

Impact of the Investments and Securities Act 2025 on Digital and Virtual Assets



OALP Technology Innovation and Fintech Newsletter

INTRODUCTION

On 25 March 2025, the President of the Federal Republic of Nigeria, President Bola Ahmed Tinubu, gave his assent to the Investments and Securities Bill thereby bringing the Investments and Securities Act, 2025 (the **ISA 2025** or the **Act**) into existence. The ISA 2025 repeals the Investments and Securities Act, 2007 (the **Repealed Act**) and introduces significant reforms in the Nigerian capital market ecosystem in a bid to boost investor confidence, reduce systemic risks, promote financial stability, strengthen regulatory oversight, and foster a fair, efficient, and transparent capital market.¹

Amongst other sweeping changes introduced by the Act,² the Act codifies the Securities and Exchange Commission's (**SEC**) regulatory powers in relation to the digital and virtual assets ecosystem. In this newsletter, we focus on the effect of the Act on digital and virtual assets, including how the ISA 2025 impacts the extant regulatory framework for virtual and digital assets in Nigeria. We also consider whether the approach adopted in the Act for regulating digital and virtual assets aligns with or differs from the approach adopted by other jurisdictions - the United Kingdom and the United States of America, specifically.

HIGHLIGHTS OF THE ISA 2025 IN RELATION TO DIGITAL AND VIRTUAL ASSETS

Express Classification as Securities

The Repealed Act, which was enacted at a time when virtual and digital assets were not prominent, did not expressly regulate such assets. As these assets gained significance in Nigeria during the COVID-19 pandemic, the SEC issued the Statement on Digital Assets and their Classification and Treatment (the **Statement**). In the Statement, the SEC's position was that 'virtual crypto assets' are securities unless proven otherwise. Further, the Statement placed the burden of proving that crypto assets are not securities on the issuer or sponsor of the said assets.³

With the ISA 2025, the legislators have modernised the statutory framework by expressly designating virtual and digital assets as 'securities', effectively vesting the oversight of these assets in the SEC.⁴

1. Section 3(1) of the ISA 2025.
2. The Act: (a) introduces a categorisation of securities exchange into composite and non-composite securities exchange (Section 27 of the ISA 2025), (b) criminalises ponzi schemes and unlawful investment practices (Section 3 of the ISA 2025), (c) establishes a regulatory framework for financial market infrastructure (Section 42 of the ISA 2025), (d) introduces a robust legal framework for commodities exchanges and warehouse receipts (Section 222 - 229 of the ISA 2025), (e) expands the categories of issuers (Section 95 of the

ISA 2025), (f) mandates the use of legal identifiers for market participants (Section 123 of the ISA 2025), and (g) paves the way for subnational entities to raise funds through the Nigerian capital market (Section 259 - 264 of the ISA 2025).

3. Please refer to the Olaniwun Ajayi Newsletter on the Statement here <https://www.olaniwunajayi.net/wp-content/uploads/2020/09/SEC-Statement-on-Digital-Assets-and-their-Classification-and-Treatment.pdf>
4. Section 357 of the ISA 2025.

Scope of Securities Exchange

As a corollary to the above, the definition of ‘securities exchanges’ or ‘registered exchange’ in the Act has been broadened to include any organised facility which maintains and provides an infrastructure that:



Previously, the SEC had introduced the Rules on Issuance, Offering Platforms, and Custody of Digital Assets 2022 (the **VASP Rules**), which, *inter alia*, provide for obligations and registration requirements for virtual assets service providers (VASP). In the VASP Rules, VASPs comprises of entities that provide the following services:



Consequently, platforms that facilitate the trading of virtual assets such as DAXs and or bring together buyers and sellers of virtual assets such as DAOPs are now statutorily considered securities exchanges or registered exchanges. By implication, DAXs and DAOPs would also be considered ‘capital market operators’ such that the provisions in the Act applicable to securities exchanges and capital market operators⁶ apply to such platforms. For example, DAXs and DAOP would be expected to:

- a) establish and maintain an investor protection fund, which will be used to compensate investors who suffer certain pecuniary losses;⁷
- b) notify the SEC of any matters that may pose a systemic risk to the financial markets as soon as it becomes aware of such matters,⁸ and
- c) at the request of the SEC, prevent, suspend or prohibit the sale of any digital or virtual assets, if the SEC deems it necessary for the protection of investors.⁹

Registration of Securities

Given the definition of securities which now encompasses virtual and digital assets, all virtual or digital assets to be issued in accordance with the Act are required to be registered with the SEC.¹⁰ VASPs are required to file a registration statement

5. *Ibid.*

6. Section 357 of the Act defines capital market operators as any persons, individual or corporate, duly registered by SEC to perform specific functions in the capital market.

7. section 198 and 199 of ISA 2025.

8. Section 30(1) of the ISA 2025.

9. Section 36(1) of the ISA 2025.

10. Section 86(1) of the ISA 2025.



with the SEC which would contain such information as the SEC may prescribe.¹¹

This registration requirement under the Act is similar to what is contemplated under the VASP Rules, which specifies certain minimum information to be provided¹² in addition to the SEC's minimum disclosure requirements for public offers.

Preserving Existing Rules and Regulations

Due to the lacuna in the Repealed Act, the SEC issued some regulatory and procedural rules between 2020 to 2024 to regulate the virtual and digital assets space including the Statement, the VASP Rules, and the Framework on Accelerated Regulatory Incubation Program for the Onboarding of Virtual Assets Service Providers and other Digital¹³ Investments Service Providers 2024 (**ARIP Framework**).

To ensure certainty and prevent market disorientation following the enactment of the Act, the Act provides that every notice, circular, direction, application, authorisation issued, given, or done under the Repealed Act, shall, if in effect at the commencement of the ISA 2025, continue in effect and have effect as if made, issued, given or done under the corresponding provisions of the ISA 2025. This has the effect of saving the aforementioned rules and framework as it relates to the virtual and digital assets space.

Nonetheless, we expect that the SEC will release a comprehensive set of rules that will replace the extant SEC Consolidated Rules and Regulations, 2013 pursuant to its powers under section 3(4) of the Act. Accordingly, the new rules will likely include provisions relating to virtual and digital assets.

No Definition of Virtual or Digital Assets

While the Act has classified virtual and digital assets as securities, the Act does not provide a definition of a virtual or digital asset. We envisage that the definition of a digital asset¹⁴ and virtual asset in the VASP Rules will remain applicable until such a time as when the SEC issues new rules to replace the SEC Consolidated Rules and Regulations, 2013.

COMPARATIVE ANALYSIS

Under this head, we examine whether the position of the Act aligns with global standards, citing the position in the United Kingdom (**UK**) and United States of America (**US**).



United States of America

Unlike the ISA 2025 which classifies all virtual and digital assets as securities subject to SEC's regulatory oversight, in the US, the regulatory stance on digital and virtual assets depends on the asset type.

Assets such as tokens offered in initial coin offerings constitute securities if they meet the criteria under the Howey test,¹⁵ and accordingly fall within the US SEC's purview. However, cryptocurrencies such as Bitcoin, Ether, and Litecoin are considered commodities and subject to the regulatory purview of the Commodity Futures Trading Commission (**CFTC**). Interestingly, the Commodity Exchange Act (**CEA**) does not expressly set out digital assets and cryptocurrencies under the ambit of what constitutes commodities, however judicial interpretations have expanded its scope. In *CFTC v. McDonnell*¹⁶ a US District Court ruled that virtual currencies such as Bitcoin are commodities falling under the enforcement authority of the CFTC.

It thus follows that the US SEC does not regulate all kinds of digital assets as has been done under the Act. Rather than the umbrella classification as adopted by the Act that

11. Section 86(2) of the ISA 2025.

12. This information includes (a) a registration statement (containing the name and ticker of the tokens, the amount to be registered, the price per token, the number of tokens to be sold, and the registration fees) (b) KYC procedures, disaster recovery plans and risk management protocol; (c) Security protocols including platform architecture and technology; (d) Auditor's opinion confirming that all applicable permits and licenses for the issuance and transfer of the securities, after the offer, has been obtained; (e) Copy of the escrow agreement with an independent Custodian/Trustee registered with the Commission; (f) Corporate governance disclosures; (g) Evidence of payment of the applicable fees; and (h) any other information to be determined by the

Commission from time to time.

13. See our Article on SEC Framework on Accelerated Regulatory Incubation Program | Olaniwun Ajayi

14. A Digital Asset means a digital token that represents assets such as a debt or equity claim on the issuer.

15. The Howey test is a test established in the US supreme court case of SEC v. W.J Howey Co., 328 US 293 (1946) which stipulates that if an asset is an investment of money in a common enterprise, with a reasonable expectation of profits to be derived from the efforts of others, it is considered a security.

16. 287 F. Supp. 3d 213 (EDNY 2018)

places all virtual and digital assets under the SEC's oversight, the Nigerian legislature could have seized this opportunity to distinguish between digital and virtual assets that operate as securities *stricto sensu* and those that do not. For instance, stablecoins, which are designed to maintain a stable value by being pegged to a fiat currency or basket of assets, may not function as securities in the conventional sense. Their primary use case often aligns more closely with that of a payment mechanism rather than an investment. As such, their regulation would arguably fall more naturally within the purview of the Central Bank of Nigeria.¹⁷

Accordingly, it is recommended that rather than applying a blanket classification, the Act should have adopted a more nuanced framework that excludes digital or virtual assets that do not meet the characteristics of securities.



United Kingdom

Similar to the US, the UK adopts a multi-agency approach to the regulation of digital assets. Regulatory oversight is principally shared among HM Treasury (HMT), the Financial Conduct Authority (FCA), and the Bank of England (BoE), collectively coordinated through the Cryptoassets Taskforce established in 2018.

The FCA plays a central role in overseeing crypto asset activities, while the BoE monitors the systemic risks posed by digital assets to financial stability and is involved in discussions regarding the potential issuance of central bank digital currencies. The HMT is responsible for formulating policy and legislative proposals concerning the regulation of cryptoassets. It collaborates closely with the FCA and BoE to develop a cohesive regulatory framework.

A significant milestone was the enactment of the Financial Services and Markets Act 2023 (FSMA). Under the FSMA, security tokens fall within the definition of "specified investments" as per the Regulated Activities Order, 2005



(RAO), while stablecoins may qualify as e-money under the E-Money Regulations 2011. Other categories like utility tokens, exchange tokens, and NFTs currently fall outside the traditional perimeter, though they remain subject to the Money Laundering, Terrorist Financing and Transfer of Funds Regulations, 2017.

CONCLUSION

The enactment of the ISA 2025 marks a pivotal moment in Nigeria's regulatory evolution by providing explicit statutory recognition of digital and virtual assets as securities.

The Act signals Nigeria's commitment to fostering a transparent, unequivocal, and regulated ecosystem by codifying the regulatory purview of the SEC over such digital and virtual assets. However, in line with practices in the global financial markets, a more nuanced approach could have been considered by the legislative draftsmen to ensure that the SEC's regulation is focused on virtual and digital assets that facilitate investments strictly.

17. Section 19 of the Central Bank of Nigeria Act, 2007.

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