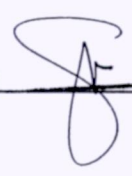




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SENATE
S.B. No. 1041

RECEIVED BY: 

Introduced by **SENATOR IMEE R. MARCOS**

**AN ACT RECOGNIZING DIGITAL ASSETS, REQUIRING THE REGISTRATION
OF DIGITAL ASSET ENTERPRISES, THEIR OPERATORS, AND FOR OTHER
PURPOSES**

EXPLANATORY NOTE

Article 2, Section 20 of the 1987 Constitution provides that "*the State recognizes the indispensable role of the private sector, encourages private enterprise, and provides incentives to needed investments*".

Digital assets (previously referred to as digital currencies) refer to assets represented in a digital form with their value being determined by supply and demand and has monetary characteristics.

Currently, the *Bangko Sentral ng Pilipinas* (BSP) regulates transactions related to digital assets through BSP Circular No. 942 and 944. The BSP Charter, however, as defined by RA No. 7653, also known as the "The New Central Bank Act" as amended by RA No. 11211, does not mention electronic, virtual, or digital representations of money. Section 3 provides that "the *Bangko Sentral* shall provide policy directions in the area of money, banking, and credit." Section 49 defines "currency" as all Philippine notes and coins issued or in circulation. This distinction is important in the context of the recommendation made by the Financial Action Task Force (FATF) last October 2018 on the use of the term "virtual asset" "to refer to digital representations of value that can be digitally traded or transferred and can be used for payment or investment purposes, including digital representations of value that function as a medium of exchange, a unit of account, and/or a store of value." The FATF further emphasizes the distinction between virtual assets and fiat currency. While the FATF recognize that virtual assets do not include digital representations of fiat currency, the limitation in the mandate of the BSP creates a need to further define the regulatory authority of the BSP to include e-money.

Virtual assets, as defined earlier, is a subset of digital assets issued by developers and stored in electronic wallets for online transactions. They are usually controlled by a decentralized network of users and is not subject to the control and guarantee of national governments or a central bank. The value of virtual assets are

solely based on the demand and supply, which makes their value volatile. As such, they differ from fiat currency, which is fully backed by the government of a country and is acceptable as a payment for public and private transactions. They are also distinct from electronic money, which is just the digital representation of fiat currency and is recognized as legal tender. Most virtual assets are programmed to behave like cash, with sophisticated encryption methods resulting in anonymity, as the user only needs to have a private digital key in order to transact in the system.

Virtual assets suffer from several problems. The combination of lack of central authority, lack of legislation and the degree of anonymity associated with virtual asset transactions make them a potential vehicle for fraud and illicit transactions. Virtual assets, in particular, is associated with the trade of illegal material in the "dark web" through the now defunct online black market Silk Road. Before its shutdown in 2013, Silk Road was able to generate an equivalent of \$1.2 billion of revenue, all in virtual assets. In addition, there are also concerns regarding money laundering using virtual assets. Liberty Reserve, a Costa Rica-based monetary transmitter, used virtual currencies to launder \$6 billion of criminal proceeds before its shutdown in 2013.

There is an emerging sentiment around the world for virtual assets to be recognized and regulated in order to facilitate acceptability and use while minimizing the dangers and risk associated with them. As of 2019, our ASEAN neighbors are currently in the process of establishing the framework for the operation of virtual asset exchanges and virtual asset business. Singapore already recognizes but not regulate virtual assets, allowing virtual payment tokens under the "Payment Services Act". Thailand regulates virtual asset exchanges and virtual asset businesses through the "Emergency Decree on Digital Asset Businesses". In the country, the Securities and Exchange Commission (SEC) regulates virtual asset offerings as securities.

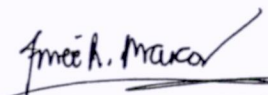
The value of virtual asset transactions in the Philippines is growing. Looking at the BSP data, the Philippines recorded \$390.37 million worth of transactions last 2018, from \$189.18 million last 2017. Fiat-to-virtual currency conversions totaled \$208.27 million in 2018, while virtual currency-to-fiat conversions totaled \$173.33 million. International remittances accounted for the remaining \$8.77 million. As of June 24, 2019, there are 48 virtual currency exchanges operating in the Philippines. As of the 48, 11 of them are registered under the Bangko Sentral ng Pilipinas (BSP) under Circular No. 944, which was issued last February 7, 2017. The remaining 37 virtual currency exchanges were licensed by the Cagayan Economic Zone Authority (CEZA) under its "Financial Technology Solutions and Offshore Virtual Currency Exchange (OVCE) Business Rules and Regulations of 2018." Out of the 37 exchanges under CEZA, 24 companies were granted the OVCE Principal license while the remaining 13 companies the OVCE Regular license. The former allows licensees to conduct offshore fintech business and virtual currency exchange activities while the latter allows licensees to conduct only offshore virtual currency exchange activities. No Philippine person or resident is allowed to apply for a CEZA OVCE license, which only applies for offshore activity, as the BSP regulates the local exchanges while the Securities and Exchange Commission (SEC) regulates the virtual asset offering and the operation of crypto-trading platforms. However, there are questions regarding the legal authority of the CEZA to issue licenses.

The recognition and standardization of the rules regarding the operation of digital assets will allow the country to enjoy its advantages. One advantage is the ease in which transactions can be done. Digital assets are traded in the Internet, which minimizes transaction costs. The accessibility, ease, and low transaction cost makes it an attractive vehicle for remittances, both local and international. The same traits also make it easier to make online transactions in the electronic commerce industry.

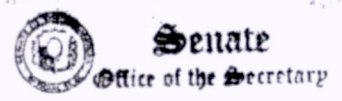
Digital assets is also a possible alternative in addressing the lack of financial inclusion. According to the 2018 Financial Inclusion Survey, 78% of Filipinos do not own a bank account. The absence of access to financial institutions result in most Filipinos not having a credit history, preventing most Filipinos from availing a bank loan. The use of digital assets can allow Filipinos to accumulate a transaction history, which will improve the financial inclusion of the country. In addition, it also improves the geographic reach of the financial system among those living in far-flung areas.

Given the situation described above, the bill aims to clarify and institutionalize the rules regarding digital assets. The bill aims to recognize but not regulate digital assets by defining what digital assets are and standardizing the process for the licensing and operation of e-money, virtual asset exchanges, and virtual asset businesses.

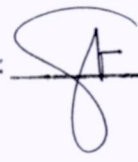
Given the abovementioned circumstances, the immediate passage of this bill is necessary.


IMEE R. MARCOS
Senator

EIGHTEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
First Regular Session)



SENATE
S.B. No. 1041

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Introduced by **SENATOR IMEE R. MARCOS**

AN ACT RECOGNIZING DIGITAL ASSETS, REQUIRING THE REGISTRATION OF DIGITAL ASSET ENTERPRISES, THEIR OPERATORS, AND FOR OTHER PURPOSES

Be it enacted by the Senate and the House of Representatives of the Philippines in Congress assembled:

- 1 Section 1. *Short Title.* – This Act shall be known as the “Digital Asset Act of 2019.”
2
- 3 Section 2. *Declaration of Policy.* – It is hereby declared the policy of the State to
4 recognize without regulating digital assets as a valid means of transaction and
5 investment with the objective of harnessing digital assets for growth, development,
6 financial inclusion, and poverty alleviation while maintaining the stability of the
7 country’s economy, and protecting investors and the public concerned.
8
- 9 Section 3. *Definition of Terms.* – The following terms shall mean:
10 (a) “BSP” means the “Bangko Sentral ng Pilipinas”
11 (b) “Digital asset” means “e-money” and “virtual assets”
12 (c) “E-money” means a digital representations of fiat currency whose issue is backed by
13 an equivalent fiat currency. It is an electronic store of monetary value on a technical
14 device that may be widely used for making payments to entities other than the e-

- 1 money issuer. The device acts as a prepaid bearer instrument which does not
2 necessarily involve bank accounts in transactions.
- 3 (d) "E-money Issuer" refers to any entity which provides money transfer or remittance
4 services using e-money.
- 5 (e) "SEC" means the Securities and Exchange Commission
- 6 (f) "virtual asset" means virtual currency and virtual token.
- 7 (g) "virtual asset business" means any of the following businesses: (i) virtual asset
8 exchange, (ii) virtual asset broker, (iii) virtual asset dealer, (iv) other businesses
9 related to virtual assets.
- 10 (h) "virtual asset exchange" means a center or a network established for the purposes of
11 trading or exchanging of virtual assets, which operates by matching orders or
12 arranging for the counterparty or providing the system or facilitating a person who
13 wishes to trade or exchange virtual assets to be able to enter into an agreement or
14 match the order, in the normal course of business.
- 15 (i) "virtual asset broker" means a person who provides services or holds itself out to the
16 public as available to provide services as a broker or an agent for any person with
17 respect to the trading or exchange of virtual assets in the normal course of business,
18 in consideration of a fee or other remuneration.
- 19 (j) "virtual asset dealer" means a person who provides services or holds itself out to the
20 public as available to provide services with respect to the trading or exchange of virtual
21 assets for its own account in the normal course of business outside the virtual asset
22 exchange.
- 23 (k) "virtual currency" means an electronic data unit created on an electronic system or
24 network for the purpose of being used as a medium of exchange for the acquisition of
25 goods, services or any other rights, or the exchange between virtual assets, and shall
26 include any other electronic data units.
- 27 (l) "virtual token" means an electronic data unit created on an electronic system or
28 network for the purpose of: (i) specifying the right of a person to participate in an
29 investment in any project or business; (ii) specifying the right of a person to acquire
30 specific goods, specific service, or any specific other right under an agreement
31 between the issuer and the holder, and shall include any other electronic data units of
32 right.
- 33 (m) "virtual token portal service provider" means a provider of an electronic system for an
34 offering of newly issued virtual tokens who is responsible for screening the
35 characteristics of virtual tokens to be offered, qualifications of the issuer and the

1 completeness and accuracy of registration statement and draft prospectus for the
2 offering of virtual tokens or any other information to be disclosed through such service
3 provider.

4
5 Section 4. *BSP as Lead Agency for E-Money.* - The BSP shall be in charge of the
6 exercise of powers under this Act over the operation of E-money and shall have the
7 power to issue notifications and perform duties in accordance with this Act.

8
9 Section 5. *SEC as Lead Agency for Virtual Assets.* - The SEC shall be in charge of the
10 exercise of powers under this Act over the offering and issuance of virtual assets, and
11 the operation of virtual asset businesses. The SEC shall have the power to issue
12 notifications and perform duties in accordance with this Act.

13
14 Section 6. *Scope.* - Securities pursuant to the law governing securities and exchange
15 shall not be regarded as virtual currency or virtual token under this Act. Virtual asset
16 business operators and virtual token portal service providers under this Act shall be
17 regarded as financial institutions under RA No. 9160, also known as the "Anti-Money
18 Laundering Act".

19
20 Section 7. *Transfer of Virtual Assets.* - In case where delivery, transfer, holding or
21 return of cryptocurrencies or virtual tokens is required, virtual currencies or virtual
22 tokens of the same category and type and of equal amount shall be fungible.

23
24 Section 8. *Operation of E-money Issuers* - For the purpose of supervision and
25 monitoring of E-money Issuers, the BSP shall have the duty and power to establish
26 the policies relating to the promotion and development as well as supervision and
27 monitoring of E-money and E-money issuers as prescribed under this Act. Such power
28 and duty shall include:

29 (a) the issuance of rules, regulations, notifications, orders or directives on the
30 operation of E-money Issuers;

31 (b) the determination of fees for an application for a license or permit, granting of a
32 license or permit, application for a permission, granting of a permission, filing of

1 registration statements for offering of virtual tokens, filing of annual registration
2 statements, other applications or undertaking of businesses under a license, license
3 or permission;

4 (c) the prescription of criteria as a guideline for the consideration to address any
5 potential issues which may arise from the enforcement of this Act;

6 (d) any other activities to be implemented according to the objectives of this Act.
7

8 Section 9. *Offering and Issuance of Virtual Assets.* - For the purpose of supervision
9 and monitoring of the issuance and offering of virtual tokens and the undertaking of
10 virtual asset businesses, the SEC shall have the duty and power to establish the
11 policies relating to the promotion and development as well as supervision and
12 monitoring of virtual assets and virtual asset business operators as prescribed under
13 this Act. Such power and duty shall include:

14 (a) the issuance of rules, regulations, notifications, orders or directives on issuance
15 and offering of virtual tokens and virtual asset businesses;

16 (b) the determination of fees for an application for a license or permit, granting of a
17 license or permit, application for a permission, granting of a permission, filing of
18 registration statements for offering of virtual tokens, filing of annual registration
19 statements, other applications or undertaking of businesses under a license, license
20 or permission;

21 (c) the prescription of criteria as a guideline for the consideration to address any
22 potential issues which may arise from the enforcement of this Act;

23 (d) any other activities to be implemented according to the objectives of this Act.
24

25 Section 10. *Disclosure of Information.* - To protect the public interest or investors, the
26 SEC shall have the duty to disclose the information relating to any violation and penalty
27 imposed on such person who commits an offence under this Act, including any other
28 information obtained in the performance of duties under this Act.
29

30 Section 11. *License to Operate E-money Issuers.* - Only the BSP shall issue a license
31 to operate E-money Issuers. Any natural or juridical person may obtain a license to
32 operate E-money Issuers by filing an Application for Registration and Notarized Deeds

1 of Undertaking to the BSP. The BSP shall issue the corresponding license upon
2 fulfillment of the registration requirements. The E-money issuer shall commence
3 operations within three (3) months from the date of issuance of the license. The E-
4 money Issuer should register with the Anti-Money Laundering Council Secretariat
5 (AMLCS) within thirty (30) calendar days from the actual commencement of business
6 operations.

7
8 Section 12. *License to Offer Virtual Tokens.* – Only the SEC shall issue a license to
9 offer newly issued virtual tokens to the public. Any natural or juridical person may
10 obtain a license to offer virtual tokens by filing a registration statement and a draft
11 prospectus to the SEC.

12
13 The offeror of virtual tokens shall prepare and submit the following information to the
14 SEC:

- 15 (a) reports concerning the results of business operation and the financial conditions;
16 (b) any information which may affect the rights and interests of virtual token holders
17 or the decision-making on investment or the change in the price or value of virtual
18 token.

19
20 The SEC shall have the power to specify in a notification the categories of virtual
21 tokens or the characteristics of the offering of virtual tokens which shall be exempt
22 from the requirement to submit a filing of the registration statement for an offering
23 of virtual tokens and the draft prospectus under this Section.

24
25 Section 13. *License to Operate Virtual Asset Business.* – Only the SEC shall issue a
26 license to operate a virtual business. The application for the license and the issuance
27 of the license shall be in accordance with the rules, procedures and conditions as
28 specified by the SEC and is subject to payment of the application and license fees.

29
30 In operating virtual asset business, a business operator shall comply with the rules,
31 procedures and conditions as specified by the SEC, taking into account the following
32 matters:

- 1 (a) sufficient financial resources for the conduct of and risks associated with its
2 operations;
3 (b) safety of its clients' assets;
4 (c) security measures against electronic crime, which are capable of protecting the
5 computer system and computer data as well as the management of risks associated
6 with crime or other causes;
7 (d) appropriate accounting systems for the business and auditing by the auditor
8 approved by the SEC;
9 (e) know-your-client measures, client due diligence process and measures against
10 financial assistance to terrorists or money laundering.

11
12 Where it is necessary to maintain the economic and financial stability of the country,
13 or to protect the public interest, the SEC shall have the power to specify conditions
14 with which the licensed business operator shall be required to comply in operating the
15 virtual asset business.

16
17 Any virtual asset business operator who has operated a virtual asset business prior to
18 the date on which this Act come into force and whose business requires a license
19 under this Act shall submit an application for the license as prescribed in this Act within
20 ninety days from the date on which this Act comes into force if it intends to continue
21 to operate the business. Upon submission of the application for the license, such
22 operator may continue to operate such business until the application is rejected.

23
24 Section 14. *Cessation of Virtual Asset Business.* Any virtual asset business operator
25 who wishes to cease operating a virtual asset business for which it has been granted
26 a license shall apply for an approval to cease its business operations from the SEC. In
27 granting the approval, the SEC may specify any conditions.

28
29 If any virtual asset business operator has ceased its business operations, it shall
30 complete the purchase, sale or exchange of virtual assets, settlement and delivery of
31 any outstanding transaction.

1 If it appears that a virtual asset business operator does not operate the virtual asset
2 business for which it has been granted a license within the period specified by the SEC
3 or suspends its operations for a period of time which is longer than those specified by
4 the SEC, the SEC, shall have the power to revoke the license of such operator.

5
6 Section 15. *Regulation of Virtual Asset Business.* If it appears that the financial
7 condition or operations of a virtual asset business operator is in such condition which
8 may cause damage to the public, or a virtual asset business operator violates or fails
9 to comply with the prescribed rules, procedures and conditions, the SEC may order
10 the virtual asset business operator to rectify it within the specified period of time. If
11 the virtual asset business operator fails to comply, the SEC may order the virtual asset
12 business operator to temporarily suspend its operations either in whole or in part
13 within the specified period of time for the rectification. In this regard, the SEC may
14 also specify any condition to be complied with by the virtual asset business operator
15 for the purpose of rectifying the financial conditions or operations of such virtual asset
16 business operator. If the virtual asset business operator fails to comply, or in the case
17 of repeated non-compliance, the SEC may consider revoking its license. In this regard
18 the SEC, may order the virtual asset business operator whose license is revoked to
19 take any action to protect the interest of its clients.

20
21 Section 16. *Revocation of License to Operate Virtual Asset Business.* Where there is
22 evidence that the financial condition or operations of any virtual asset business
23 operator is in such condition which may cause serious damage to the public and such
24 business operator is unable to rectify its financial condition or operations, the SEC shall
25 have the power to revoke its license. In this regard, the SEC may order the virtual
26 asset business operator whose license is revoked to take any action to protect the
27 interest of its clients.

28
29 Section 17. *Protection of Virtual Asset Clients.* - No virtual token business operator in
30 the category of virtual asset broker, including its staff members or employees who are
31 aware or in possession of information related to any order for purchase or sale of any
32 virtual assets or derivatives related to such virtual assets of any client of such business

operator, shall take any of the following actions, either for the their own benefit or for the benefit of any other persons, in any manner that is likely to cause a disadvantage to the client:

(a) placing, modifying, or cancelling an order for purchase or sale of virtual assets or derivatives related to such virtual assets by taking advantage of doing so before the order of such client is completely executed;

(b) disclosing information related to the order of such client to any other person where they know or ought to know that such other person would rely on such information in placing, modifying or cancelling any order for purchase or sale of virtual assets or derivatives related to such virtual assets before the order of such client is completely executed.

Section 18. *Penalty Clause.* – Any virtual token offeror who fails to comply with Section 11 and/or 12, or contravenes or fails to comply with the rules, procedures and conditions issued in accordance with Section 11 and/or 12, shall be liable to imprisonment for a term not exceeding two years or a fine not exceeding five hundred thousand pesos (PhP 500,000.00) and a further daily fine not exceeding three thousand pesos (PhP 3,000.00) for every day during which the contravention continues.

Any person who makes a false statement or conceals any fact which should have been disclosed in the registration statement for an offering of virtual tokens and draft prospectus pursuant to Section 11 and/or 12, shall be liable to imprisonment for a term not exceeding five years and a fine not less than five hundred thousand pesos (PhP 500,000.00).

Any virtual token offeror who contravenes or fails to comply with Section 13 and Section 15 shall be liable to a fine not exceeding three hundred thousand pesos (PhP 300,000.00) and a further daily fine not exceeding ten thousand pesos (PhP 10,000.00) for every day during which the contravention continues.

1 Sec. 19. *Implementing Rules and Regulations.* – Within sixty (60) days from the
2 effectivity of this Act, the SEC and the BSP shall promulgate the necessary rules and
3 regulations to effectively implement the provisions of this Act.

4

5 Section 20. *Repealing Clause.* – All laws or parts thereof, decrees, orders, rules and
6 regulations inconsistent with the provisions of this Act are hereby repealed or modified
7 accordingly.

8

9 Section 21. *Separability Clause.* – If any of the provisions of this Act is declared invalid,
10 the other provisions not affected thereby shall remain in full force and effect.

11

12 Section 22. *Effectivity Clause.* – This Act shall take effect fifteen (15) days following
13 its publication in a newspaper of general circulation or in the Official Gazette,
14 whichever comes first.

Approved,

15