

## AMENDMENT IN MONEY LAUNDERING PROVISIONS FOR VIRTUAL DIGITAL ASSETS

Money laundering has been a significant concern for governments and financial institutions for decades. Whilst traditional financial instruments /assets that are issued by the financial institutions are governed and regulated by an elaborate set of rules issued by the Government / the Reserve Bank of India, when it comes to crypto assets or currencies (typically issued via a decentralised blockchain), there are no set rules regulating them, making it extremely difficult to regulate them, including from the perspective of preventing money laundering. One of the other challenges with crypto ecosystem is that it is not confined to geographical boundaries. A person sitting in India could transfer a crypto asset for a value to a person in any part of the world, without using any formal banking channel or fiat currency and without having to complete any identity verification.

Since the transactions on a blockchain are anonymous, tracing of a transaction and implementing foreign exchange controls become extremely difficult. In order to curb the obscure nature of transactions that occur on blockchain networks the Department of Revenue, Ministry of Finance *vide* notification dated 7<sup>th</sup> March, 2023 included certain activities which when carried out for or on behalf of another natural or legal person in the course of business would fall under the purview of the Prevention of Money Laundering Act, 2002 (“**PMLA**” or “**Act**”). The set of activities brought under the ambit of PMLA include (i) exchange between virtual digital assets (“**VDAs**”) and fiat currencies, between one or more forms of VDAs; (ii) transfer of VDAs; (iii) safekeeping or administration of VDAs or instruments that enable control over VDAs; and (iv) participation in and provision of financial services that relate to an issuer’s offer and sale of a VDA.

As a result of this notification, institutions such as cryptocurrency exchanges and intermediaries dealing with VDAs will now be regarded as reporting entities under the PMLA and would be subject to standards of compliance required by such entities under the PMLA. An illustrative list of such compliances is:

- Reporting entities shall verify the identity of its clients and the beneficial owner by any officially valid document such as an Aadhar or passport. The Act further mentions that while verifying identity, the use of mode of identification shall be a voluntary choice of the client or beneficial owner and the core biometric information and Aadhar number of such client or beneficial owner shall not be stored. An electronic copy of ‘know-your-customer’ (“**KYC**”) records of a client shall be filed with the Central KYC Records Registry within 10 days of the commencement of an account-based relationship and a physical copy of the same shall also be maintained.
- Every reporting entity is required to maintain a record of all transactions. The Act further delves into the nature and value of transactions for which records shall be maintained, including but not limited to the following:

- i) All cash transactions of the value of more than INR 1 Million or its equivalent in foreign currency;
- ii) All series of cash transactions that may be individually valued below INR 1 Million or its equivalent in foreign currency but may be integrally connected and have taken place within a month and the monthly aggregate exceeds the abovementioned amount;
- iii) All transactions that involve receipts by non-profit organisations of value more than INR 1 Million or its equivalent in foreign currency;
- iv) Where forgery of a bank or currency notes, valuable security or document has taken place; and
- v) Suspicious transactions whether or not made in cash.

The records are required to contain information corresponding to the nature, amount, date of and the parties to transaction.

The notification has brought institutions and intermediaries that facilitate the trading of VDAs such as cryptocurrency and non-fungible tokens, and the provision of financial services related to such VDAs under the ambit of the PMLA. The reporting entities are required to get themselves registered with the Financial Intelligence Unit - India which is the central agency of the Government of India that is responsible for receiving, processing, analyzing and disseminating information that relates to suspicious financial transactions.

Bringing transactions in VDAs within the scope of the PMLA could play a critical role in fraud control and strengthening confidence of investors, retail consumers and financial markets in the crypto economy. Though these amendments do not legitimize or legalize private cryptocurrencies, it still would help in clamping down blockchain related financial crime and fraud and promote a more conducive use of blockchain networks.

\* \* \* \* \*

## **DISCLAIMER**

*This alert has been written for general information of our clients and should not be treated as a substitute for legal advice. We recommend that you seek proper legal advice prior to taking any action pursuant to this alert. We disclaim all liability for any errors or omissions. For further clarifications, you may write to Mallika Noorani ([mallika.noorani@parinamlaw.com](mailto:mallika.noorani@parinamlaw.com)), Ankita Singh ([ankita.singh@parinamlaw.com](mailto:ankita.singh@parinamlaw.com)), and Aastha Sood ([aastha.sood@parinamlaw.com](mailto:aastha.sood@parinamlaw.com)).*

### **MUMBAI**

4<sup>th</sup> Floor, Express Towers, Ramnath Goenka Marg, Nariman Point, Mumbai – 400 021

Tel : +91 22 4241 0000

### **NEW DELHI**

Flat No. 14(II), 2<sup>nd</sup> Floor, Front Block, Sagar Apartments, 6, Tilak Marg, New Delhi – 110 011.

Tel : +91 11 4610 2548

### **PUNE**

2<sup>nd</sup> Floor, Kundan Chambers, Thube Park, Next to Sancheti Hospital, Pune – 411 005

Tel : +91 20 2553 0711

WWW.PARINAMLAW.COM