

## Cryptocurrency for International Commercial Transactions – Prospects and Obstacles

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In July of 2016, Bank of Tokyo-Mitsubishi UFJ confirmed that it was conducting experiments on a digital currency and will issue a virtual currency.<sup>1</sup> The bank also stated that it will invest in the US bitcoin exchange operator and will jointly develop a wire-transfer system using blockchain technology.<sup>2</sup> The security that the technology provides, such as tamper-proof record keeping, is certainly a major advantage of utilizing cryptocurrency in the banking sector, not to mention the low cost wire-transfer service banks may provide by using blockchain technology.<sup>3</sup>

Historically, legal framework for regulation of new technology has always been a laggard as compared to the development of technology. Thus, it is not surprising to observe that no regulation is specifically set to govern blockchain technology and its usage in the banking sector yet. Revolutionary as it is, the need for filling the gap between the new invention and the law is apparent; however, careful consideration and thorough research must be conducted to accurately reflect traits of the virtual currency into the regulation arena.

In the United States, although private currency system that is not authorized by the central government is considered as violation of federal law,<sup>4</sup> Bitcoin, the virtual currency that is based on the blockchain technology, is proven to be included in the currently valid legal system in many different forms. Citing the Supreme Court's Decision<sup>5</sup>, one scholar<sup>6</sup> argued that Bitcoin is a security under US securities law. The Supreme Court defined an investment contract as "an investment agreement that must involve (1) an investment of money; (2) a common enterprise; and (3) an expectation of profits to derive solely from the efforts of others."<sup>7</sup> Bitcoin meets those definitions of an investment contract, and the Securities Act and the Securities Exchange Act include investment contracts as a form of a security, therefore Bitcoin is considered as a security under the US Securities law. Bitcoin is also argued to be

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<sup>1</sup> Weekly Financial Brief, Vol. 25, No. 29, p. 15, Korea Institute of Finance(2016)

<sup>2</sup> *Id.*

<sup>3</sup> As blockchain technology is basically sharing distributed ledger among users, tampering of the record is nearly impossible. As for the wire-transfer of funds, current SWIFT system takes at least three days with high fees charged at both ends while blockchain involves no centralized intermediary that results in low costs.

<sup>4</sup> U.S. F.B.I., 2011. "Defendant convicted of minting his own currency"(18 February), at <http://1.usa.gov/1Lan5ZT>

<sup>5</sup> In *SEC v. W.J. Howey Co.* 328 U.S. 293, 301 (1946)

<sup>6</sup> R. Yang, 2013. "When is Bitcoin a security under US securities law?" *Journal of Technology Law & Policy*, Vol. 18, No. 2, p. 99.

<sup>7</sup> In *SEC v. W.J. Howey Co.* 328 U.S. 293, 301 (1946)

classified as a commodity under the Commodity Exchange Act under the catch-all phrase. It is notable that Bitcoin is already intertwined with the currently valid legal system without tweaking the law, no meaningful consideration as to how to effectively regulate the cryptocurrency has been advanced in the legal arena. It is also striking that cryptocurrency and blockchain technology is almost exclusively focused on utilizing Bitcoin.

Virtual currencies such as Bitcoin is more acceptable in Europe, as Europe has recognized many different types of local currencies already.<sup>8</sup> Also, as for the regulation for virtual currencies, the Electronic Money Institutions Directive 2009/110/EC provides guidelines as to what is considered electronic money<sup>9</sup>, how it should be issued, and how electronic money should be regulated. Although EU has taken pioneering steps towards regulating virtual currencies through the Electronic Money Institutions Directive, what is important when compared with traits of Bitcoin and blockchain technology is that Bitcoin actually does not fit in the definition of the electronic money for lack of centralized issuing authority to regulate. Rather, the European Banking Authority states in the way explaining that Bitcoin should be categorized as a commodity.<sup>10</sup>

Regulation on virtual currency using blockchain technology has not been active in Asian countries. Japan is taking the lead in adopting the technology to cut the cost and to provide better service with wire-transfer of funds, while other Asian countries are still silent in utilizing the innovation, except for mining for Bitcoin<sup>11</sup>. Retail usage is still too low to draw meaningful attention, and the blockchain technology has mainly been used for cryptocurrencies like Bitcoin, except for the soon-to-be-used wire-transfer of funds. As various ways for using and making full potential of blockchain technology will soon unfold with the technological development, careful observation of the market and prompt response in legitimization must follow to minimize damage.

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<sup>8</sup> *e.g.*, Bristol Pound, Brixton Pound, Calderdale Green Currency, Exeter Pound, Eko issued in the Findhorn Ecovillage, Lewes Pound, Stroud Pound, Totnes pound, Cardiff Pound are local currencies accepted in the UK.

<sup>9</sup> "digital equivalent of cash, stored on an electronic device or remotely at a server. One common type of e-money is the 'electronic purse', where users store relatively small amounts of money on their payment card or other smart card, to use for making small payments." EC, Banking and Finance, available at [http://ec.europa.eu/finance/payments/emoney/index\\_en.htm](http://ec.europa.eu/finance/payments/emoney/index_en.htm) (last visited Jan. 8, 2017)

<sup>10</sup> European Banking Authority (EBA), 2014. "EBA Opinion on 'virtual currencies'," EBA/Op/2014/08 (4 July), at <https://www.eba.europa.eu/documents/10180/657547/EBA-Op-2014-08+Opinion+on+Virtual+Currencies.pdf> (last visited Jan. 8, 2017)

<sup>11</sup> China has the most Bitcoins, followed by the US.