UNREGULATED VIRTUAL MONEY: DEFINING THE UNDEFINED*

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ABSTRACT

Money is any medium of exchange that does not have a set form, while virtual money is anything that is generally accepted as payment for goods or services, or in the repayment of debts in the virtual domain. In the Philippines, the only forms of virtual money that are regulated are e-money and virtual currency. This leads to gaps in the regulation of other forms of virtual money because they do not fall under the definition of e-money or virtual currency. Unregulated virtual money can lead to many abuses and circumvention of laws. This is a paper meant to explain the concept of unregulated virtual money and examine the effects of this lack of regulation caused by an undefined concept.

I. INTRODUCTION

In the Philippines, all currency is money, but not all money is currency. Money is simply a medium of exchange which does not necessarily possess its own intrinsic value. Rather, money gains value because of the perceived value that people rely on it to represent. Because of this perceived value, it becomes easier to trade money for goods or services. The concept of money has evolved through time from an exchange of goods, to the use of more uniform items such as shells, and finally, to the modern concept of bills and coins. Today, however, it has further evolved from physical representations to digital ones. Transactions are no longer done over the counter, but over the browser. This virtual money has become prevalent in

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our world today through different forms, and with each form having its corresponding regulations.

The modern concept of currency is based on the guarantee of various governments of the world of the value of such currency. In the Philippines, it is the Bangko Sentral ng Pilipinas (BSP) which has the power to define terms related to money.[1] Currency is defined as "all Philippine notes and coins issued or circulating in accordance with the provisions."[2] In other words, Philippine currency pertains to all notes or coins issued by the BSP which are guaranteed by the Philippine government. Following the modern concept of currency previously defined, other currencies around the world are those that are likewise guaranteed by their respective governments. It is in this sense, therefore, that the common misconception that currency and money are one and the same is addressed.

It was only over the past 30 years, during which the concept of the Internet and the virtual world was conceived and developed, that the concept of virtual money was created. Virtual money is seen as numbers on a screen. However, these are simply numbers. They do not have an equivalent physical representation in legal tender until they are withdrawn, and they may never even be converted into physical cash. These numbers represent value, not the currency themselves.

At present, there are two main types of virtual money in the Philippines: e-money and virtual currency. They are each regulated by the BSP through separate sets of rules. However, there are other forms of money which are not regulated because our laws do not even consider them worth regulating. This can result in the circumvention of various laws as they would ultimately be considered as existing outside the ambit of the law. Transactions using virtual currency can fly under the radar of the Bureau of Internal Revenue (BIR), the Securities and Exchange Commission (SEC), or the BSP, because they do not consider these items as existing within their regulatory jurisdictions.

The notion that money has to be in the form of currency, or at least denominated as such, may have detrimental effects in regulation. For example, transactions involving unregulated forms of virtual money can circumvent anti-money laundering laws as they are not required to submit

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[1] Rep. Act No. 7653 (1993), § 62.

[2] § 49.

reports to the Anti-Money Laundering Council (AMLC). These transactions could also circumvent tax laws as they are not considered monetary gains. There can even be illegal gambling problems as virtual items may become the stakes instead of currency. However, all these transactions have value, no matter what form of virtual money they take. Without a clear concept on how virtual money should be defined, it becomes more difficult to regulate. This paper aims to be a guide in filling the gaps as to the complete concept of virtual money.

II. THE DIFFERENT TYPES OF MONEY

A. Fiat Currency

Frederic Mishkin defines money as "anything that is generally accepted as payment for goods or services or in the repayment of debts."[3] It has three primary functions in that it serves as: (1) a unit of account; (2) a store of value; and (3) a medium of exchange.[4] As a unit of account, it represents the value of goods or services in any market. For example, a pizza might be worth PHP 400 while a steak would cost PHP 800. It illustrates, therefore, what is more valuable in the market. As a store of value, money can be saved for emergencies. One does not have to consume it right away, and it can be spent on something else at another time. It allows a person to be more liquid, that is, having the ability to easily pay obligations. In essence, the money will be more acceptable in a trade.

As a medium of exchange, it facilitates transactions by being something that multiple parties would accept as having value. This is an application of the concept of dual coincidence of wants. One will only be willing to trade something for another thing which they perceive to be of equal value. Suppose A has a spear, B has a shield, and C has gold. A might not necessarily want the shield of B even if the latter wants the spear, or vice versa. These types of situations make trading more difficult, as the trader will have to find a person who offers exactly what he wants for something that he happens to have. However, in the example, both A and B would be willing to trade with C as they both perceive it to be valuable. This is how

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[3] Frederic Mishkin, *The Economics of Money, Banking & Financial Markets*, ACADEMIA, *available at* https://www.academia.edu/28680179/Frederic_S._Mishkin_The_Economics_of_Money_Banking_and_Financial_Markets (last visited Dec. 28, 2018).

[4] *Id.*

money acts as a medium of exchange. This is arguably the most distinguishing factor of money.

It is important to note that there is no set form as to what would be considered the perfect medium of exchange. There is no perfect form because money is a very flexible idea. The value of money is created based on the perception of people. Money is money precisely because people are willing to accept it as an intermediary in obtaining other goods or services. It is a universal conduit among people. In fact:

> Money in its long history has been represented by many different things from precious metals, shells and beads to heavy, largely unmovable stones. It has been made of substances that have value in themselves such as precious metals or represented by something that has no value in itself such as base metal coin or paper. Its operation has been represented in many ways from cuneiform tablets and tally sticks, to paper or electronic records.[5]

Therefore, money is not limited to the bills and coins we are all familiar with. A virtual dollar would function just as well as a physical one. Similarly, a virtual coin will do just as well as a physical peso, supposing it holds the same value. What is important is the value of the thing, not how it is represented.

The problem is drawing the line as to what is considered money. If one were to follow the definition to its most absurd extremities, then that would be regressing to barter. A good would be anything with value, and if it were exchanged for something else, then it would be considered as money. The definition by Mishkin states that money must generally be accepted as payment for goods or services. The concept of being "generally accepted" is debatable as there is no hard and fast rule as to when something will be generally accepted. The more important element would then be the fact that it is accepted as payment for goods or services. Something can be considered as money if one is able to consistently obtain goods or services with such an exchange. For example, the first few Bitcoins may not have been generally accepted at the time they were circulated, but they could be used as a means to exchange goods and services and were therefore considered as money.

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[5] Mary Mellor, *The Future of Money: From Financial Crisis to Public Resource* (2010), *available at* https://www.jstor.org/stable/j.ctt183h0cz.5 (last visited Jan. 15, 2019).

One may never reach a clear definition of money because the concept is fluid. However, one way to reach a somewhat stable definition of money is to refer to a law. In the Philippines, currency is defined in the New Central Bank Act ("NCBA"), which states that the BSP shall have the sole power and authority to issue currency within the Philippines, guaranteed by the Philippine government.[6]

The most basic form of money in the Philippines is the Philippine peso (PHP), the currency issued by the BSP. Similarly, currency in other jurisdictions is backed by their respective governments. This guarantee is important because currency is based on a system of trust. Money is only worth something because people believe it to be so. For example, a person would think that PHP 1,000 is valuable because said person can use it to obtain goods or services worth the same amount. The problem is setting the worth of money. This was simpler in the past when human society followed a barter system, where a person would simply trade for something that they believed to be of equal value. This exchange started with the use of items with intrinsic value such as gold. However, the problem with using metals is that they would get considerably heavier as the amount increases. This resulted in the use of paper notes, where people would deposit their metal coins for a note which would be equivalent to the deposit.

For money to be useful, it must be worth something. A person cannot simply keep printing money and dictate its value. It is the BSP that is tasked to determine the amount of peso to be printed annually. According to the BSP:

> The annual volume/value of currency to be issued is projected based on currency demand that is estimated from a set of economic indicators which generally measure the country's economic activity [...] The total amount of banknotes and coins that the BSP may issue should not exceed the total assets of the BSP.[7]

The peso is backed by reserves of the BSP in gold and foreign assets in the form of currency or other debt instruments.[8] This process is strictly

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[6] Rep. Act No. 7653 (1993), §§ 49-50.

[7] BSP, *Frequently Asked Questions - Banknotes and Coins*, BANGKO SENTRAL NG PILIPINAS WEBSITE, *available at* http://www.bsp.gov.ph/downloads/Publications/FAQs/banknotes.pdf (last visited Jan. 4, 2019)

[8] Rep. Act No. 7653 (1993), § 66.

controlled, and according to the BSP, there are only "about 3.4 billion pieces of notes valued at [PHP] 1,198 billion, and 29.3 billion pieces of coins valued at [PHP] 34 billion in circulation as of 30 June 2018."[9] Modern currency is referred to as fiat currency because of the trust reposed in them. Fiat currency is "government-issued currency that is designated as legal tender in its country of issuance through government decree, regulation, or law."[10]

Philippine currency is important because it constitutes legal tender in the Philippines, which means that in an obligation to pay money without denominating the currency, the peso must be accepted when it is offered as payment. The general rule is that there is no limit to the legal tender power of currency as they are guaranteed by the Government of the Republic of the Philippines. The exception is "in the case of coins in denomination of 1-, 5- and 10-Piso, they shall be legal tender in amounts not exceeding [PHP] 1,000.00, while coins in denomination of 1-, 5-, 10- and 25-Sentimo shall be legal tender in amounts not exceeding [PHP] 100.00."[11]

Having legal tender status—that is, being backed by a government—is the most important distinction between currency and other forms of money. Even in the United Staets (U.S.), currency is defined as "the coin and paper money of the United States or of any other country that is designated as legal tender and that circulates and is customarily used and accepted as a medium of exchange in the country of issuance."[12] People are required to accept the currency as payment. If a person owes another person PHP 100, the latter must accept the PHP 100 bill offered in payment. They cannot demand that they be paid with two PHP 50 bills. However, said person is not required to accept PHP 500 worth of gift certificates, or even PHP 1000 worth of virtual money. This is because the latter two are examples of money that are not backed by a government, but by private institutions. The value of the gift certificate or the virtual money may fluctuate upon the whims of another. Money is a medium of exchange, and currency is a type of money that is backed by a government. Hence, it can be said that all currency is money, but not all money is currency.

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[9] BSP, *supra* note 7.

[10] BSP, *Manual of Regulations for Non-Bank Financial Institutions,* BANGKO SENTRAL NG PILIPINAS WEBSITE, *available at* http://www.bsp.gov.ph/downloads/regulations/mornbfi.pdf (last visited Jan. 4, 2019).

[11] BSP Circ. No. 537 (2006). Maximum Amount of Coins to be Considered as Legal Tender.

[12] 31 C.F.R § 1010.100. U.S. Code of Federal Regulations.

B. Virtual Money

The earliest attempt at defining "virtual currency" was from the European Central Bank, which defined it as "a type of unregulated, digital money, which is issued and usually controlled by its developers, and used and accepted among the members of a specific virtual community."[13] In the U.S., virtual currency is defined as a "medium of exchange that operates like a currency in some environments, but does not have all the attributes of real currency. In particular, virtual currency does not have legal tender status in any jurisdiction." [14] The value of virtual currency is decided by the community that recognizes it. In turn, there is no hard and fast rule as to how big this community could be, although its size will affect the value of such virtual currency. In the current iteration in the history of money, these definitions are not sufficient to encompass the concept of money in a virtual world.

In this paper, the author proposes that the type of money used in the virtual world be called virtual money ("VM"). Virtual money is defined as anything that is generally accepted as payment for goods or services, or in the repayment of debts in the virtual domain. Currently, there is no distinction between the terms "virtual money" and "virtual currency." The current definitions are misleading as most authorities use these terms interchangeably. As discussed, there is a clear difference between currency and money, primarily in the former having legal tender status. There can be confusion when some types of virtual money are considered as virtual "currency," when in fact they are not backed by any government. It is better to use the term "virtual money when referring to digital units used as money. In a sense, the concept is broader because it can be anything as long as it is a medium of exchange. Even the definition of U.S. and European agencies recognize that what they define as virtual currency is not backed by any government. To be clearer, throughout this paper, reference will be made to virtual money, and it is to be understood as the broadest sense of money

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[13] European Central Bank, *Virtual Currency Schemes (2012)*, EUROPEAN CENTRAL BANK WEBSITE, *available at* https://www.ecb.europa.eu/pub/pdf/other/virtualcurrencyschemes201210en.pdf (last visited Jan. 15, 2019).

[14] U.S. Department of the Treasury, *Application of FinCEN's Regulations to Persons Administering, Exchanging, or Using Virtual Currencies*, U.S. FINANCIAL CRIMES ENFORCEMENT NETWORK WEBSITE, *available at* https://www.fincen.gov/sites/default/files/shared/FIN-2013-G001.pdf (last visited Jan. 15, 2019).

used in the virtual world. This is also done to avoid confusion with the legal definition of virtual currency.

Virtual money may be considered the umbrella term for all types of money, but not all virtual money is the same. In the Philippines, there are two main types of virtual money: e-money and virtual currency ("VC").

C. E-Money

E-money is not defined in a statute, but it is defined in BSP Circular No. 649. As defined by the circular:

> E-money shall mean monetary value as represented by a claim on its issuer, that is:
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> a. electronically stored in an instrument or device;
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> b. issued against receipt of funds of an amount not lesser in value than the monetary value issued;
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> c. accepted as a means of payment by persons or entities other than the issuer;
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> d. withdrawable in cash or cash equivalent; and
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> e. issued in accordance with this Section.[15]

In simpler words, e-money is a digital unit with monetary value, guaranteed by an e-money issuer ("EMI"), which can be used as payment for goods or services. It is a situation where a person pays an EMI with fiat currency to get a corresponding value in the virtual world. This value can then be used as payment for establishments that are partnered with the EMI. It can only be used with certain establishments because e-money is essentially a claim against the issuer. This means that a person with e-money can demand an EMI to give them the fiat currency equivalent of their e-money. The BSP refers to e-money as a virtual representation of fiat currency and considers it to be legal tender.[16] However, strictly speaking, e-money is not legal tender as a person cannot be compelled to accept

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[15] BSP Circ. No. 649 (2009), § 2. Definition.

[16] BSP, *Frequently Asked Questions - Virtual Currency*, BANGKO SENTRAL NG PILIPINAS WEBSITE, *available at* http://www.bsp.gov.ph/downloads/Publications/FAQs/VC.pdf (last visited Jan 4, 2019).

payment in e-money. Yet while it is not, strictly speaking, legal tender, e-money is actually the best representation of virtual currency, as it is *literally* the virtual representation of currency.

The first element of e-money is that it is electronically stored in an instrument or device. The electronic instruments referred to are "cash cards, e-wallets accessible via mobile phones or other access device, stored value cards, and other similar products."[17] This list is not exclusive, and it may include those cards or gadgets which store value magnetically, aside from those listed. Theoretically, it can also include platforms like Google Play and Apple Store which have e-wallets, although the same not being their only purpose.

The second element is that e-money is issued against the receipt of funds not lesser than the value issued.[18] This means that it cannot be sold at a discount, but it can be sold for a premium. It is basically a peso-for-peso exchange. One peso paid with currency is equivalent to one peso in e-money. This may be the reason why the BSP called e-money legal tender, because for all intents and purposes, it is just pesos in a virtual form. However, this is a mistaken belief. There is nothing stopping an EMI from issuing e-money at a premium as it is expressly allowed in the regulation. In this case, it is no longer just peso in a virtual form, but a different type of money with a different value altogether. It becomes similar to buying foreign currency, except what is bought is not the money from a country, but one from an EMI.

The third element is that e-money is accepted as a means of payment by those other than the issuer.[19] This means that the e-money can be used in multiple platforms, unlike Google Play credits, which can only be used to purchase Google Play products. However, being accepted as a means of payment is usually done by contract. As e-money is not legal tender, only the EMI's partners would accept the e-money as payment. The regulation does not list the number of partners required, which means that as long as another entity accepts the e-money, this element will be fulfilled.

The fourth element is that e-money should be withdrawable in cash or cash equivalent.[20] This is the reason why EMIs in the Philippines are

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[17] BSP Circ. No. 649 (2009), § 2 (A).
[18] § 2 (B).
[19] § 2 (C).
[20] BSP Circ. No. 649 (2009), § 2 (D).

treated as a Remittance and Transfer Company ("RTC").[21] The very nature of e-money is that it is the remittance of money. A person can buy e-money with currency at a certain location and withdraw said e-money as currency in another location—much like how remittance works. The only difference is that there is an intermediary step wherein the currency is converted first into e-money, before being re-converted into currency when withdrawn. This results in EMIs fulfilling the same duties as an RTC.

The final element simply requires that e-money must only be issued by a proper EMI which follows the regulations set upon it. An EMI can be classified as banks, non-bank financial institutions, and non-bank institutions registered with the BSP as a money transfer agent.[22] All types of EMIs will have to get a license from the BSP.

An example of an EMI is G-Xchange, Inc. (a wholly owned subsidiary of Globe Telecom, Inc.), the issuer of GCash. It is a peso-for-peso exchange platform where a person will pay PHP 1.00 to get 1 unit of GCash which also happens to be denominated in peso. One will have to buy GCash from Globe partners, and a person can only use GCash with the partners of Globe. Any person can then withdraw GCash as peso currency.

D. Virtual Currency

The second type of virtual money in the Philippines is virtual currency, and it is regulated under BSP Circular No. 944 issued in 2017. Section 1 of the Circular provides:

> VC refers to any type of digital unit that is used as a medium of exchange or a form of digitally stored value created by agreement within the community of VC users. VCs are not issued nor guaranteed by any jurisdiction and do not have legal tender status. VCs shall be broadly construed to include digital units of exchange that (1) have a centralized repository or administrator; (2) are decentralized and have no centralized repository or administrator; or (3) may be created or obtained by computing or manufacturing effort. It shall not be construed to include e-money as defined under Sec. X780 of the Manual of Regulations for Banks, digital

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[21] BSP Circ. No. 942 (2017), § 1, *amending* BSP, *Manual of Regulations for Non-Bank Financial Institutions*, BANGKO SENTRAL NG PILIPINAS WEBSITE, *available at* http://www.bsp.gov.ph/downloads/regulations/mornbfi.pdf.

[22] BSP Circ. No. 649 (2009), § 2. Definition.

> units used solely within online gaming platforms and are not convertible to fiat currency or real-world goods or services, digital units with stored value redeemable exclusively in goods or services and limited to transactions involving a defined merchant such as rewards programs.[23]

In simpler words, VC is a type of virtual money which is used as a medium of exchange, created by agreement of a community. It might seem that the usage of the term VM as proposed in the paper may be superfluous, but that is not the case. Unlike the broadest sense of VM, which involves all mediums of exchange in the virtual world, there is a limitation in the definition of VC. A VC must be created by an agreement of a community which uses VC, whereas VM can be created and offered by an individual. The reason why VC has value is because the community of VC users agree that it has value. It is not legal tender, and it is not guaranteed by any government. On the other hand, while VM is also not considered legal tender, the value does not have to depend on what is agreed upon by any community. The exchange value of other types of VM can be set solely by its creator.

An example of VC is a cryptocurrency like Bitcoin. "Cryptocurrency is a type of VC that uses cryptography—a method of storing and transmitting data in unreadable form so that only the intended receivers can read and process it. This allows cryptocurrency transactions to be carried out in a decentralized manner by a group of users."[24] People who buy and sell Bitcoin will download a program for a Bitcoin wallet which can be used to store Bitcoin bought or earned. Once in this wallet, users exchange the Bitcoin for currency or use it to buy goods or services. However, as Bitcoin is not legal tender, a person cannot be compelled to receive it as payment. Thus, whether or not to accept the Bitcoin as payment is wholly dependent on the contracting party. In order to exchange Bitcoin into currency, a person will have to go to a registered "virtual exchange" ("VE"). A VE is an entity registered in the Philippines to exchange virtual currency, such as Bitcoin, into fiat currency.

The elements of VC are listed in the negative: (1) it must not be construed as e-money, (2) it must not be used solely within online gaming

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[23] BSP Circ. No. 444 (2017), § 1, *amending* BSP, *Manual of Regulations for Non-Bank Financial Institutions*, BANGKO SENTRAL NG PILIPINAS WEBSITE, available at http://www.bsp.gov.ph/downloads/regulations/mornbfi.pdf.

[24] BSP, *supra* note 16.

platforms and are not convertible to fiat currency or real-world goods or services, and (3) it must not be digital units with stored value redeemable exclusively in goods or services and limited to transactions involving a defined merchant such as rewards programs.[25] VC is more accurately defined as a digital unit used as a medium of exchange, created by agreement within the community of VC users, and does not fall under any of the three exceptions. The three types of virtual money listed above are still digital units which are used as a medium of exchange, which exist in the virtual world. Without the distinction, they will simply be undefined.

The legal definition of VC has many hidden problems. It might seem that it is all-encompassing as it covers all digital mediums of exchange, but it is in fact limited to those agreed upon by a community. Even the negative listing, which seems like a short list, is too restrictive of a definition. E-money, not being considered as VC, is justified as it is basically a virtual peso as previously discussed. However, the next two exceptions provide a lot of loopholes. The second exception implies that if the digital unit is not solely used for gaming platforms, or if it is convertible to fiat currency, then it will fall under the regulations for VC. The third exception refers to those platforms where a person spends physical currency for digital units to spend in the respective platforms. An example of this would be Google Play. It has an e-wallet which a person can load and then spend on Google Play products. However, excluding these platforms is problematic as they would never be monitored. They can simply make their game money convertible or spendable with other merchants.

These two types of virtual money are not inclusive enough to cover all types of digital units which are used as a medium exchange—hence, the use of the term virtual money. As previously discussed, money can be anything, and in any form. The only important thing is that it is perceived to have value. Therefore, even ones and zeroes on a screen can be considered money. These ones and zeroes may take various forms such as virtual diamonds, virtual gold, or even virtual products. However, there is a limit to this definition as money cannot just be anything used for exchange in the virtual world. It must have actual monetary value in the real world. A person can trade virtual diamonds for virtual weapons in a virtual world, but this does not mean it should be considered virtual money. It becomes virtual money when physical currency is infused into the system. For example, when a person spends PHP 100 to buy 100 virtual diamonds, it can then be

[25] BSP, *supra* note 10.

used to buy 100 virtual diamonds worth of virtual weapons. There is now a monetary value to the weapons, which is PHP 100. One must be more creative and accept the realities of the virtual world. It does not matter if the virtual goods or services can be brought to the physical realm, as said goods and services, though virtual, do have monetary value.

III. HOW MONEY IS REGULATED

A. Fiat Currency Regulations

Fiat currency is regulated by the BSP, as provided for in the New Central Bank Act.[26] As discussed, the BSP issues peso currency and guarantees them. Philippine currency is backed by gold and other assets that may be in foreign currency or debt instruments. The value of the peso is subjective and is dependent on the exchange rate relative to other currencies. This is because of the global economy, which means goods and services are purchased across the globe. This results in payment using different currencies. The value of a currency will affect its purchasing power and what it can buy in a different country. The theory of purchasing power parity states that "exchange rates between any two currencies will adjust to reflect changes in the price levels of the two countries."[27] For example, either PHP 100 or USD 2 can be used to buy a kilo of copper. If said kilo of copper will cost USD 3, the Philippine equivalent will likewise adjust to PHP 150. Similarly, the peso will adjust because of the effect of the demand. The copper would be relatively cheaper if bought in peso. Moreover:

> Other factors that affect exchange rates in the long run are tariffs and quotas, import demand, export demand and productivity. In the short run, exchange rates are determined by changes in the relative expected return on domestic assets, which cause the demand curve to shift. Any factor that changes the relative expected return on domestic assets will lead to changes in the exchange rate.[28]

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[26] Rep. Act No. 7653 (1993), § 3.

[27] Dalhaawi, *Foreign Exchange Markets and Exchange Rates*, ACADEMIA, available at https://www.academia.edu/34884219/FOREIGN_EXCHANGE_MARKETS_AND_EXCHANGE_RATES (last visited Apr. 17, 2019).

[28] Mishkin, *supra* note 3.

Simply put, it is the interplay of supply and demand that affects the value of currency.

One is generally free to use his peso currency any way he wants, as long as it is not used illegally. The most important concern related to peso currency is money laundering, which is usually the center of most monetary regulations. Money laundering is a crime "whereby the proceeds of an unlawful activity are transacted, thereby making them appear to have originated from legitimate sources."[29] The main security feature to prevent money laundering is to require reports, as well as to implement the "know your client" policy, from covered institutions.[30] Covered institutions are institutions that deal with money, like banks, insurance companies, financial intermediaries, and others listed in the law. A "know your client" policy entails accurately identifying the identity of the clients from their name, age, citizenship, and even residence. This is all done to ensure that the clients are actually who they say they are, and that the accounts do not belong to terrorists or money launderers. This usually entails having the client physically go to their office with proof of their identity.

All covered institutions are required to submit two types of reports: covered transaction reports and suspicious transaction reports. A covered transaction is one "in cash or other equivalent monetary instrument involving a total amount in excess of Five hundred thousand pesos (PHP 500,000.00) within one (1) banking day."[31] On the other hand, suspicious transactions are those whose amounts do not matter as long as any of the following circumstances exists:

1. [T]here is no underlying legal or trade obligation, purpose or economic justification;

2. the client is not properly identified;

3. the amount involved is not commensurate with the business or financial capacity of the client;

4. taking into account all known circumstances, it may be perceived that the client's transaction is structured in order to

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[29] Rep. Act No. 9160 (2001), § 4.
[30] Rep. Act No. 9160 Rules & Regs, r. 17(C)(2).
[31] Rep. Act No. 9160 (2001), § 3(B).

> avoid being the subject of reporting requirements under the Act;
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> 5. any circumstances [sic] relating to the transaction which is observed to deviate from the profile of the client and/or the client's past transactions with the covered institution;
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> 6. the transactions is [sic] in a way related to an unlawful activity or offense under this Act that is about to be, is being or has been committed; or
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> 7. any transactions [sic] that is similar or analogous to any of the foregoing.[32]

Suspicious transactions are broader and can be anything suspicious. This is also why covered institutions need to implement "know your client" policies, because having unidentified clients is suspicious in itself. Covered institutions are required to report such transactions within 10 days to the BSP, with the same not being considered a violation of the bank secrecy law.[33] These safeguards help the BSP detect money-laundering.

Another restriction on the use of peso is the exportation and purchase of foreign currency. When it comes to peso:

> [a] person may import or export, or bring with him into or take out of the country, or electronically transfer, legal tender Philippine notes and coins, checks, money order and other bills of exchange drawn in pesos against banks operating in the Philippines in an amount not exceeding PHP50,000 without prior authorization by the BSP.[34]

Residents of the Philippines can buy foreign exchange to "cover payments to non-resident beneficiaries for non-trade current account purposes (e.g., education, medical and travel expenses, salaries of foreign expatriates), other than those relating to foreign/foreign currency loans and investments, without need for prior BSP approval."[35] However, when the purpose of buying foreign currency is to trade, the person buying will have

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[32] § 3(B)(1).

[33] § 9(C).

[34] BSP, *Manual of Regulations on Foreign Exchange Transactions II,* BANGKO SENTRAL NG PILIPINAS WEBSITE, *available at* http://www.bsp.gov.ph/downloads/Regulations/MORFXT/MORFXT.pdf (last modified Dec. 6, 2019).

[35] *Id.*

to file an application with the BSP. The threshold is "USD 500,000 (for individuals) and USD 1,000,000 (for corporates/other entities) or its equivalent in other foreign currency per client per day."[36] If the amount to be bought exceeds the threshold, the buyer of the foreign currency will have to provide supporting documents for the purchase.

These are forms of exchange controls which the BSP imposes in order to be able to stabilize the value of the peso. As discussed, the value of fiat currency is dependent on the exchange rate, which is affected by the law of supply and demand. These regulations effectively limit the inflow and outflow of currency in the Philippines. In the past, regulation was even stricter. In 1949, Central Bank Circular No. 20 was promulgated, which provided for restrictions on gold and foreign exchange transactions and which required that all receipts of foreign exchange be sold daily to the Central Bank (now BSP). The end goal of these controls was to stabilize the peso.[37]

B. E-money Regulations

E-money is regulated by the BSP, as provided for in BSP Circular No. 649. All EMIs require BSP approval, and only then will they be given a license to be an issuer of e-money.[38] As of March 26, 2019, there are only 44 registered EMIs in the Philippines. The EMI will issue e-money, and "shall be subject to aggregate monthly load limit of [PHP] 100,000 unless a higher amount has been approved by the BSP. In case an EMI issues several e-money instruments to a person (e-money holder), the total amount loaded in all the e-money instruments."[39]

The value of e-money is set by the EMI. The only limitation is that the EMI cannot sell e-money at a discount; but, there is nothing stopping them from selling it at a premium. Given that e-money is practically a virtual peso, it may "only be redeemed at face value. It shall not earn interest nor rewards and other similar incentives convertible to cash, nor be purchased at a discount. E-money is not considered a deposit, hence, it is not insured with the PDIC."[40] Like with fiat currency, e-money also has reportorial requirements. "EMIs shall provide the Supervisory Data Center of the

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[36] *Id.*
[37] Rep. Act No. 7653 (1993), § 3.
[38] BSP Circ. No. 649 (2009), § 3.
[39] § 4(a).
[40] § 4(C).

Supervision and Examination Sector, BSP, quarterly statements containing, among others, information on investments, volume of transactions, total outstanding e-money balances, and liquid assets in such forms as may be prescribed later on."[41]

EMIs are also covered by the Anti-Money Laundering Act ("AMLA") as they fall under the definition of RTCs.

> [RTC] refers to any entity that provides Money or Value Transfer Service (MVTS). MVTS refers to financial services that involve the acceptance of cash, cheques, other monetary instruments or other stores of value and the payment of a corresponding sum in cash or other form to a beneficiary by means of a communication, message, transfer, or through a clearing network.[42]

As EMIs are covered by AMLA, they must also comply with the covered and suspicious transaction reports, as well as the required "know your client" policies. EMIs are also required to have a capitalization of at least 100 million pesos. This is to ensure that they will be liquid enough to pay off the claims of their clients, as e-money is simply a claim against an EMI. EMIs are also required to create sound and prudent management, administrative and accounting procedures, and adequate internal control mechanisms.

C. Virtual Currency Regulations

Virtual currency is likewise regulated by the BSP through the Manual of Regulations for Non-Bank Financial Institutions. The entities that issue the virtual currency are communities or entities which create the digital unit. For example, Bitcoin was created by an unknown group of people who went by the name Satoshi. What is regulated by the government is a VE which "refers to any entity that offers services or engages in activities that provide facility for the conversion or exchange of fiat currency to VC or vice versa."[43] It is not the issuance of VC itself, but its conversion into fiat currency, that is regulated. This means that there is nothing regulating the possible value of a VC. Its value, unlike fiat currency or e-money, is

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[41] § 4(J).

[42] BSP Circ. No. 942 (2017), § 1, *amending* BSP, *Manual of Regulations for Non-Bank Financial Institutions*, BANGKO SENTRAL NG PILIPINAS WEBSITE, *available at* http://www.bsp.gov.ph/downloads/regulations/mornbfi.pdf.

[43] BSP, *supra* note 10.

completely controlled by market forces, more particularly the VC community involved. Since a VC is similar to RTCs, it must also therefore obtain a certificate of registration to operate as such.[44] As of March 31, 2019, there are only ten entities that are allowed to operate as a VE in the Philippines.

VE entities are required to have and maintain adequate internal control systems. In fact, "depending on the complexity of VC operations and business models adopted, a VE shall put in place adequate risk management and security control mechanisms to address, manage and mitigate technology risks associated with VCs."[45] Said entities are also required to submit reports to the BSP. These consist of annual audited financial statements, quarterly reports on total volume and value of VCs transacted, and a quarterly report listing of operating offices and websites.[46] Moreover, as VE entities are considered to be like RTCs, they also fall under the AMLA regulations. Thus, they are also required to comply with covered ad suspicious transaction reports as well as employing "know your client" policies.

D. Virtual Money Regulations, or the Lack Thereof

In the Philippines, only e-money and VC are regulated. E-money is regulated just like how fiat currency would be, and it is replete with safeguards for the protection of the consumer. On the other hand, what is regulated in VC is the exchange into fiat currency and not necessarily the issuance of VC *per se*. Even then, there are safeguards put into place for the protection of the consumer when it comes to the conversion to fiat currency. The BSP regulations state that VCs are not issued by the government nor are they guaranteed by such.[47]

There are other types of VM that are covered by neither the definition of e-money nor of VC, and are therefore not regulated. They may be referred to as Unregulated Virtual Money (UVM). This includes VM which are used solely within online gaming platforms and are not convertible to fiat currency or real-world goods, or to services and digital units with store value that is redeemable exclusively in transactions involving goods or

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[44] *Id.*
[45] *Id.*
[46] *Id.*
[47] *Id.*

services from defined merchants such as in the case of rewards programs. Simply put, these are the VM expressly exempt from the definition of VC and e-money. They may have been excluded as they were deemed by the BSP to not be considered as such.

However, the very definition of money is that it is a medium of exchange. The UVM are still mediums of exchange, and perhaps the main reason for their exclusion was because they were not convertible to fiat currency using their platforms. Examples of popular types of UVMs are Google Play credits and Blizzard balances. In both examples, people buy points using fiat currency, which give them an equivalent amount of points to be put inside a virtual wallet. These points can now be used exclusively to purchase products from their platforms such as movies, games, books, or music. Another example would be the game Mobile Legends, which allows players to spend fiat currency in order to buy in-game diamonds, which can then be used to buy virtual items or can even be gifted to other players. The whole point of UVM is that they are various unregulated forms of VM not falling under the definition of either virtual currency or e-money.

The distinction as to what comprises UVM is reliant on the definition of VC. If a digital unit is considered as e-money, then it does not fall under UVM as it is regulated. If it is not considered as e-money, then it will have to be analyzed under the definition of VC, as VCs expressly exclude e-money. Thus, the most important definition would be that of VC. Whatever is not considered VC will comprise UVM. For a clearer perspective, it is necessary to reexamine what makes up VC in terms of UVM. What is regulated in the Philippines is only the conversion of VC into fiat currency, so that those digital units which cannot be converted into fiat currency is considered UVM. Under the definition of VC, only digital units used solely within online gaming platforms have the limitation, stating that said digital units are not convertible to fiat currency or real-world goods or services.

The next type of digital units is those with store value redeemable exclusively in goods or services and limited to transactions involving a defined merchant, such as rewards programs. This type of digital unit does not have the limitation on games, which means that even if it is convertible into fiat currency, it is not regulated. Thus, even if some VM can be converted into fiat currency, it is not considered VC if the transaction is limited to a certain merchant. The exception as to games means that even if the digital unit is solely used for gaming platforms, it will be considered VC if it is convertible to fiat currency or real-world goods or services. It can be

argued that digital units in a gaming platform can be excluded from the definition if it is redeemable exclusively in goods or services involving a defined merchant.

This is very easy to circumvent since the owner of the gaming platform can say that people are just redeeming rewards. For example, pesos can be converted into virtual diamonds in a game. If these diamonds were convertible back to peso, it would be considered VC. However, if these diamonds were to be converted into a reward such as a "voucher for wine" which costed PHP 500, it is not covered. This voucher can then be exchanged for fiat currency.

Another key definition of VC is that it is created by agreement within the community of VC users. If the VM is not created by agreement within a community of VC users, then the discussion above would become totally irrelevant as such money would no longer be considered VC. This is the biggest hole in the definition of VC. There is no need to look at the exceptions such as gaming platforms or those redeemable with defined merchants, because these two do not create a digital unit made from a community of VC users. Thus, the two exceptions were already exempted by the definition itself, and naming these exceptions was ultimately superfluous.

The value of VC is market driven and based on community standards, but if the VM is not created by a community, then the value would not be market-driven. The value may be dependent on an individual entity. To better illustrate this, it would be akin to Google as a corporate entity issuing their own VM. This VM is called Google Play credits. It would not matter if these credits were convertible to fiat currency or even if they were redeemable only with identified merchants, because Google is a single entity and not a community. Therefore, Google is not included in the regulation of VCs.

UVM should still be regulated because there is still monetary value attached to the virtual goods, services, or money that may be measured by fiat currency. A person needs to use fiat currency in order to acquire said virtual money. Peso currency is used to buy digital units in a gaming platform, which means that the virtual goods and services within the platform do have monetary value. It is the same with paying for digital units limited to a certain selection. This can be viewed similarly to buying gift certificates. They are bought with peso currency, and they represent a certain value which can only be used in the establishment which issued them. The

difference with this analogy is that VM is bought, sold, and used in a virtual world. The issuer cannot be traced as easily nor can they be easily held accountable for their actions given the anonymity of the Internet. The scale of transactions would also be similarly limited.

It is highly unlikely that a person can commit money laundering using gift certificates as they are easily tracked, unlike anonymous transactions over the Internet. Gift certificates are also not as easily convertible as VM since there is no incentive for any person to buy the gift certificates. It is better to view the acquisition of VM as buying foreign currency. Instead of buying money issued and used by another country, a person will be buying virtual money to be used in the virtual world of the issuer. One can use the VM as legal tender within the world of the issuer or their partners, without the limitations of gift certificates.

Despite these forms of VM having monetary value, they remain unregulated. With UVM, there are no "know your client" policies, required reports, or required licenses. There is absolutely no customer protection involved when it comes to UVM. Any issuance of UVM has no limitation, nor is it regulated by any entity. UVM can be issued by anybody and for whatever value they please. It can cost anything and is at the mercy of the whims of its issuer, though there is no guarantee that it could be purchased. It can be argued that UVM, just like VC, would have its value determined by market forces. However, unlike VC where the value is controlled by a community, UVM may be controlled by an individual. There is a need to regulate UVM in order to be able to address and monitor all forms of VM. It is necessary to accept that the virtual world is not simply a means of communicating or facilitating transactions, but rather an actual world in itself. As a foreign territory, albeit virtual, protection must still be given to the public.

IV. PROBLEMS TO BE ADDRESSED

A. General Problems

If UVM continues to be unregulated, it can serve as a gateway for circumventing our current laws. Admittedly, the lack of regulation may have certain positive effects such as ease of doing business, especially since UVM is considered as mere goods to be sold. However, this is true only if it remains to be classified as goods rather than money. UVM is unregulated as it does not fall under the definition of VC. Due to the lack of monitoring,

UVM can easily circumvent the regulations. Just because platforms do not allow for its conversion to fiat currency, it does not mean that they cannot do so in the future.

Unlike in the real world where we are limited to physical realities, items in the virtual world are simply data. Both virtual and physical goods have monetary value, but only physical goods have a cost to produce. Arguably, the development cost could be considered the cost for a virtual good, but then after such a system is set up, it becomes unlimited. The game creator is the "god" of their world and can control the supply and demand of not only the virtual goods found in the game, but the virtual money involved as well. This god can decide the exchange rate of the VM to fiat currency and is not limited to the purchasing power of such goods. This god can also create demand by making goods which are significantly stronger or more useful, or by giving services which would be otherwise unavailable to those who do not pay for them. The items made in these worlds have monetary value in the real world because there are people who want them. This is a virtual monopoly of sorts though limited to the virtual world.

Virtual worlds must be viewed as an actual world in itself. In the future, it may even be possible that we would need less of our imagination for virtual worlds created to be experienced like reality. Technology is constantly evolving, and our thinking processes cannot be paralyzed by traditional concepts. Our regulations are currently lacking and can easily be circumvented. These gaps may cause actual problems within the Philippines if they are not addressed. The main problems regarding want of regulation are lack of jurisdiction, consumer protection, and law circumvention.

B. Lack of Jurisdiction

The Philippines can only prosecute crimes when the elements of which are committed within its territorial boundaries. This is because criminal law in the Philippines is generally territorial in nature. Venue is jurisdictional in criminal actions such that the place where the crime was committed determines not only the venue of the action but constitutes the essential element of jurisdiction.[48] The most obvious problem here is that the Internet is a new animal altogether. Where is the crime committed when it is committed over the Internet? In an article by Betsy Rosenblatt,[49] she

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[48] Bonifacio v. RTC of Makati, G.R. No. 184800, May 5, 2010.

[49] Betsy Rosenblatt, *Principles of Jurisdiction*, HARVARD UNIVERSITY, at

said that "U.S. courts have, basically, shoehorned Internet cases into the same jurisdictional rules that they use for non-Internet cases, with the result that U.S. courts lean toward limiting jurisdiction, regulating only sites that intentionally direct themselves into the U.S. in some way." In the same paper, Rosenblatt concludes that the current minimum contacts test does not work, as there have been inconsistent decisions by U.S. courts. In the Philippines, this question has likewise not been answered by our courts.

The best protection that the Philippines has to offer is the Cybercrime Prevention Act of 2012, which punishes certain crimes committed over the Internet. The problem is that the list of punishable acts does not encompass all crimes in the Philippines. For example, it does not cover money laundering or even illegal gambling. What is enlightening, however, are the acts that will grant jurisdiction to Philippine courts. This includes:

> [A]ny violation committed by a Filipino national regardless of the place of commission. Jurisdiction shall lie if any of the elements was committed within the Philippines or committed with the use of any computer system wholly or partly situated in the country, or when by such commission any damage is caused to a natural or juridical person who, at the time the offense was committed, was in the Philippines.[50]

This shows what Congress considers to be an act within the Philippines' jurisdiction when done over the Internet. Thus, if the computers are in the Philippines or when a victim is in the Philippines, then the Philippines should have jurisdiction over the crime.

In relation to UVM, this lack of jurisdiction becomes problematic because there is neither reason nor incentive for UVM issuers to register in the Philippines even though they have customers in the country. If they do so register, then they would be considered doing business in the Philippines which in turn, would result in taxes being owed to the Philippine government. The SEC has given an opinion that an online platform that offers goods for sale to be used with a virtual peso wallet has sufficient minimum contacts with the Philippines to be considered doing business in the country. It has minimum contacts if it is an active website which:

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https://cyber.harvard.edu/property99/domain/Betsy.html (last visited Mar. 19, 2019).

[50] Rep. Act No. 10175 (2012), § 21.

> [S]erves as a gateway for conducting business over the Internet between the website owner and residents of a particular state. Courts will exercise personal jurisdiction over a corporate website owner that knowingly and repeatedly transmits computer files over the [I]nternet to residents of a foreign state or repeatedly sells any products or services to residents of a specific state via its website.[51]

Unlike courts in the US that have inconsistent decisions, the SEC has decided to go with having sufficient minimum contacts for cases concerning peso wallets. This resulted in various platforms not offering a peso wallet, such as Google Play Store. Unlike in other countries where you can simply buy Google Play credits for the value they are worth, Filipinos are constrained to buy them at a premium. A person in the US can buy Google Play credits worth USD 20 for USD 20, but because no Filipino wallet is offered as a means to avoid tax liabilities, people in the Philippines will have to buy the corresponding points using a different currency. Thus, there is no peso account and people have to buy the Google Play credits worth USD 20 for a value set by the people who sell them. This is a clear circumvention of what is considered to be doing business. The corporations do not pay taxes in the Philippines and the Filipino consumers become subject to arbitrage because of this avoidance.

According to the SEC, an active website would be considered doing business in the Philippines since active websites are those "which generate sufficient business over the internet to establish personal jurisdiction."[52] This would mean that acts that are done through these websites, if criminal, would fall under Philippine jurisdiction. At the very least, UVM creators should be within the jurisdiction of the Philippines in order to be regulated, since they affect the general public in the Philippines and pass the minimum contacts test. UVM creators make their products available to the Philippines which means that they should be considered an active website.

Due to the lack of regulation over some types of VM, it is difficult to gauge as to which VM creators are doing business in the Philippines. It would be absurd to consider all VM platforms as doing business in the Philippines just because they offer their products in the Philippines. As

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[51] SEC Opinion 17-03 (2017) *citing* Zippo Mfg Co., 952 F. Supp. 1119, at 1124 [*citing* Compuserve, Inc. v. Patterson, 89 F.3d 1257 (6th Cir. 1996)].

[52] SEC Opinion 17-03 (2017) *citing* Zippo Mfg Co., 952 F. Supp. 1119, at 1124 [*citing* Compuserve, Inc. v. Patterson, 89 F.3d 1257 (6th Cir. 1996)].

discussed, this creates problems when buying VM. To remedy this problem, there must be regulations in place to answer the question of which types of VM would be considered as constituting doing business in the Philippines. This is necessary since, otherwise, VM creators would have no incentive to register in the Philippines.

C. Consumer Protection

When it comes to laws and regulations related to money, people's hard-earned earnings must be protected from various schemes. The average Filipino is willing to trust in banks and deposit their hard-earned money with them. For this reason, banks are required to exercise the highest degree of diligence in caring for the money of their clients. To ensure this, the Philippines has a number of regulations in place in order to protect consumers, such as having capital requirements and other policies for protection. Even when it comes to virtual money, there are protections in place. However, these are only applicable to e-money and VC.

For one, VEs are required to:

> [P]ut in place adequate risk management and security control mechanisms to address, manage and mitigate technology risks associated with VCs. For VEs providing wallet services for holding, storing and transferring VCs, an effective cybersecurity program encompassing storage and transaction security requirements as well as sound key management practices must be established to ensure the integrity and security of VC transactions and wallets. For those with simple VC operations, installation of up-to-date anti-malware solutions, [the] conduct of periodic [back-ups] and constant awareness of the emerging risks and other cyber-attacks involving VCs may suffice.[53]

Meanwhile, EMIs are required to:

> [P]ut in place a system to maintain [an] accurate and complete record of e-money instruments issued, the identity of e-money holders, and the individual and consolidated balances thereof. The system must have the capability to monitor the movement of e-money transactions and link e-money instruments issued to common e-money holders. The susceptibility of a system to intentional or unintentional misreporting of transactions and

[53] BSP, *supra* note 10.

> balances shall be sufficient ground for imposition by the BSP of sanctions, as may be applicable.[54]

For both types of regulated VM, the licensed entities are required to have adequate systems in order to protect their consumers. Given that said VMs exist in a virtual world, the BSP requires EMIs and VEs to have adequate software programs in place to protect the VM. This is because the BSP recognizes that these are mere codes of ones and zeroes. In order to make counterfeit currency, a person would have to likewise copy the various counterfeit measures placed in the physical bills. However, when it comes to virtual money, a person can simply edit the data in order to make their accounts have more VM. That is why it is important to record the transactions in order to ensure that such money has a valid source.

Unlike a VE where the entity simply exchanges VC, an EMI actually issues the e-money that circulates. Because of this, there are more regulations put in place, and EMIs are required to put in place the following control systems:

> (1) Sound and prudent management, administrative and accounting procedures and adequate internal control mechanisms;
>
> (2) Properly-designed computer systems which are thoroughly tested prior to implementation;
>
> (3) Appropriate security policies and measures intended to safeguard the integrity, authenticity[,] and confidentiality of data and operating processes;
>
> (4) Adequate business continuity and disaster recovery plan; and
>
> (5) Effective audit function to provide [a] periodic review of the security control environment and critical systems.[55]

Though an EMI is required to comply by setting up these policies, there are no specific requirements as to what exact policies should be set up. It is up to the individual EMIs to ensure that policies such as testing computer systems or programs for safeguarding data are complied with. The most effective way for BSP to monitor EMIs and VEs are the required

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[54] *Id.*
[55] *Id.*

reports. The BSP cannot monitor every single transaction with its limited manpower. Thus, it monitors only those that are registered with it and relies on the suspicious and covered transactions required.

It is obvious then that UVM does not have the customer protection afforded to those forms of VM that are regulated. No protection is put in place and so, again, the creator of said UVM becomes a "god" in the world that he makes. Any losses incurred due to glitches, bugs, or even hackers leave the victims without recourse. The only agreement that binds the creator and the consumer is the terms and conditions that are agreed upon when using the service—a contract of adhesion which is required to avail of the service. It is common for such agreements to absolve the creator from any liability and to even set the venue for the filing of cases in the venue of their choosing. The consumer would usually have to send a message and request customer service personnel to solve their problems.

This begs the question as to who owns the virtual items in the game. This is because a consumer does not have full disposal of such items and needs the consent of the creator to use it. For example, in the physical world, one can lend any item to another as such would be part of their rights as an owner. However, in a virtual world, one can only dispose of their virtual money or items if the system allowed it. Some creators may even design strict rules against two or more people sharing a single account, and consequently ban them from the program for doing so. In the physical world, this would amount to unjust deprivation of property without due process. The only recourse again would be to seek help from customer service personnel.

There is no requirement to monitor the transactions involving UVM, and in turn, there is no protection in case of loss. A common occurrence in virtual games, called a "rollback," happens when the game developer, due to problems with the server, would reboot the server and essentially turn back time in the virtual world. This means that any virtual items gained within such period are lost. It would then depend on the game developer whether or not they would return said virtual items to the players. More often than not, they do not. Said rollbacks are not always announced as they are usually unforeseen problems.

Admittedly, this would not be a problem if it were all simply a game. However, as discussed before, some of these virtual items and VM have corresponding monetary value in the real world. Transactions that have otherwise been completed would be undone and virtual items would be lost.

This poses legal problems, especially regarding completed transactions. For example, suppose a stock trade was completed but their computers were all reset because of a virus. Was the contract completed? It would have been because there was already a meeting of the minds, and possibly even delivery. This means that the parties would be required to redo the trade with the same terms, regardless of any change in price, because the ownership of the stocks was already previously transferred. However, in a virtual world, there would be nothing compelling a person to redo the trade.

When it comes to the lack of consumer protection, the consumers are left to fend for themselves and are dependent on the whims of the creator. It is not only limited to games but any sort of platform or trade. A creator of any UVM has complete control over it if the UVM is not regulated. Within their virtual world, the creator is a "god," and he can create any virtual item that he so wishes and control the supply for such. He can manually change the demand for them by making certain virtual items rarer in order to make their value shoot up. The consumers are not protected in any way from these abuses. The main purpose of preventing monopolies–which is what is essentially created–is to prevent unscrupulous businessmen from taking advantage of the demand of a captured market.

Thus, the author proposes that any UVM issuer which allows itself to be bought through fiat currency in the Philippines should be required to register with the BSP. It may seem like a logistical nightmare, but it is important to require a similar group of entities to be registered. This is because there is a transformative step in paying with fiat currency. A person will need to have first converted said fiat currency into a medium acceptable within said platforms. These are payments made through e-money, credit cards, or other forms acceptable to them.

This does not mean that UVM becomes regulated. Just because e-money or banks are regulated does not mean that the expenditures after they are transformed into VM are likewise regulated. It is precisely because UVM creators are not covered institutions that they do not have the same reporting regulations. If the method of converting fiat currency is not regulated in the Philippines or is not converted in the Philippines, then these regulations have no meaning. Nothing is stopping people from converting money in another country. The best way to combat this problem is to consider VM issuers as covered institutions similar to how casinos or EMIs have been identified as such. This would mean that purchases to UVM issuers will become covered transactions once they reach a certain threshold amount or if they meet the definition of a suspicious transaction.

The BSP can require all forms of payment through Filipino channels to report such transactions. This will not stop the circumvention of converting fiat currency to UVM in other countries, but that would already be outside the jurisdiction of the Philippines. In order to combat this, the BSP should issue regulations defining which VM issuers should register with them. Not all VM issuers should register lest the BSP be flooded with applications. They should require the platforms that pass a certain income threshold to be registered in the Philippines; otherwise, UVM creators should prohibit purchases from the Philippines lest they be banned from operating. This may inconvenience users of such noncompliant platforms as they will not be able to purchase the UVM, but this is a valid exercise of police power. What is being done is not a prohibition, but a mere regulation. It may also prove wise to create a new agency to monitor VM as this market is likely to increase in the future and pervade most, if not all, facets of modern life.

D. Law Circumvention

1. Money Laundering

Money laundering happens when proceeds of an unlawful activity are used in transactions and are made to appear to have come from legitimate sources. Simply put, it is cleaning the money. Internet transactions help money move quickly, and EMIs and VEs are required to submit covered and suspicious transaction reports to the AMLC. However, other forms of UVM are not regulated and are not required to give the compulsory reports. It is very easy to legitimize money using online platforms precisely because of the inherent anonymity on the Internet.

A corporation can simply be set up offering virtual services or goods, the value of which is set by the UVM creator and can be sold to anonymous purchasers. This money is then considered to have been acquired from legitimate business sources, and, as income, may be taxed if the person who earned the money is a Filipino or a corporation doing business in the Philippines. There is no need to ascertain who purchased the virtual goods. A person can very well use their dirty money to buy virtual services nonstop with dummy accounts, and said money would now be considered clean.

As the UVM are not covered institutions, they are not required to give reports to AMLC. However, there is a transformative step that fiat currency will have to go through in order to be spent in a virtual world. A

person will have to use a medium to convert their fiat currency into VC or e-money. It might seem redundant if we have to regulate UVM because there is already regulation in the transformative step, but this is a misconception. This is because VC and e-money are not the only methods to convert fiat currency into VM. A UVM creator can simply offer physical products like Google Play credits which can be used to redeem VM on their platforms. Said purchase would not be a covered transaction if cash were involved. A person can simply buy VM, e-money, or VC in another country with less strict rules on money laundering. These are only a few ways to circumvent the monitoring of e-money and VE in the Philippines. Thus, it is still necessary to regulate the platforms where transactions to launder money can be done.

For example, Diablo 3 created by Blizzard Entertainment and released in May 2012 did not originally allow conversion of its virtual items into fiat currency. It was just like any other game where the user pays for and plays on his gaming console. However, by June 2012, a real-money auction house and VM auction house was implemented in the game.[56] Players could either sell their items in an auction house for in-game gold money or fiat currency with a cap of USD 250. A player would have to pay a fee to put an item up for auction and the player would set up an initial bid price and a maximum buyout price for a certain period. Other players can either choose to bid with the highest bidder getting the item once the period lapses, or opt to pay the buyout price and get the item right away.[57]

The problem was that if something went wrong within the transaction, the player would be dependent on customer support and would have no recourse, regardless of the currency spent.[58] However, the auction house was shut down in March 2014 as it supposedly ruined the purpose of the game.[59] As the game was never monitored, no case was filed against the maker of the game. This is a clear situation where such a case is capable of

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[56] Robert Purchese, *Revised European Diablo 3 Real-Money Auction House release date*, EUROGAMER, at https://www.eurogamer.net/articles/2012-06-13-european-diablo-3-real-money-auction-house-release-date (last visited Mar. 22, 2019).

[57] *Auction House FAQ*, DIABLOWIKI, at https://www.diablowiki.net/Auction_House_FAQ (last visited Mar. 22, 2019).

[58] *Customer Support FAQ*, DIABLOWIKI, at https://www.diablowiki.net/Auction_House_FAQ#AUCTION_HOUSE_CUSTOMER_SUPPORT (last visited Mar. 22, 2019).

[59] *Diablo 3 Auction House Update*, BLIZZARD ENTERTAINMENT, at https://us.diablo3.com/en/blog/10974978/diablo%C2%AE-iii-auction-house-update-9-17-2013 (last visited Mar. 22, 2019).

repetition yet evading review. Another game can simply set up the same system and shut it down before it gets problematic, only to repeat the process.

What is regulated with VC is not its creation or circulation, but the exchange into fiat currency. With games that are not originally monitored, they can simply provide for a system to convert the virtual money into fiat currency. Money can move absurdly fast once converted into data. Millions can be converted into virtual money using thousands of dummy accounts in a game. The game creator can simply edit the game and allow conversion into currency, and once the desired amount has been converted into currency, the creator can then edit the game to remove such function. In case the game gets flagged by any monitoring agency–which there are none in the Philippines–then the creator can simply create a new game.

It might seem like a waste of resources to regulate such a thing, but it is not limited to small transactions. Reportedly, the most expensive item sold on Diablo 3 was an item called "Echoing Fury" which sold for the cap of USD 250. This was then resold in the gold auction house for 40,000,000 gold.[60] This might not seem too substantial an amount as only USD 250 was involved. However, the player who sold it then sold the game gold for EUR 7,500 (equivalent to approximately PHP 440,000) through a third-party trading website called "d2jsp," which specially catered to games.[61] Given that gaming platforms are not monitored, it gives rise to various third-party groups who can take advantage of them. The virtual items in games, though virtual, have a monetary value. Even if games or platforms would not allow direct conversion, this would be easy to circumvent. It operates in the same way the real world does; if there is somebody willing to sell something and there is somebody willing to buy the same thing, then there is a deal to be made.

Diablo 3 is an immensely popular game, yet no cases were filed against them concerning money laundering. There is a multitude of other platforms that are not monitored and can be easily used in order to circumvent the AMLA as well as other laws in the Philippines. Due to the lack of monitoring, any person in the Philippines can set up any virtual platform that accepts only physical cash payments in order to buy VM

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[60] *Diablo 3 News Echoing Fury Sold for Over $12,000 USD*, GAMERLUCK, at https://www.gamerluck.com/Diablo-3-News---ECHOING-FURY-SOLD-FOR-OVER-12-000-USD-news-277.html (last visited Mar. 22, 2019).

[61] D2JSP, *at* https://www.d2jsp.org/ (last visited Mar. 22, 2019).

usable solely on their platforms, which are used to buy virtual items that they can then immediately sell for cash. This is similar to what is done with casinos, where customers would buy chips and then cash out.

It might seem impossible to monitor all the possible platforms due to their sheer number. The author thus proposes that the BSP and SEC issue rules regarding corporations or individuals who allow the purchase of virtual items or VM and who pass a certain income threshold. This way, only those entities that deal with UVM up to a certain amount will be regulated. This could be correlated to the threshold amount used in covered transactions, similar to those entities which earn at least PHP 500,000 monthly. This amount could also be pegged to the capitalization requirements of banks, given that these platforms likewise issue VM. In order to ensure compliance, the Philippine government can require Filipino Internet Service Providers to block Filipino users from using platforms that do not register with the SEC.

This is in line with the SEC regulation which provides that online platforms that have active websites are considered to be doing business in the Philippines.[62] Websites allowing the purchase of UVM or virtual items should be considered as an active website as it encourages sales and exchange of money with Filipinos. This is a valid regulation as it does not prohibit the use of VM, but merely ensures appropriate safety measures for the public.

Of course, it is impossible to monitor all possible platforms as they continuously pop up. This will require the government to set up a new agency that will monitor the online platforms that the Philippines has access to. There will also be platforms that intentionally try to circumvent these new regulations, which are likely those who intended to commit a crime in the first place. For the majority of legitimate online platforms, they will have no choice but to comply lest they lose the Philippine market. The proposed requirements are not onerous, and the number of people who could have suspicious transactions would be limited. This is because circumventing the regulations would necessarily include circumventing the system of online platforms, which could easily be traced by the creators of said platforms.

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[62] SEC Op. No. 17-03 (2017).

2. Tax Evasion

Due to the nature of UVM, it is difficult to tax. As previously discussed, there are jurisdictional problems when it comes to anything that occurs through the Internet. In a situation where a foreign corporation has its offices and employees outside the Philippines but offers its products in the Philippines through the Internet, the SEC has given the opinion that it is considered to be doing business in the Philippines.[63] The SEC held that transactions will be considered consummated in the Philippines when the confirmation of purchase was done in the Philippines. The SEC puts great importance on the Internet Protocol (IP) address of the purchaser, which is essentially a virtual address that gives information showing where a device is located. When a person's IP address is within the Philippines, then the transaction is considered to have been done in the Philippines.

What is considered to be sufficient contact in the Philippines is the fact that the transactions will be consummated in the Philippines and that there will be Philippine accounts with online wallets. The more relevant factor, however, would be having Philippine accounts with online wallets. If the fact that the IP addresses are based in the Philippines is enough to acquire jurisdiction over transactions, it would result in absurd consequences, as this would mean that any platform accessed by a person with a Philippine IP address is now considered to be doing business in the Philippines. What is more important is having a Philippine account and setting up virtual wallets, as well as showing the intention to continue to do business with Filipino clients. However, as discussed above, this was easily circumvented by not having Philippine accounts, and resulted in Filipinos having to use accounts from a different country in order to use different online services, like that of Google Play.

This problem with Internet jurisdiction has tax implications. What is the applicable tax rate when a purchase is done online? Some UVM providers rely on good faith and accept what the customer says. An example of this is Google Play, where a customer indicates where their address is, and then Google applies the appropriate sales tax. The problem with this system is that a user can practically say that he is from any state and thus reduce or even avoid taxes. As discussed above, Filipino users are constrained to choose an address not located in the Philippines as there are no Philippine accounts offered. This poses a problem because if a Filipino resident

[63] SEC Op. No. 17-03 (2017).

chooses a state which has sales tax, then they will have to pay taxes for those. It is common practice to choose a state like Nevada that does not have sales tax in order to avoid paying them. Given that these transactions are consummated in the Philippines by virtue of their having Philippine IP addresses, taxes should have been paid to the Philippines. However, if a foreign corporation is not doing business in the Philippines, then said corporation does not need to pay taxes in the country.

Since UVM creators are not regulated by any entity in the Philippines, it is impossible to collect taxes from them. Filipinos pay in peso but are taxed by foreign countries for virtual purchases. If these UVM creators were to be required to obtain a license from a Philippine agency, then the difficulties of taxation could be avoided altogether. To repeat, the reason why there are no Philippine accounts is because of the necessary tax implications. However, if UVM creators were required to register in order to be made available to people with Philippine IP addresses, such registration would hit two birds with one stone in that they would no longer be skirting the definition of "doing business", and become sources of revenue for the government, and at the same time, Filipino consumers would now be protected.

3. Illegal Gambling

It also possible for UVM to result in illegal gambling. The entire purpose of money is for it to be a medium of exchange in order to make it more convenient for people to trade goods or services. It does not matter how it is represented—whether it be denominated in a currency, or even through virtual items. In the virtual world, they are all just ones and zeroes.

In the Philippines, gambling is not illegal *per se*. What is illegal is gambling without the required licenses. Illegal gambling is only defined in Executive Order No. 13, which states:

> Pursuant to existing laws, "illegal gambling" is committed by any person who, in any manner, shall directly or indirectly take part in any game scheme, regardless of whether winning thereat is dependent upon chance or skill or both, wherein wagers consisting of money, articles of value or representative of value are at stake or made, when such game scheme is not authorized or licensed by the government agency duly empowered by law or its charter to license or authorize the conduct of such games, or is conducted in a manner that violates the terms and conditions duly prescribed by the said government agency.

> All gambling activities, and activities and services directly or indirectly related to or in support of such gambling activities, conducted beyond the territorial jurisdiction of the government authority which issued the license therefor, shall be dealt with as illegal gambling.[64]

It is important to note that this definition covers any game or scheme where wagers of value are at stake, and such a game or scheme is not authorized or licensed. This can cover a variety of things, but the most important factor that would take things out of the coverage of the definition is that the wager must be of value. In the modern sense, this value is usually taken as something with monetary value and what we understand to be considered as money. UVM is unregulated precisely because it is generally perceived as something without value, and thus, deemed not important enough to regulate. For example, many gaming platforms have some method of lottery involving the infusion of fiat currency. This falls into the definition, as it is a game involving a wager it is not licensed to host. However, they are not considered to be gambling at all. This becomes even more difficult to manage when these games are accessible to Filipinos only through the Internet.

The same Executive Order clarifies how online gambling should be treated in the Philippines. Section 3 thereof states:

> No duly licensed online gambling operator, or provider of activities and services related to or in support of online gambling activities, shall directly or indirectly allow persons who are physically located outside the territorial jurisdiction of the licensing authority to place bets, or in any way participate, in the games conducted by such operator, whether through an online portal or similar means. Nothing herein, however, shall prohibit the duly licensed online gambling operator from allowing the participation of persons physically located outside Philippine territory.
>
> The license to operate online gambling granted to qualified operators shall not be assigned, shared, leased, transferred, sold or encumbered to any other party. Any gambling operator desiring to operate outside the jurisdiction of the government authority

[64] Exec. Order No. 13 (2017), § 2.

> which issued its existing license shall apply for a separate license with the appropriate authority.[65]

Simply put, an entity engaged in the gambling business in the Philippines cannot offer their services outside of the territory where they are licensed. If a business wants to offer its services in the Philippines, then it would need to apply for a license. However, this is merely lip service as Philippine criminal jurisdiction is generally territorial. Thus, gambling done outside the Philippines would be considered outside its jurisdiction, as when the servers are outside of the territorial bounds of the country. There is nothing in the law penalizing gambling in online sites; what the law penalizes is offering gambling services to people in the Philippines without a license.[66]

Online casinos in the Philippines are now monitored by the AMLC. Republic Act No. 10927 indicated "casinos, including [I]nternet and ship-based casinos, with respect to their casino cash transactions related to their gaming operations" as covered persons who are supposed to comply with AMLC regulations.[67] Internet-based casinos are defined as those where "persons participate by the use of remote communication facilities such as, but not limited to, [I]nternet, telephone, television, radio or any other kind of electronic or other technology for facilitating communication."[68] Thus, online casinos in the Philippines are now monitored and must give suspicious and covered transactions to the AMLC, as well as provide for proper risk management policies.

However, all of these AMLC regulations and protections will only apply to online casinos in the Philippines, and only to acts considered as gambling. The most problematic issue with defining gambling is what is considered as wager for value. As UVM falls outside the definition of VC or e-money, it is usually not considered as something valuable and thus results in being unregulated. Because of the lack of definition and regulation for UVM, it is possible to simply circumvent the protection given to online casinos in the Philippines. To begin with, protection is only given to those online casinos from the Philippines and not to those abroad. By regulating UVM, it makes it easier to avoid circumvention as it would be practically impossible to participate in online gambling without being monitored. There will be monitoring because the use of UVM or any other regulated virtual

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[65] Exec. Order No. 13 (2017), § 3.
[66] § 3.
[67] Rep. Act No. 10927 (2016), § 1.
[68] § 2.

money is necessary to participate in such activities. Thus, they will be subject to the AMLC regulations.

Monitoring is important in order to give customers some sort of protection. The problem with online gambling is that it is so much easier to rig. People cannot see the program operating before their eyes and the game could be set so that there would be no winners. If UVM is not regulated, it makes it easier for people to circumvent laws on illegal gambling. A good example would be the Counter Strike: Global Offensive ("CSGO") game developed by Valve. This game is a perfect illustration of the circumvention of various laws due to the VM used not being regulated. CSGO works on a gaming platform called Steam, an independent platform where users can spend fiat currency and have it placed in a virtual wallet. The catch is that there is no way to withdraw the money from the system. However, because fiat currency is spent in the game, the virtual items available in the game also have a monetary value. CSGO allows the trade of virtual items in a game among players. The most prevalent type of item is called a "skin," which is simply aesthetic decorations of virtual items in a game. It is akin to a change of coloration, clothes, or even costumes. It has a monetary value which can be tracked by the CSGO—just like in a real market.

The skins would not be considered VC or e-money and is a perfect example of UVM. Though it is in the form of a virtual item, a skin is a type of VM that serves as a medium of exchange. This is because each skin has a value which corresponds to fiat currency. Just like items in Diablo 3, the skins can be cashed out by selling it on third-party websites. Valve facilitates such transactions by allowing third-party websites to connect to the Steam platform where CSGO is played. This allows ease in trading these items. These trades are not monitored by any government agency as this entire scheme is expressly excluded in the definition of VC.

This process might appear as a mere buy and sell, but skins and other virtual items are actually closer to securities. The price of the items increases or decreases based on their demand. However, the problem is that Valve, the creator, is in complete control of the supply. It can perfectly control the market and just create money. In fact, the skins have such great value as a medium of exchange that they are used in online casinos.

An example of an online casino using skins is CSGOAtse, a brand name of Atse Online Ltd. which, in turn, is licensed by the Government of Curacao to conduct online gaming operations. CSGOAtse is a website from Curacao that offers games that people can put wagers on, from blackjack to

dice games. One dollar is equivalent to 1,000 CSGOAtse coins. Said coins are yet another example of UVM as they are only used in the website of CSGOAtse. The creator can just create more coins which a user can then acquire through paying using e-money, virtual currency in the form of cryptocurrency, or the use of skins. If he chooses to use skins, he shall "deposit" the skin into their system and the current market price for the skin will be used as the basis for the conversion. Here, it is already obvious that these skins are on the same level as the other types of VM such as cryptocurrency. The only difference is that they are UVM. A person can then use the CSGOAtse coins in order to participate in games. Once a person wants to cash out, he shall "withdraw" by choosing skins which represent the value of the coins. For example, a person with 100,000 coins can withdraw by trading for a skin that is of the same amount. The user can then sell the skin on a third-party website for fiat currency.

This scheme is gambling, with the use of the CSGOAtse coins being similar to the use of casino chips. In situations where a user can bet the skins directly, it becomes clearer that virtual items may be considered as virtual money. We do not need to be confined to traditional denominations of money, and need only keep in mind that these items have value. Even then, this type of UVM may not fall under the definition of "wager for value," with the lack of the clear definition of the phrase and given that people have not yet been penalized for the use of this type of UVM.

The problem with these UVM is that the creators of the platforms can manipulate the games and create money in the form of virtual items. Most importantly, they can avoid any regulations or responsibility. For example, CSGOAtse "has no obligation to refund balance lost if it is not clearly visible on our end and the user's provided proof that the error was on the site's end."[69] This means that if there is any loss, the consumer is again at the mercy of customer service. Fiat currency entered the system and was lost. This means that the creator can now just create some UVM which represents the fiat currency lost, basically changing the ownership of the money due to a system error. CSGOAtse even puts the responsibility of ensuring legality to the user, and their terms and conditions state that a user is "responsible for making sure gambling and/or games of chance are not prohibited in your country or country of residence. If they are, you have no right to access this website [...] CSGOAtse.com cannot be made legally liable

[69] *CSGOAtse ToS*, § 6, CSGOATSE, *at* https://csgoatse.com/terms-of-service (last visited Apr. 27, 2019).

for breaking such laws by its users."[70] Once again, a user is completely at the mercy of the platform creator. This is yet another way that the lack of definition and regulation of UVM results in the circumvention of the laws. Creators of UVM can do whatever they want, as long as they can fall outside the definition of regulated VM and laws that cover them.

V. CONCLUSION

The most obvious problem when it comes to UVM is its definition. E-money and VCs are not enough to cover most types of VM. Admittedly, not all types of VM need to be regulated, but our current classifications are too narrow in scope. It is necessary to regulate the VM with monetary value. These are the digital units that have fiat currency infused into them or such digital units that develop some sort of monetary value, as shown in the case of skins. This is the most important element in defining such VM with monetary value. To differentiate this concept with the broad definition of VM, it is necessary to define UVM. One defining element is that they derive their value from an infusion of currency. If the VM has no monetary value, then it would not affect the public. This definition is broad enough to cover all possible schemes involving the use of monetized VM because it addresses the main problem—the abuse of VM to circumvent laws.

After properly defining what would be considered as UVM, it is then important to impose regulations upon them. This will solve the issues of jurisdiction, consumer protection, and the circumvention of our laws. By considering UVM issuers as a covered institution, they would then be required to comply with AMLC regulations which involve coming up with proper risk management policies and complying with the reportorial requirements. This would prevent money laundering or illegal gambling through the use of UVM. It is also necessary to define the duties and rights of an UVM issuer in the Philippines. Now that these entities know that they are covered by Philippine regulations, it would be easier to determine their tax and even criminal liabilities. In turn, this would put monetized VM issuers on guard against Philippine regulations and even ban access to Philippine users. This may inconvenience users in the Philippines, but it is a necessary exercise of police power. The Internet is a largely unchartered place and the State, exercising its duty as *parens patriae*, should help protect the general public. If said entities are not willing to comply with regulations,

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[70] *Id.*, § 7.

then it is highly likely that a Filipino consumer would be abused. They will have no consumer protection whatsoever, and their platforms may be used to commit crimes.

Given the gargantuan tasks needed to be accomplished, a new agency should be created that would be in charge of monitoring the monetized VM accessible in the Philippines. In a world where technology is continuously evolving, it is necessary to have an agency designed to keep up with these changes. As we become more reliant on the Internet, it becomes even more necessary for the government to regulate what activities or transactions we will have access to. It is not just regulating the activities of these entities *per se*, but also blocking access to Philippine users in case of non-compliance with regulations. There is a need to create another agency solely dedicated to continuously monitor UVM issuers, as well as to study and improve polices. A mere department in the BSP or SEC will not have the manpower or resources in order to monitor these UVM issuers. The agency should also have quasi-judicial powers in deciding cases as to whether or not an entity falls under the definition of UVM issuer. They should likewise exercise quasi-legislative powers by issuing rules regarding the issuance of such UVM. The BSP and the agency could have concurrent jurisdiction as they are both regulating the use of money. At the very least, the decisions of the agency should be reviewed by the BSP.

After crafting regulations related to UVM, it would be improper to call such VM unregulated. It is necessary to finally define the concept discussed in this paper. However, it is up to the community to find a fitting term for UVM because some types of VM may further be defined and regulated, while some remain unregulated. Moving forward, it is enough to understand the broadness of VM and the need to define the different types of digital units that comprise the concept of virtual money.

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