



NIJI ONI & CO
Legal Practitioners

NIJI ONI & CO ARTICLE 1 APRIL 2021

REGULATION OF CRYPTOCURRENCY IN VARIOUS JURISDICTION ACROSS THE WORLD

1 APRIL 2021

Various national and regional authorities have been forced to grapple with their regulation given the expansive growth of the cryptocurrency over the years. While the terminology used to describe cryptocurrency varies from one jurisdiction to another, one of the most common actions identified across jurisdictions is the Government-issued notices about the pitfalls of investing in cryptocurrency markets mostly issued by the Central Banks. As earlier stated, the warnings issued by various countries majorly centres around the fact that cryptocurrencies may create an avenue for illegal activities such as money laundering, terrorism, and other organized crimes.

In analysing cryptocurrency in various jurisdictions, countries around the world fall into one of these six (6) categories;

1. Countries that have placed an absolute ban on Cryptocurrency trading in all its forms. Such as, Algeria, Iraq, Morocco, Nepal, Bolivia, Pakistan, United Arab, Egypt.
2. Countries that have placed an implicit ban on Cryptocurrency trading. Such as Bahrain, Indonesia, Iran, Kuwait, Bangladesh, Lesotho, Lithuania, Macau, China, Oman, Qatar, Saudi Arabia, Columbia, Taiwan, Dominican Republic.
3. Countries that apply their taxation laws in regulating Cryptocurrency activities. Such as Argentina, Bulgaria, Finland, Iceland, Israel, Italy, Norway, Poland, Romania, Russia, South Africa, Slovakia, United Kingdom, Sweden, Spain.
4. Countries that apply their Anti-money laundering and Anti-terrorism financing Laws. Such as Cayman Island, Costa Rica, Czech Republic, Estonia, Gibraltar, Hong-Kong, Isle of Man, Jersey, Latvia, Luxembourg, Singapore.

5. Countries that apply both their Taxation Laws and Anti-money laundering and Anti-terrorism financing Laws. Such as Australia, Canada, Denmark, Japan, Switzerland.

6. Countries that have or are in the process of issuing their own national or regional Cryptocurrency. Such as Anguilla (ECCB- Eastern Caribbean Central Bank), China, Ireland, Lithuania, Venezuela, Saint Lucia, Marshall Islands, Dominica Republic (ECCB- Eastern Caribbean Central Bank), Grenada (ECCB- Eastern Caribbean Central Bank).

However, for critical analysis, regulation of cryptocurrency in USA, Canada, China, Hongkong, and the Eastern Caribbean Central Bank will be considered.

REGULATION OF CRYPTOCURRENCY IN THE UNITED STATES OF AMERICA (USA)

In the USA, there is a mixed type of treatment for cryptocurrency by state and federal governments. Initially, cryptocurrency was not a legal trade but now, there are few exceptions in the country. While the promises and benefits of this technology are still cynical, several policymakers have acknowledged the regulation risk of the currency while others have passed legislation to increase investment in technology.

The various regulations in the USA appear to be in contrast as some regulations do not consider cryptocurrency as legal, while others have found a way to encourage cryptocurrency and promote blockchains;

The Financial Crimes Enforcement Network (FinCEN) does not consider cryptocurrency as legal. Since 2013, the network has considered it as a substitute for currency and considers it as money transmitters. In contrast, Internal Revenue Service (IRS) counts cryptocurrency as property and has declared tax guidance as well for the currency. The IRS in March 2014 declared that Bitcoin and any other cryptocurrency will be taxed as “property” not as currency and further went on to provide that every individual or group trading in cryptocurrency has to, (i)Keep a detailed record of cryptocurrency sale and purchase; (ii)Have to pay taxes on every sale and purchase made through cryptocurrency; (iii)Pay taxes on the market value of any mined cryptocurrency; (iv)Pay tax for the gains made by the sale of any cryptocurrency for cash. (1)

State Regulation wise, the Wyoming (*considered as the most crypto-friendly American state*) legi

slature has exempted cryptocurrency from property taxation. Another state of America, Colorado has passed a bill to promote blockchain for government record-keeping. Several other states like Arizona, Georgia have started accepting taxes on a cryptocurrency exchange in November 2018. While some American states like New Mexico and California have issued warnings about cryptocurrency investment and New York has restricted the currency. (2)

Regarding exchange, the exchange regulations of cryptocurrency are also regarded as an uncertain legal territory. Only one regulatory body, Security and Exchange Commission (SEC) considers cryptocurrency as a security measure and in March 2018 it declared that it will apply security law for digital wallets and exchanges. In contrast, the Commodities Future Trading Commission (CFTC) follows a friendly approach for bitcoin traders as it allows traders to trade publicly (3).

Despite the fact that there is no consistent legal approach for Cryptocurrency in the USA and the real overall image of the currency is still under discussion in several American regions, many investors and large companies in the USA like Microsoft, Subway, Overstock are taking high interest in the investment of this virtual currency.

REGULATION OF CRYPTOCURRENCY IN THE CANADA

Canada allows the use of Cryptocurrencies although they are not considered as a legal tender in Canada. According to the Financial Consumer Agency of Canada webpage on digital currencies, digital currencies can be used to buy goods and service on the internet and in stores that accept digital currencies, this is asides the regular cryptocurrency exchanges. (4)

Canada's tax laws and rules also apply to digital currency transactions, including those made with cryptocurrencies, and such digital currencies are subject to the Income Tax Act (5). The Canada Revenue Agency (CRA) has characterized cryptocurrency as a commodity and not a government-issued currency (6). Accordingly, the use of cryptocurrency to pay for goods or services is "treated as a barter transaction". According to the Financial Consumer Agency, goods purchased using digital currencies must be included in the seller's income for tax purposes and while filing taxes, any gains or losses from selling or buying digital currencies must be reported. On June 19, 2014, Canada became the first country to approve regulation of cryptocurrency in the case of anti-money laundering as the Governor General of Canada gave his assent to Bill C-

-31 (An Act to Implement Certain Provisions of the Budget Tabled in Parliament on February 11, 2014, and Other Measures) (7), which amends the Canada’s Proceeds of Crime (Money Laundering) and Terrorist Financing Act to include Canadian cryptocurrency exchange.

The new law treats virtual currencies, including Bitcoin, as “money service businesses” for the purposes of the anti-money laundering law (8). The Act is regarded as the “world’s first national law on digital currencies, and certainly the world’s first treatment in law of digital currency financial transactions under national anti-money laundering law” (9).

REGULATION OF CRYPTOCURRENCY IN THE CHINA

China’s central bank, the People’s Bank of China (PBOC), has been conducting a study of digital currency for over three years, and has set up an Institute of Digital Money within the PBOC (10). According to Zhou, the former Governor of the PBOC, Chinese regulators are not recognizing virtual currencies such as bitcoin as a tool for retail payments like paper bills, coins, or credit cards. The banking system is not accepting any existing virtual virtual currencies or providing relevant services, he said. (11)

As early as December 3, 2013, the PBOC, MIIT, CBRC, CSRC, and CIRC jointly issued a notice warning the public about the risks of bitcoin, the Notice on Precautions Against the Risks of Bitcoins (12). The circular defined bitcoin as “by nature a special virtual commodity,” which “does not have equal legal status as currencies” and “cannot and should not be circulated in the market as a currency” (13). According to the notice, banks and payment institutions in China are prohibited from dealing in bitcoins. Financial and payment institutions are prohibited from using bitcoin pricing for products or services or buying or selling bitcoins, nor can they provide direct or indirect bitcoin-related services, including registering, trading, settling, clearing, or other services; accept bitcoins or use bitcoins as a clearing tool; or trade bitcoins with Chinese yuan or foreign currencies.

REGULATION OF CRYPTOCURRENCY IN THE HONGKONG

In a statement at the Legislative Council on the use of bitcoin, the Secretary for Financial Services and Treasury reiterated there were no specific regulatory measures on virtual commodities such as bitcoin in Hong Kong, but existing laws provide for sanctions against unlawful acts such as money laundering, terrorist financing, fraud, pyramid schemes, and cybercrimes, with or without virtual commodities being involved. The police will take enforcement action if they find criminal conduct involving virtual commodities by conducting patrols, including searching for relevant information via public platforms on the Internet. ⁽¹⁴⁾

REGULATION OF CRYPTOCURRENCY IN EASTERN CARIBBEAN CENTRAL BANK

The Eastern Caribbean Central Bank (ECCB) is the monetary authority for eight island economies in the Eastern Caribbean Currency Union that use a common currency known as the Eastern Caribbean dollar ⁽¹⁵⁾ - Anguilla, Antigua and Barbuda, the Commonwealth of Dominica, Grenada, Montserrat, Saint Kitts and Nevis, Saint Lucia, and Saint Vincent and the Grenadines ⁽¹⁶⁾. On March 9, 2018, the ECCB signed a memorandum of understanding with the Barbados-based financial technology company Bitt Inc. agreeing to participate in a pilot program that will enable it to issue a digital currency. Expected to start at the end of 2018, the pilot will specifically involve the development of a digital Eastern Caribbean Dollar using distributed ledger technology with a blockchain platform specifically designed for a safe and secure digital financial ecosystem. Essentially, [it] would be a proof of concept, designed to demonstrate the viability and functionality of the ECCB issuing Digital Eastern Caribbean Dollars. ⁽¹⁷⁾

CONCLUSION

A community reading of the various ways cryptocurrency is being regulated in different countries in the world as stated above goes to show that the challenges facing the growth of cryptocurrency in Nigeria and other jurisdiction is as a result of the lack of uniform legislation and insecurities involved with trading in cryptocurrency some of which are, money laundering, terrorist financing, fraud, pyramid schemes, and cybercrimes. For cryptocurrency to thrive, a lot has to be done in the manner in which the business is regulated and operated. Issues such as transparency, credibility, regulation of trading fees, liquidity, price manipulation and transaction delays should be properly legislated on and properly regulated by both the Central Bank of Nigeria (CBN) and Securities and Exchange Commission (SEC) or other international and regional bodies.

RECOMMENDATION

It is also recommended that a global or regional instrument is put in place which would be rectified by member countries that will set in place, a uniform legislation on how cryptocurrency will regulated, thereby giving cryptocurrency transactions a level of legality, predictability, transparency and consistency. This instrument will give the dealers in cryptocurrency a level of confidence as persons from different jurisdictions will not be able to take advantage of their local laws to manipulate cryptocurrency transactions.



NIJI ONI & CO ARTICLE ON CRYPTOCURRENCY 1 APRIL
2021

1. Regulation of cryptocurrency in USA By [Nidhi Kolhapur](#) January 11, 2020
2. Ibid
3. Ibid
4. *Digital Currency*, FINANCIAL CONSUMER AGENCY OF CANADA, <https://www.canada.ca/en/financial-consumeragency/services/payment/digital-currency.html> (last modified Jan. 19, 2018), *archived at* <https://perma.cc/G3PYH8NR>
5. *Digital Currency*, *supra* note 4.
6. Mariam Al-Shikarchy et al., *Gowling WLG, Canadian Taxation of Cryptocurrency ... So Far*, LEXOLOGY.COM (Nov. 14, 2017), <https://www.lexology.com/library/detail.aspx?g=6283077e-9d32-4531-81a5-56355fa54f47>, *archived at* <https://perma.cc/H9ZW-47KB>.
7. Bill C-31, An Act to Implement Certain Provisions of the Budget Tabled in Parliament on February 11, 2014 and Other Measures, Second Session, Forty-first Parliament, 62-63 Elizabeth II, 2013-2014, Statutes of Canada 2014 Ch. 20, <http://www.parl.ca/DocumentViewer/en/41-2/bill/C-31/royal-assent>, *archived at* <https://perma.cc/2N7QE68C>.
8. Tariq Ahmad, *Canada: Canada Passes Law Regulating Virtual Currencies as “Money Service Businesses”* GLOBAL LEGAL MONITOR (July 9, 2014), <http://www.loc.gov/law/foreign-news/article/canada-canada-passes-lawregulating-virtual-currencies-as-money-service-businesses/>, *archived at* <https://perma.cc/BQA6-K7MV>.
9. Christine Duhaime, *Canada Implements World’s First National Bitcoin Law*, DUHAIME LAW (June 22, 2014), <https://www.duhaimelaw.com/2014/06/22/canada-implements-worlds-first-national-bitcoin-law/>, *archived at* <https://perma.cc/Z3AQ-SKME>.
10. *Zhou Xiaochuan: Future Regulation on Virtual Currency Will Be Dynamic, Imprudent Products Shall Be Stopped for Now*, XINHUANET (Mar. 1, 2018), http://www.xinhuanet.com/finance/2018-03/10/c_129826604.htm (in Chinese), *archived at* <https://perma.cc/2CW7-8F2T>.
11. *id.*
12. PBOC, MIIT, CBRC, CSRC, and CIRC Notice on Precautions Against the Risks of Bitcoins (Dec. 3, 2013), <http://www.miit.gov.cn/n1146295/n1652858/n1652930/n3757016/c3762245/content.html> (in Chinese), *archived at* <https://perma.cc/S4DN-DXHD>.
13. *Id.*
14. *Release, Government of Hong Kong, LCQ4: Regulation of Trading Activities of Bitcoins (Mar. 25, 2015)*, <http://www.info.gov.hk/gia/general/201503/25/P201503250463.htm>, *archived at* <https://perma.cc/WK74-B453>.

15. *trevor o.b. brathwaite, eccb, monetary unions in the caribbean context – the challenges faced by the eastern caribbean currency union since the crisis (Mar. 2016)*, [http://www.centralbank.cw/uploads/files/Monetary Unions in the Caribbean Context II.pdf](http://www.centralbank.cw/uploads/files/Monetary%20Unions%20in%20the%20Caribbean%20Context%20II.pdf), archived at <https://perma.cc/VMQ2-V8HP>.
16. *Eastern Caribbean Central Bank Agreement Act 1983*, http://eccb.slu.lc/files/documents/legal_regulatory/bank_agreement1983.pdf, archived at <https://perma.cc/5YHT-3T7Y>.
17. *ECCB STRATEGIC PLAN 2017–2021*, at 58, https://www.eccb-centralbank.org/files/documents/Strategic_Plan/ECCB_Strategic_Plan_2017%20Revised%202.2.18.pdf, archived at <https://perma.cc/GL38-SSJP>; *Press Release, ECCB, ECCB to Embark on Blockchain Pilot Initiative With Bitt Inc. (Mar. 13, 2018)*, <https://www.eccbcentralbank.org/news/view/eccb-to-embark-on-blockchain-pilot-initiative-with-bitt-inc>, archived at <https://perma.cc/UD6D-AT44>.



NIJI ONI & CO
Legal Practitioners



Lagos:

21 Ajanaku Street off
Salvation Road, Opebi,
Ikeja, Lagos

Abuja:

28, 3rd Avenue, Gwarinpa
Estate, Abuja, FCT.



lawyers@nijioni.com



+234 1 453 6454



www.nijioni.com