Legal Alert

SEC Issues New Framework for Virtual Asset Service Providers and other Digital Investment Service Providers

Introduction

The Securities and Exchange Commission ("**SEC**" or the "**Commission**") on 21 June 2024 issued *A Framework on Accelerated Regulatory Incubation Program (ARIP) for the Onboarding of Virtual Assets Service Providers* (**VASPs**) *and other Digital Investments Service Providers* (**DISPs**) (the "**ARIP Framework**"). This follows the proposed major amendment to the Commission's Rules on the Issuance, Offering Platforms, and Custody of Digital Assets issued on 15 March 2024, which is yet to be finalised.

The ARIP Framework provides guidance to **VASPs** and other **DISPs** seeking to operate in Nigeria. VASPs are digital platforms that facilitate the trading and exchange of cryptocurrencies and other digital assets, while DISPs are entities that offer investment products through digital channels. This includes platforms that allow users to purchase stocks, invest in mutual funds, and other investment schemes approved by the SEC.

In this alert, we highlight some of the key provisions of the ARIP Framework and the regulatory obligations of VASPs and DISPs seeking to operate in Nigeria or those with product offerings for Nigerian consumers.

1. *Entities Eligible for the Accelerated Regulatory Incubation Program*

The ARIP Framework applies to VASPs that have platforms that facilitate the offering, trading, exchange, and custody of digital assets through the use of distributed ledger technology[1] (or similar technology) and DISPs offering investment services through digital channels to Nigerians. A VASP or DISP will be eligible to apply for the ARIP if it meets the following requirements[2]:

[1] Digital system or recording the transactions relating to a digital asset whose details are recorded in multiple places at the same time. Blockchain operates by the digital ledger technology system.
[2] Regulation 6 of the ARIP Framework.

a. Incorporated and has an office in Nigeria[3], and its Chief Executive Officer/Managing Director or someone functioning in a similar capacity is resident in Nigeria;

b. Performing investment or securities business;

c. Seeking registration or having a pending virtual asset-related application with the SEC.

2. *Application Steps and Requirements for the Accelerated Regulatory Incubation Program*

Participation in the ARIP involves two phases: (1) the Initial Assessment Phase and (2) the Application Phase. The first phase requires an applicant to complete and submit an initial assessment form on the SEC Portal. The SEC will grant an approval-in-principle (AIP) to successful applicants in this phase.

The application phase requires an applicant to submit, among other things, the company's constitutional documents and evidence of registration with the Nigerian Financial Intelligence Unit (NFIU).[4] Additionally, applicants are required to pay a non-refundable fee of ₦2,000,000.00 (Two Million Naira), show evidence of the required shareholder funds, provide a current fidelity bond covering at least 25% of the required shareholder funds,[5] and submit an operational plan in support of their application. The operational plan should contain a detailed description of the applicants' products, services, or business model, the type of technology employed to deliver these services, information on the applicant's target customers, its risk management framework, and a clear exit plan if registration is not achieved.[6]

3. *Restrictions on Qualified Applicants*

Upon successful application, qualified applicants are precluded from conducting any other securities and/or investment business other than those for which they have applied to the Commission. The ARIP Framework also prohibits applicants from carrying out any form of promotional activity or growing their customer base by more than 10% from the point of entry into the ARIP.[7]

4. *Records and Reporting Requirements*

The reporting obligations of participants of the incubation programme include the following:

a. Submitting weekly and monthly trading statistics to the Commission;

b. Submitting quarterly financials and compliance reports demonstrating their compliance with conditions set by the Commission;

c. Filing operational incident reports and reporting measures taken to address fraud, operational risks, customer complaints, and other connected matters.[8]

In fulfilling these obligations, participants are to ensure that their premises, systems, and records are open for inspection by the Commission.

5. *Transitioning to Registration*

At the expiration of the ARIP period, the Commission may decide to grant successful participants a formal registration approval to commence full-scale operations or issue a denial of permission to unsuccessful participants under the prevailing rules.[9]

---

[3] A VASP or DISP upon incorporation may set up a representative office in Nigeria.
[4] Regulation 18 of the ARIP Framework.
[5] Regulation 20 of the ARIP Framework.
[6] Regulation 36 of the ARIP Framework.
[7] Regulation 29 of the ARIP Framework.
[8] Regulation 21 of the ARIP Framework.
[9] Regulation 37 of the ARIP Framework.

6. *Application Timeline for the Accelerated Regulatory Incubation Program*

The Commission has directed that all operating and prospective VASPs are to complete the application process no later than 30 days from the date of release of the ARIP Framework. ARIP participants who fail to comply with any of the requirements stipulated in the ARIP Framework will be liable to pay a penalty not less than ₦5,000,000.00 (Five Million Naira) at the first instance and a further ₦200,000.00 (Two Hundred Thousand Naira) for every day that the default persists.[10]

Consequently, any commercialised VASP or DISP operating without due authorisation or registration by the Commission will pay a penalty of not less than ₦20,000,000.00 (Twenty Million Naira) and ₦10,000,000.00 (Ten Million Naira) respectively[11].

The Application of the ARIP Framework to Existing VASPs and DISPs in Nigeria

All operating and prospective VASPs are expected to complete the application process for the ARIP.[12]

As it pertains to DISPs that have been licensed by other regulators, the ARIP framework prescribes that an entity licensed by another regulator can submit to the Commission a "No-objection" letter from such regulator when making an application to join the ARIP.[13] This will apply to already existing businesses that offer investment services through digital platforms (DISPs) but are licensed by other regulators.

The ARIP Framework does not indicate whether entities already licensed as capital market operators are expected to apply for the incubation programme. Thus, fintech companies operating digital investment platforms who have obtained relevant licences from the SEC, e.g. sub-broker digital license, fund/portfolio management license, etc. may need to engage with the SEC to understand whether they would need to obtain a form of waiver from participating in the incubation programme.

Conclusion

The ARIP framework has created a pre-licensing structure that gives all stakeholders the opportunity to explore the innovation associated with the digital assets space and understand the operations of VASPs and DISPs.

The issuance of the ARIP Framework is another step towards enhancing regulatory clarity for the adoption of digital assets in Nigeria. It is hoped that this pre-licensing incubation structure will create an enabling environment for the steady growth of fintech companies in the digital asset space in Nigeria.

---

[10] Regulation 40 of the ARIP Framework.
[11] Regulation 41 and 42 of the ARIP Framework.
[12] https://sec.gov.ng/framework-on-accelerated-regulatory-incubation-program-arip-for-the-onboarding-of-virtual-assets-service-providers-vasps/
[13] Regulation 17 of the ARIP Framework.

Should you have any questions about this legal alert, please do not hesitate to contact *Ajibola Asolo* or *Tomilola Tobun.*

Ajibola Asolo
Partner
ALN Nigeria | Aluko & Oyebode

Ajibola.Asolo@aluko-oyebode.com

Tomilola Tobun
Senior Associate
ALN Nigeria | Aluko & Oyebode

Tomilola.Tobun@aluko-oyebode.com

Contributors

Ayomide Awoyemi
Associate, ALN Nigeria | Aluko & Oyebode
Ayomide.Awoyemi@aluko-oyebode.com