

THE FUTURE OF CRYPTOCURRENCY IN GHANA: REGULATORY CHALLENGES AND OPPORTUNITIES

Martin Waana-Ang¹ & Kenneth Atsu Dogbey²

ABSTRACT

The advent of cryptocurrency has significantly impacted global financial systems, and Ghana is no exception. This paper explores the future of cryptocurrency in Ghana, with a focus on the regulatory challenges and opportunities that accompany its growth. It begins by providing an overview of the concept of cryptocurrency and the current state of cryptocurrency adoption in Ghana, highlighting its potential to drive economic growth, financial inclusion, and technological innovation. The paper then delves into the existing regulatory framework, examining how current laws and government policies shape the cryptocurrency landscape. It identifies key challenges such as legal uncertainties, cybersecurity threats, and infrastructural gaps, which hinder the sector's development. Additionally, it assesses the opportunities for leveraging cryptocurrency to enhance investment, foster innovation, and improve financial inclusion. By comparing Ghana's approach with that of other emerging economies, the paper provides strategic recommendations for creating a supportive regulatory environment. These recommendations aim to balance the need for regulation with the potential benefits of cryptocurrency, ultimately guiding Ghana towards sustainable economic and technological advancement. Through a detailed analysis, this paper offers valuable insights into how Ghana can navigate the evolving cryptocurrency space and harness its full potential for national growth.

¹ LLB, Kwame Nkrumah University of Science and Technology, Ghana, Barrister-at-Law, Ghana School of Law, Graduate Assistant, University of Ghana School of Law

² LLB, University of Cape Coast, Ghana, Barrister-at-Law, Ghana School of Law, LLM Candidate, University of Ghana School of Law

1. INTRODUCTION

Cryptocurrency, a form of digital or virtual currency that utilises cryptography for security, has rapidly emerged as a significant force in global financial systems.³ Since the advent of Bitcoin in 2009, cryptocurrency have proliferated, with numerous coins and tokens now available, each with unique characteristics and use cases.⁴ The decentralised nature of cryptocurrency, coupled with their potential for high returns on investment, has garnered significant attention from investors, technologists, and policymakers worldwide.⁵ In Africa, and particularly in Ghana, cryptocurrency adoption is gaining momentum, driven by factors such as financial inclusion, technological innovation, mobile operations, tech savvy population, increased access to the internet and the desire for alternative investment opportunities.⁶

In Ghana, the promise of cryptocurrency lies in its ability to revolutionise traditional financial systems, especially, in the face of the major economic downturn that has led to increased inflation and the consequent depreciation of the Ghana cedi; the high rate of unemployment in the country; high cost of living; low returns on investment from traditional financial institutions and the return to the International Monetary Fund.⁷

Ghana, like many others in Sub-Saharan Africa, faces challenges related to financial inclusion, with a significant portion of the population remaining unbanked or underbanked.⁸ Cryptocurrency offer a pathway to financial services for these underserved populations, enabling them to participate in the digital economy, access cross-border remittances, and engage in global trade with minimal barriers and low transaction in comparison to traditional payment systems.⁹ Moreover, the blockchain technology underpinning cryptocurrency presents opportunities for enhancing transparency, reducing fraud, and improving the efficiency of various

3 Laurretta Otoo, Major Selasie Atuwu (Rtd), Frank Amuh, 'The rise and risks of the cryptocurrency market in Ghana' (2022) <[4 Alexandre Olbrecht & Gina Pieters, 'Crypto-Currency and Crypto-Assets: An Introduction' \(2023\) 49 *Eastern Economic Journal* 201-205.](https://www.iffr.com/article/2a0x3llmc6aplgevo0a0l/sponsored/the-rise-and-risks-of-the-cryptocurrency-market-in-ghana#:~:text=Cryptocurrency%20usage%20and%20ownership&text=It%20is%20also%20estimated%20that,usage%20in%20Ghana%20is%20unclear.> accessed 4 September 2024.</p></div><div data-bbox=)

5 Laurretta & others (n 1).

6 Bank of Ghana, 'Draft Guidelines of Digital Assets' (2024) <<https://www.bog.gov.gh/wp-content/uploads/2024/08/Draft-Guidelines-on-Digital-Assets.pdf>> accessed 4 September 2024.

7 Africa Money & DeFi Summit, 'The State of Web3 in Ghana' (2023) < <https://africamoneydefisummit.com/the-state-of-web3-in-ghana/>> accessed 4 September 2024.

8 Business & Financial Times, 'Bridging the gap: Financial inclusion lags as 68% of Ghanaians remain financially illiterate' (2024) <[9 Flamur Bunjaku and others, 'Cryptocurrency--Advantages and Disadvantages' \(2017\) 2\(1\) *Journal of Economics* 31, 37-38](https://thebftonline.com/2024/02/14/bridging-the-gap-financial-inclusion-lags-as-68-of-ghanaians-remain-financially-illiterate/#:~:text=The%20Challenge%20in%20Ghana&text=Even%20educated%20individuals%20often%20fall,of%20financial%20illiteracy%2C%20extends%20globally.> accessed 4 September 2024.</p></div><div data-bbox=)

sectors, including finance, agriculture, and supply chain management.¹⁰

However, the burgeoning cryptocurrency market in Ghana also presents significant regulatory challenges. The decentralised and pseudonymous nature of cryptocurrency complicates the task of regulators who must balance the need to protect consumers and maintain financial stability while fostering innovation.¹¹ This notwithstanding, the risk associated with cryptocurrency and its role in increased illicit activities and terrorism cannot be lost sight of.¹² This thus necessitates a nuanced approach to developing effective regulatory strategies to ensure innovation and financial inclusion whilst minimising risk. As of now, Ghana's regulatory framework for cryptocurrency is still in its infancy, characterised by a cautious "wait and see" approach from the government and financial authorities.¹³ The Bank of Ghana has issued warnings about the risks associated with cryptocurrency trading, yet comprehensive regulations governing the use and exchange of digital currency remain underdeveloped.¹⁴ This regulatory uncertainty poses challenges for the broader adoption of cryptocurrency and the realisation of their potential benefits.

Despite these challenges, the future of cryptocurrency in Ghana holds substantial opportunities. Accordingly, the government and regulatory bodies have the chance to craft a forward-thinking regulatory framework that balances innovation with consumer protection, whilst minimising risks to pave the way for Ghana to become a leader in digital finance within the region. Additionally, the integration of cryptocurrency into the Ghanaian economy could drive technological advancements, create new job opportunities, and position the country as a hub for blockchain innovation in Africa.

This paper will explore the current state of cryptocurrency in Ghana, analyse the existing regulatory environment, identify key challenges, and highlight potential opportunities for leveraging cryptocurrency to achieve national development goals.

2. THE CONCEPT OF CRYPTOCURRENCY

Cryptocurrency are digital assets that are designed and intended to be used as a medium of exchange just like traditional legal tender such as

¹⁰ Ibid.

¹¹ Godeon T. Gabor, 'Uncharted Waters: An Exegetical Exploration of Ghana's Regulatory Framework in Relation to Cryptocurrency' (2021) 1(1) UCC FLJ 37-56.

¹² Ibid.

¹³ Bank of Ghana (n 4).

¹⁴ Bank of Ghana, 'Digital and Virtual Currency Operations in Ghana' (2018) <<https://www.bog.gov.gh/wp-content/uploads/2019/07/Digital-and-Virtual-Currency-Operations-in-Ghana.pdf>> accessed 4 August 2024.

the Ghana Cedi or the US Dollar.¹⁵ Cryptocurrency relies on cryptographic techniques to secure transactions, regulate new unit creation, and verify asset transfers. Unlike traditional currency, it operates independently of a central authority, such as a government or bank, and is instead decentralised across a network of computers (nodes).¹⁶ This decentralised nature makes cryptocurrency fundamentally different from fiat currency.¹⁷ The use of cryptography allows the generation of both public and private keys that allows the individual to exercise control over his wallet and transfer assets within the blockchain without any central control.¹⁸ A public key is like an address to which you can send cryptocurrency, and a private key is what allows the owner to access and spend it.¹⁹ These keys, secured by cryptography, protect the integrity and security of the system. These keys are normally generated automatically upon creation of an account. The software device that regulates this process is known as wallet. These software devices are normally regulated by virtual asset service providers (VASP).

Bitcoin is the first invented cryptocurrency in 2009 by an unknown person or entity using the name Satoshi Nakamoto.²⁰ With this evolution came other forms of alternative coins within a space of time. Bitcoin, however, accounts for 90 percent of the total market capitalisation of all cryptocurrency, making it the default standard.²¹ It is pseudonymous rather than anonymous, meaning that transactions are carried out using public key addresses—strings of 27 to 32 alphanumeric characters, functioning similarly to email addresses—rather than using personally identifiable information.²² These addresses are used to send, receive, and record Bitcoin transactions.

Cryptocurrency uses blockchain technology to record its transactions. A blockchain is a chain of blocks where each block contains records of transactions. These blocks are linked and secured using cryptographic techniques.²³ Every transaction on the blockchain is publicly recorded and transparent, making it difficult to alter past records without modifying all subsequent blocks and gaining consensus from the majority of the

15 Francisco Javier Garcia-Corral & others, 'A bibliometric review of cryptocurrency: how have they grown?' (2022) 8(2) *Financial Innovation* 1-31

16 Melanie Swan, *Blockchain: Blueprint for a New Economy* (O'Reilly Media 2015) 1.

17 *Ibid.*

18 Arvind Narayanan & others, *Bitcoin and Cryptocurrency Technologies* (Princeton University Press 2016) 1, 23.

19 *Ibid.*

20 Melanie (n 14).

21 *Ibid.* 6.

22 *Ibid.*

23 Gideon (n 9) 41.

network. This is key to the trustless nature of cryptocurrency.²⁴

Cryptocurrency is generally created through the process of mining. In the realm of cryptocurrency, mining refers to a two-part process: generating new cryptocurrency by solving complex algorithms and verifying and validating transactions.²⁵ The first part involves solving intricate codes, allowing miners to add a new block to the blockchain. In return, they receive newly minted cryptocurrency, known as a block reward. The second part is the verification process, akin to a bank checking if a customer has sufficient funds before processing a transaction. Miners address the issue of double spending by verifying transactions, which are then recorded in a block on the blockchain.²⁶ For this service, they are compensated with a transaction fee.

Cryptocurrency in itself has no intrinsic value and is not real money in the ordinary sense of traditional finance, hence its volatile nature.²⁷ The value of cryptocurrency is not set by any national or transnational bank. The amounts of cryptocurrency to be created is restricted through the use of complex formulars therefore insulating it from the vagaries of inflation.²⁸ Cryptocurrency gain their value from the trust and confidence that they can be traded for goods or services or exchanged for a certain amount of fiat currency. This reliance on perceived value has contributed to the volatility in cryptocurrency prices.²⁹

The buying and selling of cryptocurrency are normally facilitated by exchanges. Cryptocurrency exchanges are online platforms that facilitate the buying, selling, and trading of cryptocurrency like Bitcoin, Ethereum, and many others.³⁰ These exchanges function similarly to stock exchanges, where users can trade different assets based on current market prices. They serve as a bridge between buyers and sellers, allowing them to exchange digital assets for other digital currency or traditional fiat money.³¹ In other words, exchanges are entities that facilitate the buying and selling of cryptocurrency on the digital market.

Cryptocurrency is normally touted for its numerous benefits compared to traditional fiat currency majorly because no single entity controls the operation of these currencies and thus reduces the risk of corruption or

24 Ibid.

25 Ibid.

26 Ibid.

27 Luke Tredinnick, 'Cryptocurrency and Blockchain,' (2019) 36(1) Business Information Review 39-44.

28 Ibid.

29 Gideon (n 9) 41.

30 Ibid 45.

31 Ibid.

failure since no single entity controls the network. Also, transactional fees are lower compared to traditional banking systems, especially for international transactions and it offers financial services to people without access to traditional banking. Cryptocurrency is built on blockchain technology which ensures that transactions are transparent and secure.

2.1 Cryptocurrency in Ghana: Current State

The cryptocurrency market in Ghana is characterised by a mix of local exchanges and international platforms. Key players include BitPesa, Yellow Card, and local Bitcoin trading groups. Despite its potential, the market is still in its infancy, with limited integration into mainstream financial systems.

Cryptocurrency usage in Ghana has been steadily increasing, driven by a range of socio-economic factors and a growing interest in digital financial tools. Ghana ranks among the top 20 countries for Google searches related to cryptocurrency, indicating strong organic interest among its citizens in digital assets and their applications.³² As of recent estimates, over 900,000 Ghanaians, or about 3.01% of the country's total population, own at least one type of cryptocurrency³³

A significant reason for the popularity of cryptocurrency in Ghana is the potential to “be your own bank” by eliminating third-party intermediaries.³⁴ This concept has resonated with many Ghanaians as a way to alleviate the financial stress caused by the country's current economic challenges.³⁵ In an environment marked by currency depreciation and inflation, cryptocurrency is viewed as a potential hedge against these issues.³⁶ Although the specific rate of stablecoin usage in Ghana is not well documented, stablecoins are increasingly considered a viable alternative for protecting value. The “State of Crypto: Africa” report suggests that disinflationary crypto assets, which benefit from digital scarcity, offer a means for citizens to shield themselves from economic instability.³⁷ The report further indicates that stablecoins pegged to fiat currency, such as the US dollar, have historically outperformed African currency, making them more attractive to African users, including those in Ghana.³⁸

32 Laurretta (n 1).

33 Ibid.

34 Greenviews, ‘The rise of cryptocurrency in Ghana’ (2023) <<https://greenviewsresidential.com/cryptocurrency-in-ghana/>> accessed 5 September 2024.

35 Ibid.

36 Triple A, ‘Cryptocurrency Market Sentiment in Ghana’ (2022) <<https://www.triple-a.io/cryptocurrency-ownership-data/cryptocurrency-ownership-ghana-2021/>> accessed 5 September 2024.

37 Ibid.

38 Ibid.

Despite this steady increase in the adoption and use of cryptocurrency, uncertainty around online transactions, both behavioural (fear of fraud, privacy risks) and environmental (unpredictability of technology), also hinders adoption.³⁹ For users to become repeat customers, cryptocurrency must foster emotional connections and positive user experiences.⁴⁰ However, in developing countries, there is hesitation due to concerns about security, unfamiliarity with digital currency, and a tendency toward risk aversion.⁴¹ Limited infrastructure and internet access further contribute to the slow adoption in these regions, unlike in developed countries, where adaptation is more common.⁴² There is also the concern that the anonymous nature of cryptocurrency makes it a hub for illicit criminal activities such as money laundering, terrorism and fraud.⁴³

3. REGULATORY FRAMEWORK FOR CRYPTOCURRENCY IN GHANA

There is currently no law in Ghana that expressly regulates the use of cryptocurrency in Ghana. According to the Bank of Ghana, cryptocurrency is not recognised by any legislation in Ghana and thus, is not a recognised legal tender in Ghana.⁴⁴ This constitutes a significant regulatory gap in the legal landscape for the operations of cryptocurrency within the country further confounding uncertainty for investors in this sector. **The Anti-Money Laundering Act 2020 (Act 1044)**, however, contains provisions wide enough to cover instances where cryptocurrency transactions are used for money laundering. Be that as it may, the current laws will be explored to ascertain the extent of their applicability to virtual currency such as cryptocurrency.

3.1 The Payment Systems and Services Act, 2019 (Act 987)

The Payment Systems and Services Act is designed to regulate payment systems, payment services, and electronic money businesses.⁴⁵ The Act establishes a comprehensive legal framework to enhance financial inclusion, protect consumers, and ensure the safety and soundness of Ghana's financial ecosystem.

The Act applies to banks, specialised deposit-taking institutions, electronic

39 Murugappan Murugappan, 'Global Market Perceptions of Cryptocurrency and the Use of Cryptocurrency by Consumers: A Pilot Study' (2023) 18(4) *J. Theor. Appl. Electron. Commer. Res.* 1955-1970.

40 *Ibid.*

41 *Ibid.*

42 *Ibid.*

43 Gideon (n 9).

44 Bank of Ghana (n 12).

45 Payment Systems and Services Act, 2019 (Act 987), preamble.

money issuers, payment service providers, and their affiliates or agents.⁴⁶ Any entity that offers payment services or engages in electronic money business must comply with the regulations set by the Bank of Ghana.⁴⁷ The Act does not explicitly mention cryptocurrency or provide specific regulations for their operation. It focuses primarily on traditional financial institutions and payment service providers that deal with electronic money. Electronic money is defined by the Act to mean, 'monetary value, which is stored electronically or magnetically, and represented by a claim on the issuer, which is issued on receipt of funds, redeemable against cash and may be accepted by a person.'⁴⁸

As has been explained, however, cryptocurrency is not an electronic money that can be converted into physical cash although it is a digital asset that may be exchanged for cash or for goods and services. The definition of electronic money, per the Act, is thus narrow in scope and does not cover cryptocurrency.

Further, the Act grants the Bank of Ghana supervisory authority over all entities that carry out payment, clearing and settlement systems. The Bank has authority to issue directives to govern the operation of these entities.⁴⁹ Entities that wish to operate as payment service providers or electronic money issuers must apply for a license or authorisation from the Bank of Ghana. The application must include detailed information about the business model, financial health, and compliance with statutory requirements.⁵⁰ Entities that have been licensed have authority to engage in diverse activities including:⁵¹

- (a) clearing of payment instructions among financial and non-financial institutions,
- (b) settling of obligations arising from the clearing of payment instructions;
- (c) transfer of funds from one account to another using any electronic means;
- (d) transfer of electronic money from one electronic device to another,
- (e) provision of technological services to facilitate switching, routing, clearing and data management;
- (f) facilitation of interoperability of payment systems and services among payment systems providers;
- (g) provision of electronic payment services to the unbanked and under-banked population;

46 Ibid s 1.

47 Ibid.

48 Ibid s 102.

49 Ibid s 3.

50 Ibid s 7.

51 Ibid.

- (h) establishing a payment clearing house;
- (i) provision of financial communication network;
- (j) issuing of electronic payment instruments;
- (k) issuing of prepaid cards, credit cards and debit cards;
- (l) payment system aggregation function;
- (m) provision of any electronic platform for payment or receipt of funds;
- (n) printing of non-cash paper payment instrument; or
- (o) any other service prescribed by the Bank of Ghana.

It is apparent that none of these activities directly apply to cryptocurrency, which is without intrinsic value and thus is not a legal tender. For example, bitcoin cannot be used to clear up instructions among financial institutions since it is not a recognised legal tender. Indeed, the European Court of Justice has held that, 'bitcoin' virtual currency is used, principally, for payments made between private individuals via the internet and in certain online shops that accept the currency.⁵² According to the Court, the virtual currency does not have a single issuer and instead is created directly in a network by a special algorithm. The system for the 'bitcoin' virtual currency allows anonymous ownership and the transfer of 'bitcoin' amounts within the network by users who have 'bitcoin' addresses. The Court further asserted that virtual asset is different from electronic money.⁵³

Accordingly, it is submitted that since cryptocurrency is not expressly mentioned as a form of payment or electronic money in the Act, entities that purely operate as cryptocurrency exchanges or wallet providers may not be required to obtain such licenses. However, if they offer services that involve regulated financial instruments, they may be subject to licensing requirements.

The Act further mandates that payment service providers have adequate governance structures, including a board of directors and proper management controls.⁵⁴ The Act also requires maintaining effective security, data management, and internal control systems.⁵⁵ Cryptocurrency operations, especially those based on decentralised models, may not align with these governance and operational requirements. Therefore, these provisions likely do not apply directly to purely decentralised cryptocurrency businesses.

⁵² *Skatteverket v David Hedqvist Case C-264/14*, 6 (July 2015), para 11.

⁵³ *Ibid* para 12.

⁵⁴ *Ibid* s 18

⁵⁵ *Ibid* s 20.

3.2 *The Income Tax Act 2015 (Act 896) & Value-Added Tax Act 2013 (Act 870)*

The Income Tax Act was passed primarily to govern the imposition of income tax in Ghana.⁵⁶ The Act governs the imposition of tax in respect of income from employment, business, or investment.⁵⁷ Ghana uses both the source and residence rule in determining whether a particular person should be subject to tax.⁵⁸ This means that irrespective of whether a person is resident in Ghana, the person is liable to tax provided the income is derived from Ghana. In like manner, a person resident in Ghana is liable to tax even if the source of his income is not from Ghana.

Therefore, by the operation of the source and residence rule, notwithstanding the decentralised nature of cryptocurrency, incomes derived from it could be subject to tax. The problem, however, is whether the Act recognises virtual assets such as cryptocurrency.

The Act defines an asset as follows: “*asset*” includes property of any kind whether tangible or intangible, currency, goodwill, know-how, a right to income or future income, a benefit that lasts longer than twelve months, a part of or any right or interest in, to or over an asset.”⁵⁹ An intangible asset refers to a non-physical asset that has value but does not have a physical substance. It includes assets such as goodwill, intellectual property, brand recognition, and customer loyalty.⁶⁰ Now it is not disputed that cryptocurrency, as a digital asset, does not have intrinsic value that can be converted into physical assets or value although it may be exchanged for fiat money. This therefore means that individuals who transact through the use of cryptocurrency do not fall within tax brackets within the purview of the Income Tax Act. Consequently, the definition of assets as used in the Income Tax Act is not sufficient to cover digital assets such as cryptocurrency.

The question that, however, begs for answer is whether persons who exchange cryptocurrency for fiat money could be subject to tax. There is no clear authority under Ghanaian law on the point. That notwithstanding, it will not be out of place to draw inspiration from the jurisprudence of other countries. According to the European Court of Justice, the exchange of cryptocurrency for fiat money for consideration by a service provider constitutes a supply of service by that service provider.⁶¹ This means that the consideration thus received should be subject to tax within the

56 Income Tax Act 2015 (Act 896)

57 Income Tax Act s 1.

58 Ibid s 3.

59 Ibid s 133.

60 Bryan A. Garner, *Black's Law Dictionary* (9th Edn West Publishing Co. 2004)

61 *First National Bank of Chicago* (C-172/96, EU:C:1998:354); *Skatteverket v David Hedqvist Case C-264/14*, 6 (July 2015).

meaning of the Value-Added Tax.⁶² The first schedule to the Act, however, provides exemptions to the supply of services that are liable to tax. One such exempted service is financial services including the provision of insurance; issue, transfer, receipt of, or dealing with money whether in domestic or foreign currency or any note or order of payment of money; provision of credit; or operation of a bank account or an account with a similar institution.

The definition of exemption, however, does not seem to be applicable to the exchange of digital asset for money. In that respect, it is conceptually accurate to argue that since the exemptions provided by the Act do not recognise transactions in the nature of exchange of digital assets for money, transactions in that nature, being a service, fall within the purview of the supply of service which can legitimately be taxed. This submission is consistent with the European Court of Justice's decision in the *Skatteverket v David Hedqvist* case.⁶³ The problem, however, is that digital service providers, according to the Bank of Ghana are not licensed to engage in digital currency. The Bank of Ghana, in its 2018 directive, also prohibited all financial institutions from having dealings with digital assets such as cryptocurrency. Accordingly, it stands to reason that it may not be possible, realistically, to even engage in the exchange of digital currency for fiat currency in Ghana for them to be liable to tax.

3.3 The Anti-Money Laundering Act 2020 (Act 1044)

Cryptocurrency, such as bitcoin, are decentralised and often operate without the oversight of traditional financial institutions, making them attractive tools for illegal activities, including money laundering. Criminals exploit the anonymity and global reach of these digital assets to obscure the origins of illicit funds, transferring them across borders with little regulatory scrutiny. The Anti-Money Laundering Act seeks to combat money laundering, terrorist financing, and other related unlawful activities by first making it an offence, and secondly imposing an obligation on accountable institutions to report suspected transactions likely to be money laundering.

The Act criminalises money laundering stating that:

'A person commits an offence if they know or ought to have known that a property is, or forms part of, the proceeds of unlawful activity and the person.'⁶⁴

⁶² Value Added Tax 2013 (Act 870) s 1.

⁶³ *Skatteverket v David Hedqvist* Case C-264/14, 6 (July 2015).

⁶⁴ Anti-Money Laundering Act 2020 (Act 1044) s 1.

- i. Converts, conceals, disguises, or transfers the property to conceal its illicit origin or to assist any person involved in the unlawful activity to evade legal consequences.
- ii. Acquires, uses, or takes possession of the property, knowing or suspecting at the time of receipt that it is the proceeds of unlawful activity.

The Act defines an unlawful activity to include any actions considered offenses under Ghanaian law or under the laws of another jurisdiction, if such actions would also be offenses in Ghana. It specifically targets activities such as tax evasion, financing of terrorism, and the proliferation of weapons of mass destruction, trafficking of human beings, piracy, forgery, kidnapping, environmental crime, just to mention a few.⁶⁵ This broad definition allows for the prosecution of money laundering and related crimes, even if the underlying offense occurs outside Ghana, aligning with international standards and reinforcing Ghana's commitment to combating financial crimes and enhancing global security.

Therefore, to constitute money laundering, there must be established, a predicate 'serious offence' that had been committed and thereafter, it must be proved that the Accused person converted, concealed, acquired, used or possessed proceeds of that offence.⁶⁶

Act 1044 also defines property as any asset of any kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible. This broad definition includes rights, interests, or proceeds from such property, encompassing digital assets such as cryptocurrency. The definition by the Act is wide enough to cover transactions involving digital assets. Therefore, by this wide definition of property by Act 1044, any transaction involving cryptocurrency suspected of being tied to unlawful activity is subject to the provisions of the Act, such as customer due diligence and reporting requirements by accountable institutions.

Act 1044 further imposes an obligation on accountable institutions to take various steps and measures that aim at combating terrorism. The Act defines accountable institutions as entities such as banks, financial institutions, virtual asset service providers, real estate providers, law firms, and other specified organisations that are subject to regulatory requirements to prevent money laundering.⁶⁷ The Act imposes obligations on accountable

⁶⁵ *Ibid* s 63.

⁶⁶ *Republic v. Nana Appiah Mensah & 2 ors.* [TLP-HC-2024-30].

⁶⁷ Anti-Money Laundering Act, first schedule.

institutions in respect of customer due diligence. Accountable institutions are not to establish or maintain anonymous accounts and are required to apply due diligence measures for all transactions above a certain threshold or whenever there is suspicion of money laundering or terrorist financing.⁶⁸ Accountable institutions must report any suspicious transactions to the Financial Intelligence Centre (FIC) within 24 hours.⁶⁹ They are equally required to maintain records of all transactions for at least five years, ensuring that these records are available to the FIC and other relevant authorities.⁷⁰ Most importantly, institutions are expected to develop and implement internal rules and policies to prevent money laundering, train their employees on compliance, and appoint an Anti-Money Laundering Reporting Officer to oversee adherence to the Act.⁷¹ The Act establishes the Financial Intelligence Agency to work closely with law enforcement agencies, supervisory bodies, and foreign counterparts to enhance the detection, prevention, and prosecution of financial crimes.⁷²

Although the definition of unlawful activity and accountable institutions are wide in scope to cover cryptocurrency and VASPs, the real problem lies in the implementation of the law. First, cryptocurrency provides anonymity to protect those who engage in transactions in the digital market. It may be possible that although a VASP may suspect that a particular transaction is irregular, it may be difficult to identify the real identity of the person responsible for the transaction. The situation may be further confounded where there is a network of persons behind the transactions who span across different jurisdictions beyond the territory of Ghana. This may pose a significant challenge to fighting Anti-money laundering and terrorism despite the expansive scope of the Act.

3.4 Overview of the Position and Actions of the Ghanaian Government and Financial Authorities on Digital Assets

The Bank of Ghana is the Central Bank of Ghana with authority for the issuance and maintenance of the Ghana cedi.⁷³ The Bank is also to implement policies for the stability of the cedi and to promote economic growth and innovation.⁷⁴ To this end, the Bank is the sole regulator of the financial and credit systems in Ghana.⁷⁵ The Bank holds significant regulatory authority over banks, specialised deposit-taking institutions (SDIs), and financial holding companies to maintain the integrity, stability,

68 Ibid s 30.

69 Ibid s 38.

70 Ibid s 32.

71 Ibid s 49 & 50.

72 Ibid s 6-8.

73 The 1992 Constitution, art 183.

74 Ibid.

75 Ibid.

and proper functioning of the financial system.⁷⁶ Under the provisions of the Banks and Specialised Deposit-Taking Institutions Act, the Bank is empowered to issue directives when necessary to achieve several key objectives that ensure the sound management of these financial entities and protect the interests of depositors, other stakeholders, and the overall financial system.⁷⁷

The Bank of Ghana may intervene to secure the effective and sound management of a financial institution to prevent mismanagement that could harm the institution or the wider economy. If the Bank of Ghana determines that the affairs of banks or SDIs are being conducted in a way that could harm depositors, other stakeholders, or the institutions themselves, it has the authority to issue corrective directives. One of the Bank's core mandates is to maintain financial stability in Ghana. This gives the bank the right to act pre-emptively by issuing directives that ensure systemic stability.

The Ghanaian government, through the Bank of Ghana has acknowledged the growing importance of digital assets, particularly cryptocurrency like Bitcoin and stablecoins, and their increasing use in the country. As part of its regulatory response, the Bank initially adopted a cautionary "wait and see" approach to survey the developing of this new technology. In a notice issued in 2018, the Bank noted that cryptocurrency operations were currently not licensed under the then **Payment Systems Act 2003 (Act 662)**.⁷⁸ The Bank thus cautioned the public to deal with only licensed institutions recognised by the Bank. The Bank further indicated that a new Payment Systems Bill was to be passed to consider this new technology. It must be stated, however, that the Payment Systems and Services Act, as reviewed, does not still deal expressly with cryptocurrency operations. Accordingly, considering the increasing adoption of cryptocurrency in the country, the BoG released draft guidelines in August 2024 aimed at managing the benefits and risks associated with digital assets. The BoG's position is proactive but cautious. While recognising the potential of digital assets to enhance financial inclusion and facilitate activities like cross-border payments and international remittances, the government is equally focused on addressing associated risks. These include concerns around money laundering, fraud, cybersecurity, and consumer protection.

⁷⁶ Banks and Specialised Deposit-Taking Institutions Act 2016 (Act 930), s 92.

⁷⁷ *Ibid.*

⁷⁸ Bank of Ghana (n 12).

4. A COMPREHENSIVE REGULATORY FRAMEWORK

The draft guidelines propose a comprehensive regulatory framework intended to foster innovation while safeguarding financial stability. The framework targets VASPs, to ensure that entities engaged in trading, exchange, and custodial services for digital assets adhere to anti-money laundering (AML) and counter-terrorism financing (CFT) measures. The main objectives of the proposed regulatory framework are as follows:⁷⁹

1. Ensure integrity and stability of the financial sector;
2. Protect consumers and Investors;
Guard against Financial Crime (AML/CFT);
3. Foster innovation and market integrity;
4. Promote domestic coordination in managing risks posed by crypto asset service providers;
6. Promote international cooperation in combating financial crime; and
7. Address cyber security risks.

4.1 Regulation of Virtual Asset Service Providers (VASPs)

VASPs, including exchanges, will be regulated for money laundering, terrorism financing, and consumer protection. VASPs will be required to conduct customer due diligence, monitor transactions, and report any suspicious activity to the Financial Intelligence Centre (FIC). VASPs must conduct comprehensive risk assessments and implement a risk-based approach to prevent and report financial crimes. Compliance with the Financial Action Task Force (FATF) Travel Rule will be mandatory, which involves sharing information about the originators and beneficiaries of transactions. The Bank of Ghana will collaborate with the Securities and Exchange Commission (SEC) to create distinct regulatory frameworks for various digital asset use cases. These frameworks will be informed by the specific mandates of both the Central Bank and the SEC. Enhanced Payment Service Providers (EPSPs) may be authorised to process virtual asset transactions for registered VASPs, subject to prior authorisation from the Bank of Ghana. EPSPs are prohibited from operating exchanges, holding virtual assets, or providing custodial services. They must create separate entities for any virtual asset-related activities, and funding for such activities must not come from the EPSP. Commercial banks will be allowed to provide banking, payment, and settlement services to registered VASPs, subject to the same conditions as EPSPs, including prohibitions on direct involvement in virtual asset businesses. All VASPs currently operating in or intending to operate in Ghana will need to apply for authorisation

79 Bank of Ghana (n 9) 4-5.

from either the Bank of Ghana or the SEC, depending on their product offerings. VASPs that fail to register within the specified timeframe will be considered to be operating illegally. VASPs will be required to provide a detailed company profile, governance and ownership structure, financials, and evidence of registration in Ghana. They must demonstrate a robust internal control and risk management framework, along with compliance measures in line with existing regulations, including consumer protection, cybersecurity, and data privacy practices. Prospective VASPs may also need to meet minimum capital and solvency requirements. VASPs will be required to ensure adequate education and risk disclosures to users, making them aware of the risks associated with virtual asset transactions.

5. INTERNATIONAL COMPARISONS: REGULATORY APPROACHES IN OTHER EMERGING ECONOMIES

In examining Ghana's regulatory framework for cryptocurrency, it is essential to compare it with approaches adopted by other emerging economies, each of which faces unique challenges and opportunities in regulating digital currency. These comparisons provide insights into how countries can balance innovation and investment with regulation to foster cryptocurrency growth while mitigating risks.

5.1 Nigeria

Nigeria has one of the highest rates of cryptocurrency adoption in Africa.⁸⁰ In 2021, the Central Bank of Nigeria (CBN) issued a ban on cryptocurrency transactions by banks and financial institutions, citing concerns over money laundering and fraud.⁸¹ Despite this ban, Nigerians have continued to use cryptocurrency extensively for peer-to-peer transactions. The government later introduced the eNaira, a Central Bank Digital Currency (CBDC), as a regulated alternative to decentralised cryptocurrency. In December 2023, the Central Bank lifted the ban on cryptocurrency whilst providing guidelines for its operation. The institutions covered by the guidelines include: Merchant Banks, VASPs licensed by the Securities and Exchange Commission ("SEC"), digital asset custodians, digital asset offering platforms, digital asset exchanges ("DAX"), DAX operators, and any other entity that may be categorised as such by the CBN from time to

80 African Law & Business, 'Nigeria offers legitimacy to crypto-asset providers' (2024) < <https://www.africanlawbusiness.com/news/20208-nigeria-offers-legitimacy-to-crypto-asset-providers>> accessed 5 September 2024.

81 HKTDC Research, 'NIGERIA: Ban on Digital Currency Transactions Lifted' (2024) < <https://research.hktdc.com/en/article/MTYwMjE3OTI1MA#:-:text=In%20February%202021%20the%20CBN,assets%2C%20subject%20to%20new%20guidelines.>> accessed 5 September 2024.

time.⁸²

The primary objectives of the guidelines are to establish minimum standards for banking relationships with VASPs, guide financial institutions (FIs) in operating accounts for entities licensed by the SEC, and ensure robust risk management in the cryptocurrency sector. These objectives are designed to create a safer environment for digital asset transactions while supporting the increasing activity of VASPs in Nigeria.

Under the guidelines, FIs such as commercial and merchant banks can open designated, non-interest-bearing settlement accounts for VASPs. These accounts are restricted to virtual asset-related transactions, and FIs are tasked with adhering to strict compliance measures, including setting transaction limits based on the risk profile of account holders and reporting suspicious activities to relevant authorities.⁸³

To ensure transparency and minimise risks, the guidelines impose various restrictions on the operations of designated accounts. For example, withdrawals can only be made through Manager's Cheques or transfers, and accounts that remain inactive for three consecutive months will be classified as dormant and closed. Additionally, VASPs must meet specific requirements, such as being incorporated in Nigeria and licensed by the SEC, to open designated accounts.

The guidelines also place heavy emphasis on anti-money laundering (AML), combating the financing of terrorism (CFT), and customer protection. FIs are required to implement robust know-your-customer (KYC) procedures, monitor account activities closely, and establish customer complaint mechanisms to protect against fraud.

The CBN's move marks a strategic shift that is expected to drive broader cryptocurrency adoption in Nigeria. By allowing FIs to facilitate cryptocurrency-related transactions for VASPs, the guidelines remove a significant barrier that previously restricted the operations of virtual asset exchanges.⁸⁴ However, FIs remain prohibited from holding or trading virtual assets on their own account. This balanced approach aims to support innovation in the digital asset space while maintaining necessary oversight and mitigating financial risks.

The step taken by the Central Bank of Nigeria is significant as compared to

82 Udo Uduoma & Bel-Osagie, 'The Regime for The Operation Of Bank Accounts By Virtual Asset Service Providers/Exchanges In Nigeria' <<https://nubo.org/wp-content/uploads/2024/01/Guidelines-on-the-Operation-of-Bank-Accounts-for-Virtual-Asset-Service-Providers.pdf>> accessed 5 September 2024.

83 Ibid.

84 Ibid.

the Ghana's central bank's cautionary "wait and see approach". On March 15, 2024, the Securities and Exchanges Commission introduced proposed revisions to its current Rules on the Issuance, Offering Platforms, and Custody of Digital Assets. These draft amendments are intended to include and clarify additional registration requirements for VASPs operating in Nigeria. While these changes are still being finalised and new digital asset regulations are under development, the Commission, on June 21, 2024, released a *Framework on Accelerated Regulatory Incubation Program (ARIP)* for onboarding VASPs and other Digital Investment Service Providers (DISPs), referred to as the *ARIP Framework*.⁸⁵

5.2 Kenya

Kenya does not yet have a blockchain regulatory framework in place.⁸⁶ The Central Bank of Kenya (CBK) in 2015, issued a clear stance regarding the use, holding, and trading of virtual currency, such as Bitcoin, within the country. The CBK emphasised that Bitcoin is an unregulated digital currency that is neither issued nor guaranteed by any government or central bank, including Kenya's. Moreover, the CBK highlighted that no entity is currently licensed to offer money remittance services using virtual currency under Kenya's existing financial laws, such as the Central Bank of Kenya Act.⁸⁷

Kenya's position is that Bitcoin and other virtual currency are not considered legal tender, meaning they hold no official status as currency within the country. As a result, the public have no legal protection if a platform facilitating Bitcoin transactions collapses or ceases operations. The CBK outlines several risks associated with virtual currency, including the anonymity of transactions, which makes them vulnerable to criminal activities like money laundering and terrorism financing. Furthermore, these currencies are traded on unregulated platforms globally, exposing users to the risk of losing their investments without any legal recourse. This reflects Kenya's cautious approach towards cryptocurrency, prioritising consumer protection and financial security. The CBK did not, however, ban trading in or other transactions relating to the use of virtual or digital assets.

⁸⁵ Seun Timi-Koleolu and Hillary Okorotie, 'Operating A Crypto Trading Company In Nigeria: Regulatory Requirements' (2024) <<https://pavestoneslegal.com/newsletters/>> accessed 5 September 2024.

⁸⁶ Baker McKenzie, 'Blockchain and Cryptocurrency in Africa: A comparative summary of the reception and regulation of Blockchain and Cryptocurrency in Africa' (2018) <https://www.bakermckenzie.com/-/media/files/insight/publications/2019/02/report_blockchainandcryptocurrencyreg_feb2019.pdf> accessed 5 September 2024.

⁸⁷ Ibid.

5.3 Brazil

Brazil is one of the leading countries in Latin America in terms of cryptocurrency usage. The country has adopted a progressive regulatory stance, with the Brazilian Securities and Exchange Commission (CVM) allowing the trading of cryptocurrency-based assets. The Central Bank of Brazil, however, has taken a cautious stance, warning about the risks of using digital currency for illegal activities. In late 2022, the Brazilian Congress passed legislation aimed at regulating the cryptocurrency market in Brazil.⁸⁸ The approved bill outlines concepts, resolutions, and guidelines for services related to virtual assets, including cryptocurrency payments. The specific processes for its implementation will be further developed and refined by relevant authorities responsible for overseeing the regulation.

5.4 South Africa

South Africa has one of the most developed financial markets in Africa, and its approach to cryptocurrency regulation reflects this. The South African Reserve Bank (SARB) has adopted a balanced approach, acknowledging the potential benefits of digital currency while warning about the associated risks. The country is currently working on regulatory frameworks that would classify cryptocurrencies as financial products, subjecting them to oversight under existing financial regulations.

6. CRYPTOCURRENCY IN GHANA: NOTABLE CHALLENGES

One of the major challenges is the lack of a clear legal framework for cryptocurrency operations. The ambiguity in regulations creates uncertainty for businesses and investors. This legal uncertainty can deter investment and innovation in the sector. Also, there is a lack of clarity regarding which institution is to exercise oversight responsibilities over the operations of digital assets. As to whether it is the Bank of Ghana or the Securities and Exchange Commission, there is no clear-cut line between the two institutions. This could create instances of duplicitous, overlapping and conflicting roles or decisions being taken by the two institutions, further confounding the problem.

Again, cybersecurity threats and fraud are significant concerns in the cryptocurrency space. The rise in digital asset theft and scams highlights

⁸⁸ Ebury Bank, 'New regulation for crypto market in Brazil' (2023) <<https://br.ebury.com/en/blog/new-regulation-for-crypto-market-in-brazil/>> accessed 5 September 2024.

the need for robust security measures and regulatory oversight to protect users and investors. The volatility of cryptocurrency markets poses risks to financial stability. The potential for large-scale financial losses and market manipulation requires careful regulatory measures to mitigate these risks while supporting innovation. Additionally, Ghana faces real infrastructural challenges, including limited internet access and inadequate technological support for cryptocurrency transactions. Developing the necessary infrastructure is essential for supporting widespread cryptocurrency adoption.

7. RECOMMENDATIONS AND OPPORTUNITIES FOR GROWTH

Ghana's burgeoning cryptocurrency market presents both opportunities and risks, making it essential for the Bank of Ghana and other relevant authorities, such as the Securities and Exchange Commission, to establish a comprehensive regulatory framework. However, care must be taken to ensure that this framework balances innovation with security and compliance. The following are key recommendations for addressing regulatory challenges related to cryptocurrency in Ghana.

1. Avoid Overly Stringent Licensing Requirements

First, it is suggested that stringent licensing requirements or overly complex capital adequacy norms could deter innovation and restrict market entry for smaller or emerging VASPs. While it is essential to maintain high standards to protect the integrity of the financial system, the Central Bank must ensure that licensing criteria are not so restrictive that they prevent startups or local companies from entering the market. A tiered licensing system could be introduced, where smaller VASPs or new entrants face lower capital requirements and simplified procedures, while larger, more established entities are held to stricter standards. Moreover, the regulatory framework should be designed to be inclusive, allowing a diverse range of businesses, from fintech startups to established financial institutions, to engage in the cryptocurrency market. This would encourage growth and competition in the sector, spurring innovation while maintaining the necessary safeguards.

2. Clear Regulatory Scope Between BoG and SEC

It is recommended that a clear delineation of regulatory responsibilities between the BoG and the SEC is crucial to avoid regulatory overlap or confusion in the cryptocurrency space. The Bank of Ghana should focus on the financial stability aspects of cryptocurrency, particularly with regard to its use in payments and banking. Meanwhile, the SEC could regulate digital assets as financial instruments, overseeing issues related

to investments, securities, and market integrity.

To achieve this, a joint task force could be established between the two regulators to ensure coordination and reduce gaps or conflicts in regulatory oversight. Such cooperation would also enable both entities to stay updated on market trends and technological advancements, allowing for more agile and effective regulation.

This suggestion is made having regard, particularly, to the complications encountered by the two institutions relative to the operations of Menzgold Ghana Ltd. These challenges were encountered because of a lack of clear-cut roles between the two institutions. Lessons from those incidents should inform the two institutions to work closely in defining their roles regarding the regulation of digital assets in Ghana.

3. Enhance Cybersecurity Standards for VASPs

One of the key risks in the cryptocurrency sector is cybersecurity threats, such as hacking, fraud, and data breaches. It is vital that VASPs implement robust cybersecurity measures to protect their platforms and users from these risks. The Bank of Ghana should mandate that all VASPs comply with stringent cybersecurity protocols, such as encryption, multi-factor authentication, and secure data storage practices.

To ensure compliance, VASPs could be required to undergo periodic cybersecurity audits and risk assessments. Additionally, creating a national cybersecurity framework for the financial sector, specifically tailored to the needs of the digital assets market, would provide a unified approach to mitigating cyber threats.

4. Flexible Guidelines for Future Technological Advancements

As the cryptocurrency landscape is constantly evolving, it is important that the regulatory framework is adaptable to future technological developments. Technologies such as decentralised finance (DeFi), non-fungible tokens (NFTs), and central bank digital currencies (CBDCs) are likely to shape the future of the crypto market. Therefore, regulations should be designed with flexibility in mind, allowing for updates and amendments as new technologies emerge, just like what the Nigerian Securities and Exchange Commission has done.

This could be achieved by incorporating review clauses in the regulations, and mandating periodic reassessments of the regulatory framework to ensure it remains relevant. Establishing an innovation sandbox for digital assets could also allow regulators to test new technologies and regulatory approaches in a controlled environment before fully implementing them.

5. Further Define Digital Assets and Expand Regulatory Scope

A key aspect of any regulatory framework is clarity. It is essential that the scope of Ghana's cryptocurrency regulations clearly defines what constitutes a digital asset. Whether the asset is a cryptocurrency, a stablecoin, or a digital token, the regulations need to specify the types of assets covered and the obligations of market participants dealing with them.

This will help prevent ambiguity and ensure that all market players understand their legal responsibilities. Additionally, specific regulations could be developed for different types of digital assets, with varying levels of oversight based on the risk they pose to the financial system.

6. Comprehensive Anti-Money Laundering (AML) and Counter-Terrorism Financing (CTF) Compliance

Given the potential for cryptocurrency to be used for illicit activities, such as money laundering or financing terrorism, strong AML and CTF measures are essential. The regulatory framework should include detailed guidelines on the specific actions VASPs must take to comply with these regulations. This could involve:

Requiring VASPs to conduct thorough know-your-customer (KYC) checks; implementing transaction monitoring systems to detect suspicious activities; and Reporting requirements for large or unusual transactions to the appropriate financial intelligence units.

VASPs should also be required to maintain comprehensive records of all transactions, which would aid in investigations by law enforcement authorities in case of criminal activity. Regular audits and compliance checks should be conducted to ensure ongoing adherence to AML/CTF regulations.

7. Address Data Privacy and Protection

As VASPs handle sensitive user data, it is crucial that data privacy regulations are enforced to protect personal information. VASPs should be required to adhere to Ghana's Data Protection Act and implement measures to ensure that user information is securely stored and processed. The regulatory framework should specify the obligations of VASPs in handling customer data, including guidelines for data collection, storage, sharing, and protection.

Furthermore, VASPs should have clear data breach protocols in place to promptly address any unauthorised access or loss of user data. Ensuring transparency regarding how customer data is used will also foster trust in the cryptocurrency sector.

8. Establish Clear Tax Regulations for Digital Assets

Taxation of digital assets is another critical area that must be addressed in Ghana's cryptocurrency regulations. Clear guidelines on how gains from digital assets are taxed, whether as capital gains or income, will promote transparency and compliance. This could include specific tax reporting obligations for VASPs, as well as guidelines for individuals and businesses that trade or invest in cryptocurrency.

The Bank of Ghana and the Ghana Revenue Authority (GRA) should work together to ensure that tax regulations are straightforward, with provisions that account for the complexities of digital asset transactions. This may require an amendment of the Income Tax Act and the Value-Added Tax to ensure that the definition of assets encapsulates digital assets.

This will not only help boost government revenues but also ensure that the crypto market operates within the legal financial system.

8. CONCLUSION

The future of cryptocurrency in Ghana presents a dynamic landscape filled with both regulatory challenges and promising opportunities. As digital assets continue to gain traction globally, Ghana stands at a crossroads where the adoption of cryptocurrency could drive financial innovation, inclusion, and economic growth. However, this potential can only be realised if the regulatory framework effectively addresses key concerns such as money laundering, consumer protection, and market stability.

The proposed regulatory measures by the Bank of Ghana, in collaboration with other stakeholders, demonstrate a proactive approach towards establishing a secure and transparent environment for cryptocurrency activities. By fostering a regulatory ecosystem that balances innovation with risk management, Ghana can position itself as a leader in the digital finance space in Africa. It is crucial for regulators, policymakers, and industry participants to collaborate in crafting policies that harness the benefits of cryptocurrency while mitigating their associated risks.

Ultimately, the successful integration of cryptocurrency into Ghana's financial system will depend on clear regulations, effective enforcement, and continuous stakeholder engagement. This approach will not only attract investment and enhance economic resilience but also ensure that Ghana remains competitive in the evolving global financial landscape.