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CRYPTOCURRENCY

Money Laundering Implications in Nigeria

Cryptocurrency: Money Laundering Implications in Nigeria*

1. Introduction

With the bandwagon of cryptocurrency users in Nigeria and the recent regulatory brouhaha surrounding the same, it is desirable to consider the money laundering (ML) implications of cryptocurrency transactions in Nigeria. Due to their decentralization and relative privacy, cryptocurrencies are expedient instruments for money laundering – the offence of concealment of illegal wealth by moving it. The pertinent question is – if an act that would ordinarily amount to ML if committed using legal tender is committed using cryptocurrency, could the actor be criminally liable under the present anti-money laundering (AML) regime in Nigeria? It will appear that the answer is “yes” under the current law, but both the current law and the machinery of law enforcement are in need of reform and refinement.

2. Understanding Cryptocurrency and ML

2.1 According to the Financial Action Task Force (FATF)¹, cryptocurrency is ‘*a math-based, decentralized convertible virtual currency that is protected by cryptography*’.² FATF defines ‘virtual currency’ as a “*digital representation of value that can be digitally traded and functions as: (a) a medium of exchange; and/or (b) a unit of account; and/or (c) a store of value, but does not have legal tender status in any jurisdiction*”.³

2.2 The foregoing definition of cryptocurrency connotes that all cryptocurrencies can perform the function of fiat money – that is – medium of exchange, unit of account and store of value. However, the author takes an exception to the indiscriminate use of the term ‘cryptocurrency’. ‘Cryptocurrency’ could mean a “crypto-coin” (which performs functions of money) or a ‘crypto-token’ (which is a security and is usually offered by startups in Initial Coin Offerings).⁴ Since a reference to ‘cryptocurrency’ connotes a reference to an instrument that may not be a ‘currency’, the term ‘cryptocurrency’ may be described as a misnomer.

2.3 This piece focuses on crypto-coins (Crypto or Cryptos). A Crypto is a subset of the larger Crypto-asset class.⁵ It fulfils the requirements of a currency, that is, a medium of exchange, unit of account, store of value and a standard of deferred payment.⁶ Examples of Cryptos are (in no particular order) PIVX, Zcash, Zencash, Blackbytes, Bytecoin, Deeponion, Cloak Coin, BNB, Bitcoin, Ethereum, Chiliz and Polkadot. It is noteworthy that the European Union Court has held that converting Bitcoin to a legal tender is synonymous with conversion of legal tenders.⁷

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¹ FATF is the global coordinating body on AML/CFT efforts

² FATF, “2015 Guidance for a Risk-Based Approach to Virtual Currencies” <http://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-RBA-Virtual-Currencies.pdf> page 27 [Accessed on March 22, 2021].

³ FATF, “2015 Guidance for a Risk-Based Approach to Virtual Currencies” <http://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-RBA-Virtual-Currencies.pdf> page 26 [Accessed on March 22, 2021].

⁴ Alexander Snyers; Karl Pauwels, “ICOs in Belgium: Down the Rabbit Hole into Legal No Man’s Land? Part 1” International Company and Commercial Law Review, Volume 29, Issue 8 2018, p. 486.

⁵ David Lee, Li Guo and Yu Wang, “Cryptocurrency: A new investment opportunity?” (March 2018), p. 2, https://ink.library.smu.edu.sg/cgi/viewcontent.cgi?article=6783&context=lkcsb_research [Accessed on March 22, 2021].

⁶ European Central Bank, “Virtual Currencies” (October 2012), p. 10, <https://www.ecb.europa.eu/pub/pdf/other/virtualcurrencyschemes201210en.pdf> [Accessed March 22, 2021].

⁷ Skatteverket v. David Hedqvist Case C-264/14.

- 2.4 Cryptos fulfil the requirements of a currency and although independent of the central bank, constitute a peer-to-peer alternative to fiat money.⁸ The author contends that Cryptos perform the functions of money better than fiat money because, more than fiat money, Cryptos possess - portability, uniformity, divisibility, durability, acceptability, substitutability, and rarity. Looking back at the history and evolution of money – from trade by barter, traded goods, precious metals, mints, coins to paper money – the constant catalysts for the evolution have been portability and uniformity. One continues to wonder if paper money would be extinct in fifty years.

ML

- 2.5 ML could mean either a generic ML act (**Generic ML**) or an act that is not a generic ML act but has been criminalized under an ML prohibition statute (**Non-Generic ML**). A Generic ML act simply means the concealment of the origins of illegally obtained money – to ‘wash dirty money’. An example of a Non-Generic ML Act is a situation where an individual, without involving a financial institution, makes or accepts a cash payment exceeding ₦5,000,000 or its equivalent.⁹
- 2.6 Cryptos can be traded over-the-counter or on exchanges. Currently, under the MLPA, Crypto exchanges, merchants or traders do not qualify as “Financial Institutions” (FIs) or “Designated Non-Financial Institutions” (DNFIs). Also, Crypto wallets do not qualify as “Accounts” under MLPA.¹⁰ Therefore, in Nigeria, Crypto merchants, traders and exchanges are not bound to comply with “KYC” requirements, mandatory disclosures, reporting and other obligations of FIs and DNFIs in the MLPA. It should, however, be noted that the MLPA respectively empowers the CBN and Ministry of Trade and Investment to designate any business as FI or DNFI within the ambit of MLPA.¹¹

3. **Cryptos and Non-Generic ML**

- 3.1 Non-Generic ML offences under the MLPA do not envisage the use of Cryptos. Therefore, if an act that would ordinarily amount to a Non-Generic ML offence under MLPA if committed using fiat money is committed using Crypto, the actor may not be criminally liable under MLPA. Under the MLPA, transportation of cash or negotiable instruments above USD10,000 or its equivalent by individuals in or out of the country shall be declared to the Nigeria Customs Service.¹² This legislation is simply defeated by the virtual nature of Cryptos. The issue of “transportation of cash” would not arise.
- 3.2 Further, under the MLPA, a body corporate cannot, without involving a FI, make a cash transaction exceeding ₦10,000,000.¹³ Does “cash transaction” include Cryptos? Are Cryptos “cash”? This is further exacerbated by CBN’s directive to FIs prohibiting FIs from dealing in Cryptos.¹⁴ Assuming that Cryptos qualify as cash, could the referenced CBN directive be a good defence to charge under the MLPA?

⁸ Bryan Chia, “Evolution of Cryptocurrency: Replacing Modern Cash” (2017), Masterthecrypto available at: <https://masterthecrypto.com/evolution-cryptocurrency-replacing-modern-cash/> [Accessed on March 22, 2021].

⁹ Money Laundering Prohibition Act, 2011 (as Amended) (MLPA), s.1.

¹⁰ MLPA, s. 26 defines FIs, DNFIs and Accounts.

¹¹ MLPA, s. 26.

¹² MLPA, s. 2(3).

¹³ MLPA, s. 1.

¹⁴ CBN’s Letter to all FIs and DNFIs dated February 5, 2021, <https://www.cbn.gov.ng/Out/2021/CCD/Letter%20on%20Crypto.pdf> [Accessed March 22, 2021].

4. **Crypto and Generic ML**

Any person who directly or indirectly: (a) conceals or disguises the origin of; (b) converts or transfers; (c) removes from jurisdiction; or (d) acquires, uses, retains or takes possession or control of; any fund or property which forms part of the proceeds of an unlawful act commits an offence of ML.¹⁵ The use of “fund or property” makes the provision wide enough to cover Cryptos. From the foregoing, it is clear that, subject to proof, a person using Crypto in Nigeria may be criminally liable for committing the Generic ML in MLPA, section 15.

5. **Proof: Are Cryptos Anonymous or just Private?**

5.1 Cryptos are considered private. However, they are not necessarily anonymous as the law may intervene to investigate facts or compel disclosure where they are used to perpetrate crimes. In February 2015, Ross Ulbricht, who created Silk Road – a Bitcoin market facilitating the sale of USD1bn in illegal drugs – was sentenced to life in prison.¹⁶ In March 2015, the assets of Tomáš Jiříkovský, a 28-year-old Czech national were seized based on suspicions of laundering USD40mm in stolen Bitcoins.¹⁷ In September 2015, an American, Trendon Shavers pleaded guilty to running a USD150mm Ponzi scheme—the first Bitcoin securities fraud case¹⁸—and a Frenchman Mark Karpelès, was arrested and charged with fraud and embezzlement of USD390mm from the now-shuttered Bitcoin exchange, Mt. Gox.¹⁹ The foregoing are testaments to the fact that Crypto transactions are private but not necessarily anonymous, and should not be used to perpetrate crimes.

5.2 However, despite the best efforts of law enforcement agencies, some Cryptos are mined using sophisticated cryptographic methods which are widely considered to confer anonymity.²⁰ Examples include PIVX, Zcash, Zencash, Blackbytes, Bytecoin, Deeponion, Cloak Coin, Monero and Komodo. Whether anonymous or private, it will no longer be business as usual for Nigerian investigators (who are used to tracing money by examining statements of bank accounts) seeking to trace Cryptos. To ensure global best practices, it is crucial that the Nigerian Financial Intelligence Unit and the Economic and Financial Crimes Commission empower their forensic investigators with the relevant training and tools.

6. **Conclusion**

Although there are provisions wide enough to cover certain Crypto transactions, the present AML framework in Nigeria does not adequately contemplate the use of Cryptos by money launderers. There is, therefore, the need for legislative intervention to put the law in line with emerging trends.

¹⁵ MLPA, s. 15.

¹⁶ Mullin, Joe “Sunk: How Ross Ulbricht ended up in prison for life” (May 29, 2015), <https://arstechnica.com/tech-policy/2015/05/sunk-how-ross-ulbricht-ended-up-in-prison-for-life/> [Accessed on March 22, 2021].

¹⁷ Jamie Redman “Darknet Market Operators Who Stole 40 Thousand BTC Face Prison Time” (April 5, 2017) <https://news.bitcoin.com/darknet-market-operators-who-stole-40-thousand-btc-face-prison-time/> [Accessed March 22, 2021].

¹⁸ Nate Raymond “Texan gets one-and-a-half years in prison for running bitcoin Ponzi scheme” (July 21, 2016) <https://www.reuters.com/article/us-bitcoin-fraud-texas-idUSKCN1012W8> [Accessed on March 22, 2021].

¹⁹ Yessi Perez “Mt Gox CEO Mark Karpelès Charged with Embezzlement” (September 11, 2015) <https://www.coindesk.com/mt-gox-ceo-mark-karpelès-embezzlement> [Accessed March 22, 2021].

²⁰ Shobhit Seth “6 Private Cryptocurrencies” (January 5, 2021) <https://www.investopedia.com/tech/five-most-private-cryptocurrencies/> [Accessed on March 22, 2021].

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