

How will we regulate blockchain and cryptocurrency in Africa?

While fintech and mobile solutions for money transfers have taken off in Africa, there has been a mixed reaction thus far from governments to the use and regulation of blockchain and cryptocurrency.



Ashlin Perumall, senior associate, corporate/M&A practice at Baker McKenzie

The pervasiveness of mobile telecommunication usage in Africa is said to have enabled the continent to leapfrog many first-world countries. Mobile phone usage grew from less than 3% to 80% in under a decade and there is already an abundance of local mobile and e-payment platforms that have seized this as an opportunity to develop innovative ways to ease the transfer of money across the continent.

“Further, sub-Saharan Africa is reported to have the second highest population of unbanked adults in the world, at about 350 million people, or 17% of the global total. Reportedly, two thirds of sub-Saharan Africans do not have a bank account. Despite this, a high percentage of migrant work, both within and between African countries, results in a disproportionate need for remittance mechanisms outside of traditional banks,” said Ashlin Perumall senior associate in the corporate/M&A practice at Baker McKenzie.

Foreign remittance remains a primary source of income for many African communities and households, with countries like Lesotho purportedly attributing almost a third of their GDP to remittances from abroad. These, amongst many other factors, have created the ideal environment for new ways of moving value, and present many of the challenges that distributed ledger solutions aim to solve,” he explained.

The good, the bad and the indifferent

Some governments have taken a positive stance regarding blockchain and cryptocurrency, seeking to understand how best to regulate its use, while others have adopted a wait and see approach.

"Some governments, however, have been apprehensive and reserved, and in some instances unreceptive to the use of this technology. Countries such as Zimbabwe and Namibia have reportedly begun with a hard stance, whilst Mauritius is a regional frontrunner. The regulatory sandbox created in Mauritius, for instance, demonstrates a progressive take on the general economic benefits that could follow a friendly, and even incentivised, approach to cryptocurrencies," he said.

In Kenya, the Mpesa mobile money transfer platform, piloted by Vodafone through Safaricom, was implemented as early as 2007, and this had stimulated the establishment of other similar ventures in the country. The broad success of the Mpesa platform has made the region ripe for alternate value-transfer innovations and blockchain technology is already being implemented in the country in number of ways.

A task force has been established by the Government of Kenya to explore the use of digital currencies and artificial intelligence. Kenya's National Land Commission, for example, recently welcomed the use of the blockchain network in creating transparency of land ownership, saying it would alleviate potential fraudulent sales of land, and confusion over title to land. And in the private sector, companies such as TMT Global Coin, a blockchain-powered logistics company that uses blockchain technology through smart contracts to improve the transparency and authenticity of records in imports and exports, are increasingly finding success. Despite all this, the Central Bank of Kenya recently rejected the use of digital currencies due to their unregulated nature and no regulations have been issued so far.

"In Nigeria, no regulation has been issued by the country's central bank to date. However, the bank has announced plans to release its white paper on the use and regulation of cryptocurrency. So far, the country has been against the use of cryptocurrency due to the risk that Nigerians might fall victims to fraudulent schemes. The slow acceptance of cryptocurrencies by Nigerian regulators is notable, considering that Nigeria reportedly has the world's third largest Bitcoin holdings as a percentage of gross domestic product," said Perumall.

What SA is doing

Although there is no specific regulation yet in South Africa, there had been a positive response from regulators who were working with the fintech and banking industries to find the most effective and appropriate way to regulate cryptocurrencies in South Africa. He said that the country positive about the concept of cryptocurrencies and is researching the effect of distributed virtual currencies so as to streamline the South African Multiple Option Settlement system through Project Khokha.

"In 2018, the National Treasury's Taxation Laws Amendment Bill, 2018 proposed amendments to tax legislation which, amongst other things, would change the way cryptocurrencies are classified in South Africa. And in December 2018, the South African Reserve Bank (Sarb) published its review of the National Payment Systems Act, 78 of 1998 for public comment.

"This legislation regulates systems used by South Africans for payment settlement, and the Sarb reportedly intends to undertake a complete overhaul the current regulation by 2020. The Sarb appears to recognise that there may soon be little difference between domestic and international payments and sees the possibility of similar digital currencies being at the heart of the national payment system in the future. This may pave the way for a reduction in the exclusivity of commercial banks in processing payments and, further down the line, the possibility of a digital South African fiat currency," he said.

"In a significant step forward, the South African Reserve Bank, South African Revenue Service, National Treasury, Financial Sector Conduct Authority and the Financial Intelligence Centre created the intergovernmental fintech working

group (IFWG) which released a consultation paper on policy proposals for crypto assets in January 2019. The efforts by the IFWG aim to provide a platform for regulators and policymakers to engage with industry and work towards a harmonised approach to regulation, and is a first for the region,” he explained

Irrespective of the different approach to regulation across African jurisdictions, there were many opportunities around the use of blockchain and cryptocurrency on the continent. He noted, however, that it was clear that there were still substantial challenges. “Considering the speed at which this technology is being embraced on the continent, there is great potential for African countries to develop regulations governing fintech use, with the intention of incentivising foreign direct investment in this sector,” he concluded.

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