

UPDATE ON REGULATION OF DIGITAL ASSETS IN NIGERIA: SOME LESSONS FROM SWITZERLAND

Introduction

Generally, skepticism expressed about cryptocurrencies stems from their classification as high-risk assets” which are extremely volatile and speculative in terms of price.¹ The main reason for the existence of Blockchain Technologies is their independence from financial endorsement and their universal nature. This is why the regulation of cryptocurrencies remains an arduous task for financial authorities.

Following the recent announcement of the ban on the dealing or facilitation of cryptocurrency transactions by Nigerian financial institutions by the Central Bank of Nigeria (CBN)², the Securities and Exchange Commission (SEC) also announced on 11th February 2020, that its previous decision to regulate cryptocurrency investments in Nigeria has now been suspended. In light of these developments, this article aims to shed light on possible options to aid the crafting of a regulatory regime for blockchain technologies in Nigeria.

There are indeed some valid concerns about cryptocurrency transactions. For instance, the fact that they create new opportunities for criminals and terrorists to launder their proceeds, or finance their illicit activities.³ Notwithstanding, the Swiss have built a system that innovatively utilizes pre-existing Swiss law and novel legislation, to regulate the activities of blockchain service providers in Switzerland.

Nigeria is responsible for more cryptocurrency trading than most countries and is currently rated as the third highest globally for trading volumes in cryptocurrency. It is therefore desirable, that a robust regulatory regime exists to govern these transactions, address negative tendencies, and in effect, strengthen the financial services industry and the Nigerian economy in general. For these reasons, it is essential to examine some key aspects of Swiss Blockchain Laws to understand the methodology employed to provide a grounded basis for digital asset exchange and tokenization, while simultaneously addressing the issue of digital currency money laundering.

The Swiss Approach

The Swiss Financial Market Supervisory Authority or ‘FINMA’ recognises the tendency for block-chain business models to sidestep existing regulations. To put a check on such tendencies, Swiss authorities have successfully placed blockchain service providers under the ambits of the Swiss Anti-Money Laundering Act.⁴ Blockchain service providers in Switzerland are mandated to verify all their customers’ identities, monitor business relationships based on risk level, and report to the ‘Money Laundering Reporting Office Switzerland (MROS), where there are reasonable grounds to suspect money laundering. All Virtual Asset Service Providers who intend on doing business in Switzerland are required to apply for a license from FINMA.

The new Swiss laws define ‘exchange digital securities’ and stipulate the legal procedure for the seizure of digital currency assets in bankruptcy proceedings.



The roles of digital currency trading platforms and their legal standing on digital securities are also well clarified.

FINMA has granted licenses to several financial institutions to carry out cryptocurrency trading activities. This has served to promote distributed ledger technology and incorporate crypto assets into portfolios and Exchange-Traded Funds.

Switzerland is noted to have a comprehensive regime for Initial Coin Offerings (ICOs) which are also regulated under money laundering laws, terrorist financing laws, securities trading laws, banking laws and, Swiss collective investment scheme legislation.

Residents of the Canton of Zug in Switzerland (referred to as the “Crypto Valley”) can now pay their taxes in bitcoin and cryptocurrencies up to 100,000 CHF, under the supervision of the Swiss Federal Tax Administration (SFTA).⁵

Interestingly, like the Nigerian position, cryptocurrencies are still not classed as a legal tender in Switzerland, neither are they considered to be “money” for reasons that their intangible nature stops them from being classified as a “thing” under Swiss civil law.⁶

Conclusion

From the foregoing, it is evident that a technology-neutral legislative approach is needed and can be developed in Nigeria. To achieve this, active steps need to be taken towards streamlining regulations on insolvency, financial market, banking, collective investment, and anti-money laundering into a legal framework for the regulation of cryptocurrency transactions and investments in Nigeria. This is likely to trigger an unprecedented boost in the Nigerian economy which has continuously suffered from currency devaluation over the years.

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