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EXPLORING THE REGULATORY NEEDS FOR CRYPTOCURRENCY: THE TIME IS NOW.

The idea of Cryptocurrency can be traced back to the 1980s. The idea was to create a system that could not be traced and did not require centralised entities or government agencies to transact.

Harwick (2016) defined cryptocurrency as “a virtual asset utilized as a form of digital currency that is exchanged to transfer assets and other forms of financial instruments.” (p. 570). The Merriam-Webster Dictionary defines cryptocurrency

as “any form of currency that only exists digitally, that usually has no central issuing or regulating authority but instead uses a decentralized system to record transactions and manage the issuance of new units, and relies on cryptography to prevent counterfeiting and fraudulent transactions.” One common thread in the definition of cryptocurrency is that it exists digitally and is decentralized.

The digital version of cryptocurrencies takes the form of virtual tokens or coins.¹

Cryptocurrencies take different forms, such as Bitcoin, Ethereum, Litecoin, Ripple, and Cardano, each with its values and rules.

There have been controversies surrounding the use of cryptocurrency as a legal tender to trade. Some of the major drawbacks are the unfamiliarity with the concept of cryptocurrency, its volatility, and vulnerability to hacking which poses a considerable threat to investors, financial institutions, and governments.

Despite the drawbacks, the emergence of cryptocurrencies has its antecedent benefits, such as the absence of transaction fees and monetary policies, reasonable timeframes, the anonymity of holders of cryptocurrencies and lack of transparency.

With the growing popularity of cryptocurrency worldwide, there has been global discussion to find a legal framework, given that countries view them differently. While some countries welcome this digital currency, some regard them with cynicism, while others choose to ignore its existence or ban them in its entirety. Companies such as Microsoft, Expedia, Overstock, and Shopify accept Bitcoin as a form of payment.

The map below shows the global bitcoin legality



Source: Coin. dance
 Legend: Legal (Green), Alegal (Light Green), Restricted (Yellow), Illegal (Red), Unknown (Grey)

As of April 2022, El Salvador and the Central African Republic are the only countries in the world to allow Bitcoin as legal tender for monetary transactions, while the regulation by other countries varies by jurisdiction.

Since cryptocurrency operates as a decentralized system and primarily exists outside financial institutions, it is difficult to ascertain the legal regime of financial jurisdictions globally.

Undoubtedly, cryptocurrency has become a worldwide phenomenon and has influenced economies worldwide, with banks and governments exploring the creation of digital currency. The idea behind this digital currency has now become known as the Central Bank Digital Currency (CBDC), a digital form of central bank money issued and governed by a country's central bank and is available to the public. Central Bank Digital Currency (CBDC) has been noted as a tool that can advance the quest for enhancing innovation, efficiency, and financial inclusion if designed prudently.¹

The Bank of Ghana (BoG) is one of the first and few African central banks which has declared its intention to pilot a Central Bank

Digital Currency (CBDC). The E-Cedi is regulated and supplied by the Bank of Ghana. It is subject to less volatility and uncertainties than other cryptocurrencies.

From the point of the CBDC taxonomy, the digital Cedi (or the eCedi) is a retail token based on CBDC. This is a value-based strategy that implies an eCedi that represents a token or a digital value note.² The eCedi is expected to complement the physical form of the Ghana cedi but in a digital way.

As of today, the Ghana Cedi is the only form of legal tender in Ghana. As such, cryptocurrencies, including Bitcoin, are not regulated or considered legal tender. Despite this, it has been discovered that people buy Bitcoin and other cryptocurrencies in Ghana.

The regulation of cryptocurrencies has been a popular topic globally. As cryptocurrency usage grows, so make cryptocurrency regulations around the world that are put in place to govern them as the cryptocurrency sphere is constantly evolving.

In Ghana, the Bank of Ghana³, in a notice to Banks and Specialized Deposit-Taking Institutions (SDIS) and the General Public dated 22nd January 2018, stated that the activities in digital currency were not licensed under the Payments System Act 2003 (Act 662) now repealed. The public was advised to do business with only institutions licensed by the Bank of Ghana to ensure that such transactions fall under the BoG's regulatory purview.

The notice further mentioned that the revised Payment Systems and Services Bill (now Payment Systems and Services Act 2020) would consider the electronic payments space up to date with international standards and aligned with the evolving electronic payments landscape. However, the new Act does not address cryptocurrency, blockchain, or digital currency.

In another notice⁴ issued by the Securities and Exchange Commission (SEC), Ghana dated 29th March 2019; it was stated that Cryptocurrencies are not recognised as a currency or legal tender in Ghana. The platform on which they are traded is also not licensed nor regulated by the SEC. The SEC stated that it does not control these types of product offerings and their

accompanying online trading platforms or Exchanges, and such activities should be reported to SEC.

The effect of the above is that cryptocurrencies are not regulated under any laws in Ghana and are therefore not backed by any safeguards by the relevant agencies.

Interestingly, despite the notices and warnings to the general public, a report by Cryptocurrency Adoption Index, conducted by Finder.com in 2021, revealed that 17.3% of internet users in Ghana own cryptocurrency. As of December 2021, 52.1% of people own Bitcoin, 18.1% own Ethereum, 19.7% own Dogecoin, and 17.2% own Ripple.⁵

The interest in cryptocurrencies continues to grow in Ghana and globally, dividing governments around the globe on how to handle its regulation within its borders. For some, strict measures should be adopted to end cryptocurrencies, while others believe that the set time for regulatory guidance is now.

We believe that cryptocurrency has undoubtedly come to stay. As such, the

urgent need for regulatory guidance is needed to reduce speculation among crypto assets and ensure the protection of assets.

As it stands, most of the trading in the crypto world today is under-regulated. This means investor protection is much weaker on crypto exchanges than in the securities markets. Thus, regulation is needed to make the market safer and more predictable.

Though trading in cryptocurrency will not eliminate the risk factor, investor protections can make the market less vulnerable to external manipulation by creating a safer market through regulation. Currently, the lack of laws and policies to regulate cryptocurrencies in Ghana has created an avenue for scams and market manipulation. Thus, the need to regulate cryptocurrency remains vital.

Cryptocurrencies are here to stay as they continue to garner traction worldwide. Even though a section of the public has accepted cryptocurrencies, the industry remains heavily under-regulated worldwide and more so in Africa.

The gaps in the regulation of cryptocurrencies make participants prone to issues concerning cyber-attacks, money laundering, irreversible erroneous transfers, and fraud. Arguably, stricter regulation would serve broader societal interests as using crypto-assets for illegal transactions is a growing concern.

Regulation of cryptocurrencies remains a reoccurring conversation worldwide and in Ghana, as the country, through its central bank, the Bank of Ghana, pushes on with its e-Cedi. The current non-regulation of cryptocurrencies in Ghana will undoubtedly change with its growing popularity and the burgeoning call for its regulation.

In light of the above, it would be advantageous for regulators to establish and maintain a conducive environment tailored to the cryptocurrency industry, which pays excellent attention to crypto-based commerce, alongside mechanisms to protect the integrity, security, and stability of financial systems and its actors.

Such a system demands a deep understanding of blockchain technology, a thorough understanding of the intricacies of cryptocurrencies, and most importantly,

its potential power to revolutionize the global financial system.

1 <https://ssrn.com/abstract=4113179> Dataking Policy Brief 006, Accra, Dataking Consulting

2 <https://www.bog.gov.gh/wp-content/uploads/2022/03/eCedi-Design-Paper.pdf>

3 NOTICE NO. BG/GOV/SEC/2018/02

4 PUBLIC WARNING ON INVESTMENT AND TRADING IN CRYPTOCURRENCIES AND THEIR DIGITAL PLATFORMS. SEC/PN/003/03/2019

5 <https://www.finder.com/ng/finder-cryptocurrency-adoption-index>

REGULATORY GUIDE

Office of the Registrar of Companies

The President of Ghana, Nana Addo Dankwa Akufo-Addo officially launched the Office of the Registrar of Companies (ORC) on Friday 22nd July, 2022. The ORC was established pursuant to Section 351 of the Companies Act, 2019 (Act 992) to register and regulate all types of business entities in accordance with the relevant enactments governing such entities which include Business Names, Companies, Partnerships, and Professional Bodies.

The Registrar of Companies is also the Official Liquidator and Regulator of Insolvency Practitioners under the Corporate Insolvency and Restructuring Act, 2020 (Act 1015) and other relevant enactment.

The Registrar-General's Department (RGD) will no longer be responsible for the registration of businesses as it used to be. Its mandate is limited to Registration of Marriages, Industrial Property Rights, Administration of Estates and Public Trusts.

The Cybersecurity Authority

The Minister for Communication and Digitalization, Hon. Mrs. Ursula Owusu-Ekufu has inaugurated the 18 pioneer members of the Joint Cybersecurity Committee. This is pursuant to Section 13 of the Cybersecurity Act 2020 (Act 1038). The Committee is expected to collaborate with the Authority and the sectors or institutions represented on the Committee for the implementation of relevant cybersecurity measures.

and metrology, whilst also consolidating all laws relating to those areas.

Under the auspices of the Ghana Standards Bill, 2022, the GSA is empowered to establish laboratories and other facilities to promote education and research pertaining to standardisation, collection and dissemination of information connected to standardisation as well as and developing and maintaining a collection of library materials and a museum collection relating to standardisation and allied materials.

LEGISLATIVE CORNER

Electronic Transfer Levy Act, 2022 (Act 1075)

The Electronic Transfer Levy (E-Levy) was introduced to capture revenues within the digital space. The E-Levy Act 2022 (Act 1075) imposes a levy of 1.5% on electronic transfers and applies to tax on mobile money payments, bank transfers, merchant payments, and inward remittances charged to the transferor at the time of transfer.

The Ghana Revenue Authority reports that, between 2017 and 2021, mobile money

transactions in Ghana increased from GHS 155 billion to GHS 986 billion.

Ghana Standards Authority Bill, 2022

The Ghana Standards Bill, 2022, establishes the Ghana Standards Authority (GSA), as the apex authority responsible for the establishment and promulgation of standards, enforcement of conformity assessment programmes and regulation activities in respect of weights and measurements in Ghana. The Bill further revises the laws pertaining to standardisation, conformity assessment

Tax Exemptions Bill, 2022.

The Parliament of Ghana has passed the Tax Exemptions Bill, 2022. The Bill when assented to, will set clear eligibility criteria for tax exemptions and provide for the monitoring, evaluation and enforcement of exemptions. It will further strengthen the monitoring role of the Ministry of Finance and Parliament on management of tax exemptions.

WHO'S WHO?¹⁶



Professor Rosina Kyerematen has been appointed as the First Female Dean of Student Affairs of the University of Ghana, Legon, effective 1st August 2022.

She is an Associate Professor of Entomology at the Department of Animal Biology and Conservation Science and a member of the Entomological Society of America (ESA), Norwegian Entomological Society, the Society for Conservation Biology (SCB), the Entomological Society of Ghana and the Ghana Science Association.

She has a PhD in Systematic Entomology from the University of Bergen, Norway and is the first woman to occupy this office since the establishment of the university in 1948



Mrs. Jemima Oware was the appointed Registrar-General from 2017 to 2022. Her dedicated service bore many reforms which significantly transformed the ease of business registrations, filings and turnaround time at the Registrar-General's Department. During her tenure, the Companies Act, 2019 (Act 992) and Corporate Insolvency and Restructuring Act, 2020 (Act 1015) were enacted. Mrs. Oware has been appointed the first Registrar of Companies effective July, 2022.

She is an Honorary Council member of the Ghana Association of Restructuring & Insolvency Advisors (GARIA), a Commissioner of the Securities and Exchange Commission, a member of the Ghana Bar Association as well as the Federation of International Women Lawyers Association (FIDA).



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This publication may provide a summary of legal issues but is not intended to give specific legal advice. If you require legal advice, please speak to a qualified lawyer, which may include a qualified member of our legal team at B&P ASSOCIATES.