



Is Cryptocurrency a Security?

There are several developed and emerging markets with cryptocurrency platforms operating within their jurisdictions. In these jurisdictions, cryptocurrency-based transfers are becoming increasingly common and are used to transact on a day to day basis. This week's article will focus on cryptocurrencies and whether they are considered a security within the Trinidad and Tobago market.

What is a cryptocurrency?

Cryptocurrencies also known as virtual assets refer to a digital representation of value that can be digitally traded or transferred and can be used for payment or investment purposes, including digital representations of value that function as a medium of exchange, a unit of account, and/or a store of value (FATF). Most crypto exchanges are unregulated, so it's important to consider the risks before any investment decision is made.

Cryptocurrencies purport to be items of inherent value, designed to enable purchases, sales and other financial transactions. Cryptocurrencies attempt to facilitate functions that have been performed by longstanding currencies such as the United States and Trinidad and Tobago dollar. But unlike fiat, they do not have the backing of a government.

The Trinidad and Tobago Securities and Exchange Commission (TTSEC), the Central Bank of Trinidad and Tobago and the Financial Intelligence Unit of Trinidad and Tobago (Regulatory Authorities), in a joint statement issued on January 25th 2019, informed the public that providers of cryptocurrencies/virtual currencies are neither regulated nor supervised by the Regulatory Authorities and that there are no legislative provisions under their purview that provide protection to consumers for losses arising from the use of virtual currencies. In addition, unregulated virtual currency companies may lack appropriate internal controls and as a result be more susceptible to fraud and theft than regulated financial institutions.

Is Cryptocurrency a Security in Trinidad and Tobago?

The Securities Act, Chap. 83:02 (SA 2012) defines a security in section 4(1) to include, *inter alia*, "any document, instrument or writing evidencing ownership of, or any interest in, the capital, debt, property, profits, earnings or royalties of any person".

A cryptocurrency could be considered a security if it falls within the non-exhaustive definition of security as defined by the SA 2012. Thus, a cryptocurrency that satisfies the definition of an

investment contract could be considered a security in Trinidad and Tobago. Under the legislative definition, an investment contract includes “any contract, transaction, plan, scheme, instrument or writing, whereby *a person invests* money or other property in a common enterprise *with the expectation of profit or gain* based on the expertise, management or effort of others, and such money or other property is subject to the risks of the common enterprise”.

It should also be noted that if a cryptocurrency, or any other digital asset, affects the securities market similar to the buying and selling of securities using fiat currency, then similar responsibilities and regulatory requirements will apply. This extends to securities firms and other market participants that allow transactions using cryptocurrency, these market participants must ensure compliance with existing laws and regulations related to the securities industry and money laundering, among other things.

What are Initial Coin Offerings (“ICO”)?

Initial Coin Offerings (ICOs, also known as token sales or coin sales) typically involve the creation of digital tokens that are based on a cryptocurrency. Tokenisation is the process of digitally representing an asset or ownership of an asset. A “token” represents an asset or ownership of an asset. This is done using distributed ledger technology, and they are sold to investors by auction or through subscription, in return for fiat or cryptocurrency. The capital derived from the ICO is typically used as a source of start-up capital for companies where legal tender is required for initial and operating costs. It should be noted that, unlike an initial public offering (IPO), investing in an ICO will not result in an ownership stake of the company being invested in. When someone invests in an ICO they are hoping that the cryptocurrency increases in value due to increased circulation and adoption. Some examples of ICOs include Trodl and TotemFi which were based on the Ether cryptocurrency.

The Regulatory Authorities are implementing regulatory tools such as a Regulatory Innovation Hub and a Regulatory Sandbox to aid in the regulation of fintech products and services. Fintech products such as cryptocurrencies are constantly evolving and understanding their risks to investors and to the securities market is of utmost importance to the Regulatory Authorities. Any cryptocurrency offering on the local market will be reviewed, on a case by case basis, by the joint regulatory tools to determine its risks, characteristics and use.

The TTSEC continues to foster development of the securities market and welcomes participation. We encourage members of the public who are interested in investing in securities, to visit our website at: <https://www.ttsec.org.tt/registration/> for a list of registered companies, individuals, securities or investment advisers.

For information on the securities market visit us at: www.ttsec.org.tt and to learn more about investing wisely, check out our investor education website: www.investucatett.com and while you're there take the fintech pledge: <https://investucatett.com/caribbean-fintech-pledge-initiative/> while expanding your knowledge about financial technology and its use.

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