



DUALE, OVIA &  
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## **Review of SEC's Framework on Accelerated Regulatory Incubation Program for the Onboarding of Virtual Assets Service Providers and Other Digital Investments Service Providers**

## Introduction

In response to the rapid evolution and importance of digital assets in Nigeria, the Securities and Exchange SEC (“**SEC**” or the “**Commission**”) in 2022, introduced the Rules on Issuance, Offering Platforms, and Custody of Digital Assets (the “**Rules**”)<sup>1</sup>. The introduction of the Rules represents a crucial step in ensuring that the offer and trading of digital assets are undertaken under regulatory oversight and also seeks to safeguard the interest of investors.

On June 28, 2024, the SEC released the Framework on Accelerated Regulatory Incubation Program for the onboarding of Virtual Assets Service Providers (**VASPs**) and other Digital Investments Service Providers (**DISPs**) (the “**ARIP Framework**”). The ARIP Framework seeks to facilitate the onboarding of entities that are proposing to carry on virtual asset activities and whose applications have been filed with the SEC, as well as potential applicants that perform such activities in Nigeria (“**Prospective Participants**”).

This article provides essential insights for Prospective Participants interested in participating under the ARIP Framework.

### 1. What is the Main Purpose of the ARIP?

The ARIP provides a platform:

- a) To accelerate the onboarding of Prospective Participants and enable qualified Prospective Participants to obtain requisite approvals from SEC pending when the Rules become fully operational.
- b) To allow Prospective Participants to receive guidance relating to the SEC’s regulatory obligations before becoming fully operational in the Nigerian Capital Market. This preparatory phase allows entities to align their operations with regulatory standards early on.
- c) To deepen SEC’s understanding of digital asset business models. This understanding is crucial for refining regulations to effectively address issues such as market integrity, investor protection, and prevention of money laundering.

### 2. Who are the Parties Subject to the ARIP Framework?

The ARIP Framework applies to the following:

- a) virtual asset service providers, promoters, and token issuers that carry on business activities in Nigeria or offer services to Nigerians irrespective of the physical location from which the activities are carried out. This includes foreign or non-residential operators that actively target Nigerian investors directly or through their agents, through promotions, publications in Nigeria, or direct e-mails to Nigerian addresses;

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<sup>1</sup> The Rules provide for the classification of digital assets as securities, obligations and registration requirements for digital assets offering platforms, digital asset custodians, virtual asset service providers and digital asset exchanges.

- b) platforms that facilitate the offering, trading, exchange, custody, and transfer of virtual/digital assets;
- c) promoter/organizer, issuer, founder, purchaser, or investor who participates in the formation, promotion, maintenance, organization, sale, or redemption of an initial token offering; and issuers/sponsors of virtual/digital assets, including foreigners or non-residents;
- d) persons (individual or corporate) whose activities involve any aspect of Distributed Ledger Technology (DLT)-related and virtual/digital assets services. Such services include, but are not limited to reception, transmission, and execution of orders on behalf of other persons, dealers on their own account, portfolio management, investment advice, custodian or nominee services, etc.; and
- e) unregistered digital investment platforms operating in the Nigerian capital market.

### 3. What are the Eligibility Requirements of Prospective Participants?

Prospective Participants seeking to apply to the ARIP must be incorporated under the Companies and Allied Matters Act 2020 (“**CAMA**”) and must maintain an office in Nigeria. The Chief Executive Officer/Managing Director or equivalent leadership of the company must reside in Nigeria. Prospective Participants should be engaged in investments and securities business and must either be seeking registration with the SEC or have pending applications related to virtual assets with the Commission.

### 4. What are the Application Steps into the ARIP?

Participation in the ARIP involves two main phases: the Initial Assessment Phase and the Application Phase. The application process is listed below:

- a) Prospective Participants for the ARIP must first complete and submit an initial assessment form via the SEC's ePortal <https://eportal.sec.gov.ng/login>.
- b) Upon receiving the initial assessment submission, SEC will review it and inform the Prospective Participant of their eligibility status.
- c) Eligible Prospective Participants will then be guided to proceed with completing and submitting a formal application for the ARIP.
- d) Upon successful clearance of the application by SEC, an approval-in-principle (AIP) will be issued, allowing the eligible Prospective Participant to operate in accordance with the Investments and Securities Act 2007 (“**ISA**”) and the SEC's Rules and regulations.
- e) The qualified Prospective Participants will operate under the ARIP for a period determined by SEC.
- f) SEC reserves the right to defer approval or reject applications to maintain the integrity of the capital market.

- g) Any decision by SEC to deny admission into the ARIP will be communicated with appropriate justification.

## 5. What are the Registration Requirements for Prospective Participants?

Under the ARIP Framework, applications must be completed online via the SEC's eportal at <https://eportal.sec.gov.ng/login> by a SEC registered solicitor or adviser. The application process requires the submission of the following documents:

- a) Form SEC 2 and 2D – including a minimum of four Sponsored Individuals who will serve as principal officers, including the Managing Director and Compliance Officers.
- b) Certified copies of corporate documents by the Corporate Affairs Commission (CAC), including:
  - i. Certificate of Incorporation (original for verification).
  - ii. Memorandum and Articles of Association, demonstrating the authority to conduct specified functions;
  - iii. CAC Forms indicating Statement of Share Capital, Return of Allotment, and particulars of Directors.
- c) Latest audited accounts or audited statements of affairs for new companies.
- d) Tax Identification Number (TIN) and Clearance Certificate.
- e) Valid means of identification (including NIN and BVN) for the sponsored individuals.
- f) Sworn undertaking ensuring the operation of an orderly, fair, and transparent market in relation to offered or traded securities on the platform.
- g) Evidence of registration with the Nigerian Financial Intelligence Unit.
- h) Sworn undertaking to maintain proper records and submit specified returns as required by the SEC, signed by a director or company secretary.
- i) Sworn undertaking by a director or company secretary to adhere to SEC Rules and Regulations, 2013 as amended ("SEC Rules") and ISA.
- j) Operational plan and business model detailing a clear or unique value proposition contributing to the capital market's development.
- k) Where an applicant is regulated by another sectoral regulator, the applicant will also provide a "no objection" or approval letter from the relevant sectoral regulator when making an application into the ARIP.

ARIP participants are subject to the Commission's onsite and off-site inspection, audit, and monitoring and are also required to make such periodic reports and returns as may be specified by the Commission.

## Applicable Fees and Penalties

- a) Prospective Participants are required to pay a non-refundable processing fee of ₦2,000,000.00 (Two Million Naira); provide evidence of the required shareholder fund; and maintain a current fidelity bond covering at least 25% of the required shareholder fund.
- b) Failure to comply with any of the stipulated requirements shall be liable to a penalty of not less than ₦5,000,000 (Five Million Naira, only) at the first instance and a further ₦200,000 (Two Hundred Thousand Naira, only) for every day of default.
- c) A penalty of not less than ₦20,000,000 (Twenty Million Naira only) will immediately apply to all commercialized VASPs operating trading, offering, and custody platforms without due authorization or registration by SEC.
- d) A penalty of not less than ₦10,000,000 (Ten Million Naira only) will immediately apply to all other digital investments platforms including crypto brokers/dealers, advisers, market makers, etc. operating without due authorization or registration by SEC.
- e) Other administrative sanctions as provided for in SEC Rules may also apply depending on the severity of the violation(s).

## 6. What is the Next Step at the Expiration of the ARIP Period?

Upon the conclusion of the ARIP period, Prospective Participants are expected to smoothly transition to registration with SEC as capital market operators. Successful participants therefore undertake SEC's formal registration for its approval to operate in the Nigerian capital market, contingent upon compliance with all relevant existing Rules and Regulations<sup>2</sup>. Insights gained by SEC from the programme may require the introduction of new regulations, guidelines, or notices pursuant to Section 38 (2&3) of the ISA, where there is a need for broader regulatory reform. Unsuccessful participants will however be denied permission to operate in Nigeria under prevailing Rules and Regulations.

Furthermore, SEC may conduct training and examinations for sponsored individuals of Prospective Participants, and those who pass will proceed to a registration interview.

It is however important to note that the ARIP framework is not intended and cannot be used as a means to circumvent applicable Rules and Regulatory requirements.

## Conclusion

While SEC reserves the right to defer approval or reject applications, the Framework is silent regarding provisions for appeals. Nevertheless, the ARIP Framework represents a significant step in recognizing the potential and significance of digital/virtual assets in advancing the Nigerian capital market. This proactive approach therefore ensures thorough oversight of digital assets to mitigate potential disruptions to the Nigerian financial sector upon their release to the public.

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<sup>2</sup> See also Section 38, ISA



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