

The Significance of Regulating Virtual Currency Service Businesses in Thailand*

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ABSTRACT

Traditional financial models and businesses are disrupted by the integration of finance and technology or financial technologies. Virtual currency is a product of financial technologies. It has been developed and increasingly used as alternative mean of payment. Bitcoin is the most popular decentralized virtual currency which being used as medium of exchange for goods and services and also exchanged for legal currencies including Thai Baht. The price value of Bitcoin is determined by demand and supply which can change easily. That is where people find an opportunity for investment or speculation similar to those stocks and other securities. The reasons behind Bitcoin popularity include a number of benefits. User's privacy remains undisclosed and transactions can be done without relying on third party like financial institutions. Additionally, Bitcoin transactions are quick, cheap and irreversible. Unfortunately, it has been taken advantages by criminals and money launderers. They sometimes use virtual currency to perform illicit activities such as illegal trading, dirty money launderings, fraud, cybercrimes and tax evasion. Likely, virtual currency service businesses which administering or exchanging virtual currencies for Baht or other virtual currencies are found with potential to facilitate those illicit activities.

* The article is summarized and rearranged from the thesis "The Significance of Regulating Virtual Currency Service Businesses in Thailand" Master of Laws Program in Business Laws (English Program), Faculty of Law, Thammasat University, 2015.

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It has been arguing what virtual currency like Bitcoin is under the existing laws in foreign countries and Thailand. The questions of legal currency, foreign currency, electronic money, securities, commodity and property have been discussed. It is also a concern how virtual currency service businesses should properly be regulated in order to manage the potential risks while avoid the over-regulation. United States is a country which actively responds to those issues. Though regulators and courts find it is possible to apply the existing laws to virtual currency and the related businesses, they are aware of the significant difference between financial technologies and traditional financial businesses. United States regulators instead develop the new regulations to ensure putting in place guardrails that protect consumers and rooting out illicit activity without stifling beneficial innovation.

Accordingly, this thesis explores the approaches to regulate virtual currency and the related businesses properly. Fundamentally, the approaches are based on Thai existing laws. The regulatory developments in United States shall essentially be guidelines to provide the appropriate recommendations for Thailand's regulations. In conclusion, this thesis proposes that virtual currency and virtual currency services business should be, on a timely basis, regulated under the securities regulations. In order to do so, the Securities and Exchange Commission should issue the regulations to specify virtual currency as securities and to establish the licensing regime to regulate the conduct of virtual currency service businesses appropriately. The regulations are proposed to help reduce the incentive for criminals, money launderers and tax evaders using virtual currency services business to facilitate illegal purposes. This licensing regime will ensure that consumers are treated properly and will also mitigate cyber-attack risks of this business.

Keywords: Virtual currency, Digital currency, Bitcoin, Licensing, Securities

บทคัดย่อ

รูปแบบการทำธุรกิจและโครงสร้างอุตสาหกรรมด้านการเงินแบบดั้งเดิมได้เปลี่ยนแปลงไป อันเป็นผลสืบเนื่องมาจากการพัฒนาการของเทคโนโลยีประยุกต์ด้านการเงิน (Financial Technologies) เงินตราเสมือนหรือเงินดิจิทัลซึ่งเป็นหนึ่งในผลิตภัณฑ์ของเทคโนโลยีประยุกต์ดังกล่าว ได้ถูกนำมาใช้เป็นตัวกลางการแลกเปลี่ยนทางเลือกใหม่ในปัจจุบัน บิทคอยน์ถูกจัดว่าเป็นเงินตราเสมือนประเภทหนึ่ง ซึ่งไร้ศูนย์กลางในการควบคุมที่กำลังได้รับความนิยม โดยสามารถใช้แลกเปลี่ยนกับสินค้าและบริการต่าง ๆ ตลอดจนแลกเปลี่ยนเป็นสกุลเงินจริง รวมทั้งเงินบาทด้วย มูลค่าของบิทคอยน์ขึ้นอยู่กับอุปสงค์และอุปทานของผู้ใช้งานเป็นหลัก ทำให้มีความผันผวนง่าย และถูกใช้ในลักษณะทั้งการดำเนินงานเดียวกับการลงทุนในหุ้นหรือหลักทรัพย์ประเภทอื่น ข้อดีประการสำคัญที่ทำให้บิทคอยน์ได้รับความนิยม คือ ผู้ใช้งานไม่จำเป็นต้องเปิดเผยตัวตนในการทำธุรกรรม และธุรกรรมระหว่างผู้ใช้งานบิทคอยน์ไม่ต้องอาศัยตัวกลางประเภทสถาบันการเงิน นอกจากนี้ ธุรกรรมดังกล่าวมีความรวดเร็ว ต้นทุนต่ำ และเพิกถอนไม่ได้ อย่างไรก็ดี ในบางคราวกลับพบว่า บิทคอยน์ถูกบุคคลกลุ่มหนึ่งนำไปใช้ในทางที่ผิดกฎหมาย เช่น ใช้ซื้อสินค้าผิดกฎหมาย ใช้เป็นเครื่องมือในการฟอกเงิน หรือ ก่ออาชญากรรมทางคอมพิวเตอร์ และเลื่อยกาฬี เป็นต้น อีกทั้งพบว่า ธุรกิจที่ให้บริการแลกเปลี่ยนบิทคอยน์และเงินตราเสมือนประเภทอื่นเป็นเงินบาท และ/หรือ เป็นเงินตราเสมือนประเภทอื่น อาจกลายเป็นแหล่งให้ความสะดวกแก่บุคคลกลุ่มดังกล่าวในการกระทำความผิดข้างต้นได้

บิทคอยน์ถูกตั้งคำถามเกี่ยวกับสถานะทางกฎหมายทั้งในประเทศไทยและต่างประเทศ แต่ปัจจุบัน ข้อสรุปเกี่ยวกับสถานะดังกล่าวยังไม่ชัดเจนและเป็นที่ยุติ รวมไปถึงมาตรการทางกฎหมายในการกำกับดูแลธุรกิจที่ให้บริการแลกเปลี่ยนบิทคอยน์อย่างเหมาะสมด้วยเช่นกัน จากการศึกษาพบว่า ประเทศสหรัฐอเมริกาได้ให้ความสำคัญกับกรณีดังกล่าวค่อนข้างมาก โดยแม้ว่าหน่วยงานรัฐและศาลของประเทศสหรัฐอเมริกาจะพิจารณาว่าบิทคอยน์และธุรกิจที่เกี่ยวข้องอาจอยู่ภายใต้การกำกับดูแลของกฎหมายปัจจุบันของประเทศตนเองได้ก็ตาม แต่ในขณะเดียวกัน ประเทศสหรัฐอเมริกาก็ได้ตระหนักถึงความแตกต่างระหว่างอุตสาหกรรมด้านการเงินแบบดั้งเดิมกับพัฒนาการของเทคโนโลยีประยุกต์ด้านการเงินแบบใหม่ จึงได้พัฒนาแนวทางการกำกับดูแลรูปแบบใหม่ที่มีความเหมาะสมกับเทคโนโลยีประยุกต์ดังกล่าวขึ้นเป็นการเฉพาะ

วิทยานิพนธ์ฉบับนี้มุ่งศึกษาและวิเคราะห์หาแนวทางการกำกับดูแลเงินตราเสมือนและธุรกิจที่เกี่ยวข้องอย่างเหมาะสม โดยเน้นศึกษาและปรับใช้บทบัญญัติของกฎหมายไทยในปัจจุบันเป็นสำคัญ รวมทั้งศึกษาและวิเคราะห์พัฒนาการทางกฎหมายของประเทศสหรัฐอเมริกาเพื่อใช้เป็นแนวทางพัฒนากฎหมายของประเทศไทยด้วย โดยสรุปแล้ว วิทยานิพนธ์ฉบับนี้เสนอให้เงินตราเสมือนและธุรกิจที่เกี่ยวข้องอยู่ภายใต้การกำกับดูแลของกฎหมายหลักทรัพย์และตลาดหลักทรัพย์ โดยสำนักงานคณะกรรมการกำกับหลักทรัพย์และตลาดหลักทรัพย์ควรออกประกาศกำหนดให้

เงินตราเสมือนเป็นหลักทรัพย์ประเภทหนึ่ง และการประกอบธุรกิจที่เกี่ยวข้องต้องได้รับใบอนุญาต รวมทั้งจัดให้มีระบบการปฏิบัติงานที่เหมาะสม เพื่อลดความเสี่ยงของการถูกนำไปใช้เป็นเครื่องมือกระทำความผิดตามกฎหมาย และสร้างความเชื่อมั่นให้แก่ผู้บริโภค

คำสำคัญ: เงินตราเสมือน, เงินดิจิทัล, บิทคอยน์, การออกใบอนุญาต, หลักทรัพย์

1. Introduction

Traditional financial models and businesses are disrupted by the integration of finance and technology or “Financial Technologies” (FinTech).¹ Virtual currency is a product of FinTech. It has been developed and increasingly used as alternative mean of payment.² It can also be exchanged for legal currencies including Thai Baht. There is a number of virtual currencies. Bitcoin³ is probably the most well-known and successful decentralized virtual currency widespread accepted at this time.⁴

This new development provides various benefits for financial system. However, every coin has two sides. This is another great challenge for regulators to provide the proper approach managing risks which this technology bring.

2. Virtual Currency and Virtual Currency Service Businesses

Bitcoin, in brief, is a system designed and implemented in 2008 by Satoshi Nakamoto, the pseudonym of a computer programmer.⁵ It has initially been proposed for electronic

¹ UK Government Chief Scientific Adviser, **FinTech Futures** (2015), https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/413095/gs-15-3-fintech-futures.pdf (last visited Oct 3, 2015).

² United States Government Accountability Office, **Report to the Committee on Finance, U.S. Senate : Virtual Economies and Currencies** (2013), <http://www.gao.gov/assets/660/654620.pdf> (last visited Dec 29, 2014).

³ Bitcoin with a capital “B” would be the name of the system software; bitcoin with a lowercase “b” would mean the units of currency.

⁴ European Central Bank, **Virtual Currency Schemes** 1 (2012).

⁵ Satoshi Nakamoto, **Bitcoin: A Peer-To-Peer Electronic Cash System** 1 (1 ed. 2008), <http://bitcoin.org/bitcoin.pdf> (last visited May 5, 2015).

transactions without relying on any trusted third party like financial institutions to process electronic payments.⁶ The reasons behind Bitcoin popularity include a number of benefits. User's privacy remains undisclosed and transactions can be done without relying on third party like financial institutions. Additionally, Bitcoin transactions are quick, cheap and irreversible. Unfortunately, it has been taken advantages by criminals and money launderers. They sometimes use virtual currency to perform illicit activities such as illegal trading, dirty money launderings, fraud, cybercrimes and tax evasion.

In law, the status of virtual currency is still hardly to be explicitly classified. Basically, it is not legal currency in any countries including in Thailand. Many foreign countries responded to this new technology differently. A few countries explicitly prohibited the use of virtual currency as a substitute of legal money such as Russia.⁷ While the banks and financial and payment institutions in China are barred from dealing businesses with Bitcoin.⁸ In contrast to another group of countries such as Germany, Canada, United of Kingdom and United States of America, virtual currency is allowed to continue developing as an alternative medium of payment. In Thailand, virtual currency is not legal tender but only an electronic data unit.⁹ The Bank of Thailand has publicly warned that virtual

⁶ *Id.*

⁷ Reported by Russia Today (RT), the leading Russian news organization, *See* Rt.com, 'You can play with you bitcoins, but you can't pay with them': Russia may ban cryptocurrencies by 2015 (2014), <http://rt.com/business/187440-bitcoin-ban-russia-cryptocurrency/> (last visited Dec 26, 2014).

⁸ 关于防范比特币风险的通知[Notice on Precautions Against the Risks of Bitcoins] (issued by the People's Bank of China, the Ministry of Industry and Information Technology, China Banking Regulatory Commission, China Securities Regulatory Commission, and China Insurance Regulatory Commission, Dec. 3, 2013) YIN FA, 2013, No. 289, *available at* http://www.pbc.gov.cn/publish/goutongjiaoliu/524/2013/2013120515315683222251/20131205153156832222_251_.html (China).

⁹ ธนาคารแห่งประเทศไทย, ข้อมูลเกี่ยวกับ **Bitcoin** และหน่วยข้อมูลทางอิเล็กทรอนิกส์อื่นๆ ที่ลักษณะใกล้เคียง (2014). (The Bank of Thailand, **Information on Bitcoin and other similar electronic data** (2014)).

<http://www.bot.or.th/Thai/PressAndSpeeches/Press/News2557/n0857t.pdf> (last visited Dec 26, 2014).

currency by itself is valueless and further suggested that conducting businesses with virtual currency is risky. Investors should be aware that dealing with it is not sufficiently efficient.¹⁰

Though virtual currency itself is valueless, it is possible to find the daily price value. Generally, the price value of virtual currency is determined by demand and supply¹¹ which can change easily. That is where people find an opportunity for investment or speculation similar to those stocks and other securities. In 2013, the market price of a bitcoin fluctuated between \$13 and \$1,200 USD.¹² In 2014, it fluctuated between \$320 and \$1,000 USD.¹³ On September 18, 2015, one bitcoin was valued at around \$233 USD.¹⁴ The financial data including price and volume of Bitcoin trading are publicly available on the websites of businesses providing the service of Bitcoin exchange.

In Thailand, the businesses providing the exchange services for virtual currency and Thai Baht or other virtual currencies can be found online operating. Such businesses are allowed to run freely under Thai laws. However, they are not categorized as any specific business under the laws. They are then only required to provide the very general information about their businesses for registration with the commercial registration office. This sort of service businesses are sometimes found with potential to be places facilitating illegitimate activities not only fraud, cybercrime, black market trade, but also money laundering.

In spite of such risks, it should not be an option to ban or prohibit the use of virtual currency or related businesses in Thailand.

¹⁰ *Id.*

¹¹ Bitcoin.org, **FAQ - Bitcoin** (2015), <https://bitcoin.org/en/faq#why-do-bitcoins-have-value> (last visited May 5, 2015).

¹² Bitcoincharts.com, **Bitcoin Charts / Charts** (2015), <http://bitcoincharts.com/charts/bitstampUSD#rg60zczsg2013-01-01zeg2013-12-31ztgSzm1g10zm2g25zv> (last visited May 3, 2015).

¹³ Bitcoincharts.com, **Bitcoin Charts / Charts** (2015), <http://bitcoincharts.com/charts/bitstampUSD#rg60zczsg2014-01-01zeg2014-12-31ztgSzm1g10zm2g25zv> (last visited May 3, 2015).

¹⁴ Bitcoincharts.com, **Bitcoin Charts / Charts** (2015), <http://bitcoincharts.com/charts/bitstampUSD#rg60zigDailyzczsg2015-09-18zeg2015-09-18ztgCzm1g10zm2g25zv> (last visited September 20, 2015).

The face of technology development is changing every day. It will never stop developing. Outright banning FinTech product like Bitcoin will only take Thailand many steps backward from other developed countries.

It would be better for Thai regulators to allow virtual currency technology to continue developing while also monitor it closely. At the meantime, the regulations should readily be slowly adopted to prepare for those potential risks. Carefully, the over-regulation should be avoided. Excessive regulations can be obstacle for technology and innovation development in Thailand.

2. Legal Aspects of Virtual Currency in Thailand and United States of America

2.1 Thailand

Currently, virtual currency like Bitcoin is not legal tender in Thailand. It is not recognized as Thai currency by the Currency Act B.E. 2501.¹⁵ So far, it is not legal tender in any country. It is therefore not foreign currency under the Exchange Control Act B.E. 2485.¹⁶ Bitcoin does not fall within the definition of electronic money as prescribed by the Royal Decree Regulating Electronic Payment Service Business B.E. 2551,¹⁷ thus, it cannot be categorized as electronic money. The definition of securities under the Securities and Exchange Act B.E. 2535 is specifically defined.¹⁸ Unfortunately, virtual currency does not fall within any of them, it is then not securities under this Act.

Virtual currency is not goods as defined by the Price of Goods and Services Act B.E. 2542¹⁹ and the Derivatives Act B.E. 2546.²⁰ However, it may be arguable whether virtual currency like Bitcoin can be goods under the Consumer Protection Act B.E. 2522 because

¹⁵ The Currency Act B.E. 2501 sec.7.

¹⁶ The Exchange Control Act B.E. 2485 sec. 3.

¹⁷ The Royal Decree Regulating Electronic Payment Service Business B.E. 2551 sec. 3.

¹⁸ The Securities and Exchange Act B.E. 2535 sec. 4 [hereinafter *The Securities and Exchange Act*].

¹⁹ The Price of Goods and Services Act B.E. 2542 sec. 4.

²⁰ The Derivatives Act B.E. 2546 sec. 3.

it is possible to be possessed for sale as defined by this Act.²¹ Virtual currency can also be property under the Civil and Commercial Code²² because it is an incorporeal object susceptible of having a value and of being appropriated.

2.2 United States of America

Virtual currency is neither US money nor issued by Federal Reserve banks or national banks as described by Section 31 U.S.C. 5103 under the Coinage Act of 1965 and the related laws, it is not US legal tender. However, Bitcoin has recently been discussed in US courts that it was a form of money.²³ In contrast to the point of view of US Internal Revenue Service which stated that even virtual currency is capable of serving real currency functions, it does not have legal tender status in any jurisdiction.²⁴

So far, virtual currency is not currency of any foreign country other than US. Accordingly, it is not foreign currency under US laws at all.²⁵ Though virtual currency exists digitally and the transfers among users are electronically executed, those transactions are not considered as electronic fund transfers under the Electronic Fund Transfer Act of 1978.²⁶ However, Bitcoin is possibly a securities under the Securities Act of 1933 in accordance with the US court judgment. The court determined that Bitcoin is a security because it is an investment contract as broadly defined by this Act.²⁷ Virtual currency can also be a commodity under the Commodity Exchange

²¹ The Consumer Protection Act B.E. 2522 sec. 3.

²² The Civil and Commercial Code sec. 138 [hereinafter *Thai CCC*].

²³ See *SEC v. Shavers*, Case No. 4:13-CV-416 (E.D.Tex.) and *U.S. v. Faiella*, Case No. 14-cr-00243 (U.S. District Court, Southern District of New York).

²⁴ Irs.gov, **IRS Virtual Currency Guidance : Virtual Currency Is Treated as Property for U.S. Federal Tax Purposes; General Rules for Property Transactions Apply** (2015), <http://www.irs.gov/uac/Newsroom/IRS-Virtual-Currency-Guidance> (last visited Oct 3, 2015).

²⁵ Code of Federal Regulations Title 26 Chapter I Subchapter A Part 1 Section 1.6045-1, the section related to the returns of information of brokers and barter exchanges, for purposes of this section

“Foreign currency means currency of a foreign country.”

²⁶ 15 U.S.C. § 1693(a)(6).

²⁷ *SEC v. Shavers*, Case No. 4:13-CV-416 (E.D.Tex.)

Act according to the announcement of chairman of the Commodity Futures Trading Commission.²⁸ Property in US laws can be differently defined under different scope of laws. Possibly, virtual currency like Bitcoin is falling within the definitions of property under some US laws.²⁹ This issue is supported by US Internal Revenue Service announcement which stated that virtual currency like Bitcoin is not legal currency but in contrast is viewed as property for US federal tax purposes.³⁰

3. Virtual Currency Service Businesses Regulations in Thailand and United States of America

In this article, virtual currency service business means a business which is administering or exchanging virtual currencies for legal currency, Baht, or other virtual currencies.

3.1 Thailand

Virtual currency service business is providing service by electronic media via internet system and is also a central market for virtual currency services by electronic media via internet system (e-marketplace) under the Business Registration Act B.E. 2499 and the related regulations.³¹ It is therefore required to apply for e-commerce registration³² and to provide some general information about its business for registration, for example, name, age, nationality, address, capital money, business starting date and business description. These laws are only providing the minimum

²⁸ Cftc.gov, **Testimony of Chairman Timothy Massad before the U.S. Senate Committee on Agriculture, Nutrition & Forestry** (2015), <http://www.cftc.gov/PressRoom/SpeechesTestimony/opamassad-6> (last visited Oct 3, 2015).

²⁹ For example, the 12 US Code 5433 and 21 U.S. Code § 853 - Criminal forfeitures.

³⁰ Irs.gov, *supra* note 24.

³¹ Regulation of Ministry of Commerce on Persons who Have the Duties for Commercial Registration (No. 11) B.E. 2553 sec. 5(3) and sec. 5(6) [hereinafter *Regulation of Ministry of Commerce*].

³² Regulation of Ministry of Commerce, *supra* note 31, sec. 5.

information of businesses. They are lack of requirements which should be established properly for a specific business like virtual currency service business.

In the aspect of following current laws which meant to regulate the conduct of specific businesses, it appears that virtual currency service business does not fall within the scope of those laws at present. It is neither prohibited nor subject to the Exchange Control Act B.E. 2485 and the related regulations.³³ This sort of business is not a financial institution business under the Financial Institution Business Act B.E. 2551.³⁴ It is not an electronic payment service provider under the Electronic Transaction Act B.E. 2544 and the related regulations.³⁵ It is neither a securities exchange³⁶ nor securities business³⁷ in the capital market under the Securities and Exchange Act B.E. 2535.

However, a transaction with virtual currency is subject to contract law in general. Indeed, it is a reciprocal contract³⁸ which one party agrees to transfer virtual currency for payment and another party agrees to pay for the transferred virtual currency. Each party of the contract has a duty to perform his obligation. If one of them fails to perform, the other party has the right to refuse to perform his obligation and/or right to rescind the contract. After rescinding the contract, the breaching party has perform something in order to restore the injured party to his former condition. The injured party also has the right to claim for damages. Merely, such relationship is a personal right between parties. If one party fails to perform his obligation, the other party may only be entitled to claim the right by

³³ The Exchange Control Act B.E. 2485 and Ministerial Regulation No. 13 B.E. 2497 issued under the Exchange Control Act B.E. 2485.

³⁴ The Financial Institution Business Act B.E. 2551 sec. 4.

³⁵ The Electronic Transaction Act B.E. 2544 and the Royal Decree Regulating Electronic Payment Service Business B.E. 2551.

³⁶ The Securities and Exchange Act, *supra* note 18, sec. 153.

³⁷ The Securities and Exchange Act, *supra* note 18, sec. 4.

³⁸ Thai CCC, *supra* note 22, sec. 369

bring a case to the court for compulsory performance. The injured party is unable to enforce the right by himself.³⁹

The Consumer Protection Act B.E. 2522, the Anti-Money Laundering Act B.E. 2542 and the Computer Crime Act B.E.2550 are relevant laws that this writer also studies and finds that they are not established to regulate the conducting of any business in Thailand.

3.2 United States of America

(1) US Current Laws

US Financial Crimes Enforcement Network (FinCEN) has guided that participants involving certain virtual currency activities are money transmitters and are subject to the Bank Secrecy Act regulation.⁴⁰ Fundamentally, money transmitter in US is required to be registered, conduct a comprehensive risk assessment of its exposure to money laundering, implement an anti-money laundering program based on such risk assessment and comply with the recordkeeping, reporting and transaction monitoring obligations.

In the view of securities regulations, though a US court accepted virtual currency as a security, any specific guidance on how US Securities and Exchange Commission regulate business related to virtual currency has not been found yet.

(2) US Regulatory Developments

Even virtual currency and its related businesses are likely under US existing regulations, they are different from many traditional regulated things. US is greatly aware of the development

³⁹ รองศาสตราจารย์ ดร. สุนทร มณีสวัสดิ์, คำอธิบายประมวลกฎหมายแพ่งและพาณิชย์ หนี้ 313 (พิมพ์ครั้งที่ 3, 2555) (Sunthorn Manisawat, **Commentaries on the Civil and Commercial Code: Obligation Law** 313 (3rd ed. 2012)).

⁴⁰ See FIN-2013-G001: Application of FinCEN's Regulations to Persons Administering, Exchanging, or Using Virtual Currencies, FIN-2014-R001: Application of FinCEN's Regulations to Virtual Currency Mining Operations, FIN-2014-R002: Application of FinCEN's Regulations to Virtual Currency Software Development and Certain Investment Activity, FIN-2014-R011: Request for Administrative Ruling on the Application of FinCEN's Regulations to a Virtual Currency Trading Platform and FIN-2014-R012: Request for Administrative Ruling on the Application of FinCEN's Regulations to a Virtual Currency Payment System.

of new FinTech. US regulators instead develop the new regulations, both model and state levels, to ensure they put in place guardrails that protect consumers and root out illicit activity without stifling beneficial innovation.

In model level, the CSBS Model Regulatory Framework for State Regulation of Certain Virtual Currency has been introduced by the Conference of State Bank Supervisors,⁴¹ a US nationwide organization of banking regulators. The Model Framework appears to be a guideline for the state regulators to develop their financial regulatory regimes applying to virtual currency activities to provide licensing requirements for entities engaged in virtual currency activities and robust licensing systems. The components of a model licensing regime have widely been outlined.

In state level, the licensing regime has also been established in New York and California. “BitLicense” is commonly known as the regulation proposed to govern the conduct of business involving virtual currencies in New York.⁴² It includes provisions providing for consumer protections, anti-money laundering program, cyber security program and customers safeguarding assets program.⁴³ While in California, Assembly Bill No. 1326 (AB 1326)⁴⁴ is proposed to amend the Financial Code relating to virtual currency. Basically, AB 1326’s purpose is very similar to New York’s BitLicense. However, it mostly sets requirements to provide and ensure the consumer protection while the anti-money laundering program has not been found yet.

⁴¹ Csbs.org, **Model Regulatory Framework** (2015), <https://www.csbs.org/regulatory/ep/pages/framework.aspx> (last visited Oct 3, 2015).

⁴² Dfs.ny.gov, **Speech - June 3, 2015: NYDFS Announces Final Bitlicense Framework for Regulating Digital Currency Firms** (2015), <http://www.dfs.ny.gov/about/speeches/sp1506031.htm> (last visited Oct 3, 2015).

⁴³ Title 23 Chapter I. Part 200 : Regulations of the Superintendent of Financial Services, Virtual Currencies.

⁴⁴ Leginfo.legislature.ca.gov, **Bill Analysis**, <http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml> (last visited Apr 5, 2015).

4. Analysis and Recommendations

Though virtual currency has been used as well as money in many areas in Thailand and other countries, it is not legal currency in any country. It is not going to replace traditional money easily. It needs to be much further developed and widely accepted among people than it is being now in order to gain significant attention from traditional money regulators. National banking regulators in most countries including Thailand may not supervise the businesses related to virtual currency any time soon.

In contrast to securities industry, virtual currency has the potential to continue developing in this industry. Its value changes quickly. People find it an opportunity for investment or speculation like they do with stocks or other securities. Related businesses are facilitating the exchange of virtual currency and Baht which make it easier to make profit or suffer loss. This activity is more likely to be an investment and should be supervised under the securities regulations. Thus, it is significant for Thai regulators to prepare developing the proper regulations for this specific business.

Virtual currency services business is different from traditional businesses. It should be specifically regulated. First of all, it should be brought into the legal system to reduce the incentive for criminals, money launderers and terrorists using virtual currency services business to facilitate illegal purposes. At this time, consumer protection may be the priority issue. Unavoidably, the other issues like illegal trading, money laundering, cyber security and tax collecting are required to be on a timely basis managed. Thus, two directions on regulation are recommended as follows.

(1) Proactive approach on securities regulations

Virtual currency has the potential to be specified as securities by the authority of the Securities and Exchange Commission of Thailand (SEC). Virtual currency service businesses are also possible to and should be supervised under the securities regulations. Therefore, the securities regulations should be amended

and should establish the proper regime to regulate the conduct of virtual currency service businesses appropriately.

Firstly, the SEC should issue the regulations to specify virtual currency as securities in accordance with Section 4 of the Securities and Exchange Act B.E. 2535. Then, it should issue the regulations to specify that the offer for sale of securities like virtual currency shall not be applied by the provisions in chapter 3 of the Act, but shall be subject to the notification of the SEC. Accordingly, the notification of the SEC should contain the provisions establishing the proper regime to regulate the conduct of virtual currency service businesses in accordance with Section 64(3) of this Act.

Fundamentally, license should be required for any person engaging in any virtual currency service business offering for sale of virtual currency in exchange for Baht or other virtual currencies. This will ensure that consumers are dealing with reliable business man. Accordingly, it will reduce the potential of fraud committed by such business. Furthermore, the business is required to know its customers and to keep record of transactions. An effective cyber security program is also required to establish and maintain. In conclusion, it will reduce the incentive for criminals, money launderers and terrorists using virtual currency for illegal purposes and mitigate the risks of being hacked by cybercriminals. Likely, it may reduce the incentive for tax evaders who hiding their revenue from the authority by using virtual currency

(2) Reactive approach on consumer protection regulations

At this time, it may be arguable whether this is the right time to establish the proactive approach supervising virtual currency services business due to its market capitalization and the widespread popularity. Undeniably, this sort of business exists in Thailand and so its consumers do. Consumers should be at least protected by the consumer protection regulations. Even such regulations do not mean to proactively prevent business man from misconduct but only to ensure that consumers will be fairly treated in general. When the disputes occur, they empower the authority to resolve problems for consumers. This, in this writer's opinion, is a reactive approach.

However, it is unclear whether virtual currency service business is business man and its customers are consumer under this regulations. This writer finds it is possible for those parties to fit in the definitions but it is required to be clearer. Therefore, the Consumer Protection Board should exercise its powers under the Consumer Protection Act B.E. 2522 by issuing or publicizing information explaining that virtual currency service business is a business man who renders services which have potential risks to cause damage to or be prejudicial to the right of the consumers for the purpose of the Act. Accordingly, customer of such business is consumer who obtains services from a business man under the Act. Consequently, the Consumer Protection Board shall have the powers and duties to resolve problems for consumers when the disputes occur in accordance with Section 10 of the Act.

5. Conclusion

Technology will never stop developing. Not only virtual currency like Bitcoin and its related businesses, but other Fintech will continually be developed and will disrupt the traditional financial system. Unsurprisingly, this will be another financial challenge that people in financial sectors and regulators need to get prepared and to keep monitoring it closely. Even this article specifies the significance of regulating virtual currency service businesses in Thailand, it does not mean that every Fintech will always need regulations. Financial regulations should be provided only to ensure putting in place guardrails that protect consumers and rooting out illicit activity without stifling beneficial innovation.

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