ABSTRACT

Financial innovations bring new challenges and new risks besides advantages to the world of finance in cyberspace and in the real world. These innovations evolve alongside the development of cyberspace creating more e-business opportunities. One such innovation is digital currency. As cyberspace develops, this financial innovation allows more and more players into a formerly closed market of providing a medium of intrinsic purchasing power which was generally supplied by a nation’s central bank in the form of money. What then, is the legal status of this digital currency in a nation?

INTRODUCTION

Digital currencies are denominations of intrinsic purchasing power medium that exist only in electronic information storage. Financial innovations such as digital currency bring new challenges and new risks besides advantages to the world of finance in cyberspace and in the real world. These innovations develop and evolve alongside the development of cyberspace creating more e-business opportunities.

As cyberspace develops, this financial innovation allows more and more players into a formerly closed market of providing intrinsic purchasing power medium which was generally supplied by a nation’s central bank in the form of money. This poses a question, is this medium money?

This medium utilizes payment systems that are built over the Internet, and a need for supervisory and regulatory control arose as these innovations seem to defy the payment systems law of some countries. This need has spawned new e-business opportunities for creation of accreditation companies to evaluate digital currencies’ providers. This chapter seeks to illuminate how far the supervisory and regulatory control over this industry.
WHAT IS DIGITAL CURRENCY?

Digital currency is a term used by the researcher to refer to laissez-faire private virtual currencies or free banking concept virtual currencies that are used as medium of exchanges in cyberspace. There are three broad categories of digital currency—indexed based digital currency, asset or community based digital currency, and community digital currency. Index based digital currency is digital currency that does not have direct asset backing for its issuance, while asset or commodity based digital currency is backed by valuable assets or commodities for its issuance, and community based digital currency is the digitization of local currency concept, that is, Local Exchange Trading Systems.

What is Commodity Based Digital Currency?

Asset or commodity based digital currency, hereinafter will be abbreviated as CBDC, initially appeared in the Internet payment systems market in 1996 under the name e-gold. Since 1996, there are many companies issuing similar type of payment instrument established in cyberspace. E-gold is the brainchild of Douglas Jackson, an American physician.¹ This innovation is being used in the United States, Australia, Britain, and even Japan, to name some areas of usage. This type of payment system is run by non-bank private companies held by private individuals with no connection to any government.

Innovation such as CBDC assumes functions of money in cyberspace and challenges our traditional view of money. It modifies for use in cyberspace the old concept of commodity based receipt money, where receipts were given in exchange for gold held in deposit and these receipts are used to exchange for goods and services. CBDC issues payment instruments in exchange for gold held in trust by CBDC issuing companies.

Legal tender is monopolized by central banks or similar governmental institutions. In contrast, CBDC is found based on the notion of free banking and creation of money that is free from government monopoly. These non-bank private companies issue payment instrument or digital currency for use in their payment systems. They collect money in exchange for the denomination of intrinsic purchasing power medium that they supply and charge fees for the services they provide in administration and management of the medium. The issuance of CBDC type of digital currency must necessarily be supported by valuable assets or valuable commodities. This is the determining feature of this type of digital currency.

Capie (1999), an economic historian, noted that e-gold is an interesting development in cyberspace retail business, the gold industry, and free banking.² He advised that “It is important to be clear about what [e-payment] is.”³ Drawing from his advice, we need to be clear as to what e-payment is, what it does, what it cannot do, and why it is the way it is. To an ordinary user, he would say that one e-payment is the same as another. This is true insofar as to the functions they serve are concerned but not true in the area of legal rights, duties, and liabilities they carry due to differences in contractual set up of each e-payment.

Legal Concept of Money

CBDC is a medium of exchange but is not money, according to Mann’s (1963) legal concept of money.⁴ CBDC did not manage to qualify for even one out of the five criteria listed by Mann (1963). It is not a universal medium of exchange. It is not a chose in possession as well as a chose in action but only a chose in action. It does not come in certain denomination. It does not possess intrinsic purchasing power. Moreover, it is not a chattel created by law. Therefore, CBDC is not money and does not even come close to being called money. Although it emulates most features