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Legal Nature of Electronic Payment in Cameroon

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ABSTRACT

Electronic payment is any payment mechanism which enables individuals, businesses, government and nonprofit organizations to make cashless payments for goods and services through cards, mobile phones and over the internet. This study examines the legal nature of electronic payment in Cameroon. Electronic payment is legally recognized in Cameroon, however, crypto currency prohibited. This study adopts the qualitative research methodology and the method used is doctrinal. The research finds that electronic payment is not a legal tender but a means of payment applicable to parties to a contract who have accepted it. The study recommends that the government should recognize crypto currency and regulate its use in Cameroon.

Keywords: Legal, nature, electronic payment.

I. Introduction

Electronic payment refers to any payment method that allows individuals, businesses, government entities, and nonprofit organizations to make cashless transactions for goods and services using cards, mobile phones, and the internet. Examples include payment through debit card, credit card, mobile money and smart card and electronic banking.² Originally, the payment system of goods and services that existed was barter. Conceptually, barter³ is a trading and financing tool that is based on centuries ago in the economy, though it is still new today. Simply, a barter system is the exchange of goods or services without money.⁴

The emergence of e-payment can be traced back to 1871, When Western Union introduced

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²Anubha, Electronic payment system? Available at E-Payment System at https://www.Shivajicollege.ac.in econtent. Visited, 06/05/2023.

³ In the case of Goods exchanged for goods, for example, a horse may be exchanged for a cow or 3 sheep or 4 goats. Under a barter system for a transaction to take place, there must be a double coincidence of wants. For instance, if the horse owner wants a cow, he has to find a person who not only possesses the cow but wants to exchange it with the horse. In other cases, goods are exchanged for services. A doctor may be paid in kind as payment for his services. For example, he may be paid cock, or some wheat or rice or fruits. Thus, a barter economy is a moneyless economy. The Barter System, available at https://www.dspmuranchi.ac. in/pdf/Blog/1: * 20Barter

^{% 20} System.pdf. Visited, 28/03/2023.

⁴ O., Uyan, "Barter as An Alternative Trading and Financing Tool and its Importance for Businesses in Times of Economic Crisis", *Journal of Economics, Finance and Accounting*, 2017, vol.4, Iss.3, pp-p.282-295:285.

electronic fund transfer (EFT) in the U. S, it marked the first occasion when individuals could pay for goods and services without needing to be physically present during the transaction process. Forms of payment continue to transform since then, including the launch of the first modern-day credit card by the Bank of America in 1958.⁵

Payment by way of an electronic transfer is not regarded as legal tender. An agreement must therefore be entered into between the parties involved in the transaction in terms of which the beneficiary agrees to accept payment by the originator's bank to settle the underlying obligation. Such agreement can be expressly or tacitly entered into, but in modern times, it is said that such an agreement can possibly be inferred or implied as a trade usage. The possibility of an electronic fund transfer constituting an assignment of the debt is also considered by Schulze. He states that "assignment takes place where an obligation is transferred from the debtor to a third party, with the creditor's consent. In the context of an electronic fund transfer, the originator's payment obligation will be assigned to the bank, who becomes the new debtor."

Law-makers have always been very much on guard against any private initiative to replace fiduciary money with another medium having the same features and advantages. Article 442-4 of the new Penal Code of France states that "introducing into circulation any unauthorised monetary symbol with the purpose of replacing coins or banknotes that are legal tender in France shall be punishable by five years' imprisonment and a 500 000 franc fine".

Traditionally, a distinction is made between three stages in the evolution of money: coins whether gold or silver, fiduciary money, and bank money. By this standard, the question arises as to whether electronic money, as a new payment method, represents a new legal form of money or merely serves as an additional means of managing bank money..¹² If electronic money

⁵ However, it was not until the 1960s when the U.S. Advanced Research Projects Agency Network (ARPANET) was launched. The platform laid the foundation for the internet that is common nowadays, paving the way for the next evolution of payment methods. Due to its usability, it started gaining grounds and acceptability worldwide. Following the invention of the Internet, in the early 1990s, the business and consumer world encountered new ways of conducting trade business, which was named electronic commerce (e-commerce). E-commerce has been defined as "commercial activities which are carried on by means of computers interconnected by telecommunications lines", or even more simply, as "business transactions conducted over the Internet". *Ibid.*

⁶ R., Heunis, The Regulation of Electronic Payments in South Africa, Masters Thesis, University of Pretoria, 2021, p.3.

⁷ Ibid.

⁸ Ibid.

⁹ Cited in R., Heunis, op cit., p.3.

¹⁰ Ibid

¹¹ S., Lanskoy, The Legal Nature of Electronic Money, Legal Affairs Division

Electronic Money Research Unit, p.105, available at https://www.bcb.gob.bo/webdocs/publicacionesbcb/revista_analisis/ra_vol0302/articulo_6_v3_2.pdf, visited, 19/02/2024.

12 Ibid.

were a new legal form of money, it would have to fulfill the three defining criteria of money: it would have to be a unit of account, used as a means of payment and embodied in a monetary instrument.

II. UNIT OF ACCOUNT

A unit of account (in economics) is a standard numerical monetary unit of measurement of the market value of goods, services, and other transactions. Also known as a "measure" or "standard" of relative worth and deferred payment, a unit of account is a necessary prerequisite for the formulation of commercial agreements that involve debt.

In medieval Europe, the separation of various functions of money was the standard rather than the exception. ¹⁴Even where a circulating coin was used as unit of account, it served to specify value in contracts, but not necessarily to settle those contracts. For example, Cipolla ¹⁵ writes: ". . . it was tacitly assumed that the payment could be settled with any other commodity of equivalent value. A debt stipulated in 20 solidi in a French document of November 1107 was, we know from a later document, settled with a horse." At the same time, it was common to denominate contracts in natural units (such as bushels of wheat) or even bundles (such as a combination of a natural unit and a monetary unit). ¹⁶

Money as a measure of value at times did not possess any physical quality; it was imaginary (conceptual). ¹⁷A value measure existed primarily for calculating. Nevertheless, it was deemed essential to establish a monetary system (a medium of exchange) that would facilitate trade; its general acceptability allowed for a consistent control over purchasing power (goods and services).). ¹⁸In so doing, money enhanced specialization and increased the efficiency of the economic system; it provided a means of trading labor services for commodities without holding

¹³ Money: Definition - Functions of Money - Role of Money - Defects of Money - Kinds of Money - Qualities of Good Money - Supply of Money: Changes in Money Supply -Velocity of Circulations, available at https://gacbe.ac.in/pdf/ematerial/18BEC63C-U1.pdf, visited, 27/02/2024.

¹⁴ M., Doepke and M., Schneider, Money as a Unit of Account, UNBER Working Paper Series, http://www.nber.org/papers/w19537, available at 27/02/2023.

¹⁵ Cited in M., Doepke, *ibid*.

¹⁶ There is also early evidence of accounting currencies distinct from any medium of exchange. In France, for example, the livre tournois served as unit of account for centuries during the medieval and early modern periods, even when the corresponding coin was no longer in circulation. The value of a coin used as an unit of account could also be different from that of the same coin in circulation, a phenomenon referred to as "ghost money" or "imaginary money". As pure accounting currencies, those monies were thus precursors of the ECU (European Currency Unit), a basket of European currencies that served as a unit of account in European trade before the introduction of the euro *Ibid*.

¹⁷ S., Salvary, On The Historical Validity of Nominal Money as A Measure of Organizational Performance: Some Evidence and Logical Analysis, (Essays in Economic and Business History Volume XI 1993 - pp. 153-177), p.2. ¹⁸ *Ibid*.

commodities.¹⁹ As Leijonhufvud²⁰ puts it: Individuals seek money wages because firms do not produce a balanced basket of goods. Consumers do not commit themselves in advance to a specific future consumption pattern, and accordingly would want wealth in a form which would permit the potential of consuming in the future whatever is then desirable.

Money therefore acts as a standard measure and a common denomination of trade. It is thus a basis for quoting and bargaining of prices. It is necessary for developing efficient accounting systems.

III. MEANS OF PAYMENT

The only alternative to using money is to go back to the barter system. Barter is usually defined as the dyadic exchange of goods and services of similar kind without the intervention of money. ²¹Initially regarded as a simple bilateral transaction (equivalent to commodity exchange), it did not attract particular anthropological attention. Barter has been widely reported in all five continents in an extensive range of societies throughout history, from hunter-gatherers to postsocialist states. ²²

However, a pure model of barter exists only in theory (Chapman 1980). Indeed, an apparently simple barter transaction (that is, two parties exchanging goods taken to be equivalent) entails multiple possibilities concerning the timing of the exchange (simultaneous or delayed), the partners (neighbors or foreigners), the relationship between them (fairness or hostility), the type of items exchanged (foodstuff, luxury goods, labor), and the wider socioe-conomic context in which the exchange takes place (economic crisis, international diplomacy, everyday provisioning).²³

However, as a system of exchange the barter system would be highly impracticable today.²⁴For example, if the baker who supplied the green-grocer with bread had to take payment in onions and carrots, he may either not like these foodstuff or he may have sufficient stocks of them.The baker would, therefore, have to re-sell the product which would take time and be very inconvenient.²⁵ By replacing these complicated sales by the use of money it is possible to save

¹⁹ *Ibid*.

²⁰ A., Leijonhufvud, *Information and Coordination: Essays in Macroeconomic Theory*, (New York; Oxford: Oxford University Press, 1981), p.68.

²¹ H., Valenzuela, "Barter", *The International Encyclopedia of Anthropology*. Edited by Hilary Callan. (John Wiley & Sons, Ltd, 2018).

 $^{^{22}}$ Ibid.

²³ *Ibid*.

²⁴ Money: Definition - Functions of Money - Role of Money - Defects of Money - Kinds of Money - Qualities of Good Money - Supply of Money: Changes in Money Supply -Velocity of Circulations, available at https://gacbe.ac.in/pdf/ematerial/18BEC63C-U1.pdf, visited, 27/02/2024.
²⁵ Ibid.

a lot of trouble. If the baker accepts payment in money this can be spent in whatever way the baker wishes. The use of money as a medium of exchange overcomes the drawbacks of barter.²⁶

There is argument against the proposition that money replaced barter as a means of exchange. For classical political economy, commerce is a natural, timeless and universal human activity.²⁷ The locus classicus of this view is Smith²⁸who suggested that 'to truck, barter, and exchange one thing for another' is a fundamental disposition of human beings. Moreover, for Smith, commerce gradually progresses from primitive barter, undertaken by 'savages' in the primeval jungle, to capitalist monetary exchange. In this vein, the emergence of money as means of exchange raises the productivity of labour and increases 'the wealth of nations'. But Smith does not offer an account of the process through which barter leads to the emergence of a means of exchange, thus transforming itself into monetary exchange.

A 'prudent' trader could solve them by carrying a commodity that is generally acceptable to all, that is, able to function as means of exchange. But neither Smith, nor the other classical political economists tackled the problem of how a generally acceptable commodity comes into existence. On what grounds can commodity owners expect others to accept a given commodity despite not wanting to consume it directly? Lapavitsas, assert that "Without answering this question, the view that money emerges as means of exchange in the course of barter lacks credibility".²⁹

IV. EMBODIED IN A MONETARY INSTRUMENT

Payment is generally defined as the discharge of an obligation by the satisfaction of the creditor.³⁰With regard to a money obligation, the debt is discharged by delivery of the sum, either in the form of cash that is legal tender and inconvertible currency (banknotes and coins), or by entering the amount of the sum of money owed in the creditor's bank account. Payment is made on transfer of the currency units 18 from the debtor to the creditor.³¹

Notes and coins (fiduciary money), like bank accounts (bank money) are therefore three

²⁶ *Ibid*.

²⁷ C., Lapavitsas, Money as 'Universal Equivalent' and Its Origin in Commodity Exchange, p.5, available at https://www.soas.ac.uk/sites/default/files/2022-10/economics-wp130.pdf, visited, 27/02/2024.

²⁸ A., Smith, The Wealth of Nations, E. Cannan (ed), vol. I, II, (London: Methuen, 1776, Vol.I,II) p.17.

²⁹ C., Lapavitsas, *op cit*. Amaresh, on his part posits that it would seem that the assumption that money necessarily arose from the realization of the inconveniences of barter, popular as is among economists, needs careful reexamination. The medium of exchange theory of the origin of money appears sometimes in an extreme form which suggests that at a certain moment a deliberate decision to adopt money was made, when the increase in the volume of trade made barter conditions intolerable. Economic historians rightly denounce the idea of a deliberate decision to change the system of commercial exchanges as being fully as unrealistic as Rousseau's conception of the conclusion of a contract social. D., Amaresh, "Money as a Medium of Exchange: Then and Now: Can

Technology be a Facilitator of Exchange?", *Global Journal of Management and Business Research: B Economics and Commerce*, 2015, Vol.15, Iss.11 Version 1.0, pp.39-44:40.

³⁰ S., Lanskoy, op cit.,

³¹ *Ibid*.

monetary instruments that contain currency units. In the case of fiduciary money, the means of payment and the monetary instrument are one and the same. Payment is made by delivery of notes or coins.³²

Electronic money is not therefore a new form of money but a debt instrument that facilitates the circulation of bank money.³³The electronic money payment system is a new way of managing bank money in which the means of payment is a card loaded with electronic units.³⁴ From a legal standpoint, each electronic unit is thus a claim embodied in an electronic instrument and accepted as a means of payment by third parties other than the issuer.³⁵

V. THE POSITION IN CAMEROON

The legal status of electronic payment is not expressly stated in Cameroonian law. Nevertheless, there is a legal framework for the regulation of electronic payment in Cameroon. The legal status of electronic payment can therefore be inferred from this framework. Central African Economic and Monetary Community (CEMAC) has adopted laws to regulate electronic payment within the region such as; Instruction No.001/GR/2018 of August 10, 2018 relating to the scope of interoperability of electronic payment systems in CEMAC zone. The electronic payment instruments authorized for external payment and withdrawals are immediate debit cards, deferred debit or credit card and prepaid cards, ³⁶ and Regulation No.04/18/CEMAC/UMAC/COBAC on Payment Services. Our focus is on Regulation No.04/18.

Regulation No 04/18/CEMAC/UMAC/COBAC on Payment Services³⁷

Regulation No 04/18/CEMAC/UMAC/COBAC on payment services within the CEMAC was adopted by the Ministerial Committee of the Central African Monetary Union (UMAC), at Yaoundé, Cameroon, on 21 December 2018.³⁸ As of 1 January 2019, the major innovation brought about by the new CEMAC Regulation is a shift from the Central Bank's banking model whereby the issuing of e-money was the sole responsibility of a credit or a microfinance

³² In the case of bank money, the bank account assumes the role of monetary instrument: the means of payment, also called cashless payment medium, will trigger the payment by giving an order to the bank that holds the account to transfer funds to the creditor's account20, through a dual transaction: a debit entry on one account (the payer's) and a credit entry on another account (the payee's). *Ibid*.

³³ S., Lanskoy, The Legal Nature of Electronic Money, Legal Affairs Division Electronic Money Research Unit, p.105, available at https://www.bcb.gob.bo/webdocs/publicacionesbcb/revista_analisis/ra_vol0302/articulo_6_v3_2.pdf, visited, 19/02/2024.

³⁴ *Ibid*.

³⁵ *Ibid*.

³⁶ Article 2.

³⁷ This CEMAC Regulation which came into force on 1 January 2019.

³⁸ A law for Fintech companies within the CEMAC zone in Cameroon, Cyber Law, Block Chain, Technology, https://www.lexafrica.com/2019/12/a-law-for-fintech-companies-within -the-cemac-zone/, visited, 06/05/2024.

institution, whether or not in partnership with a technical operator (usually a telecom operator); to a non-banking model, whereby the issuing of e-money can now be entrusted to a non-banking institution called a Payment Institution.³⁹ In other words, the 2018 CEMAC Regulation enables entities other than credit or microfinance institutions to issue e-money.

The Regulation defines 'payment services' as the issuing, provision or management of payment instruments or means of payment or the execution of payment orders. ⁴⁰ In this regard, payment services within the meaning of the Regulation include the following activities relating to the provision or management of instruments that enable anyone to transfer funds, regardless of the medium or technical process used: services which permit payment and withdrawal of cash into a bank or payment account and the related management operations; the execution of the following payment transactions associated with a bank or payment account; direct debits, including individually authorised debits; payment transactions carried out with a payment card or similar device enabling such transactions to be carried out; and one-off or permanent transfers.

It also includes: the execution of the following payment transactions associated with credit; direct debits, including unitary authorised debits; payment transactions carried out with a payment card or similar device enabling such transactions to be carried out; one-off or permanent transfers; the provision of payment instruments or the acquisition of payment orders; money transmission services, not involving an account of either the payer or the payee or both; or the issuing and management of e-money.⁴¹

In addition to the traditional players in the payment services sector, the new CEMAC Regulation has included: approved or authorised payment institutions;⁴² distributors and sub-distributors of payment services.⁴³

It is important to point out that the Regulation does not regulate e-commerce directly, but indirectly by providing for electronic payment that facilitates e-commerce.

VI. THE PROBLEM OF THE PROHIBITION OF CRYPTO CURRENCIES

Crypto currencies in financial transactions in COBAC are prohibited. On 6th May 2022 during

⁴⁰ Ibid.

³⁹ *Ibid*.

⁴¹ Ibia

⁴² According to the 2018 CEMAC Regulation, 'payment institutions' are institutions that, as a normal profession, provide exclusively payment and related services. These institutions may neither make available nor manage foreign exchange payment instruments, in particular cheques, promissory notes, bills of exchange and documentary credits

⁴³ A distributor or sub-distributor shall be any natural or legal person offering payment services to its customers, in the name and on behalf of one or more authorised payment service providers.

an extraordinary session, the Banking Commission of Central Africa (COBAC) categorically rejected any use of crypto currencies in financial transactions in the region. ⁴⁴ Crypto currencies are now banned in the Cemac zone (Cameroon, Central African Republic, Congo, Gabon, Equatorial Guinea). This decision results from the will of the COBAC to "guarantee financial stability and preserve customer deposits". ⁴⁵This prohibition is a problem given the relevance of crypto currencies in e-commerce. Crypto currencies such as Bitcoin is currently viewed by many investors as "digital gold", but it could also be used as a digital form of cash. ⁴⁶It is accessible. Anyone can use crypto currency. All you need is a computer or smartphone and an internet connection. The process of setting up a crypto currency wallet is extremely fast compared to opening an account at a traditional financial institution. There's no background or credit check. ⁴⁷

VII. CONCLUSION

It has been established that payment by way of an electronic transfer is not regarded as legal tender. An agreement must therefore be entered into between the parties involved in the transaction in terms of which the beneficiary agrees to accept payment by the originator's bank to settle the underlying obligation. Laws have however been adopted to accord electronic payment a legal status. In Cameroon, there are a good number of CEMAC regulations that regulate electronic payment. The only problem is that crypto currency is prohibited. Given the importance of crypto currency in the international transactions, it is important that CEMAC recognizes this mode of payment so as to enable nationals of CEMAC countries use it.

⁴⁴ Cameroon: COBAC Bans Cryptocurrency In Cemac zone, available at https://www. Journa lducameroun.com/en/cameroon-cobac-banns-cryptocurrency-in-cemac-zone/, visited,26/01/2023.

 $^{^{46}}$ Why do we need cryptocurrency, available at https://why-do-we-need-cryptocurrencies/amp, visited, 28/01/2023.

⁴⁷ *Ibid*.

⁴⁸ R., Heunis, The Regulation of Electronic Payments in South Africa, Masters Thesis, University of Pretoria, 2021, p.3.

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