

Research on the Legal Regulation Path of Digital Currency Electronic Payment and Its Improvement from Anti-Money Laundering Perspective

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Abstract. With the rapid development of Internet information payment technology, digital currencies are widely used, and digital currencies with blockchain as the underlying technology can be used as a monetary policy tool to serve national economic policies. Under the principle of adhering to steady development, operational safety and risk control, China has launched digital currency electronic payment with equivalence and legalization with traditional legal currency, featuring controlled anonymity, loose coupling of accounts and support for dual offline payments, which combines the advantages of both physical RMB and electronic payment instruments. However, precisely for this reason, China's existing Anti-Money Laundering (AML) legal system, which mainly regulates and protects traditional currencies, can hardly adapt to the changes of money laundering crimes in the Internet environment in terms of the subject scope, object standards, subjective mentality and behavioral patterns. Taking into account the existing legal norms and the needs of AML regulation of digital currency, money laundering crimes should be incorporated into the section of "obstruction of justice", the scope of predicate crimes of money laundering crimes should be expanded, the AML obligations of specific non-financial institutions should be improved, and international cooperation should be strengthened, so as to promote the healthy development of China's digital economy.

Keywords: Digital currency electronic payment; Legal digital currency; Anti-money laundering; Path of improvement.

1. Introduction

In recent years, with the evolution of digital technology and the booming development of mobile Internet and electronic payment technologies, payment methods have undergone tremendous changes worldwide. The public demand for convenience, security and universality of retail payments is increasing. Information disclosed in the "White Paper on Research Progress of China's Digital Currency Electronic Payment(DCEP)" shows that in order to ensure the security of payments and the stability of the financial system, and in response to the rapid development of the digital economy, the People's Bank of China has formed a special team since 2014 to conduct special research on the issuance framework, key technologies, the issuance and circulation environment, and relevant international experience. At the end of 2019, DCEP was tested internally at closed areas in Shenzhen, Suzhou, Xiongan New Area and Chengdu. The current pilot scenario of DCEP is comprehensively considering both online and offline, including various aspects such as wholesale and retail, catering, tourism, education, healthcare, public transportation, government payment, tax collection and subsidy issuance. As of December 31, 2021, the DCEP pilot scenarios have exceeded 8,085,100, with a total of 261 million personal wallets opened and a transaction amount of 87.565 billion yuan.

The use and promotion of the central bank's DCEP not only has a significant impact on individuals' productive lives and the country's monetary policy and financial system, but also brings opportunities and challenges to AML work. How to further strengthen the legal regulation of AML in the context of the widespread use of digital currencies has become an important issue to be considered. This paper aims to put forward new requirements for China's AML work based on the design of the underlying architecture disclosed in the patent of DCEP and the application scenarios in pilot areas, on the basis of the analysis and generalization of the development trend of China's AML work. In turn, from the path of legal regulation, this paper aims to improve the specific measures of AML in the field of

digital currency, strengthen the overall layout of digital China construction, and promote the quality and efficiency of China's digital economy.

2. An Overview of DCEP

Digital Currency Electronic Payment (DCEP) is a legal currency issued and traded in digital form by the People's Bank of China (PBOC) with the help of blockchain technology, cryptography, distributed ledger and other technologies. DCEP is designed with the advantages of both physical RMB and electronic payment instruments. It not only has the advantages of physical RMB, such as unlimited legal compensation, payment on demand and anonymity, but also has the advantages of low cost, good portability, high efficiency and low possibility of counterfeiting.

3. The Challenges of AML Legal Regulation Brought by DCEP

Money laundering risk has always been of great concern to financial regulators. The Financial Action Task Force on Money Laundering (FATF) defines money laundering risk as "the possibility of money laundering and terrorist financing activities". At present, China has basically formed an AML legal system consisting of the "Anti-Money Laundering Regulations for Financial Institutions", the "Measures for the Administration of Large Transaction and Suspicious Transaction Reports for Financial Institutions" and other laws and regulations, which is formulated on the basis of the "Criminal Law of the People's Republic of China" with the "Anti-Money Laundering Law of the People's Republic of China" as its core. With the rapid development of digital technology, money laundering methods have become increasingly complex and varied, such as the use of P2P network lending, online network sales services, crowdfunding platforms, third-party payment platforms, online gambling, online insurance and other Internet financial services to legalize illegal funds for money laundering purposes. The birth of DCEP has also provided a new vehicle for money laundering.

3.1 Challenges to Money Laundering Crime Legislation

Firstly, DCEP influences the value orientation of money laundering crime legislation. The focus of money laundering crimes in the Internet environment shifts from undermining the financial management order to obstructing the judicial order. By transferring illegal proceeds through the convenience of the Internet, DCEP downplays the crime's damage to the order of financial management. Secondly, DCEP affects the scope of the target of money laundering crimes. Article 191 of China's Criminal Law clearly lists seven predicate offenses for money laundering crimes, but the overly narrow limitation of the scope of predicate offenses for money laundering crimes has resulted in rampant money laundering not being proportional to the low conviction rate. Coupled with the development of DCEP issuance, highly mobile capital and new payment technologies, the scope of the traditional money laundering crime targets is no longer adaptable to the new Internet era. Thirdly, DCEP affects the way money laundering crimes are committed. Article 191 of China's Criminal Law provides for "disguise", "concealment", "transfer", "conversion" and other ways of behavior. However, in the Internet environment, especially after the central bank has launched DCEP, the forms of "acquisition", "possession" and "use" of money laundering crimes are increasing day by day. It is worth considering whether to criminalize the "integration stage" of money laundering crimes and tighten the legal net of money laundering crimes, so as to better block and punish money laundering crimes in the Internet environment. Fourthly, DCEP affects the subjective elements of the money laundering crime. China's Criminal Law only considers intentional as the mentality of money laundering crime, and must use "knowingly - disguise and conceal" as the subjective judgment of money laundering crime. The money laundering crime in DCEP scenario is a non-contact crime, in which the entire operation of the money laundering act can be completed by sending commands on the Internet or other communication devices. This makes the subjective evaluation of the crime more complicated, and at the same time blurs the line between intentional and negligence in the subjective

sense of the law, making it difficult to meet the subjective and objective requirements in specific cases.

3.2 Challenges to the Subjects of AML Obligations

Article 3 of China's AML Law emphasizes the fulfillment of AML obligations such as customer identification, large-value transaction and suspicious transaction reporting, and transaction record keeping by financial institutions and specified non-financial institutions. Today, with the issuance of DCEP, "peer-to-peer transactions without going through any financial institution have emerged in large numbers." At this point, it is necessary to find the subject of AML obligation opposite to it. In particular, China has not yet made clear provisions specifically for the subjects of AML legal obligations of specific non-financial institutions and their specific contents, making the relevant laws and regulations almost in a blank state. This is the short board of AML that needs to be strengthened urgently.

3.3 Challenges to Transnational Money Laundering

The emergence of DCEP will reduce the need for intermediaries in cross-border transactions, enable easy cross-border transactions, and enable "dual offline payments" to support payment transactions in a network-free environment. But it also poses a serious challenge for international AML regulation. At the same time, in accordance with Article 6(2)(c) of the UNTOC and Article 23(2)(c) of the UNCAC, the prerequisite for a State Party to exercise jurisdiction over transnational money laundering offences is that the predicate offence is consistent with the principle of dual criminality. However, due to the instantaneous and transnational nature of digital RMB transactions, the perpetrators scatter the "actor" and the "act" in multiple countries. It is difficult to determine the identity and location of the trader, which makes the traditional jurisdictional rules such as territorial jurisdiction basically impossible to use, leading to disputes over jurisdiction between countries. At this stage, China's international exchange and cooperation focus on intelligence collection, analysis and collaboration in the exchange of investigative experience. There lacks collaboration on legislation and judicial assistance.

4. Legal Improvement of China's Money Laundering Crime in the Context of DCEP

Currently, China has entered the era of digital economy and DCEP is moving from theory to reality. While improving the efficiency of payment clearing, DCEP has also changed the "paradigm" of money laundering crimes in the field of payment, settlement and clearing. In view of the above challenges brought by DCEP to the AML legal regulation, the following suggestions for improvement are made by drawing on the experience of international conventions and other countries' legislation, and taking the judicial practice in China as the background to make up for the shortcomings.

4.1 Improve Criminal Legislation

Firstly, the existing section on money laundering should be adjusted to include the crime of "obstruction of justice". The primary object of the crime of money laundering in the Internet environment should be the normal activities of the judiciary, and the secondary object should be the financial management order. In this way, the source and nature of the proceeds of crime, which are concealed through means other than the financial sphere, can be included in the criminal net of money laundering.

Secondly, the scope of the target of money laundering crimes should be expanded. In terms of the current status of China's fight against money laundering criminal activities, China should extend the predicate criminal activities of money laundering criminal activities to all criminal activities where proceeds of crime exist. This is not only to respond to the "Convention against Transnational Organized Crime", the "Convention against Corruption", the "2019 FATF China AML Mutual

Evaluation Report and the Anti-Money Laundering Law (Revised Draft for Public Comments)”, but also to enhance the applicability of money laundering crimes in practice.

Thirdly, the three acts of “acquisition, possession, and use” should be added as forms of the crime of money laundering. Acquisition is the fact that the perpetrator acquires all of the property by purchase, exchange or gift. Possession is the actual control of the property acquired by the perpetrator in various ways. Use is defined as the factual utilization of the property acquired by the perpetrator for the purpose of business, livelihood and use. The criminalization of the acquisition, possession, and use of stolen funds will criminalize the disposal (placement) stage, the discrete (cultivation) stage, and the fusion (integration) stage of money laundering, which will help tighten the legal net and close the flow of funds after money laundering.

Fourthly, indirect intentional money laundering should be included in the scope of criminal law. In the face of the increasingly technical, complex and professional nature of money laundering using digital currencies, and the difficulty of examining intentional or negligent money laundering crimes, it is reasonable and necessary to criminalize indirectly intentional money laundering. In reality, many people know or suspect that the other party’s property is of “unknown origin”, but subjectively do not have the purpose of helping them to cover up or conceal it. Take the third-party payment platform as an example, the platform may know or suspect that the customer’s funds come from an irregular source, but for the business purpose of pursuing profits, it chooses to turn a blind eye to the situation, resulting in money laundering. Such behavior should be punished.

4.2 Improve the Rights and Obligations of the Subjects of AML Obligations

The AML legislation used to regulate specific non-financial institutions should be improved. The subjects of AML obligations in the AML Law are distinguished between financial institutions and specified non-financial institutions. The Law provides for the scope of financial institutions, but does not specify the definition and regulatory requirements for specified non-financial institutions, leaving it to the relevant authorities to develop. On July 26, 2018, the PBOC issued the “Notice of the General Office of the PBOC on Strengthening the Supervision of Specific Non-Financial Institutions on AML” (hereinafter referred to as the Notice), which clearly stipulates the scope of the subjects of specific non-financial institutions that should fulfill AML obligations. It indicates that the State has paid attention to this issue, but the specific content of the participation of specific non-financial institutions in AML obligations still needs to be clearly stipulated. It is worth noting that the AML Law (Draft for Public Comments) drafted by the PBOC specifies the obligations of units and individuals other than specific non-financial institutions to cooperate with AML work, such as fulfilling the declaration of huge cash receipts and payments, proper storage and use of financial accounts in accordance with the law, and not renting, lending or trading financial accounts or performing other acts that facilitate illegal and criminal activities such as money laundering. This improves the scope of the subjects of AML obligations.

4.3 Strengthen International Collaboration on DCEP

FATA, an international standard-setter on anti-money laundering, plays an important role in the field of anti-money laundering of digital currencies, and its 40 Special Recommendations on Anti-Money Laundering provide useful references for countries and international organizations to formulate laws and regulations on anti-money laundering. Extensive and effective international cooperation is necessary to combat the crime of transnational money laundering using digital currencies such as DCEP. Firstly, there is a need to strengthen the exchange of experience in AML. China can actively participate in seminars, forums, and joint projects organized by international organizations such as the Financial Action Task Force on Money Laundering (FATF), the International Monetary Fund (IMF), and the Committee on Payments and Market Infrastructures for AML of digital currencies. Through academic exchanges, China can understand the current status of legislation and the latest theoretical achievements of other countries, and further enhance cooperation and exchanges with other countries. Secondly, international legislative cooperation needs to be

continuously strengthened, and bilateral or multilateral treaties need to be concluded to provide a clearer legal basis for the participation of international cooperation organizations against money laundering. Thirdly, the judicial collaboration among countries should be promoted, extradition cooperation should be strengthened, and jurisdictional disputes over transnational money laundering crimes should be resolved through national consultations, bilateral or multilateral jurisdictional agreements, etc. to fill the regulatory gap. Furthermore, countries should make full use of the existing international AML cooperation mechanism to establish an efficient digital currency transaction data platform and a unified information and intelligence monitoring agency. Finally, the international regulatory standards should be strengthened and improved. This can be done by strengthening coordination and cooperation with the United Nations and the International Criminal Police Organization, promoting the development of digital currency regulation and detection technology, improving the investigation technology of asset regulation, and exploring cooperation mechanisms such as joint investigations and transnational litigation. Only with concerted efforts in domestic and international regulation can we further enhance coordination in combating international crime and maintain the prosperity and stability of the world economic order.

5. Conclusion

China's economy has shifted from high-speed development to high-quality development. Technological innovation represented by the digital economy has become a major driving force for China's economic development. The launch of the DCEP is timely, as it not only meets the public demand for cash in digital form, helps financial inclusion, but also helps improve the operational efficiency of the currency and payment system. With features such as controlled anonymity, loosely coupled accounts, support for dual offline payments, peer-to-peer payment settlements, and cross-border transactions, DCEP is more likely to be a rallying point for money laundering crimes to occur than traditional paper money media. As for the expansion of ordinary traditional money laundering methods to the space of DCEP, the essence is still traditional money laundering with the help of DCEP. China can crack down on such money laundering crimes by applying the elements of traditional money laundering crimes to China's Criminal Law as well as the AML Law and other laws and regulations. However, at the same time, there are challenges such as insufficient attention to the change of the object of money laundering crimes in the digital currency environment, difficulties in identifying the subjective elements of money laundering crimes, too narrow scope of predicate crimes, and transnational money laundering. The development of new technologies will certainly force to change the traditional regulatory model of AML and establish a new regulatory paradigm to strengthen governance. Therefore, the legal regulation of AML in DCEP should be further improved by improving the legislation on criminal money laundering, clarifying the AML obligations of non-specific financial institutions as well as individuals and institutions, strengthening international cooperation and accelerating the legislation on electronic evidence. From the time of conforming to the development of the digital era and actively embracing changes, the integrated development of AML work and promoting the development of digital economy should be realized.

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