



Blockchain & Cryptocurrency Regulation

2019

First Edition

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glg global legal group



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Taiwan

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Government attitude and definition

While Taiwan has not promulgated any laws or regulations specifically dealing with the rise of certain applications of blockchain technology such as so-called “virtual currencies” or “cryptocurrencies”, Taiwan’s financial regulators have issued several press releases to announce their positions and attitude towards such developments, as well as to educate and warn the general public in Taiwan.

On 30 December 2013, both the Central Bank of the Republic of China (Taiwan) (“CBC”) and Taiwan’s Financial Supervisory Commission (“FSC”) first expressed the government’s position toward Bitcoin by issuing a joint press release (“2013 Release”). According to the 2013 Release, the two authorities held that Bitcoin should not be considered a “currency”, but highly speculative digital “virtual commodity”. In another FSC press release in 2014 (“2014 Release”), the FSC ordered that local banks must not accept Bitcoin or provide any other services related to Bitcoin (such as exchange Bitcoin for fiat currency). Recently, the FSC further issued a press release on 19 December 2017 (“2017 Release”), in which the FSC reiterated the government’s positions as specified in the 2013 Release and 2014 Release.

Given the above, in light of the authorities’ attitude, “Bitcoin” is not considered “legal tender”, “currency” or a generally accepted “medium of exchange” under the current regulatory regime in Taiwan; instead, Bitcoin is deemed as a digital “virtual commodity”. Please note that the government’s attitude stated in the abovementioned press releases only covers “Bitcoin”, instead of any other types of virtual currencies/cryptocurrencies (except for “ICOs” as further explained below). But we tend to think that any other virtual currencies/cryptocurrencies, if having the same nature and characteristics as Bitcoin, should also be considered as digital “virtual commodities”.

Cryptocurrency regulation

Please see our reply to “Government attitude and definition” above. So far no Taiwanese laws or regulations have been promulgated or amended to formally regulate “virtual currencies” or “cryptocurrencies”; therefore, currently, virtual currencies/cryptocurrencies cannot be considered “legal tender”, “currencies” or a generally accepted “medium of exchange” in Taiwan.

Further, currently there exists no required licence in Taiwan for (a) operating the services of exchange between virtual currencies or virtual currencies with fiat currencies, or (b) acting as a “money transmitter” and the like in Taiwan.

Sale regulation

Sale of Bitcoin or any other virtual currencies/cryptocurrencies of the same nature and characteristics

So far there exist no laws or regulations specifically dealing with sale of virtual currencies/cryptocurrencies. Sale of Bitcoin, currently considered by the FSC as sale of a digital “virtual commodity” but not “currency”, should generally be fine from a Taiwan regulatory perspective, and the general principles and rules governing “purchase and sale” under the Civil Code would apply if the consideration is cash. Also, we tend to think that the above would apply to the sale of other virtual currencies/cryptocurrencies of the same nature and characteristics as Bitcoin.

Please note that the above are subject to “ICO and token offering” as described below.

ICO and token offering

In response to the rising amount of Initial Coins Offerings (“ICOs”) and other investment activities regarding virtual currencies/cryptocurrencies, the FSC also expressed the following view on ICO through the 2017 Release as mentioned above:

- (1) An ICO refers to the issue and sale of “virtual commodities” (such as digital interests, digital assets, or digital virtual currencies) to investors. The classification of an ICO should be determined on a case-by-case basis. For example, if an ICO involves offer and issue of “securities”, it should be subject to Taiwan’s Securities and Exchange Act (“SEA”). The issue of whether tokens in an ICO would be deemed “securities” under the SEA would depend on the facts of each individual case.
- (2) If any misrepresentations with respect to technologies or their outcomes and/or promises of unreasonably high returns are used by the issuer of virtual currencies or an ICO to attract investors, the issuer would be deemed as committing fraud or illegal fund-raising.

Given the above, in an ICO (or other types of token offering, such as private token pre-sale before the ICO stage), the core issue in this regard is whether an ICO would be considered issuing “securities” under Taiwan’s securities regulations. Under current Taiwan law, the offer and sale of “securities” in Taiwan, whether through public offering or private placement, are regulated activities and shall be governed in accordance with the SEA, its related regulations as well as relevant rulings issued from time to time by the FSC.

The term “securities” has a very broad (but maybe not clear enough) definition in Taiwan. According to Article 6 of the SEA, “securities” could mean government bonds, corporate stocks, corporate bonds, and other securities approved by the competent authority, and any stock warrant certificate, certificate of entitlement to new shares, and certificate of payment or document of title representing any of the above securities shall be deemed securities. Additionally, according to a recent Taiwan Supreme Court opinion, a contract or agreement would be considered securities under the SEA if it has monetary value, the nature of investment and transferability.

Taxation

There is currently no express interpretation or regulation governing the taxation of Bitcoin or other cryptocurrencies. Given that Bitcoin is currently classified as a digital “virtual commodity” by the FSC and the CBC, it is possible that the tax authorities might take the following stances on Bitcoin:

(1) Business Tax

In general, sales of goods and services in Taiwan are subject to Taiwan's business tax. Given this, a legal entity selling cryptocurrencies in Taiwan should be subject to Taiwan's business tax.

Individuals should refer to the standards for "online personal sale of goods" for guidance on tax liability. Specifically, an individual with online monthly sales of goods (including virtual commodities) reaching NT\$80,000 on average for the past six months should apply for taxation registration with Taiwan's tax authority and pay applicable business tax.

(2) Income Tax

Taiwanese legal entities are subject to Taiwan income tax for their worldwide income. Accordingly, for a Taiwanese legal entity, its income from sale of cryptocurrencies should be subject to income tax in Taiwan. As to a foreign legal entity, if its income is generated from the sale of cryptocurrencies to Taiwanese persons, it should be subject to Taiwan's income tax.

As for Taiwanese individuals, it depends on whether the cryptocurrency trading is conducted on an offshore platform. If the trading is conducted on a local platform, the trader (individual) should consolidate the income from trading Bitcoin into his/her personal consolidated income, on which a consolidated income tax shall be levied and the current highest progressive tax rate applicable is 40%. If the trading is conducted on an offshore platform, then the income should be classified as "non-Taiwan-sourced income", which is not included in the calculation of personal consolidated income tax. However, such non-Taiwan-sourced income is subject to alternative minimum tax ("AMT"), currently at a flat rate of 20%.

Money transmission laws and anti-money laundering requirements

As advised under "Cryptocurrency regulation" above, currently there exists no required licence for (a) operating the services of exchange between virtual currencies or virtual currencies with fiat currencies, or (b) acting as a "money transmitter" and the like in Taiwan. As for anti-money laundering ("AML"), Taiwan's Ministry of Justice issued a press release on 10 April 2018 about bringing virtual currencies exchange/platform operators under Taiwan's AML regulatory regime. According to the press release, the details on cryptocurrency and AML compliance are still under discussion and should be subject to further discussion and decision by local regulators.

Promotion and testing

Taiwan's law for the fintech regulatory sandbox, the "FinTech Development and Innovation and Experiment Act" ("Sandbox Act"), was promulgated on 31 January 2018 and took effect on 30 April 2018. The Sandbox Act was enacted to enable fintech businesses to test their financial technologies. In April 2018, the FSC promulgated the enforcement rules for the regulatory sandbox. As of the date of this article, the FSC has not started accepting applications for entering the sandbox, but it is generally expected that it would start from the second quarter of 2018.

According to the Sandbox Act, an applicant (which can be an entity or individual) needs to obtain approval from the FSC before entering the sandbox. Once the experiment begins, the experimental activities may enjoy exemptions from certain laws and regulations (such as FSC licensing requirements and certain legal liability exemptions).

After completion of the approved experiments, the FSC will analyse the results of the experiments. If the result is positive, the FSC would actively examine the existing financial laws and regulations to explore the possibility of amending them, after which the business model or activities previously tested in the sandbox could become feasible under law. Please note, however, that the sandbox entity or individual might still be required to apply for a relevant licence or approval from the FSC in order to formally conduct the activities as previously tested in the sandbox.

It is possible that the relevant market players of some controversial fintech business models and activities (e.g., ICOs) would wish to apply to the FSC to enter the sandbox. However, according to the Sandbox Act, any experimental activity needs to be “innovative”. Therefore, (a) whether or not the commonly seen cryptocurrency-related activities (such as ICOs) would enter the sandbox, and (b) if yes, whether the result of the experiment would be considered “positive”, would still depend on the FSC’s then-effective policies and final decision.

Ownership and licensing requirements

As mentioned above, Taiwan has not promulgated any laws or regulations specifically dealing with “virtual currencies” or “cryptocurrencies”, so there exists no ownership or licensing requirements under Taiwanese law, except for “ICO and token offering” as advised under “Sale regulation” above. Under current Taiwanese law, the offer and sale of “securities” in Taiwan are regulated activities. In other words, theoretically speaking, any offer or sale of ICOs or tokens in Taiwan needs to obtain the FSC’s approval beforehand if such ICOs or tokens are considered “securities” under the SEA. However, currently such approval is not available under the SEA and its related regulations.

Mining

So far no Taiwanese laws or regulations have been promulgated or amended to regulate the “mining” of Bitcoin or any other types of cryptocurrencies. The mining activities should generally be permitted.

Border restrictions and declaration

So far no Taiwanese laws or regulations have been specifically promulgated or amended to impose any border restrictions on or requirements for declaration of holdings of cryptocurrencies.

Reporting requirements

So far no Taiwanese laws or regulations have been specifically promulgated or amended to impose any reporting requirement for cryptocurrencies.

Estate planning and testamentary succession

So far, Taiwan’s laws and regulations have not addressed this topic. Since cryptocurrencies have value, we tend to think they would be considered as “property” or “assets” from the perspective of Taiwan estate and succession law, unless they are confiscated by the government due to, for example, the commission of a criminal offence violating the prohibition of “securities” offering without prior approval from or registration with the FSC as required under the SEA (see under “Sale regulation”, above).

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