

**BITCOIN AND THE CURRENT
LEGALITY OF ITS
TRANSACTIONS IN TAIWAN**

Alex TSAI

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I. Concept and Principle

Bitcoin is a virtual online currency that users can participate in using open-source software over the Internet, working as a peer-to-peer decentralized payment system. The biggest difference between Bitcoin and ordinary virtual currency related to gaming is that it is a virtual currency scheme with two-way currency flows that can be used to pay for virtual and physical products or services^[1].

The concept of Bitcoin was first proposed in a paper titled "*Bitcoin: A Peer-to-Peer Electronic Cash System*" published under the pseudonym of Satoshi Nakamoto to a cryptography website in 2008^[2]. In early 2009, Nakamoto created the first Bitcoin P2P user node and mined the first 50 bitcoins in history. New bitcoins are generated by P2P network nodes completing certain mathematical calculations. In the first four years, 50 bitcoins were to be published on average every 10 minutes, or a total of 10,500,000 bitcoins. The rate of issue will be halved every four years from then on, so the global issuing rate between years five and eight will be 25 Bitcoins every 10 minutes, for a total of 5,250,000 bitcoins. The issuing rate will continue slowing at this pace until the last bitcoin is produced in 2140. The total amount of currency is therefore limited to 21 million bitcoins, creating a supply-and-demand mechanism based on scarcity^[3].

II. Method of Transaction and Features

Bitcoin is a virtual currency similar to an e-mail. The user must first obtain a "Bitcoin Wallet"^[4] on an electronic device and then an automatically generated "Bitcoin Address"^[5] and "Private Key"^[6]. These are similar to an e-mail account and password. Bitcoin transactions are made by the paying party reassigning ownership directly to the other party's address over an electronic device. The Bitcoin transaction is transmitted to a "Block"^[7] and the transaction is then transmitted to the network, where miners will include in the "block" they are working on to solve the cryptographic puzzle that is the bitcoin generation. Miners can accept or refuse transactions. The block is part of the public record when the puzzle is solved

Once this transaction receives an initial confirmation^[8], this block connects to the previous block for additional confirmation. Initially mined or "freshly minted" bitcoins usually require at least 120 confirmations (connecting blocks), but the transaction is visible on the network after a few seconds even before being confirmed and often that is enough to avoid risk of double-spend (spending some money more than once). All Bitcoin transaction history is stored in the "Block Chain"^[9], a record of all past Bitcoin transactions^[10].

The Bitcoin mining system is based on P2P technology and cryptographic principles. The rules of the network are created based on the consensus of peers, and the parameters of the Bitcoin network can be adjusted. This ensures that Bitcoin's issuing system cannot be tampered with or destroyed by any government or individual. As the total amount of currency to be mined has already been set by the system, it will not suffer from inflation either. Bitcoins are used around the world in any anonymous manner and there is almost no cost for transactions, so it has quickly become a popular transaction method worldwide.

III. Bitcoin's Current Situation and Legal Status

According to the BitPay website, over 12,000 merchants or organizations now accept Bitcoin as a method of payment^[11], and the currency has now attracted a high level of interest from national governments as well. On August 19, 2013, the German government formally recognized Bitcoin as a currency similar to financial instruments^[12]. On November 20 of the same year, a letter from U.S. Federal Reserve Chairman Ben Bernanke published during congressional hearings stated that Bitcoin and other virtual currencies "may hold long-term promise" and there was no need to directly supervise or regulate these types of virtual currencies yet^[13]. The deputy governor of the People's Bank of China also said on November 20 that the bank will not allow the legitimacy of Bitcoins in the short-term, but Bitcoin transactions are a form of online transaction that the general public is free to participate in^[14].

While answering questions from legislators on November 23, Perng Fai-nan, the governor of Taiwan's Central Bank, stated that Bitcoin was not legal tender and may only be used for transactions between issuers and members. The credits issued by computer gaming companies right now are like a basic form of Bitcoin, and the Central Bank will regulate transactions in Bitcoins the way it regulates transactions in precious metals^[15]. Perng also emphasized to legislators on November 27 that currency issued by the Central Bank remains the legal transaction instrument according to the Central Bank Act^[16].

IV. Legality of Bitcoin in Taiwan

1. Legal Nature of Bitcoin

From a currency perspective, currencies can be divided by their issuing authority into local and foreign currencies. Each is subject to different regulations in Taiwan. Article 13 of the Central Bank Act states that the currency of Taiwan is to be issued by the Central Bank, and is to be considered legal tender for all transactions within the borders of Taiwan^[17]; Articles 2 and 5 of the Foreign Exchange Control Act also authorize the Central Bank to supervise all transactions in foreign currencies^[18]. Here the wording of the law can be interpreted to mean that any transaction in legal

currencies issued by a sovereign nation other than Taiwan that takes place on the island or its governing areas should fall under the supervision of Taiwan's Central Bank. Bitcoin is, however, not a currency issued by Taiwan's Central Bank so it cannot be considered a local currency. Bitcoin is not a legal currency issued by another sovereign nation either, so neither can it be considered a foreign currency. Perng had already explicitly stated that Bitcoin is not considered legal tender and that only currency issued by the Central Bank is legal tender in Taiwan. It can therefore be inferred that Taiwan is unlikely to recognize Bitcoin as an official currency in the short-term.

If analyzed from the perspective of game points, according to the "Mandatory Provisions to be Included and Prohibitory Provisions of Standard Form Contract for Online Game Point Cards" issued by the Ministry of Economic Affairs, so-called online game points (usually cards purchased from convenience stores) are where a certain amount of money was prepaid to purchase points (cards) from the issuer that records or holds a certain amount of value, in-game items, or number of uses. The holder can register a serial number representing that value or some other method to a specific account in order to redeem it for online gaming services or merchandise offered by the issuer. Based on this definition, game points can only be used for transactions between the issuer and members. A contractual relationship exists between the issuer and member, and privity of debt exists. Even though Bitcoin is a payment system mined to serve as an instrument for global transactions, no inherent issuer or membership relationship exists, and there is no entity to provide online gaming services or products. There is therefore a distinct difference between the nature of Bitcoin and game points.

At the same time, Bitcoin is a virtual currency generated using P2P networking technologies and cryptographic principles. Anyone who owns an electronic device can access and use Bitcoin in a certain method or quoted price. As for the legal nature of Bitcoin, this can be analyzed by looking at its method of acquisitions and transactions. To be more exact, while a small number of people can acquire Bitcoin through "mining", it is still primarily acquired in the exchange of cash, goods, or services.

The legal relationship between transaction parties is more approximate to that of a buyer and seller. In other words, the buyer acquires the right to Bitcoins from its owner for a certain amount of consideration. Once the buyer acquires Bitcoins, they can then exercise their right over the Bitcoins to acquire its counterpart. The holder therefore exercises disposal, absolute and real rights over the Bitcoin. Bitcoin is therefore an "object" and a type of an intangible asset.

Case law in Taiwan^[19] considers virtual currencies to be a form of electromagnetic record and the holder has the right to dispose or transfer virtual currencies as they see fit. Virtual currencies therefore have a certain amount of financial value in the real world, and can be treated as an object under the criminal laws on theft (Criminal Code Articles 323 and 320 paragraph 1)^[20] and fraud (Criminal Code Article 339, paragraph 2)^[21]. This shows that in Taiwan, legal practice acknowledges the nature of virtual currency as a type of liquid asset with property rights^[22]. Bitcoin is a virtual object of electromagnetic records and its nature should be interpreted in the same way.

2. Nature of Bitcoin Transactions

What type of contract should Bitcoin transactions fall under then? Based on the above explanation, the legal nature of Bitcoin is defined here to be a liquid asset. If the buyer pays cash to a seller to acquire Bitcoins then it should be considered an agreement for sale and purchase. However, if the Bitcoin holder should use Bitcoins in consideration of items or labor in the future, the legal relationship is then more of a barter contract. This opinion, however, remains to be confirmed in a court of law. Article 398 of the Civil Act does, however, allow regulations governing sales and purchases to be applied to contracts of barter, so there should be no difficulties on the applicability of laws whether it is interpreted as barter of contract or an agreement on a sale and purchase.

Finally, Perng explicitly stated on November 23 of the same year that if Bitcoins should be traded in Taiwan in the future, the Central Bank will treat it as a precious metal for the purpose of supervision. This appears to set the tone on the nature of Bitcoin transactions for now. In other words, the Central Bank considers Bitcoin to be a liquid asset and its transactions to be similar to that of precious metal transactions - i.e. the purchase and sale of an object - and so will be supervised and regulated under the relevant laws.

[1] Institute for Information Industry, "European Central Bank Publishes Report on "Virtual Currency Scheme" and French Bitcoin trading platform certified as PSP"

<http://stli.iii.org.tw/ContentPage.aspx?i=5940>

[2] <http://bitcoin.org/bitcoin.pdf>

[3] <http://zh.wikipedia.org/wiki/%E6%AF%94%E7%89%B9%E5%B8%81>

[4] A Bitcoin wallet is loosely the equivalent of a physical wallet on the Bitcoin network. The wallet actually contains your private key(s) which allow you to spend the bitcoins allocated to it in the block chain. Each Bitcoin wallet can show you the total balance of all bitcoins it controls and lets you pay a specific amount to a specific person, just like a real wallet. This is different to credit cards where you are charged by the merchant. <http://bitcoin.org/en/vocabulary>

[5] A Bitcoin address is similar to a physical address or an email. It is the only information you need to provide for someone to pay you with Bitcoin. An important difference, however, is that each address should only be used for a single transaction. <http://bitcoin.org/en/vocabulary>

[6] A private key is a secret piece of data that proves your right to spend bitcoins from a specific wallet through a cryptographic signature. Your private key(s) are stored in your computer if you use a software wallet; they are stored on some remote servers if you use a web wallet. Private keys must never be revealed as they allow you to spend bitcoins for their respective Bitcoin wallet.

<http://bitcoin.org/en/vocabulary>

[7] A block is a record in the block chain that contains and confirms many waiting transactions. Roughly every 10 minutes, on average, a new block including transactions is appended to the block chain through mining. <http://bitcoin.org/en/vocabulary>

[8] Confirmation means that a transaction has been processed by the network and is highly unlikely to be reversed. Transactions receive a confirmation when they are included in a block and for each subsequent block. Even a single confirmation can be considered secure for low value transactions, although for larger amounts like 1000 US\$, it makes sense to wait for 6 confirmations or more. Each confirmation *exponentially* decreases the risk of a reversed transaction. <http://bitcoin.org/en/vocabulary>

[9] The block chain is a public record of Bitcoin transactions in chronological order. The block chain is shared between all Bitcoin users. It is used to verify the permanence of Bitcoin transactions and to prevent double spending. <http://bitcoin.org/en/vocabulary>

[10] <http://zh.wikipedia.org/wiki/%E6%AF%94%E7%89%B9%E5%B8%81>

[11] <https://bitpay.com/directory#/>

[12] <http://finance.sina.com.hk/news/-33431-6110174/1.html>

[13] <http://qz.com/148399/ben-bernanke-bitcoin-may-hold-long-term-promise/>

[14] <http://news.cnyes.com/Content/20131122/KHBI444M9QELA.shtml>

[15] United Daily News <http://udn.com/NEWS/FINANCE/FIN4/8308072.shtml;ETtoday>

<http://www.ettoday.net/news/20131120/298323.htm>; NOW News

<http://www.nownews.com/n/2013/11/20/1025514> etc.

[16] Liberty Times <http://www.libertytimes.com.tw/2013/new/nov/28/today-e13.htm?Slots=BE>

[17] Refers to how national currency is legal tender for all transactions within national borders. National currency remains the legal tender until it is officially revoked. Creditors may not refuse payment made using legal tender by the debtor or they shall bear the responsibility for the delay in payment.

<http://www.cbc.gov.tw/lp.asp?CtNode=317&CtUnit=488&BaseDSD=7&mp=1&nowPage=27&pagesize=15>

[18] According Article 2 of the Foreign Exchange Control Act, foreign exchanges encompasses all foreign currencies, bills and valuable securities.

[19] Criminal Judgment Shang-Yi No. 494 (2012) issued by the Taiwan Higher Court; Criminal Judgment Jian No. 114 (2012) issued by the Taipei District Court, Taiwan; Criminal Judgment Xu No. 2032 (2002) issued by the New Taipei City District Court, Taiwan; as well as Bulletin Fa-Jian No. 0920800696 and Bulletin Fa-Jian-Jue No. 039030 (2001) of Ministry of Justice etc.

[20] Criminal Judgment Xu No. 2032 (2002) of the New Taipei City District Court, Taiwan, determined that the stolen virtual property was an electromagnetic record and that the accused damaged the ownership of the victim's right over the virtual property while also establishing his own control in its stead so constituted theft under Article 323 and Article 320 Paragraph 1 of the Criminal Code.

[21] Criminal Judgment Shang-Yi No. 494 (2012) issued by the Taiwan Higher Court determined that property in the virtual world constituted legal interested protected by against fraud under the Criminal Code. However, "the virtual property does not exist in no human touchable-form so the practice of fraud should be considered the acquiring of illegal benefits from the property" and therefore constituted the procuring of illegal benefit by fraud under Article 339 Paragraph 2 of the Criminal Code.

[22] Bulletin Fa-Jian No. 0920800696 and Bulletin Fa-Jian-Jue No. 039030 (2001) issued by the Ministry of Justice determined electromagnetic records to fit the definition of "liquid asset" for theft and for fraud as well. Virtual objects can therefore be considered objects protected against theft and fraud under the Criminal Code.

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