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## TEMPLARS ThoughtLab

# A Blockchain Strategy for Nigeria – Navigating the Evolving Regulatory Landscape

## Introduction

Blockchain technology has emerged as a transformative innovation, with the potential to revolutionize a wide range of industries. Beyond its most popular use case in cryptocurrency, blockchain technology has shown promise in areas such as supply chain management, real estate, healthcare, and even voting systems. By enabling secure and transparent record-keeping, blockchain technology has the potential to eliminate fraud, corruption, and other inefficiencies that have long plagued traditional systems.

It is therefore paradoxical that despite the enormous potential of blockchain technology, its adoption has faced some challenges, particularly from regulators and governments that are still grappling with how to regulate this nascent technology. Notwithstanding, the adoption of this technology continues to gain traction in Nigeria, with record growth seen in 2021. According to a 2022 Kucoin report, 35% of the Nigerian population aged 18 to 60, owned or traded cryptocurrencies in 2022.<sup>1</sup> Another report by Enhancing Financial Innovation & Access (EFInA) predicts that blockchain technology can potentially add Twenty-Nine Billion United States Dollars (\$29,000,000,000) to Nigeria's gross domestic product (GDP) within a decade.<sup>2</sup>

It however appears that the regulatory landscape in Nigeria is evolving as regulatory agencies are increasingly embracing the adoption and deployment of blockchain technology. This shift is evident in the recent approval of the National Blockchain Adoption Strategy by the Federal Government of Nigeria, which indicates a willingness to explore the potential benefits of blockchain technology across various sectors in Nigeria.<sup>3</sup>

In view of these developments, this article aims to provide an analysis of the current legal framework for blockchain technology in Nigeria, while also highlighting the challenges impeding its adoption and the potential solutions for minimizing associated risks. Through this examination, we aim to provide valuable insights for stakeholders in the Nigerian blockchain space and legal professionals seeking to navigate this emerging technology.

<sup>1</sup> Kucoin, 'Into the Cryptoverse: Decoding the World of Crypto Consumers', accessible at: <https://www.kucoin.com/blog/kucoin-is-into-the-cryptoverse-report-reveals-35-percent-of-nigerian-adults-are-crypto-investors>

<sup>2</sup> EFInA, 'Report – Potential of Blockchain for Financial Inclusion in Nigeria', 3 April 2021 accessible at: <https://efina.org.ng/media-room/potential-of-blockchain-for-financial-inclusion-in-nigeria/>

<sup>3</sup> Punch Nigeria, 'Why FG approved national blockchain policy', 03 May 2023, accessible at <https://punchng.com/why-fg-approved-national-blockchain-policy/#:~:text=%E2%80%9CThe%20vision%20of%20the%20Policy,growth%2C%20and%20prosperity%20for%20all>

## Legal and Regulatory Framework of Blockchain in Nigeria

In Nigeria, the regulatory framework for blockchain is still evolving but the focus has been largely on virtual/digital assets and cryptocurrencies with multiple regulatory bodies exercising varying levels of oversight. These regulators include:

### (a) The Central Bank of Nigeria (“CBN”)

In the financial services sector, the CBN's approach to blockchain technology is streamlined to the use of virtual/digital currencies/assets in financial services. The CBN has adopted a cautious position as expressed in various circulars and press releases<sup>4</sup>. According to the CBN, transactions in virtual currencies are largely untraceable and anonymous, making them susceptible to abuse by criminals especially in money laundering and financing of terrorism.<sup>5</sup> Thus, pending the issuance of substantive regulation by the CBN, banks and other financial institutions are prohibited from holding, trading, facilitating or transacting in any way in virtual currencies. In line with the above, in April 2021 and 2022 respectively, the CBN fined three (3) Nigerian banks a sum of Eight Hundred Million Naira (₦800,000,000) and another six (6) banks over One Billion Naira (₦1,000,000,000) for non-compliance with its directives on virtual currencies.<sup>6</sup> Notably, while the CBN has not outrightly banned trading in virtual currencies, its position implies that persons or entities in Nigeria cannot facilitate the trade or transmission of virtual currencies through the Nigerian financial system thereby crippling virtual currency-based businesses in Nigeria. Given its stance on virtual currencies, it is therefore interesting that the CBN has also explored digital currency in the form of the e-Naira, which is a central bank digital currency (CBDC). Although the e-Naira was launched on 25<sup>th</sup> October 2021,<sup>7</sup> its adoption level remains slow due to insufficient awareness and acceptance.<sup>8</sup>

### (b) The Securities and Exchange Commission (“SEC”)

The SEC has taken a different position from the CBN on the regulation of virtual/digital assets in Nigeria. The SEC's position is that virtual assets that qualify as securities fall within the SEC's regulatory purview.<sup>9</sup> Staying true to this position, on 11<sup>th</sup> May 2022, the SEC issued the New Rules on Issuance, Offering Platforms and Custody of Digital to regulate digital and virtual assets in Nigeria (the “**Digital Asset Rules**”). The Digital Asset Rules regulate digital asset offering platforms; digital asset custodians; digital service providers; and digital asset exchange platforms. In 2021, the SEC introduced the Regulatory Incubator (RI) program, a platform aimed at providing startups with a supportive environment to test innovative products, services, business models, and delivery mechanisms related to the capital market<sup>10</sup> and initiated the application process for the first cohort of the RI on April 28, 2023.<sup>11</sup> However, the acceptance of blockchain products and developers into the SEC RI remains uncertain. In its February 2021 press release, the SEC stated that individuals affected by the CBN's position would only be eligible for the RI program once they are allowed to operate Nigerian bank accounts. Surprisingly, the SEC's call for applications did not specifically exempt virtual and digital assets from the program even though the CBN's position has remained unchanged. However, crowdfunding, robo advisory/digital investment advisory, and digital sub-brokers innovators were explicitly excluded from the program due to the existence of SEC regulations governing those models.

### (c) The National Information Technology Development Agency (“NITDA”)

NITDA, the regulatory body saddled with the responsibility of developing and regulating information technology practices in Nigeria has on its part focused on the general sphere of blockchain not just virtual and digital currencies/assets. Together with other stakeholders in the eco-system, NITDA developed the recently approved National Blockchain Adoption Strategy<sup>12</sup> (the “**Strategy**”) to serve as a roadmap for the adoption of blockchain technology in the government's digital transformation agenda. The Strategy encompasses several key elements, including the establishment of a Nigeria Blockchain Consortium, the enhancement of the regulatory and legal framework governing blockchain, and the implementation of blockchain business incentive programs to support small and

medium-sized enterprises (SMEs) and startups. The Strategy also recognises the scepticism of regulators like the CBN about the adoption of blockchain technology which has slowed down the adoption process and resulted in a high entry barrier into the blockchain space. To address this challenge, the Strategy introduces a blockchain sandbox framework which will be spearheaded by these regulators particularly the CBN, SEC, NITDA, FIRS and the Nigeria Deposit Insurance Corporation (the “NDIC”). It is worth noting that while the Strategy is commendable, it is not an act of the national assembly or a regulation/guideline. Instead, it is an explanatory document that lacks the force of law. This raises concerns about how effectively the initiatives outlined in the Strategy will be enforced, which is particularly significant in Nigeria, where laws and government initiatives often lack proper enforcement.

## Challenges Facing Blockchain Adoption in Nigeria

Blockchain adoption in Nigeria has faced several challenges that have impeded its growth and potential impact on various sectors of the economy. Some of the key challenges include:

### (a) Lack of awareness

One of the main challenges associated with blockchain technology in Nigeria is a lack of awareness of the technology and a widespread lack of understanding of how it works. Many companies and individuals alike do not understand what blockchain is or what it can do, and this lack of understanding is hampering investment in and adoption of the technology. Additionally, blockchain is often associated with cryptocurrency in the mind of many and the negative press that has shrouded the use of cryptocurrency has been extended to blockchain technology generally. It is important to educate people on the versatility of blockchain technology and how it can be deployed to solve a variety of problems in Nigeria.

### (b) Regulations and Regulators

The lack of legislative clarity is a significant obstacle to the widespread use of blockchain technology in Nigeria. Although the SEC introduced Digital Assets Rules in 2022, they remain non-operational due to challenges in implementation and conflicts with the CBN's stance on virtual currencies. The absence of clear guidelines and licenses has created uncertainty, slowing down innovation and investment in blockchain-based startups. To address this issue, the Nigerian government must develop clear and comprehensive regulatory frameworks for the blockchain industry. The government should also collaborate with relevant stakeholders in the blockchain industry, including startups, investors, and industry associations, to ensure that the regulatory frameworks are practical and effective.

<sup>4</sup> CBN, 'Virtual Currencies not Legal Tender in Nigeria – CBN', 28 February, 2018 accessible at:

<https://www.cbn.gov.ng/out/2018/ccd/press%20release%20on%20virtual%20currencies.pdf>

CBN 'Letter to all Deposit Money Banks, Non-Bank Financial Institutions and other Financial Institutions', 5 February 2021 accessible at:

<https://www.cbn.gov.ng/Out/2021/CCD/Letter%20on%20Crypto.pdf>

<sup>5</sup> CBN 'Circular to banks and Other Financial Institutions on Virtual Currency Operations in Nigeria', 12 January 2017 accessible at:

<https://www.cbn.gov.ng/out/2017/fprd/aml%20january%202017%20circular%20to%20fis%20on%20virtual%20currency.pdf>

<sup>6</sup> Punch Nigeria, 'CBN hits banks with N1.31bn fine for flouting directive on crypto accounts', 7 April, 2022 accessible at: <https://www.thecable.ng/cbn-fines-six-banks-n1-31bn-for-flouting-directive-on-closure-of-crypto-accounts>

<sup>7</sup> Wasilat Azeez, 'CBN: We expect minor challenges — but eNaira is secure, dependable' 22 October 2021 accessible at: <https://www.thecable.ng/enaira-platform-is-secure-dependable-cbn-assures-nigerians>

<sup>8</sup> Onome Amuge, 'Nigeria's eNaira battles for survival amid acceptance challenges' 10 May 2022 accessible at: <https://www.businessamlive.com/nigerias-enaira-battles-for-survival-amid-acceptance-challenges/>

<sup>9</sup> SEC, 'Statement On Digital Assets And Their Classification And Treatment' 14 September 2020, accessible at: <https://sec.gov.ng/statement-on-digital-assets-and-their-classification-and-treatment>

SEC, 'Press Release on Cryptocurrencies' 11 February 2021 accessible at: <https://sec.gov.ng/press-release-on-cryptocurrencies>

<sup>10</sup> Ibid

<sup>11</sup> SEC, 'Notice of Acceptance of Applications for the Regulatory Incubation (RI) Program', 28 April 2023 accessible at: <https://sec.gov.ng/notice-of-acceptance-of-applications-for-the-regulatory-incubation-ri-program/>

<sup>12</sup> NITDA, 'National Blockchain Strategy 2023' accessible at: <https://nitda.gov.ng/wp-content/uploads/2020/10/DRAFT-NATIONAL-BLOCKCHAIN-ADOPTION-STRATEGY.pdf>

**(c) Electricity**

The epileptic state of the Nigerian power sector is another significant clog in the wheel of blockchain adoption in Nigeria. A recent report by the Electricity Think Tank Group indicates that about 75 per cent (75%) of electricity consumed in Nigeria, comes from diesel and petrol-powered generators<sup>13</sup> which account for about 25,000MW, while the national grid provides about 4,000MW. This poses a significant challenge to the implementation and adoption of blockchain technology in Nigeria, as many blockchain-based solutions require a stable and reliable source of electricity to function effectively. To overcome these challenges, the Nigerian government and relevant stakeholders in the power sector need to invest in improving the country's power infrastructure as well as the adoption of renewable energy sources such as solar, hydro, and wind power. Another potential solution is to explore the use of energy storage technologies, such as batteries and fuel cells, to store excess power generated during times of high demand. This excess power can then be used to supplement the grid during periods of low supply or power outages.

**(d) Security**

Another key issue with blockchain technology is security. Despite being more secure than traditional computer systems, blockchain-based applications, networks, and organizations are not immune to vulnerabilities.<sup>14</sup> In addition, due to its largely untraceable nature, criminal elements have adopted cryptocurrencies for their criminal activities including money laundering, drug trafficking, human trafficking, and financing terrorism. To address these security challenges, organizations that use blockchain technology need to implement robust security measures, such as two-factor authentication, encryption, and regular security audits. Additionally, collaboration between blockchain experts, law enforcement agencies, and regulatory bodies can also play a significant role in combating criminal activities related to blockchain technology.

**(e) Data Protection**

Some important tensions between blockchain technology and data protection include:

- (i) The distributed peer-to-peer network architecture of blockchain technology often makes it difficult to determine the data controller, especially with respect to public block;<sup>15</sup>
- (ii) Applying jurisdictional data protection regulations to decentralized blockchain which is often multi-jurisdictional may prove difficult;
- (iii) The decentralized nature of the blockchain poses a challenge to the enforcement of these cross-border restrictions<sup>16</sup>; and
- (iv) The immutability of blockchain which underpins the technology itself makes it difficult to enforce the data subject's right to rectification<sup>17</sup> and the right to erasure<sup>18</sup> (right to be forgotten) under the Nigeria Data Protection Act (the "DPA") without compromising the structure and integrity of the blockchain.

In the absence of regulatory guidance from relevant authorities to reconcile these issues, organisations should consider the following to mitigate possible areas of conflict:

- (i) Analysing carefully whether implementing blockchain technology is a good fit for existing business and operational goals;

<sup>13</sup> Punch Nigeria, 'Nigeria relies on generators for 75% electricity – Report', 21 March 2023 accessible at: [https://punchng.com/nigeria-relies-on-generators-for-75-electricity-report/#:~:text=Diesel%20and%20petrol%2Dpowered%20generators%20account%20for%20about%2025GW%20\(25%2C000,polluting%20sources%20of%20electricity%20generation.](https://punchng.com/nigeria-relies-on-generators-for-75-electricity-report/#:~:text=Diesel%20and%20petrol%2Dpowered%20generators%20account%20for%20about%2025GW%20(25%2C000,polluting%20sources%20of%20electricity%20generation.)

<sup>14</sup> Finextra, 'Remaining challenges of blockchain adoption and possible solutions', 29 February 2020 accessed at:

<https://www.finextra.com/blogposting/18496/remaining-challenges-of-blockchain-adoption-and-possible-solutions>

<sup>15</sup> Shah P., Forester D., Polk D. & Wardwell LLP, Berberich M., Raspé C., Mueller H., with practical law data privacy advisor, 'Blockchain Technology: Data Privacy Issues and Potential Mitigation Strategies', 2019 accessed at:

[https://www.davispolk.com/sites/default/files/blockchain\\_technology\\_data\\_privacy\\_issues\\_and\\_potential\\_mitigation\\_strategies\\_w-021-8235.pdf](https://www.davispolk.com/sites/default/files/blockchain_technology_data_privacy_issues_and_potential_mitigation_strategies_w-021-8235.pdf)

<sup>16</sup> Sections 41-43 of the DPA highlight specific requirements for the transfer of data outside Nigeria.

<sup>17</sup> Section 34 (1) (c) of the DPA.

<sup>18</sup> Section 34 (1) (c) of the DPA.

- (ii) Deploying private or “permissioned” blockchains to enforce stricter usage rules;
- (iii) Combining on-chain and off-chain data storage mechanisms and using on-chain transactions as mere pointers or access controls to manage storage solutions off-chain;
- (iv) Limiting the volume of personal data that is stored on the blockchain by design; and
- (v) Adopting alternative data encryption and destruction techniques e.g. revocation of access rights, irreversible data transformations etc., to protect personal data

**(f) Environmental Cost**

Recent reports have shown that cryptocurrency mining and transaction processes have resulted in significant climate damages, with the average cost ranging from 35% between 2016 to 2021 and increasing to 58% from 2020 to 2021.<sup>19</sup> This places cryptocurrencies in the same category as other energy-intensive or highly polluting goods like meat, and electricity produced from gasoline.<sup>20</sup> The growing concerns about climate change in Nigeria may create challenges with the adoption of blockchain technology. However, the use of renewable energy sources for the deployment of blockchain technology could alleviate these environmental fears and concerns. Additionally, the use of energy-efficient hardware and mining techniques could further minimize the energy consumption and environmental impact of blockchain technology.

**(g) Ethical issues**

One significant ethical concern with blockchain adoption is the use of cryptocurrency for criminal activity.<sup>21</sup> This was one of the underlying reasons given by the CBN for its stance against the use of cryptocurrencies in the Nigerian financial sector. To tackle these ethical concerns, the Nigerian government must establish robust regulatory frameworks for the use of cryptocurrencies and other blockchain-based solutions. These regulations should include measures to combat money laundering, terrorist financing, and other illegal activities associated with the use of cryptocurrencies. Additionally, there needs to be increased collaboration between stakeholders in the blockchain industry, law enforcement agencies, and regulatory bodies for the development of policies and regulations that promote transparency, accountability, and compliance in the use of blockchain-based systems and cryptocurrency.<sup>22</sup>

## Looking Forward

Over the past few years, we have witnessed an uptick in regulatory activities within the blockchain technology ecosystem, and we expect even more in the coming years. From a tax standpoint, Nigeria is moving towards taxing digital/virtual assets. For example, the Finance Act 2023 amended the Capital Gains Tax Act to include “Digital assets” as a form of property upon which capital gains tax is payable. The telecommunications regulator, the Nigerian Communications Commission (“NCC”) is also not left behind as it has taken a keen interest in blockchain technology. In April 2022, the NCC organised a workshop, themed on “Distributed Ledger Technology (Blockchain) Ecosystem, Decentralisation and Adoption Methods” where it stated in detail its appreciation for the use of blockchain even in the telecoms sector. The

<sup>19</sup> Benjamin A. Jones, Andrew L. Goodkind & Robert P. Berrens ‘Economic estimation of Bitcoin mining’s climate damages demonstrates closer resemblance to digital crude than digital gold’, 2022 accessed at: <https://www.nature.com/articles/s41598-022-18686-8.pdf>

<sup>20</sup> Ibid.

<sup>21</sup> Johnson F, Akande A., Akinsanya P. . ‘Leveraging digital currency For National Development’, 2019 accessed at: [https://www.academia.edu/38942203/LEVERAGING\\_DIGITAL\\_CURRENCY\\_FOR\\_NATIONAL\\_DEVELOPMENT](https://www.academia.edu/38942203/LEVERAGING_DIGITAL_CURRENCY_FOR_NATIONAL_DEVELOPMENT)

<sup>22</sup> This includes measures such as KYC (Know Your Customer) and AML (Anti-Money Laundering) compliance, which would require individuals and organizations using cryptocurrency to provide identification and other necessary information.

Nigerian Financial Intelligence Unit ("NFIU") has also issued an advisory for regulators, law enforcement officers, digital currency operators in Nigeria, financial institutions and designated non-financial institutions in addressing issues related to virtual currency. We also anticipate the implementation of the SEC Digital Assets Rules and improved synergy between the SEC and the CBN in the regulation of blockchain technology in the financial services sector.

Given the foregoing activities, we anticipate that the regulatory environment in Nigeria will shift from a state of relative uncertainty to one of clarity as evidenced by the approval of the National Blockchain Adoption Strategy by the federal government. The Strategy signifies a commitment to exploring the benefits of blockchain across various sectors. Thus, Nigerian businesses have an exceptional opportunity to harness the transformative potential of blockchain and in doing so, should leverage the expertise of professionals in navigating the varying degrees of legal complexities.

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