LAW VISION

Cryptocurrency Conundrum
Lessons from the MTFE Scam in Bangladesh

The lessons learned from MTFE's disappearance should serve as a call to action for better regulation, vigilance, education, and transparency. Indeed, the path forward lies in striking a balance between innovation and regulation, between empowerment and protection.

NAURIIN AHMED

In an era driven by technological advancement and financial innovation, the realm of virtual assets and currencies has gained substantial attention, drawing both curiosity and apprehension. The frenzy around cryptocurrencies has given rise to a variety of legal and regulatory obstacles that require swift and effective reactions. This has been exacerbated by the recent events that have sparked discussions about the perils and potential pitfalls of engaging with virtual assets in Bangladesh. MTFE, an online broker, allowing trading of Forex, commodities, indices, stocks and cryptocurrencies such as Bitcoin, Ethereum, Liitecoin, Dogecoin, Polkadot, Bitcoin Cash and BNB on its platform, and operating in Bangladesh at least since June of 2022, has disappeared along with crores of public funds of Bangladeshi users.

Since the disappearance of MTFE, which claimed to be registered in Ontario, Canada with the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC), it has come to light that in addition to dealing in virtual assets, they were also operating a multi-level marketing (MLM) scheme by offering its users attractive referral benefits and monthly returns for logging on to the platform. It must also be noted that FINTRAC is not the authority in Ontario, Canada for authorising brokers, such as MTFE, it is rather the Ontario Securities Commission (OSC). MTFE was not registered with OSC and was running its business illegally from Dubai.

The question then arises, can MTFE be held legally responsible in Bangladesh under the existing regulatory framework? In this regard we must delve into the legality of offering virtual asset-related services on a cross-border basis— as was offered by MTFE, to individuals in Bangladesh— which has been a topic of much contention. According to Bangladesh Bank's FE Circular No. 24 dated 15.09.2022, it's crystal clear that transactions involving virtual assets or virtual currencies within, to, or from Bangladesh are unequivocally prohibited. This ban extends not only to the exchange, transfer, or trading of these assets but also to any facilitation of such activities. The foundation of these prohibitions lies within the Foreign Exchange Regulation Act, 1947 (FERA, 1947) and any transgressions may be met with severe penalties, including imprisonment and hefty fines. Moreover, these violations can also intertwine with the Money Laundering Prevention Act, 2012.

However, it's important to mention that FERA, 1947 applies exclusively to citizens, residents of Bangladesh, and individuals in the service of the People's Republic of Bangladesh, regardless of their location. This implies that even though MTFE was involved in activities banned by Bangladesh's central bank through the authority of FERA, 1947, holding it accountable under the existing regulatory framework might not be feasible. The reason being that MTFE lacks registration as an entity in Bangladesh, and FERA, 1947 doesn't possess jurisdiction beyond the nation's borders. Under the current regulatory setup, only users of MTFE who are citizens or residents of Bangladesh, can be held liable for contravening Bangladesh Bank's prohibitions. Consequently, foreign online platforms like MTFE can continue their operations with impunity in Bangladesh.

Furthermore, MTFE's operations are not merely about virtual assets; it's also about MLM schemes. MLM has been a contentious issue in Bangladesh, with the Multi-Level Marketing (Control) Act, 2013, clearly stipulating that any company engaging in MLM activities must obtain a license from the Ministry of Commerce. The Act further dictates that before applying for an MLM license, a company must register itself as a company limited by shares under the Bangladesh Companies Act, 1994. This registration requirement is intended to bring transparency and accountability to MLM activities, to protect consumers from pyramid schemes and deceitful marketing practices. However, MTFE was running its MLM operations from Dubai, without having any registrations or licenses in Bangladesh.

The MTFE debacle highlights not only the flagrant disregard for the law but also the consequences of such actions on unsuspecting citizens. This further underscores the need for awareness of the law and strict adherence to the law by the general public and the vital role of regulatory bodies in preserving the integrity of our financial system. The loss of hard-earned money, coupled with shattered trust, is a grim reminder of the urgent need for a stronger overarching regulatory framework. As virtual assets become part of the contemporary financial landscape, it's crucial to either facilitate their legal and transparent integration into the economy or establish improved regulations prohibiting them. These regulations should not only deter individuals from participating in virtual asset activities, but also ensure that those who disregard the law are held accountable, irrespective of their domicile. Outright banning of dealing in virtual assets has not been effective and has done nothing to prevent bad actors such as MTFE from continuing to operate under the radar of the regulatory authorities in unmonitored environments. Also, it is not the only foreign online virtual asset trading platform currently operating in Bangladesh; there are in fact many others that continue to operate illegally and launder money from the country.

As we seek a way forward, education emerges as a powerful tool to safeguard the masses from fraudulent crypto schemes. Ensuring that citizens have access to accurate and unbiased information about virtual assets and MLM schemes is crucial. By fostering financial literacy, we can equip individuals with the tools needed to make informed decisions and thereby safeguard themselves from potential scams.

In conclusion, as we navigate the ever-evolving landscape of virtual assets, the MTFE scam serves as a stark reminder of formulating a better legal framework and the importance of enabling a culture of adherence to it. The MTFE debacle has laid bare the risks, liabilities, pros, and cons associated with virtual asset-related services. The lessons learned from MTFE's disappearance should serve as a call to action for better regulation, vigilance, education, and transparency. Only through collective efforts, can we hope to create a safer, more secure financial future for all. Indeed, the path forward lies in striking a balance between innovation and regulation, between empowerment and protection.

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FOR YOUR INFORMATION

Recent Amendments in the Bank Company Act, 1991

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Recently, the Bank Company Act, 1991 has been amended to bring about significant changes in various provisions of the Act. To curtail family influence on the board of directors, section 15 of the Act has been amended and according to this new amendment, maximum of three from one family can be appointed to the board of directors of a bank. It should be noted that as per the earlier provision, maximum of four from one family could be appointed.

As per section 15AA of the Act, the tenure of the director has been increased to 12 years, earlier it was 9 years. The provision may increase the powers of directors, posing a significant obstacle to establishing good governance in the banking sector. To overcome this challenge and foster the overall development of the industry, reducing the tenure of the directors is necessary.

The newly added section 27B empowers Bangladesh Bank (BB) to declare a directorship vacant in case someone deliberately defaults on a bank loan. Moreover, he/she will not be able to become director of the bank for the following five years. On the other hand, according to the said section, if any bank or financial institution violates the said provision, a minimum of 50 lakhs to a maximum of 1 crore Taka fine will be imposed (additionally, a penalty of 1 lakh Taka will be imposed for every day from the day of such violation). As a result, the tendency of defaulting loans will likely be reduced to a large extent.

On the other hand, in the said law, there is a provision for providing loan facilities to other institutions or companies of a defaulting company or an individual (section 27), if the BB is satisfied that there is sufficient reason for the default of the loan, i.e., the said person or institution is not a willful defaulter. However, a willful loan defaulter can take advantage of this provision. Therefore, BB needs to exercise its discretion prudently in this regard; otherwise, there will be chaos in the banking sector.

The new changes are quite major; however, the biggest challenge is to implement these provisions effectively in order to establish good governance in the banking sector.

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REVIEWING THE VIEW

Vicarious Liability and Liability Insurance

There is no doubt that *Bangladesh Beverage v Rowshon Akhter* was quite a leap in the right direction as it opened the scope for bringing claims on vicarious liability to courts. However, without a proper liability insurance framework and adequate legal guidance on the quantum of compensation in place, it may be a challenge to implement the mechanism.

RAGIB SHAHRIAR

Bangladesh Beverage v Rowshon Akhter (2016) was one of the first instances where tortious damages for vicarious liability were awarded in Bangladesh, firmly entrenching a significant precedent in the realm of constitutional torts in general. Vicarious liability refers to the liability of one person or company for the act of another done on behalf of the former. Although *Bangladesh Beverage* was indeed a landmark, some crucial aspects for cases involving vicarious liability have remained unanswered— this includes guidance on assessment and quantification of damages and the need for a liability insurance framework.

The vicarious liability doctrine may differ on a case-to-case basis. The main element that is considered in every such case is the course of employment. The court examines primarily whether the wrongful act has occurred within the course of employment. For instance, in this case, the driver was a direct employee of the Bangladesh Beverage. While driving a vehicle of the company, the driver ran over the respondent, and he died. Hence, Bangladesh Beverage was held responsible as the action of the driver fell within the scope of his employment and the Appellate Division (AD) awarded compensation of 1,71,47,008 Taka to the deceased's family.

In this case, the company was capable of paying the hefty amount of compensation. However, most small and medium enterprises (SMEs) may need help in paying damages in such situations. The doctrine of vicarious liability is mainly implemented in legal systems where there is an established framework and practice of liability insurance. In countries with well-established liability insurance frameworks, the burden of compensation mostly falls upon the insurer. This not only results in victims receiving adequate compensation but also keeps economic stability by safeguarding businesses from bankruptcy. Moreover, such a system promotes responsible business practices and fosters a culture of accountability among the employers. However, in Bangladesh, in absence of the practice of liability insurance, being held vicariously liable may result in smaller companies facing significant financial hardships and therefore, the issue of liability insurance needs to be brought to attention.

Furthermore, in the judgment, the AD mentioned that the assessment of damages in such cases must necessarily be to some extent of a rough and approximate nature, based more or less on guesswork. In countries with established practice of vicarious liability claims, while assessing the damages, judges frequently rely on the data and statistics of reputed organisations. Awarding compensations based on guesswork alone can hardly result in fair judgments. This shows that our current justice system needs to be better equipped in terms of assessing and quantifying damages for tortious claims.

Another key critical observation on the judgment is the fact that the judges could have also taken into account (and discussed briefly) the economic consequences of prolonged litigation— indeed, the family had waited 27 long years seeking 'justice'. Failing to consider the impact of inflation over 27 years is also a grave injustice to the bereaved family. The family's need for reparation must have significantly changed over time. Hence, it raises the question as to whether the compensation awarded was sufficient or not.

In a nutshell, there is no doubt that the 2016 judgment was quite a leap in the right direction as it opened the scope for bringing in claims on vicarious liability to courts. However, without a proper liability insurance framework and adequate legal guidance on the quantum of compensation in place, it may be cumbersome to implement the mechanism.

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