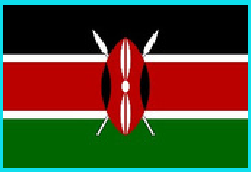
CHAINTUM
RESEARCH

Cryptocurrency and Blockchain Regulation



Kenya

2023 Edition

Blockchain and Digital Transformation in Africa.

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Note: The information provided here implicitly highlights various regulations and laws in the country that can potentially impact digital asset service providers operating in the country's crypto and blockchain landscape. While these laws do not explicitly address cryptocurrencies, they provide a foundation upon which regulations can be modified or adapted to accommodate the evolving crypto and blockchain landscape in the nation.

Overview

In Kenya, cryptocurrencies are not legal tender or approved by the government. The Central Bank of Kenya warns against utilizing cryptocurrencies, and the Capital Markets Authority has not approved any initial coin offerings (ICOs). The Capital Markets Act allows cryptocurrencies to be securities, however this has not happened yet. It has set up a regulatory sandbox to improve visibility into new innovations and reduce risks for consumers. However, blockchain technology is becoming more accepted for government record-keeping and registrations. Kenya is cautious about regulating cryptocurrencies and blockchain technology, but there is a strong interest in fintech innovation, and ICOs are becoming popular as a means to raise capital.

The National Payments Systems Act (NPSA)

The NPSA regulates payment systems in Kenya. The National Payment System Regulations 2014 oversees payment providers and anti-money laundering measures. In this case, the CBK oversees these efforts to promote financial stability through financial market infrastructure cohesion under the Central Bank of Kenya Act 2004[1]. The Central Bank of Kenya oversees the National Payment System to:

-Ensure safety, efficiency and financial system stability

-Minimize anti-trust tendencies

-Ensure fairness, equity and transparency in payments

-Promote payment services expansion

-Prevent criminal abuse of payment systems

-Address risks & promote risk reduction measures

-Reduce systemic risks

-Stay up to date with international developments

-Monitor exposures in the National Payment System.

[1] Central Bank of Kenya, "The National Payments Systems Act (NPSA)" (2014), https://www.centralbank.go.ke/images/docs/legislation/NPSRegulations2014.pdf.

The Capital Markets Act

The Capital Markets Authority (CMA) was created by the Act to regulate and develop Kenya's capital markets. The CMA licenses various entities including investment banks, stockbrokers, dealers, fund managers and investment advisers2.

The objectives of the Authority include:

(a) Developing all aspects of capital markets, specifically by creating incentives for longer-term investments in productive enterprises and removing impediments.

(b) Facilitating a nationwide system for securities commodities market and derivatives market, as well as brokerage services, to allow wider participation of the general public.

(c) Creating, maintaining, and regulating a market where securities can be issued and traded in a fair, efficient, and orderly manner through a self-regulatory system.

(d) Protecting investor interests.

(e) Providing a compensation fund to protect investors from financial loss in case a licensed broker or dealer fails to meet contractual obligations.

(f) Developing a framework to facilitate the use of electronic commerce for the development of capital markets in Kenya.

[2] National Council for Law, “CAPITAL MARKETS ACT CHAPTER 485A,” 2012, http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/CapitalMarketsAct_Cap485A.pdf.

The Kenya Information and Communication Act

The Kenya Information and Communications Act (KICA) is the main law governing the telecommunications sector in Kenya, providing a general legal framework. It was enacted on 1 October 1998 (initially called the Kenya Communication Act) and has since undergone multiple revisions3.

The primary objective and purpose of the Commission is to:

(1) License and regulate postal, information, and communication services as outlined in this Act.

(2) The Commission has all necessary powers to perform its functions under this Act.

(3) The Commission may form an association with any other bodies or organizations either within or outside Kenya deemed desirable or appropriate and in furtherance of its primary purpose.

(4) In performing its functions under this Act, the Commission shall have regard to:

(a) any general policy directives relating to the provisions of this Act notified by the Minister and published in the Gazette.

(b) Kenya's obligations under any international treaty or agreement relating to the provisions of telecommunications, radio, and postal services.

[3] Communications Authority of Kenya, "Statutes & Regulations Overview | Communications Authority of Kenya," www.ca.go.ke, 2018, https://www.ca.go.ke/statutes-regulations-overview.

Bank Act

The definition of "foreign exchange business" varies for different financial institutions. For a bank, it includes buying, selling, borrowing, or lending foreign currency, settling payments between residents and non-residents, and other related transactions4. For a foreign exchange bureau, it means buying or selling foreign currency and settling payments as prescribed by the Bank. Authorized money remittance providers engage in the business of foreign exchange transfers, while microfinance banks and specified mortgage finance companies conduct similar transactions. Any other person or body of persons granted a permit by the Bank can engage in limited foreign exchange transactions as permitted by the Bank.

4 Central Bank of Kenya, “CAP 491 CENTRAL BANK of KENYA ACT the Central Bank of Kenya Act CHAPTER 491 Note,” 2014, https://centralbank.go.ke/images/docs/The_Central_Bank_of_Kenya_Act_1st_January_2014.pdf.

The Money Remittance Regulations 2013

To establish money remittance services, one must follow regulations set by the

Central

Bank of Kenya. Incorporating a limited liability company and obtaining approval for

the business name and license are a must. To obtain a license, one must submit a feasibility study, credit reports, bank statements, an undertaking to comply with the bank's rules and directives, and a policy manual[5]. The Bank will then evaluate the application based on several factors before issuing a letter of intent, advising the applicant to submit the required fees and security before receiving the license. The bank has the right to alter any condition stated in the license.

5 Central Bank of Kenya, “The Money Remittance Regulations 2013” (2013), https://www.centralbank.go.ke/wp-content/uploads/2016/08/The-Money-Remittance-Regulations-2013.pdf.

The Proceeds of Crime and Anti-Money Laundering Act (AML Act)

Income earned through a digital marketplace is taxable under the Finance Act. The CS Treasury has yet to publish detailed regulations specifying which income is taxable, applicable tax rates, responsible parties for tax accounting, and compliance requirements[6]. This provision came into effect on November 7, 2019, or upon issuance of regulations by the CS Treasury.

[6] Bowmans Law, "The Finance Act 2019 Assented into Law: A Summary," *Bowmans*, 2019, https://bowmanslaw.com/insights/tax/the-finance-act-2019-assented-into-law-a-summary/.

The Financial Services Act (2019)

Income earned through a digital marketplace is taxable under the Finance Act. The CS Treasury has yet to publish detailed regulations specifying which income is taxable, applicable tax rates, responsible parties for tax accounting, and compliance requirements7. This provision came into effect on November 7, 2019, or upon issuance of regulations by the CS Treasury.

[7] Bowmans Law, "The Finance Act 2019 Assented into Law: A Summary," *Bowmans*, 2019, https://bowmanslaw.com/insights/tax/the-finance-act-2019-assented-into-law-a-summary/.

Income Tax Act

The Income Tax Act in Kenya was amended in November 2019 to introduce a digital service tax. This tax applies to cryptocurrency transactions. The Income Tax (Digital Service Tax) Regulations, 2020 came into force on 2nd January 2021. The regulations outline the digital services that digital service tax shall apply to, including downloadable digital content, over-the-top services, sale of data collected about Kenyan users, subscription-based media, electronic data management, electronic booking services, online training, and any other service provided through a digital marketplace[8]. Digital service tax shall apply to the income of a resident or non- resident person derived from or accrued in Kenya from the provision of services through a digital marketplace. Non-resident persons without a permanent establishment in Kenya who elect not to register must appoint a tax representative. Starting January 1, 2021, cryptocurrency traders in Kenya must pay income taxes

[8] Parliament of Kenya, "Income Tax Act" (2020), http://www.parliament.go.ke/sites/default/files/2020-12/The%20Income%20Tax%20%28Digital%20Service%20Tax%29%20Regulations%2C%202020.pdf.

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Thank you for your interest!

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