



Regulatory Alert



The Central Bank of Nigeria's (CBN) Guidelines on Operations of Bank Accounts for Virtual Assets Service Providers, 2023.

Background

On 22 December 2023, the Central Bank of Nigeria ("CBN") issued the Guidelines on Operations of Bank Accounts for Virtual Assets Service Providers ("VASPs") (the "Guidelines"); thereby reversing its earlier ban on Banks and Other Financial Institutions ("BoFIs") from operating accounts for cryptocurrency service providers¹. The Guidelines provide the regulatory framework for the operation of bank accounts for VASPs that are licenced by the Securities and Exchange Commission ("SEC") in Nigeria.

This Guidelines aligns with SEC's New Rules on Issuance, Offering Platforms, and Custody of Digital Assets ("SEC Rules")² and the introduction of Capital Gains Tax ("CGT") on the disposal of digital assets, including cryptocurrencies in Finance Act 2023.

This article highlights the key provisions of the Guidelines and provides insights for consideration.



1 Key provisions of the Guidelines

A key point in the Guidelines is that BoFIs can now open designated accounts for VASPs, provide settlement services, facilitate trade, foreign exchange (FX) flow, and other activities approved by the CBN. However, BoFIs are still prohibited from holding, trading, and/or transacting in virtual assets in their own accounts.

2 Operating a Designated Account

- SEC-licensed VASPs (including Digital Asset Exchange (DAX), Digital Asset Custodian (DAC) and Digital Asset Offering Platform (DAO)) can only open a designated account for virtual/digital transactions. The approval of an Assistant General Manager or above in the BoFI is required to open the account.
- BoFIs are required to provide monthly reports on designated accounts no later than the 10th day of the month following the transaction.
- Cash withdrawals and clearance of third-party cheques are not permitted. Withdrawals can only be made by transfers to another designated account, or through a manager's cheque.
- Where there are no customer transactions for three months, the account will be declared dormant and closed.

3 Designated Settlement Account

- An authorisation from CBN is required to open and operate a designated settlement account. VASPs are also required to ensure that the details of transactions on their platforms are accessible to BoFIs in real time.
- Transactions on VASPs platforms are required to only be in Naira and settled through the designated settlement accounts. Transfers from the FX position of a user to a foreign account is prohibited. Users of VASPs platforms are allowed only two (2) transfers per quarter from their Naira position to the bank account used in funding their Naira position.

4 Risk Management and Consumer Protection

- BoFIs are required to establish appropriate risk management systems including conducting Customer Due Diligence ("CDD") during onboarding and continuously, monitoring and investigating suspicious transactions, filing Suspicious Transaction Report ("STR") with Nigerian Financial Intelligence Unit ("NFIU").
- Records of transactions on a designated account are to be kept for at least five years. BoFIs must provide a complaint redress channel for customers.

5 Sanctions

A fine of NGN 2,000,000 may be applied against a defaulting BoFI, its board, senior management, or staff. The CBN may also suspend the operating licence of the BoFI and prohibit the BoFI from opening further designated accounts.



Takeaway

The Guidelines is a welcome development, as it provides a collaborative regulatory regime for virtual assets (including cryptocurrency) transactions in Nigeria. This suggests that the Nigerian government is aware of the potential economic value of these virtual assets transactions, and is willing to collaborate with the global community in regulating these transactions. The enforcement of the Guidelines will aid the Federal Inland Revenue Service and State Internal Revenue Service in identifying eligible transactions for the collection of CGT or income tax on the disposal of virtual assets.

The Guidelines is limited to VASPs, DAOs, DACs and DAXs that are licensed by SEC. The Guidelines do not contemplate peer-to-peer transactions ("P2P"). This implies that there is still a ban on bank accounts used for direct P2P virtual asset trades. While acknowledging the progress made in the Guidelines, there needs to be concerted efforts to capture P2P transactions, prevent them from falling into regulatory lacuna and to address any associated financing crimes risks. The Financial Action Task Force has requested countries to understand how P2P transactions are being used in their jurisdiction to avoid detection and regulation and has recommended measures aimed at training financial intelligence units, development of blockchain analytics and facilitating the visibility of P2P transactions.³ We recommend this approach to providing an all-inclusive framework for digital assets trading activities.

The restriction on transfers from the FX positions of a user may be a disincentive to obtaining SEC licence and operating the designated account, particularly because cryptocurrencies and other virtual assets have been adopted by many users as a means of hedging against the devaluation of the Naira. Also restricting the transfer from FX positions may be contrary to the objectives of BoFIs in the Guidelines (i.e. to facilitate trade and FX flow).

The risk management obligations in the Guidelines is similar to existing risk management obligations in the Money Laundering (Prevention and Prohibition) Act 2022 ("MLA 2022"). The definition of a transaction of "significant value" which is a condition for conducting CDD is not defined in the Guidelines. The provisions of MLA 2022 on Currency / Foreign Transaction Report (CTR/ FTR) (i.e., reports on transactions of NGN5,000,000 or its equivalent, in the case of an individual or NGN10,000,000 or its equivalent, in the case of a body corporate) may be applicable in this regard.

Overall, the effectiveness of the Guidelines in achieving its objectives will depend on the collaboration of all the relevant regulators.

¹ CBN Circular BSD/DIR/PUB/LAB/014/001 dated 5 February 2021

² Refer to our publication on The SEC Rules - <https://pwcng.typepad.com/files/insights-and-perspectives-on-the-securities-and-exchange-commissions-new-rules-on-digital-assets.pdf>

³ FATF (2021), Updated Guidance for a Risk-Based Approach to Virtual Assets and Virtual Asset Service Providers (www.fatf-gafi.org/publications/fatfrecommendations/documents/Updated-Guidance-RBA-VA-VASP.html)

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