

Improving the current legal framework for virtual property, electronic money and virtual currency in Vietnam

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Abstract: *Based on literature review on virtual property, electronic money and virtual currency, the article analyzes the rationale for the improvement of the legal framework thereof. It also identifies focus issues in terms of directions and objectives in improving the legal framework governing virtual property, electronic money and virtual currency in Vietnam today.*

Keywords: Legal Framework, Industrial Revolution 4.0, Virtual Property, Electronic money, Virtual Currency

Introduction

The law and science and technology influence each other in many ways. As the current legal framework fails to cover issues brought about by newly introduced technologies, the rationale for legal reform becomes apparent. Presently, the law-making and enforcement activities which take place in a traditional manner are under profound impact of the Fourth Industrial Revolution (FIR). Multiple novel legal issues that arise from the introduction of FIR breakthrough technologies must be dealt with, including those related to virtual property, electronic money and virtual currency. That fact calls for studies to be conducted to clarify the theoretical framework for understanding the relevant matters. It is also necessary to assess to what

extent the current Vietnamese legal system meets the requirements for regulating transactions related to virtual property, electronic money and virtual currency and come up with appropriate recommendations for improving the legislation.

1. Overview on virtual property, electronic money and virtual currency

As the information technology and e-commerce witness strong development, virtual property, electronic money and virtual currency become increasingly popular and attract the attention of the general public, experts in technical, economic and legal fields, international organisations and governments around the world. Many “virtual” things have become “real” and engender relevant legal issues.

Although consensus has not been reached on how to define virtual property, electronic money and virtual currency, those terms can be understood as follow:

- *Virtual property* is the two- or three-dimensional graphic representation of invisible objects that human beings can recognise in a virtual world created by computers, such as: avatars, buildings, clothes, furniture, positions, ranks... in an online game. Depending on the specific circumstances, a participant in such a simulated world can see, hear, use and create virtual objects by employing the data provided by computer programs (Sprankling, 2014: 93)¹.

The information about the monetary value or the disposable value of the consumer is stored on an electronic device owned by the consumer².

- *Virtual currency* is the digital representation of value that can be digitally traded and functions as (1) a medium of exchange; and/or (2) a unit of account; and/or (3) a store of value, but does not have legal tender status in any jurisdiction. It is not issued nor guaranteed by any jurisdiction, and fulfils the above functions only by agreement within the community of users of the virtual currency (Financial Action Task Force, 2014: 4).

Difference between electronic money and virtual currency

	Electronic money	Virtual currency
<i>Money format</i>	Digital	Digital
<i>Unit of account</i>	Traditional currency (American dollar, British pound, Japanese yen...) with legal tender status	Invented currency (Bitcoin, Linden dollar...) without legal tender status
<i>Acceptance</i>	Accepted by individuals and legal persons other than the issuer	Usually accepted within a specific virtual community
<i>Legal status</i>	Regulated	Unregulated
<i>Issuer</i>	Legally established electronic money institution	Non-financial private company
<i>Supply of money</i>	Fixed	Not fixed (depends on issuer's decisions)
<i>Possibility of redeeming funds</i>	Guaranteed (and at par value)	Not guaranteed
<i>Supervision</i>	Subject to supervision	Not subject to supervision
<i>Types of risks</i>	Mainly operational	Legal, credit, liquidity and operational

Source: European Central Bank, 2012: 16.

- *Electronic money* is the digital representation (electronic form) of the fiat money. Electronic money is used to digitally transfer the value of the fiat money. It is the stored value or prepaid payment.

The virtual currency is distinct from the fiat money in the following aspects: While

¹ Besides, in a broader sense, domain, email address, facebook of an individual... could also be considered virtual property.

² Electronic money has five basic properties: i) The value is stored electronically; ii) being represented by a claim on the electronic money issuer; iii) being issued based on funds in fiat money; iv) being used for the purposes of making payment transactions; and v) being accepted as a means of payment by persons other than the electronic money issuer.

the fiat money is guaranteed by the state and the issuing central bank, the virtual currency is not guaranteed by institutions with such capacity, even not guaranteed by any institution at all. The fiat money has a definite physical form and independent existence whereas the virtual currency depends on the digital environment for its existence all the time.

The virtual currency is also distinguishable from electronic money, though both are dependent on the digital environment for their existence. While the electronic money is simply the fiat money in electronic form, such as: electronic wallets, payment accounts through electronic portable devices..., the virtual currency, though taking the digital form, is not associated with any fiat money. Therefore, the conversion from the virtual currency to the fiat money is not guaranteed by the issuing or managing institutions. It is even not within the responsibility of any institution. In reality, the conversion from the virtual currency to the fiat money is a civil transaction between the actors. In many countries, such transactions are not legally recognised or regulated.

In principle, consideration can be given to regulating the virtual currency as *virtual property* (often as goods) or *a means of payment* or *both*.

2. The rationale for improving the legal framework for virtual property, electronic money and virtual currency

2.1. From the economic perspective, the value of traded virtual currencies, virtual properties as well as electronic money has become increasingly large. More and more transactions use real money for trading virtual currencies and virtual properties with billions USD in total value. Take Bitcoin -

a popular kind of virtual currencies - alone, its market capitalisation has now reached about 10 billion USD. (<https://blockchain.info/charts/market-cap>)¹. Along with that expansion, civil and commercial disputes as well as criminal activities related to virtual property, electronic money and virtual currency have increased in both number and complexity, including money laundering and terrorist financing... Therefore, many countries, international organisations and experts around the world, including legal experts, have expressed great interest in this matter (especially virtual currency). A large number of studies and discussions have taken place with a view to creating a legal framework for establishing and executing transactions involving virtual properties, electronic money and virtual currencies, thereby protecting the legitimate rights and interests of the parties concerned and preventing related criminal activities. Doing so would also help to promote exchanges and commerce in the virtual world.

As far as the virtual property is concerned, debates about its nature (whether it is personal property, intellectual property or services rendered by the provider of online games...) and the kind of laws applicable in regulation (whether it is property law or contract law) are still ongoing without

¹ As an example of virtual property, Pokemon Go game (once a mania among the youth) shows the increasingly strong interaction between the real world and the virtual world. At some point, there was a Pokemon Go account at level 23 (in the game, the higher the level of the account, the easier the player can catch hard-to-get Pokemons) advertised on Ebay for 7,300 British pounds (equivalent to 220 million Vietnamese dong) (<http://gamek.vn/xuat-hien-tai-khoan-pokemon-go-duoc-rao-ban-voi-gia-220-trieu-20160723174511783.chn>).

common agreement (Cifrino, 2014; Nelson, 2010: 281).

With regard to electronic money, many countries have recently promulgated legal documents specifically applicable to this matter: European Union (EU) issued Directive on the establishment, operation and supervision of the business of electronic money institutions. Many EU member states subsequently put in place laws on electronic money (England in 2011, Cyprus in 2012...); many developing countries such as Rwanda, Tanzania... are considering promulgating legal provisions on electronic money (State Bank of Vietnam, 2016). Particularly, People's Bank of China is undertaking studies to prepare for the issuance of electronic money, including reviewing relevant legislation (General Department V - Ministry of Public Security, 2016).

Especially, *virtual currency and relevant legal issues* are a relatively new topic that has received much attention of the general public, governments and international organisations.

- European Central Bank conducted studies on virtual currency in 2012 and 2015 (European Central Bank, 2012; 2015). In October 2015, Court of Justice of the European Union (CJEU) pronounced a judgement confirming that transactions to exchange Bitcoin into fiat money or vice versa are exempt from Value-Added Tax because in such transactions Bitcoin is considered to be the means of payment (CJEU, 2015). On 5th July 2016, the European Commission published the proposal for a Directive amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering (4AMLD)

which calls on EU member states to ensure that services of exchanging between virtual currency and fiat money are registered or licensed (European Commission, 2016).

- In early 2016, International Monetary Fund (IMF) published a study on virtual currency which states the potential benefits as well as risks and challenges of using virtual currency. Countries around the world can also refer to a number of principles in creating the legal framework for virtual currency as recommended in the report (IMF, 2016).

- In August 2015, Australian Senate's Economics References Committee published a piece of research on virtual currency which proposes that virtual currency should be treated as real money, particularly when it comes to taxation and money laundering (Australian Senate's Economics References Committee, 2015).

- On 12th September 2016, the US House of Representative issued a resolution which emphasises that new modes of payment, including virtual currency, based on blockchain technology, reflect new commercial opportunities and need promoting as well as regulating (<https://www.congress.gov/bill/114th-congress/house-resolution/835/all-info>).

- In late 2013, People's Bank of China declared that Bitcoin was not a currency and prohibited commercial banks and payment service providers from using Bitcoin in their transactions. The Bank also advised that Bitcoin transactions were online trading transactions and participants should expect to take their own risks. However, as per the General Provisions Draft of the Civil Code submitted to the Chinese National People's Congress in June 2016, virtual properties, including virtual currencies, is recognised

as property rights objects (Southurst, 2016). In October 2016, the Chinese Ministry of Industry and Information Technology published “Blockchain technology and application development Whitepaper” to reflect the fact that China was developing a new perspective on blockchain technology in general and virtual currency in particular (Solana, 2016).

2.2. The international context as analysed above shows that legal issues concerning virtual property, electronic money, and especially virtual currency are a topic of great interest in the world. Vietnam, therefore, cannot stand outside the play. The developments in reality have given rise to numerous legal issues that should be dealt with by competent authorities of Vietnam. However, the Civil Code 2015 (effective from 1st January 2017), the Law on State Bank of Vietnam 2010 and the Law on Credit institutions 2010 do not have specific provisions for virtual property, electronic money, virtual currency.

With regard to *virtual property*, in the current system of legal documents of Vietnam, there is no definition of “virtual property” or “virtual goods”. Circular No. 24/2014/TT-BTTTT dated December 29, 2014 of the Ministry of Information and Communication providing for the management, provision and use of online gaming services (providing detailed guidance on a number of provisions of Decree No. 72/2013/ND-CP dated July 15, 2013 of the Government on management, provision and use of Internet service and online information) mentions “virtual item” and “virtual unit”. However, Article 7 of the Circular reads “*Virtual items, virtual units and game points are not assets and shall not be converted into money, game cards,*

coupons or other items having transaction value outside of the game. Virtual items, virtual units, game points must not be traded between players”. In practice, those virtual properties still change hands without any supervision of competent authorities.

As far as *electronic money* is concerned, the Government promulgated Decree No. 80/2016/ND-CP dated July 1, 2016 amending a number of provisions of Decree No. 101/2012/ND-CP dated November 22, 2012 on cashless payment. The Decree put in place new provisions on the basis of “upgrading” the relevant provisions in Circular No. 39/2014/TT-NHNN dated December 11, 2014 providing guidance on intermediary payment services¹. Nevertheless, basically, the specific legal framework for digital wallets, bank cards, including investment and business conditions, is only provided for in circulars of the Governor of the State Bank of Vietnam².

Besides, some instruments similar to electronic money take the forms of stored value or prepaid payments which are not issued by the State Bank of Vietnam-licensed intermediary payment service

¹ Clause 1, Article 1, Decree No. 80/2016/ND-CP amending Clause 8, Article 4 Decree No. 101/2012/ND-CP stipulates: “Digital wallet service is the service that provides a customer with an identity electronic account created by an intermediary payment service provider on an information carrier (such as electronic chip, mobile phone sim, computer, etc.), enabling the customer to store a sum of monetary value guaranteed by a deposit equivalent to the sum of money transferred from the customer’s payment account at a bank to a payment account of the provider of digital wallet service with the ratio of 1:1”.

² Circular No. 39/2014/TT-NHNN dated December 11, 2014 providing guidance on intermediary payment services; Circular No. 19/2016/TT-NHNN dated June 30, 2016 providing for bank card operations.

providers (such as prepaid phone cards that can also be used for online shopping; prepaid purchase cards...). Currently, they are not subject to any specific provisions of regulation and management¹.

As for *virtual currency*, on February 27, 2014 the State Bank of Vietnam issued a *Press release on Bitcoin and similar virtual currencies*. It was stated that “*Bitcoin (and similar virtual currencies) are not currencies and cannot be used as legal means of payment in Vietnam*” and “*credit institutions are not allowed to use Bitcoin (and similar virtual currencies) as a currency or a means of payment when providing services to customers*”. This viewpoint was indirectly re-affirmed when the Government issued Decree No. 80/2016/ND-CP² on the basis of the submission of the State Bank of Vietnam. However, according to Decree No. 52/2013/NĐ-CP dated May 16, 2013 of the Government on e-commerce, Bitcoin and similar virtual currencies are not included in the list of prohibited goods and services for doing business through e-commerce.

¹ In Official Letter No. 5551/VPCP-KTTH dated July 6, 2016 of the Office of the Government, Deputy Prime Minister Vuong Dinh Hue instructed: “The Ministry of Industry and Trade and the Ministry of Information and Communication on the basis of respective functions and tasks to take the lead and in cooperation with the State Bank of Vietnam and relevant authorities to conduct studies and formulate legal provisions for regulating the activities of licensing, issuing and using cards in purchasing goods and services within the scope of state management of each ministry (except for payment cards regulated by the State Bank of Vietnam), ensuring the purchase and payment functions for customers”.

² Submission No. 07/TTr-NHNN dated March 4, 2014.

Meanwhile, the Ministry of Industry and Trade (particularly E-Commerce and Digital Economy Agency) stated that “*Bitcoin does not demonstrate fundamental attributes of goods or services. Therefore, it is not goods or a service*”³.

When the investigators of police forces in some provinces like Khanh Hoa, Ben Tre... demonstrated their intentions to start criminal prosecution against the acts of trading virtual currencies on the Internet, the Supreme People’s Procuracy and the Ministry of Public Security gave the opinion that “*currently, there is no legal document regulating the acts of mining Bitcoin and virtual currencies. Therefore, there is no legal basis for dealing with acts of this kind*”⁴. From the perspective of tax regulation, the General Department of Taxation (Ministry of Finance) expressed the view that virtual currencies are (movable) properties according to the Civil Code and goods according to the Commercial Law; virtual currency trading is goods trading; virtual currencies are subject to VAT. In addition, individuals and enterprises doing business with virtual currencies are subject to personal/corporate income tax⁵. For that reason, the Ministry of Finance proposed that legal provisions concerning virtual currency should be soon promulgated, including the definition of virtual currency as a kind of goods - property. The Ministry of Finance

³ Official Letter No. 334/TMDT-PC dated August 12, 2014 of the then E-Commerce Agency (now E-Commerce and Digital Economy Agency), the Ministry of Industry and Trade.

⁴ Official Letter No. 2313/VKSTC0V3 dated June 19, 2016 of the Supreme People’s Procuracy.

⁵ Official Letter No. 5612/TCT-CC dated December 28, 2015 of the General Department of Taxation.

also advised that their recommendations related to the tax treatment of virtual property and virtual currency would be produced following the issuance of those legal provisions¹. Thus, it can be seen that the legal framework for virtual currency in Vietnam is still unclear, even leading to conflicting interpretations.

The political materials of the XII Congress of the Communist Party of Vietnam stated the need to enhance the institution as one of the three strategic breakthroughs. General directions were given, including “*further improving the institution related to ownership*”, “*institutionalising property rights*”, and “*improving the institution for protecting investors, ownership rights and property rights*”. The Proposal “A number of major policies for renovating growth model, improving growth quality, labour productivity and economic competitiveness” submitted by the Politburo to the 4th Conference of the 12th Party Central Committee (Submission No. 29/TLHN dated October 4, 2016) stressed the importance of “*speeding up the improvement of the legal system on ownership rights and property rights to firmly protect the legitimate ownership and property rights of organisations and individuals; ensuring that all types of properties and property rights can be commercialised and transferrable...*”².

¹ Official Letter No. 867/BTC-CST dated September 26, 2016 of the Ministry of Finance on tax policies related to virtual currency and virtual property.

² Section III.2.1 Resolution No. 05-NQ/TW dated November 1, 2016 of the 4th Conference of the 12th Party Central Committee on a number of major policies for renovating growth model, improving growth quality, labour productivity and economic competitiveness

2.3. Given the guiding viewpoints of the Party as well as the national and international context, it can be suggested that the improvement of the legal framework for virtual property, electronic money and virtual currency is badly needed. On August 21, 2017 the Prime Minister issued Decision No. 1255/QĐ-TTg on the approval of the Proposal for improving the legal framework for managing virtual property, electronic money and virtual currency.

3. Noteworthy issues in the process of improving the legal framework for regulating virtual property, electronic money and virtual currency

In the context of the FIR and the rapid development of science and technology, it is necessary for Vietnam to seize the opportunities for accelerated growth by establishing a welcoming legal framework for innovative scientific and technological products as well as creating a conducive legal environment for the participation of enterprises and individuals. The timely adjustment and enhancement of the current legal system with regard to virtual property, electronic money and virtual currency will promote transactions and commercial activities, adding strong momentum to the economic growth of Vietnam. In the process of improving the legal framework for regulating virtual property, electronic money and virtual currency, the following viewpoints should be thoroughly adhered to:

- Institutionalising the Party’s and State’s policies on protecting ownership and property rights; ensuring that all types of properties and property rights can be legally commercialised and transferred;
- Helping to expand the application of information technology, to develop

e-commerce and to stimulate innovative start-ups; protecting the legitimate rights and interests of national and foreign investors in Vietnam; at the same time, effectively restricting, preventing and controlling related risks and misuses;

- Concretising the overall legal provisions on property rights as stated in the Civil Code 2015 for regulating virtual property, electronic money and virtual currency;

- Helping to ensure the safety in payment operations of credit institutions and legal persons licensed to provide electronic money-related services;

- Learning from international experiences on virtual property, electronic money and virtual currency for improving the legal framework and upholding the internationally-recognized principles of harmonisation, consistency, transparency, stability and predictability in the legal system.

On the basis of the above-mentioned viewpoints, the improvement of the legal framework for regulating virtual property, electronic money and virtual currency should focus on the areas as follows:

- Comprehensively reviewing and assessing the current laws and regulations on virtual property, electronic money and virtual currency as well as the recent developments of virtual property, electronic money and virtual currency in Vietnam; proposing feasible and appropriate directions for improvement.

- Clearly determining the position, responsibility and role of the focal authority which takes the lead in developing, improving the legal framework and implementing the laws and regulations on virtual property, electronic money and virtual currency.

- Amending the current or issuing new legal documents on the management of virtual property, electronic money and virtual currency with a view to: (i) Ensuring the relevance to associated risks to reduce and control those risks without producing adverse impacts on innovation and innovative start-ups; (ii) Ensuring the flexibility to accommodate the possible changes of virtual property, electronic money and virtual currency in the continuous development of information technology, e-commerce and online business models; (iii) Regulating not only issues related to frauds, cheating, tax evasion, money laundering, terrorist financing but also matters concerning the financial health of virtual property, electronic money and virtual currency intermediaries in a comprehensive, rational and feasible manner.

- Enhancing and promoting international cooperation on legal issues related to virtual property, electronic money and virtual currency.

The legal system is not a static one with rigid principles and traditions. Given the multi-faceted legal challenges posed by the FIR in general and information technology particular, much attention has always been paid to the relationship between the law and technology, legal issues associated with the technological development, and the alignment of legal reforms with the requirements of scientific and technological development. The FIR and the development of information technology and the Internet require changes in the legal system that meet the demands of the modern society. Failing to change in tune with new developments in practice, the law will become obsolete and give rise to an increasing number of

lawsuits. In that context, lawyers and judges will have to rely on themselves to explore the uncharted legal waters for the answers.

Conclusion

It challenging not only for Vietnam but also many countries in the world to ensure that the national laws and policies keep up with the development of science and technology. In recent years, along with the rapid and significant development of science and technology, the virtual economy in the online world has also witnessed continuous expansion. In that virtual economy, the presence of different types of real and virtual goods and services (virtual property, electronic money and virtual currency are specific examples) has pointed to a number of gaps in the legal system that need to be addressed. To take advantage of great opportunities brought about by science and technology, Vietnam should put in place new or amend the current legislation to regulate relationships that arise from new kinds of transactions, new kinds of payment, new kinds of properties. The goals are to limit risks, promote economic development and protect legitimate rights and interests of investors, organisations and individuals that participate in those relationships in this area □

References

1. Australian Senate's Economics References Committee (2015), *Digital Currency - Game Changer or Bit Player*, 2015, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Digital_currency/Report
2. Cifrino, C.J. (2014), "Virtual Property, Virtual Rights: Why Contract Law, Not Property Law, Must be the Governing Paradigm in the Law of Virtual Worlds", *Boston College Law Review*, 55(1).
3. Court of Justice of the European Union (CJEU) (2015), *Case C-264/14, Skatteverket vs David Hedqvist*, October 22, 2015, <http://curia.europa.eu/juris/document/document.jsf?docid=170305&doclang=EN>, accessed on December 28, 2018.
4. European Central Bank (2012), *Virtual Currency Schemes*, <https://www.ecb.europa.eu/pub/pdf/other/virtualcurrencyschemes201210en.pdf>
5. European Central Bank (2015), *Virtual Currency Schemes - a Further Analysis*, <https://www.ecb.europa.eu/pub/pdf/other/virtualcurrencyschemesen.pdf>
6. European Commission (2016), *COM (2016) 450 final*, [http://www.europarl.europa.eu/RegData/docs_autres_institutions/commission_europeenne/com/2016/0450/COM_COM\(2016\)0450_EN.pdf](http://www.europarl.europa.eu/RegData/docs_autres_institutions/commission_europeenne/com/2016/0450/COM_COM(2016)0450_EN.pdf)
7. Financial Action Task Force (2014), *Virtual Currencies: Key Definitions and Potential AML/CFT Risks*, <https://www.fatf-gafi.org/media/fatf/documents/reports/Virtual-currency-key-definitions-and-potential-aml-cft-risks.pdf>.
8. General Department V - Ministry of Public Security Vietnam (2016), *Report No. 705/BC-B1-B32 dated March 8, 2016 on China considering the issuance of digital currencies (Bao cao so 705/BC-B1-B32 ngay 08/3/2016 ve viec Trung Quoc nghien cuu phat hanh tien ky thuat so)*.
9. *H. Res. 835*, <https://www.congress.gov/bill/114th-congress/house-resolution/835/all-info>.
10. IMF (2016), *Virtual Currencies and Beyond: Initial Considerations*,

- SDN/16/03, <https://www.imf.org/external/pubs/ft/sdn/2016/sdn1603.pdf>
11. *Market Capitalization*, <https://blockchain.info/charts/market-cap>, accessed on November 20, 2017.
 12. Nelson, J.W. (2010), "The Virtual Property Problem: What Property Rights in Virtual Resources Might Look Like, How They Might Work, and Why They Are a Bad Idea", *McGeorge Law Review*, Vol 41.
 13. *Pokemon GO account advertised for 220 million (Xuất hiện tài khoản Pokemon GO được rao bán với giá 220 triệu)*, <http://gamek.vn/xuat-hien-tai-khoan-pokemon-go-duoc-rao-ban-voi-gia-220-trieu-20160723174511783.chn>
 14. State Bank of Vietnam (2016), *Report No. 264/BC-NHNN dated July 27, 2016 on a number of issues related to digital currency and management experiences of some countries in the world (Báo cáo 264/BC-NHNN ngày 27/7/2016 về một số vấn đề liên quan đến tiền kỹ thuật số và kinh nghiệm quản lý của một số nước trên thế giới)*.
 15. Solana (2016), *China Publishes Country's First Blockchain Research Report*, <http://calvinayre.com/2016/10/21/business/china-publishes-countrys-first-blockchain-research-report/>, accessed on December 28, 2018.
 16. Southurst (2016), *China's Proposed New Law Recognizes Bitcoin as 'People's Rights'*, <https://news.bitcoin.com/china-recognize-bitcoin-peoples-rights/>, accessed on December 28, 2018.
 17. Sprankling, J.G. (2014), *The International Law of Property*, Oxford University Press.