

DATE: December 16, 2015
TO: All Virtual Currency Companies Operating or Desiring to Operate in Tennessee
FROM: Greg Gonzales, Commissioner
SUBJECT: Regulatory Treatment of Virtual Currencies under the Tennessee Money Transmitter Act

Purpose

Virtual currencies, including cryptocurrencies like Bitcoin, have raised questions in relation to money transmission and currency exchange. This memorandum outlines the policy of the Tennessee Department of Financial Institutions with regard to virtual currencies. It expresses the Department's interpretation of the Tennessee Money Transmitter Act, and the application of its interpretation to various activities involving virtual currencies. This memorandum also seeks to establish the regulatory treatment of virtual currencies under existing statutory definitions.

What is Virtual Currency?

Virtual currency is an electronic medium of exchange that does not have all the attributes of real currencies. Virtual currencies include cryptocurrencies, such as bitcoin and litecoin, which are not legal tender and are not issued or backed by any central bank or governmental authority. Virtual currencies have legitimate purposes and can be purchased, sold, and exchanged with other types of virtual currencies or real currencies like the U.S. dollar. This can happen through various mechanisms such as exchangers, administrators, or merchants that are willing to accept virtual currencies in lieu of real currency. As of the date of this memorandum the Department is not aware of any virtual currency that has legal tender status in any jurisdiction. Nor is the Department aware of any virtual currency that has been issued by a governmental central bank. As such, virtual currencies exist outside established financial institution systems.

One important characteristic of cryptocurrency is its lack of intrinsic value. A unit of cryptocurrency does not represent a claim on a commodity, and is not convertible by law. And unlike fiat currencies, there is no governmental authority or central bank establishing its value through law or regulation. Its value is only what a buyer is willing to pay for it.

Statement of Policy

Because cryptocurrency is not money under the Tennessee Money Transmitter Act, receiving it in exchange for a promise to make it available at a later time or different location is not money transmission. Consequently, absent the involvement of sovereign currency* in a transaction, no money transmission can occur. However, when a cryptocurrency transaction does include sovereign currency, it may be money transmission depending on how the sovereign currency is handled. A licensing determination will be based on the handling of the sovereign currency.

To provide further guidance, the regulatory treatment of some common types of transactions involving cryptocurrency can be determined as follows.

- The exchange of cryptocurrency for sovereign currency between two parties is not money transmission. This is essentially a sale of goods between two parties. The seller gives units of cryptocurrency to the buyer, who pays the seller directly with sovereign currency. The seller does not receive the sovereign currency in exchange for a promise to make it available at a later time or different location.
- Exchange of one cryptocurrency for another cryptocurrency is not money transmission. Regardless of how many parties are involved, there is no receipt of money, and therefore no money transmission occurs.
- Transfer of cryptocurrency by itself is not money transmission. Because cryptocurrency is not money or monetary value, the receipt of it in exchange for a promise to make it available at a later time or different location is not money transmission. This includes intermediaries who receive cryptocurrency for transfer to a third party, and entities (depositories) that hold cryptocurrency on behalf of customers.
- Exchange of cryptocurrency for sovereign currency through a third party exchanger is generally money transmission. For example, most Bitcoin exchange sites facilitate exchanges by acting as an escrow-like intermediary. The buyer of cryptocurrency sends sovereign currency to the exchanger who holds the funds until it determines that the terms of the sale have been satisfied before remitting the funds to the seller. Irrespective of its handling of the cryptocurrency, the exchanger conducts money transmission by receiving the buyer's sovereign currency in exchange for a promise to make it available to the seller.
- Exchange of cryptocurrency for sovereign currency through an automated machine is usually but not always money transmission. For example, several companies have begun selling automated machines commonly called "Bitcoin ATMs" that facilitate contemporaneous exchanges of bitcoins for sovereign currency. Most such machines, when operating in their default mode act as an intermediary between a buyer and seller, typically connecting through one of the established exchange sites. When a customer buys or sells bitcoins through a machine configured this way, the operator of the machine receives the buyer's sovereign currency in exchange for a promise to make it available to the seller. However it is worth noting that at least some Bitcoin ATMs can be configured to conduct transactions only between the customer and the machine's operator, with no third parties involved. If the machine never involves a third party, and only facilitates a sale or purchase of Bitcoins by the machine's operator directly with the customer, there is no money transmission because at no time is money received in exchange for a promise to make it available at a later time or different location.

A cryptocurrency business that conducts money transmission must comply with all applicable licensing provisions of Tennessee Code Annotated (Tenn. Code Ann.) § 45-7-205 of the Tennessee Money Transmitter Act. Please note, a money transmitter may not include virtual currency assets in determining its net worth under Tenn. Code Ann. § 45-7-205. Nor, may a license holder include virtual currency assets in calculations for its permissible investments under Tenn. Code Ann. § 45-7-206.

* In this memorandum the term sovereign currency generally means government-issued currencies with legal tender status in the country of issuance. In most of the literature pertaining to virtual currency, the term fiat currency is used to refer to government-issued legal tender.