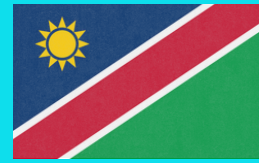




Cryptocurrency and Blockchain Regulation

Namibia



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

As of 2018, virtual currencies were not legal money in Namibia and could not be used for purchases. The Currency and Exchanges Act and Exchange Control Regulations also prohibited cryptocurrency exchanges. The Bank of Namibia warned against investing or trading in cryptocurrencies, as virtual currencies are not legal currency and could not be used to price goods or services. Storing cryptocurrency was also discouraged, and cryptocurrency losses were unrecoverable. Namibia opposed cryptocurrencies since they were not issued by a central body, which contradicted the Bank of Namibia (BON's) authority[1].

However, the BON has announced that digital currencies, including Bitcoin, can be used as payment in the country. Merchants can accept cryptocurrencies, but they are not legal tender. Merchants and buyers in the exchange or trade agreement decide whether to accept virtual assets for payment. Cryptocurrencies were strongly opposed by the Bank of Namibia in 2018[2]. However, the bank hints at revisions to virtual asset laws and regulations, signaling a change in its position. The Bank of Namibia's FinTech Innovations Regulatory Framework and Regulatory Sandbox will engage with virtual assets and service providers[3]. Notably, the first Bitcoin ATM in the country opened in July 2022, complying with financial standards[4]. Even in the digital age, the Governor of the Bank of Namibia stressed the importance of currency trust and the central bank's responsibility in instilling confidence. Industry leaders are enthusiastic about the new developments.

[1] Freeman Law, "Namibia and Cryptocurrency," Freeman Law, 2018, <https://freemanlaw.com/cryptocurrency/namibia/>.

[2] Johnstone Kpilaakaa Johnstone Kpilaakaa, "Crypto Payments Are Now Legal in Namibia," Bendada.com, modern tech media in SSA, October 11, 2022, <https://www.benjamindada.com/cyrpto-payments-legal-namibia/>.

[3] Bank of Namibia, "FINANCIAL TECHNOLOGY (FINTECH) INNOVATIONS REGULATORY FRAMEWORK," 2022, <https://www.bon.com.na/CMSTemplates/Bon/Files/bon.com.na/aa/aa835af1-2bee-4a80-a0f9-29ded893acf4.pdf>.

[4] Kodzilla, "[MILESTONE] a Look at the First Bitcoin ATM in Namibia," BitcoinKE, August 3, 2022, <https://bitcoinke.io/2022/08/a-look-at-the-first-bitcoin-atm-in-namibia/#:~:text=According%20to%20CoinATM%20Radar%2C%20the>.



Bank of Namibia Act

Namibia's currency is the Namibia Dollar (N\$) and the cent (C), which is one-hundredth of the N\$. The Bank of Namibia is the exclusive issuer of banknotes and coins in Namibia, and only those issued by the Bank are legal tender, except as stipulated in Section 45. All public and private obligations in Namibia must be paid using Bank notes and coins. The Board approves the denominations, designs, and other characteristics of banknotes and coins. It also produces, stores, and maintains Namibia's currency reserve inventory[5].

[5] NamibLII, Bank of Namibia Act, 1997, NamibLii.org (Laws.Africa Legislation Commons, 2023), <https://namiblii.org/akn/na/act/1997/15/eng@2023-03-15>.



Currency and Exchanges Act, No.9 of 1993

Namibia's Act 36 of 1950 added paragraph 9(6) to the Currency and Exchanges Act 9 of 1933 (SA) on June 23, 1950, making section 9 applicable to Southwest Africa[6]. Currency, banking, and exchange regulations can be made by the Governor-General under this clause. Sanctions and the suspension of other laws or conduct that violates the regulations may also be included. However, Parliament should receive a copy of each regulation from the Minister of Finance. For a revenue-raising regulation to remain in place, both Houses of Parliament must adopt it within a month. The provision empowers specified officials to issue regulations and orders. Section 9 applies to South-West Africa as well.

[6] Legal Assistance Center, "Currency and Exchanges Act 9 of 1933 (SA), Section 9," 2018, <http://www.lac.org.na/laws/annoSTAT/Currency%20and%20Exchanges%20Act%209%20of%201933.pdf>.



Exchange Control Regulations 1961

On March 13, 1995, Namibia adopted a unified foreign exchange system, replacing the Commercial Rand and Financial Rand. Non-residents no longer have exchange controls, save for former Namibia residents having blocked assets. Exchange controls in Namibia ensured that Namibian nationals promptly repatriated foreign cash and that foreign currency outflows were for legitimate purposes in the best interest of Namibia.

Foreign exchange transfers required Forms A and E. Form A allowed sales and deposits to non-resident accounts, while Form E allowed purchases and payments to Common Monetary Area inhabitants from non-resident accounts[1].

Foreign loan money accepted by local entities and local financial aid granted to concerned persons (corporations, foundations, trusts, or partnerships with significant non-resident capital or control) were subject to exchange control.

For a company's local borrowing base, shareholder loans from residents and non-residents must meet certain requirements.

Exchange Control may allow borrowing beyond usual limits to boost local industry, exports, imports, or the national interest.

Current payments included dividend transfers, interest remittance, directors' fees, management/technical service fees, and international visitor flights.

[7] Bank of Namibia. EXCHANGE CONTROL REGULATIONS, 1961 (2011).
<https://www.bon.com.na/CMSTemplates/Bon/Files/bon.com.na/ad/ad4875ef-3cfa-414b-8c15-ba575c6b5cd8.pdf>.



Payment System Management Act 2003

Banks and financial organizations are regulated by the Payment System Management Body, which manages the national payment system. The Bank of Namibia and other banks must join the Body. The Body's constitution and rules must be fair, transparent, and legal. The Body sets technical standards, monitors payment obligations, and facilitates payment clearing and netting. Participants' security might be used to settle or pay. Payment system information is protected by the Bank. Good faith conduct by Bank executives and employees are also indemnified. The Bank can issue directions to handle risks or acts that harm the payment system, and non-compliance is a crime. Lastly, contravening the Bank's payment system decisions is also a crime.

In Namibia, cryptocurrencies are not defined as payment instruments under the Payment System Management Act, 2003 (Act No. 18 of 2003). They are not recognized or acknowledged by the Bank as permitted payment instruments or electronic money[8].

[8] Bank of Namibia, "Bank of Namibia - Payment System Management Act," www.bon.com.na, 2023, <https://www.bon.com.na/Bank/Payments-and-Settlements/Legal-Framework/Payment-System-Management-Act.aspx>.

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