

WHITHER POLICING CRYPTOCURRENCY IN MALAYSIA?*

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ABSTRACT

Cryptocurrency, like Bitcoin, is a digital currency in which encryption techniques are used to regulate the generation of units of currency and verify the transfer of funds, operating independently of a central bank. It is an emerging financial technology enabled by innovation, increasingly popular among global Internet users, and more interestingly, it challenges the existing financial and regulatory rules on the currency and payment systems of the world today. On the other side, certain cryptocurrency like Bitcoin, have been actively used as payment tools for illicit transactions. Both the “promising” and “challenging” faces of cryptocurrency trigger causes for concern for policy makers, not only from financial sector, but also legal and technological sectors. The decentralised nature of cryptocurrency creates unique problems for the government to regulate or impose any regulatory requirements. This article argues that, in order for Malaysia to remain at the forefront of financial and digital innovation, it is timely to look at the question on whether to formulate certain policy and regulatory framework on the use of cryptocurrency in Malaysian market. The answer can pave the way for Malaysian digital citizens to potentially grab the opportunities made possible by the cryptocurrency technology. For this purpose, the researchers seek to study the features of cryptocurrency and the experiences from policymakers in other jurisdictions in dealing with the matter.

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Keywords: cryptocurrency, Bitcoin, digital money, electronic commerce, regulations

KE MANA ARAH KAWALSELIAAN MATAWANG CRYPTO DI MALAYSIA?

ABSTRAK

Matawang crypto seperti Bitcoin, merupakan matawang digital di mana teknik-teknik enkripsi digunakan untuk mengenerasi unit matawang dan mengesahkan pemindahan dana dan ianya beroperasi secara bebas tanpa kawalan bank pusat. Ianya merupakan teknologi kewangan yang baru muncul dan dibolehkan oleh inovasi, sudah menjadi begitu popular dalam kalangan pengguna internet global dan lebih menarik lagi, ianya mencabar kaedah dan kawalan kewangan yang sedia ada berkenaan matawang dan sistem pembayaran dunia masakini. Namun, beberapa matawang crypto seperti Bitcoin telahpun digunakan secara aktif sebagai cara pembayaran untuk transaksi menyalahi undang-undang. Dua faktor iaitu ‘menjanjikan’ dan ‘cabaran’ matawang crypto mencetus kebimbangan para penggubal dasar, bukan sahaja daripada sektor kewangan tetapi juga daripada sektor-sektor perundangan dan teknologi. Sifat desentralisasi matawang crypto mewujudkan masalah unik bagi kerajaan dalam usaha mengawalselia atau mengenakan keperluan pengawalseliaan. Makalah ini menghujahkan bahawa sudah tiba masanya untuk Malaysia melihat kepada persoalan samada mewujudkan satu kerangka dasar dan kawalseliaan berkenaan penggunaan matawang crypto di pasaran Malaysia agar Malaysia boleh berada di tahap terdepan dalam inovasi kewangan dan digital. Jawapannya akan membuka jalan untuk warga digital Malaysia berpotensi mengambil peluang yang dimungkinkan oleh teknologi matawang crypto. Untuk tujuan ini, penyelidik menganalisa ciri-ciri matawang crypto dan pengalaman pembuat polisi di bidangkuasa lain yang berurusan dalam perkara ini.

Kata kunci: matawang crypto, Bitcoin, wang digital, perdagangan elektronik, kawalseliaan

INTRODUCTION

Cryptocurrency is a digital currency in which encryption techniques are used to regulate the generation of units of currency and verify the transfer of funds, operating independently of a central bank. It is an emerging financial technology enabled by innovation, increasingly popular among global Internet users, and more interestingly, it challenges the existing financial and regulatory rules on the currency and payment systems of the world today. One of the leading cryptocurrency is Bitcoin. For that matter, this paper looks at how Bitcoin emerges and “challenges” our traditional concept of the currency.

The main reason why Bitcoin, and many other cryptocurrencies, are getting increasingly popular is because of its efficiency and low-cost transaction fees as there is no intermediary involved. It offers significantly less banking bureaucracy for one to set up, send and receive payments across borders. This innovation is undoubtedly the key for leveraging small and medium enterprises as it becomes an alternative to expensive credit cards and a solution for micropayments. Bitcoin was created and introduced to the world since 2009 by the pseudonym hacker Satoshi Nakamoto.¹ To date, Bitcoin is the most well-known virtual currency and is also addressed as cryptocurrency since it is created through a special process based on cryptography.²

Innovative as it may be, it was found that cryptocurrency is actively used as payment tools for illicit transactions. According to the US Secret Service, Bitcoin, the leading cryptocurrency today, is preferred by criminals because it offers the greatest degree of anonymity for both users and transactions, the ability to quickly and confidently move illicit proceeds from one country to another, and widespread adoption in the criminal underground. Both the “promising” and “challenging” faces of cryptocurrency trigger causes for concern for policy makers, not only from the financial sector, but also legal and technological sectors. The decentralised nature of cryptocurrency creates unique problems for the

¹ Lawrence Trautman, “Virtual Currencies Bitcoin & What Now After Liberty Reserve, Silk Road, and Mt.Gox?,” *Richmond Journal of Law & Technology* 20, no. 14 (2014):13: 14.<http://jolt.richmond.edu/jolt-archive/v20i4/article13.pdf>.

² Jovan Kurbalija, *An introduction to Internet Governance* (Geneva Switzerland: Diplofoundation, 2014), 128.

government to regulate or impose any regulatory requirements. The lack of a centralised entity has made it more difficult because there is no entity that can be held accountable to users, merchants or investors for any harm that is caused.

This article discusses what Bitcoin is technically and the pros and cons of Bitcoin. Then it reviews the countries that allow and those that ban Bitcoin with justifications from those with and against it. Currently, as Kurbalija³ notes, it is left to the sovereign states to regulate virtual currencies. The focus of discussion is then directed towards legality of Bitcoin in Malaysia, the Bitcoin digital communities in Malaysia and cyber law and cyber crime in Malaysia. Relating to the concept of economic efficiency and cashless society in Malaysia, we will then discuss and justify why Bitcoin should be regulated in Malaysia with respect to the current global development, awareness, acceptance and growth in the digital currency technology as well as its relation with Central Bank of Malaysia Financial Blueprint 2011-2020 and the Malaysian Financial Service Act ('FSA') 2013.

HOW CRYPTOCURRENCY WORKS: AN EMERGING CASE OF BITCOIN

Bitcoin is the world's best-known virtual or cryptocurrency widely used for commercial transactions.⁴ Made up entirely of complex code and algorithms, Bitcoin has no physical existence. Saunder explained that there are no physical notes or currency prints denominated by Bitcoin.⁵ Quest further stated that Bitcoin is a form of electronic cash that allows users to make online payments or transactions directly and efficiently from one party to another without using financial institutions as intermediaries.⁶ Bitcoin was created to be free and independent of any regulations from any financial institutions. To achieve this, Bitcoin utilises a decentralised structure which is made up of users collectively

³ Kurbalija, *An introduction to Internet Governance*, 129.

⁴ David Quest, "Taking Security Over Bitcoins and Other Virtual Currency," *Journal of International Banking and Financial Law*, no. 7 (2015): 401.

⁵ Sarah Saunders, "Cryptic Currency?," *Taxation Magazine* 175, no. 4492 (2 March 2015): 16.

⁶ Quest, "Taking Security Over Bitcoins and Other Virtual Currency," 401.

collaborating via peer-to-peer (P2P) networks to authenticate and maintain a public ledger of Bitcoin transactions.⁷ This means that unlike conventional currencies, the Bitcoin is free from any form of central authority or control.

The core of Bitcoin's decentralised system lies inside its highly innovative publicly downloadable ledger named 'blockchain'. Every user's Bitcoin transaction worldwide has to be entered into the linked public ledger (blockchain) to be authenticated via complex computer encryption, rendering it impossible to create forged Bitcoins.⁸ Using open-source and downloadable software available at <www.bitcoin.org>, anyone can generate a unique and anonymous alphanumeric address, known as the 'Bitcoin wallet', which can receive or send Bitcoin to make online purchases or payments.⁹ Similar to creating an email account, creating a Bitcoin wallet does not require any validated information about the person who created his/her wallet. This means that even though all transactions are recorded and can be viewed in the 'blockchain', the individual user's wallet owner still remains predominantly anonymous. All Bitcoin transactions can be viewed real time at <www.blockchain.info>.

Naturally, one may ask how Bitcoin itself is obtained. Since its creation, there are three major means of obtaining Bitcoin – all which require the users to have (download and register) a Bitcoin wallet prior to any transactions. First is converting (or buying) normal fiat currency via online Bitcoin Exchange Companies; second means is by accepting Bitcoin for goods and services sold. The third means is by 'mining' new Bitcoins.¹⁰ While the first and second means of obtaining Bitcoin are the most common and similar to buying or selling a Malaysian product or service using a foreign currency, the third method, i.e. 'mining' needs to be put into a practical context for easier understanding of this new concept.

⁷ Elaine Chan, "The Regulation of Bitcoin in Singapore," *Journal of International Banking and Financial Law*, no. 6 (2014): 398.

⁸ Saunders, "Cryptic Currency?," 16.

⁹ Quest, "Taking Security Over Bitcoins and Other Virtual Currency," 401.

¹⁰ Anthony Volastro, "CNBC Explains: How to Mine Bitcoins on Your Own," *CNBC*, last modified January 24, 2014, <http://www.cnb.com/2014/01/23/cnbc-explains-how-to-mine-Bitcoins-on-your-own.html>.

As an example, let us take the analogy of the ‘conventional money’ which is – for this exercise - tied to an intrinsically valued material such as gold.¹¹ Gold deposits are limited as they are a non-renewable source. Gold miners in a certain country generally need to spend their own money capital for mining equipment to extract gold in a certain location. Once that gold is mined, they are registered and added to the ‘money circulation’ in the country. Earlier gold explorers (the pioneering group) need lesser equipment to successfully mine gold in that location. As more gold are extracted, and as time goes by, gold mining becomes harder and deeper, and more expensive mechanical equipment and resources are needed to obtain gold to add gold to the financial circulation.

Similar to the above analogy, Bitcoin numbers itself is limited. As per its coding protocol the total number of Bitcoins designed by its founders allowed to be ‘mined’ is limited to 21 million Bitcoins only.¹² These Bitcoins are ‘mined’ by miners using their computers and electricity through solving algorithms to verify Bitcoin transactions in the ‘blockchain’.¹³ In line with its decentralised nature, anyone can become a Bitcoin miner provided they have sufficient computer power to solve the ‘blockchain’ algorithms. All appropriate mining software can be easily found and downloaded online. Chan¹⁴ noted that currently a miner who successfully solved verifying transaction algorithms is awarded 25 unique new Bitcoins. Additional incentive is that the miner is also rewarded by the fees paid by users sending transactions.

Just like the gold analogy, in the earliest stage of Bitcoin introduction in 2009 where there were only a few Bitcoin users and transactions to be verified, mining activities were easily solved with normal consumer PCs.¹⁵ However, over the last few years –as Bitcoin goes mainstream; miners had to use faster computers, including application specific integrated circuits (ASIC) to solve harder equations. Some Bitcoin miners collaborate and pool with each other to combine computing power and the percentage of rewards are divided equally as per respective contributions.

¹¹ Satoshi Nakamoto, “Bitcoin: A Peer-to-Peer Electronic Cash System,” *www.bitcoin.org*: 4, <https://bitcoin.org/bitcoin.pdf>.

¹² Chan, “The Regulation of Bitcoin in Singapore,” 398.

¹³ Nakamoto, “Bitcoin: A Peer-to-Peer Electronic Cash System,” 4.

¹⁴ Chan, “The Regulation of Bitcoin in Singapore,” 398.

¹⁵ Volastro, “CNBC Explains: How to Mine Bitcoins on Your Own.”

ADVANTAGES AND DISADVANTAGES OF BITCOIN

Bitcoin is considered as an emerging financial technology. Top universities in the world such as Harvard and Oxford universities are advocating their students to use Bitcoin to learn and witness the progress of this technology. There are advantages and disadvantages of using Bitcoin. The main reason why people are attracted to use Bitcoin is that it avoids the high transaction fees from banks because there is no third-party intermediary. When making a Bitcoin transfer, the transaction is cheaper and faster than the bank transaction.¹⁶ Bitcoin offers significantly less capital cost and banking bureaucracy for one to set up, send and receive payments globally across country borders. All one need to do is to simply register and download the Bitcoin application software to make global money transaction. Hence, Bitcoin contributes small businesses alternatives to expensive credit cards and facilitates micropayments.

Additionally, as an inexpensive fund-transfer system, Bitcoin enables migrants and foreign labor workers to make cheaper remittances of payments to their poor families in developing countries by providing less than 0.0005 BTC transaction fees on the Bitcoin network. In contrast, transaction fees using Western Union and MoneyGram is extremely expensive. For instance, in the first quarter of 2013, the global average fee for sending remittances was 9.05 percent. In fact, it will take several business days to transfer the funds.¹⁷

Bitcoin arguably offers promise of improving the quality of life for the world's poorest and has the potential to combat poverty and oppression from tyrant regimes or escaping criminal-laden environments. People who are living in developing countries are having difficulties in making payment because of the impediments in developing traditional branch banking in poor areas. Thus, people in developing countries have turned to mobile banking services for their financial needs.¹⁸ It is very hard and challenging with regard to the issue of reducing world poverty especially in reducing the transaction costs of remittances. The World Bank reported in its *Remittance Market Outlook* that "remittance prices are high for many reasons, including underdeveloped financial

¹⁶ Saunders, "Cryptic Currency?" 17.

¹⁷ Jerry Brito and Andrea Castillo, *Bitcoin: A Primer for Policymakers*, (Mercatus Center: George Mason University, 2013), 13.

¹⁸ Brito and Castillo, *Bitcoin: A Primer for Policymakers*, 14.

infrastructure in some countries, limited competition, regulatory obstacles, lack of access to the banking sector by remittance senders and/or receivers, and difficulties for migrants to obtain the necessary identification documentation to enter the financial mainstream."

In turn, issues of global poverty are directly related to the propensity for outbreaks of civil war and terrorism. Bracking and Sachikonye¹⁹ found that: "Remittances are critical to household wellbeing in Zimbabwe... Indeed, it has become a commonplace in the research area of migration and development, and its subfield of poverty reduction and remittance studies, that international migration can have a positive impact on poverty reduction through the generation of migrant remittances, and, for the vast majority of researchers, that remittances are positively associated with economic growth. Within international development, much hope has been invested that remittances provide an accessible pathway out of poverty, and an alternative to inter-governmental and official systems of development assistance."

There are also disadvantages associated with using Bitcoin. The Bitcoin system is a fairly new system and is still at its infancy stage with incomplete features that are in development. Thus, Bitcoin poses unique risks because it is stored electronically and if the transaction has been made and processed, the transaction is not reversible.²⁰ Just like cash money, Bitcoin can be lost or stolen. For example, Stefan Thomas who is a Bitcoin user has accidentally erased two copies of his e-wallet and lost the account password to his third copy. He immediately suffered losses of about 7,000 Bitcoins worth \$140,000 in 2011.²¹

Besides, given the growing prevalence of Bitcoin, the risk of theft is likely to increase.²² Users' Bitcoins could be stolen through malware and hacking and it is not only limited to personal individual computers but

¹⁹ Sarah Bracking and Lloyd Sachikonye, "Remittances, Poverty Reduction and Informalisation in Zimbabwe 2005- 6: A Political Economy of Dispossession?," *Brooks World Poverty Institute*, Working Paper No. 28, (2008), <http://ssrn.com/abstract=1265516>.

²⁰ Kevin V. Tu and Michael W. Meredith, "Rethinking Virtual Currency Regulation in the Bitcoin Age," *Washington Law Review*, no. 90 (2015): 299.

²¹ Jeffrey Simser, "Bitcoin and Modern Alchemy: In Code We Trust," *Journal of Financial Crime (JFC)* 22, no. 2 (1 May 2015): 164.

²² Simser, "Bitcoin and Modern Alchemy: In Code We Trust," 164.

businesses have also been targeted.²³ For instance, it was reported by Gadkari,²⁴ that Bitcoin users have been warned by the Bitcoin Foundation that some Android wallet applications had programming flaws resulting in losses of Bitcoin money by hackers' theft or false code. According to the report, a research fellow at the Oxford Internet Institute, Dr Joss Wright, said that cryptographers relied heavily on a computer's ability to generate random numbers in order to keep information secure. But, he added, that computers did not always do this reliably. "Choosing good random numbers is the key issue," Dr Wright said. "If the random numbers can be predicted by somebody else, this could lead to all sorts of security problems."

In a virtual currency such as Bitcoin, which operates without a central administrator and being pseudonymous in nature, criminals can use it to transfer and process the money for illicit goods and services. According to the US Secret Service, digital currencies like Bitcoin is preferred by criminals because it offers the greatest degree of anonymity for both users and transactions, the ability to quickly and confidently move illicit proceeds from one country to another, and widespread adoption in the criminal underground.²⁵ For example, Bitcoin has been linked to numerous types of crimes, including facilitating marketplaces for: assassins, attacks on businesses, exploiting children (including pornography), corporate espionage, counterfeit currencies, drugs, fake IDs and passports, high yield investment schemes (Ponzi schemes and other financial frauds), sexual exploitation, stolen credit cards and credit card numbers, and weapons.

We can refer to an underground black-market website known as Silk Road which emerged as the most sophisticated and extensive criminal marketplace on the Internet. In October 2013, the Guardian reported that the US authority immediately shut down its operation and confiscated all Bitcoins associated with Silk Road in a seizure totaling 26,000 BTC,

²³ Tu and Meredith, "Rethinking Virtual Currency Regulation in the Bitcoin Age," 299.

²⁴ Pia Gadkari, "Bitcoins at Risk of Theft on Flawed Android Apps," *BBC News*, last modified August 12, 2013, <http://www.bbc.com/news/technology-23664743>.

²⁵ Trautman, "Virtual Currencies Bitcoin & What Now After Liberty Reserve, Silk Road, and Mt.Gox?," 3.

worth \$3.6 million at the time of the transfer.²⁶ Recently in 2015, it was also reported that Ross William Ulbricht who is the owner and operator of Silk Road has been arrested and he was found guilty by a federal jury in Manhattan.²⁷ Mr. Ulbricht was found guilty of narcotics and other charges for helping to enable around USD 200 million of anonymous online drug sales using Bitcoins and he faced up to life in imprisonment for the criminal action.

From the above discussion, for some, the most attractive aspect of Bitcoin is that it provides a low-cost mode of transacting across borders and it is faster than a bank transaction. However, due to its anonymous characteristic, criminals and terrorists may be attracted to use it for their illicit activities. Furthermore, the decentralised nature of Bitcoins creates unique problems for the government to regulate or impose any regulatory requirements. The lack of a centralised entity has made it more difficult because there is no entity that can be held accountable to users, merchants or investors for any harm that is caused.

GOVERNMENTS' RESPONSES

There are many governments in the world that have taken their own standpoint towards Bitcoin – whether through legalising and regulating the usage of Bitcoin; banning it altogether; or only issuing official statements by the relevant authorities in that specific country with some forms of legal effect. From a survey made by Global Legal Research Directorate Staff from the Law Library of Congress, only two countries have imposed specific regulations regarding the usage of Bitcoin,

²⁶ James Ball, Charles Arthur and Adam Gabbatt, "FBI Claims Largest Bitcoin Seizure After Arrest of Alleged Silk Road Founder," *The Guardian*, last modified October 2, 2013, <http://www.theguardian.com/technology/2013/oct/02/alleged-silk-road-website-founder-arrested-Bitcoin>.

²⁷ Jemima Kelly, "Nine of World's Biggest Banks Join to Form Blockchain Partnership," *Reuters*, last modified September 15, 2015, <http://www.reuters.com/article/us-banks-blockchain-idUSKCN0RF24M20150915>.

namely, China and Brazil.²⁸ Bitcoin has proven to be a growing contentious issue among regulators and law enforcers in an attempt to control and regulate its uses. This is due to the fact that while there are many benefits from digital currency, it also has potential utilisation for criminal activities such as money laundering and facilitating transactions of illegal goods, possible impact on national currencies and the implication on its use for taxation.

The Global Legal Research Center also reported that among the countries that allow usage of Bitcoin and have established regulations on it include the United State (US), Brazil, Australia, Norway, Canada, Denmark, European Union (EU), France, Germany, Hong Kong, Netherlands, New Zealand, and Russia.²⁹

As in the United States, Gatto and Broeker³⁰ explained that the main objectives for public policy considered for virtual currencies regulations are: (1) providing consumer protection, (2) preventing money laundering, (3) maintaining the safety and soundness of the financial system, and (4) preventing tax evasion. These are in accordance with the existing legal and regulatory framework applicable to virtual currencies. In March 2013, an agency within the US Treasury Department, namely, Financial Crimes Enforcement Network (FinCEN) issued interpretive guidance clarifying the applicability of the Bank Secrecy Act (BSA) to virtual currencies and defining circumstances on how virtual money users, administrators or exchangers could be categorised as money service businesses (MSB).³¹

Under the Currency and Foreign Transactions Reporting Act of 1970 (commonly referred to as the “Bank Secrecy Act” or “BSA”) registered US financial institution are required to assist US government agencies to

²⁸ Global Legal Research Directorate Staff, “Regulation of Bitcoin in Selected Jurisdictions,” *The Law Library of Congress*, (January 2014): 1, <https://www.loc.gov/law/help/bitcoin-survey/regulation-of-bitcoin.pdf>.

²⁹ Global Legal Research Directorate Staff, “Regulation of Bitcoin in Selected Jurisdictions,” 2-24.

³⁰ James Gatto and Elsa S. Broeker, “Bitcoin and Beyond: Current and Future Regulation of Virtual Currencies,” *The Ohio State Entrepreneurial Business Law Journal* 9.2, (2014-2015): 430.

³¹ Stephen T. Middlebrook and Sarah Jane Hughes, “Virtual Uncertainty: Developments in the Law of Electronic Payments and Financial Services,” *The Business Lawyer* 69, no. 1 (November 2013): 263, 2.

detect and prevent money laundering. Hence under FinCEN's guideline, the administrator or exchanger of Bitcoin falls within provisions inside the "BSA Regulation" which requires establishment of extensive customer verification, recordkeeping, reporting, and other anti-money laundering requirements for financial institutions.³²

FinCEN Director Jennifer Shasky Calvery observed that the impact of troublesome and illicit virtual currencies (Bitcoin) providers are mitigated by the positive innovative contributions provided by virtual currencies, and the financial inclusion that they might offer for society. There are many hosts of emerging technologies in the financial sector that have proven their capacity to empower customers, encourage the development of innovative financial products, and expand access to financial services. These positive advances –which comply with the FinCEN's guidelines and regulations– are desired to be continued.³³ While critics say that Bitcoin does help illicit business dealings, opponents may say so does a regular \$100 bill. This was an argument in point which gave birth to the regulation of Bitcoin in the US.

Meanwhile, the same Global Legal Research Center in 2014 also reported that countries that allow the usage of Bitcoin but still left it unregulated are Argentina, Belgium, France, India, Indonesia, Malaysia, Japan, Singapore, South Korea and Turkey. These countries however have issued official statements not recognising Bitcoin as a legal tender and consequently warned users of associated risks in using the virtual currency. At the time of writing, the central banks in these countries appear to be disassociating themselves with the high uncertainties in Bitcoin, especially in regard to the technical and regulatory challenges as compared to normal currency.³⁴ Hence in these countries, Bitcoin exists in a legal grey area where it is not recognised, but not outlawed either.

It is worth to note that many developed countries such as the USA, South Korea, Japan, Singapore, Germany, Australia, and Canada have their financial institutions and investment banks partnering in Bitcoin

³² Gatto and Broeker, "Bitcoin and Beyond: Current and Future Regulation of Virtual Currencies," 430.

³³ Trautman, "Virtual Currencies Bitcoin & What Now After Liberty Reserve, Silk Road, and Mt.Gox?," 10.

³⁴ Derek De Vries, John Paul Crutchley, Jack Hwang and Ivan Jevremovic, "Bitcoins and Banks; Problematic Currency, Interesting Payment System," *UBS Securities LLC Global Research*, (28 March 2014): 1.

Blockchain startup companies to take leverage in using the innovative Blockchain technology to improve efficiency of the current banking system.

Singapore, for example, has started to follow suit in considering Bitcoin and related cryptocurrency development and regulation.³⁵ The prime minister Lee Hsien Loong has urged Singaporean banks to be innovative specifically in leveraging emerging technology such as the Blockchain for real-time gross settlement or better trade finance verification. Moreover, the Singapore central bank in 13 March 2014, stipulated that it plans to regulate virtual currencies to address potential money laundering or terrorism finance risks they might pose. Deputy Managing Director of Monetary Authority of Singapore (MAS), Mr. Ong Chong Tee, said in an official media release in March 2014, that “MAS is taking a targeted regulatory approach to virtual currencies to specifically address money laundering and terrorist financing risks. Consumers and businesses should take note of the broader risks that dealing in virtual currencies entails and should exercise the necessary caution.” However, in a recent interview in October 2017, Mr. Ravi Menon, the managing director of Monetary Authority of Singapore (MAS), said he currently sees “no basis for wanting to regulate cryptocurrencies,”³⁶ It appears that Singapore does not plan to regulate cryptocurrencies such as Bitcoin, but will remain alert to money laundering and other potential risks stemming from their use. Therefore, MAS will instead formalise rules for digital currency intermediaries like exchange operators to curb money laundering and other criminal activities.

At the opposite end of the spectrum are those countries that explicitly outlaw or discourage the use of Bitcoin, such as China, Iceland, Thailand and Vietnam. Banks and financial institutions in China are prohibited

³⁵ “MAS to Regulate Virtual Currency Intermediaries for Money Laundering and Terrorist Financing Risks,” *Monetary Authority of Singapore*, last modified March 13, 2014, <http://www.mas.gov.sg/news-and-publications/media-releases/2014/mas-to-regulate-virtual-currency-intermediaries-for-money-laundering-and-terrorist-financing-risks.aspx>.

³⁶ “Singapore Won't Regulate Cryptocurrencies, Central Bank Chief Says,” *Bloomberg*, last modified October 25, 2017, <https://www.bloomberg.com/news/articles/2017-10-24/singapore-won-t-regulate-cryptocurrencies-remains-alert-to-risk>.

from dealing with or accepting Bitcoin or any of its related products. In a “Notice on Precautions Against the Risks of Bitcoins” issued by the People’s Bank of China (2013), the Ministry of Industry and Information Technology, China Banking Regulatory Commission, China Securities Regulatory Commission, and China Insurance Regulatory Commission dated Dec. 3, 2013, it states that “at this stage, financial and payment institutions may not use Bitcoin pricing for products or services, buy or sell Bitcoins, or provide direct or indirect Bitcoin-related services to customers, including registering, trading, settling, clearing, or other services; accepting Bitcoins or using Bitcoins as a clearing tool; and trading Bitcoins with Chinese Yuan or foreign currencies”. De Vries *et.al.*³⁷ opined that the main reason why these countries have banned Bitcoin or other cryptocurrencies is that they are viewed as potentially damaging the national currency (as a means for the government to maintain capital control) and would potentially be misused to assist in untraceable illicit activities, service and trades.

REGULATING BITCOIN IN MALAYSIA?

Internet-based virtual currencies like Bitcoin have been cautiously welcomed by the Malaysian regulators. In its annual Financial Stability and Payment Systems Report (by Bank Negara Malaysia: 2014), the Malaysian highest banking authority acknowledged the increasing popularity of innovation in Internet-based payment methods and the emergence of virtual currencies such as Bitcoin. According to a check made by *The Sunday Star* dated 30th March 2014, Malaysia has at least twelve local Bitcoin-related groups on Facebook, including Malaybtc Bitcoin, Bitcoin Malaysia #1 Group, Bitcoin Malaysia Open Group, Bitcoin Malaysia (Trader), Cryptocurrency Malaysia (Bitcoin, Litecoin, Dogecoin, etc) and Malaysia Bitcoin Info. As of May 2017, there are about 26 Bitcoin-accepting merchants in Malaysia and they are primarily located in the Klang Valley or online small businesses.³⁸ A Singaporean

³⁷ De Vries, “Bitcoins and Banks; Problematic Currency, Interesting Payment System,” 21.

³⁸ Colbert, “List of Bitcoin Accepting Merchants in Malaysia,” *Bitcoin Malaysia*, last modified April 22, 2017,

based company Numoni Pte. Ltd. which developed and launched the Bitcoin Auto Vending Machine (AVM) in Malaysia estimated that there were some 2,000 Bitcoin users in Malaysia. Overall, the numbers of Bitcoin users in Malaysia is still low and is at its infancy stage as compared to the 18 million worldwide users of Bitcoin as of October 2017, as reported by the website <blockchain.info>.³⁹

Despite its popularity, the Central Bank (2014) cautioned that Bitcoin is “a virtual currency scheme that is not issued or controlled by any central authority, and which permits its users to maintain a high degree of anonymity”. The Report continued by saying that the use of Bitcoin has come under close scrutiny by regulators worldwide due to the inherent risks it presents, such as the potential for its use in money laundering and other criminal activities. In light of this, the Bank published a cautionary statement on its webpage on 2 January 2014 to highlight the risks of using virtual currency and to caution the public that the operations of Bitcoin are not regulated by the Bank or any other authority. The statement reads “Bitcoin is not recognised as legal tender in Malaysia. The Central Bank does not regulate the operations of Bitcoin. The public is therefore advised to be cautious of the risks associated with the usage of such digital currency.” Apart from this minimal announcement of the Central Bank, there is no other announcement on Bitcoin from other agencies in Malaysia. Even in the subsequent Bank’s annual reports (2014 to 2016), there is no specific mention on the cryptocurrencies nor virtual currencies like Bitcoins.

Based on this, the following matters can be preliminarily understood: Firstly, that Bitcoin is not legally recognised as a means of legal tender in Malaysia. This means, their use may not be enforced in the courts in cases of dispute. Secondly, Bank Negara has not issued any regulations on the operation of Bitcoins. Yet, this statement can also be understood that there is no prohibition of using it on a personal basis. Therefore, as of now, there is no single regulation on usage of virtual currency in Malaysia. Southurst from Coindesk argued that it is still speculative

<http://Bitcoinmalaysia.com/2014/07/20/list-of-Bitcoin-accepting-merchants-in-malaysia/>.

³⁹ “My Wallet Number of Users,” *Blockchain*, accessed November 1, 2017, <https://blockchain.info/charts/my-wallet-n-users>.

whether the Central Bank is only disassociating themselves with Bitcoin responsibilities or whether they will be banning it in the future.⁴⁰

In a recent development, and in an obvious effort to put some regulations on cryptocurrencies, it was reported that Bank Negara Malaysia ('BNM') will designate persons converting cryptocurrencies into fiat money as reporting institutions under the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 beginning year 2018.⁴¹ The BNM Governor Muhammad Ibrahim said the move was aimed at preventing the abuse of the system for criminal and unlawful activities, and ensuring the stability and integrity of the financial system. He argued that we need to prepare ourselves, as according to many pundits, digital currencies will become the new norm. The advent of digital currencies, as some have forecast, will mark the beginning of a new era in the financial sector. As authorities, we cannot be oblivious to these developments.

As cryptocurrency is not recognised as a legal tender in Malaysia, there is a potential significant gap on the efforts to wholly achieve the efficiency of a cashless society and e-payment. As we are living in an open information technology age, an idea or concept could be embraced by people quickly once gone viral, the application of cryptocurrency or specifically, Bitcoin, is only awaiting time before it becomes a more popular option among the Malaysians. This is true especially where almost everyone in Malaysia is connected and has access to the Internet.

From the latest comment by the BNM, it is clear that the Malaysian Government had started to look at the issue of cryptocurrency. It is therefore argued that more needs to be done to take a closer look and consider further regulatory framework on the growth and usage of Bitcoin or any other cryptocurrency innovation. This paper limits itself to this speculative comment and reserves the remaining work for further research. It is argued that there are strong reasons for the Malaysian government to look further at regulatory approaches on the

⁴⁰ Jon Southurst, "Malaysian Central Bank Has No Plans to Regulate Bitcoin," *Coindesk*, last modified January 4, 2014, <http://www.coindesk.com/malaysian-central-bank-no-plans-regulate-bitcoin/>.

⁴¹ "Bank Negara to enforce cryptocurrency regulations in 2018," *The Malaysian Insight*, last modified on November 22, 2017, <http://www.themalaysianinsight.com/s/24028/>.

cryptocurrency in near future due to some concerns. This is because we are moving towards a cashless society. The convergence of mobility, social media, IT cloud models and fast data movement catalyses the digitisation of banking channels thus paving the way towards a ‘cashless society’ in Malaysia. “Cashless society” concept is where the usage of physical payment methods such as cash and cheques diminish and give way to more cashless mediums such as debit and credit cards, online cards, online credit transfers, mobile payments, banking portals, digital wallets, cryptocurrencies and more.

Malaysia is currently in the transition stage from cash to a cashless society. This upward trend is influenced by factors such as ease of access to financial services, uptake of cashless payment solutions by merchants, technology and infrastructure readiness, and macroeconomic and cultural aspects. For banks and many businesses in the financial sector, a cashless society will substantially lower their costs by removing the need to handle cash on a daily basis. For the end users (customers), going cashless means ease of payment and ensures a safer environment against any losses due to potential crime activities such as pick-pocketing, house breaching and wallet stealing.

According to Bank Negara Malaysia’s BNM Financial Blueprint 2011-2020, the migration to e-payments (cashless) is identified as a key enabler for greater economic efficiency, productivity and growth as Malaysia transitions towards a high value-added, high-income economy. This can be accelerated by making the payment landscape in Malaysia to be cost effective, safe, fast and easy to use. BNM has been a major driver for the greater adoption of e-payments with coordinated efforts with several economic sector and the Malaysian government to achieve this agenda. Hence, based on the discussions above, it is highly recommended that the Malaysian Government utilises the FSA 2013 to also extend its regulatory framework to Bitcoin and other digital currencies. This regulation of Bitcoin and virtual currencies enables it to be legally used by the masses with consumer protection and financial liberalisation, thus opening up for more extensive ‘legal’ positive technological innovations for the Malaysian financial system.

Nevertheless, while proposing this regulatory direction, it is pertinent to remind the regulators about the risks associated with the use of Bitcoins. While anonymity may offer a good reason for using this technology, laws on computer crimes, evidence as well as banking need to be viewed together in order to address cyber criminals. This is

necessary, because using Bitcoins should not be made unlawful just because they have been used partially by criminals.

On top of that, it is necessary to consider empowering industrial self-regulatory mechanisms to help regulators keep the use of Bitcoins on check. When industries are activated, this will serve as a stick-and-carrots system to not only penalise abuses but also incentivise a good use of Bitcoins. In this respect, Malaysian regulators should assess the best way to engage financial industry players, Internet intermediaries as well as consumers to contribute in their different roles.

CONCLUSION

The discussion above elucidates how cryptocurrency and Bitcoin are becoming more popular and growing in terms of users and transaction volumes. Like any other innovation, cryptocurrency carries enormous advantages and disadvantages at the same time. From legal and regulatory perspectives, this innovation provides yet another avenue for creativity and anticipation. Governments worldwide differ in their attitude and responses. Malaysia has so far applied a “minimalist” approach while possibly adopts a wait-and-see attitude on the cryptocurrency. This article argues that the Government needs to take a closer look and consider putting a clearer regulatory response to address and accommodate relevant aspects and risks while engaging an industrial self-regulatory mechanism. This approach will make the innovative cryptocurrency a solution rather than another source of problems. The writers propose for a further research on the types of regulatory framework that can be considered for this digital currency innovation.