

# Regulatory Alert

March 10, 2023



## Crypto assets brought within the ambit of PMLA

### Background

The agenda of the government since the past many years has been clear, honor the honest law-abiding citizens and pursue the suspected evaders. The outlook of the judiciary has also been unforgiving with the Apex Court ruling that the Enforcement Directorate ('ED') has the power to investigate people, conduct search and even arrest citizens under the stringent provisions of the Prevention of Money Laundering Act ('PMLA').

Under the rigours of the PMLA, a person shall be guilty of money laundering where he directly or indirectly attempts to indulge/ assist in any activity connected with "proceeds of crime". The scope of PMLA is extremely wide due to the meaning of the term "proceeds of crime".

The government has now further widened the scope of certain provisions of PMLA which have been elucidated below:

### Recent developments

#### I. Increased reporting of transactions in Virtual Digital Assets ('VDA')

In the latter half of 2022, ED conducted criminal investigation against one of the largest cryptocurrency exchanges in India. The ED claimed that a large number of fintech companies diverted proceeds of crime to the exchange and the crypto assets so purchased were diverted to unknown foreign wallets.

This led the government to take strict cognizance of money laundering activities using crypto assets.

The Ministry of Finance has issued a notification<sup>1</sup> where the following activities in respect of VDA are carried out for or on behalf of another person, it shall be regarded as an activity by a "person

---

<sup>1</sup> Notification no. S.O. 1072(E) dated 7 March 2023



carrying on designated business or profession” under PMLA:

- (i) exchange between VDAs and fiat currency
- (ii) exchange between one or more forms of VDAs
- (iii) transfer of VDAs
- (iv) safekeeping or administration of VDAs or instruments enabling control over VDAs
- (v) participation in and provision of financial services related to an issuer’s offer and sale of a VDA

It is further clarified that for the purpose of this notification a VDA<sup>2</sup> shall have the same meaning as assigned to it under the Income-tax Act, 1961 (‘Income-tax Act’).

Under the PMLA a person carrying on a designated business or profession (including related to VDA as provided above) shall be included within the meaning of a “reporting entity”.

### Obligations of reporting entity

A reporting entity shall be required to fulfil the following obligations:

- Verifying the identity of clients and beneficial owners.
- Maintain records of transactions in a manner that individual transactions may be reconstructed.  
  
Such records must be maintained for five years from the transaction date.
- Maintain records of identity, files and correspondences of its clients for five years from the end of the business relationship or closure of account, whichever is later.
- Other obligations include additional compliances viz. access of information to the

prescribed authority, enhanced due diligence etc.

## II. Amendments to PMLA Rules

Non-profit/ Charitable Institutions have been subject to heightened scrutiny in the recent past. They have been under the lens of the taxman and under the radar of agencies entrusted with regulating allied laws.

Actions against renowned politicians and persons affiliated with large political parties have also led to increased scrutiny of high-ranking officials.

Thus, multiple amendments have been notified<sup>3</sup> to the Prevention of Money Laundering (Maintenance of Records) Rules, 2005 (‘PMLMR Rules’). Some of the key changes are listed below:

### (i) Obligations of ‘group entities’

The term ‘group’ has been defined to have the same meaning as per the Income-tax Act to include a parent and all entities where due to ownership/ control, a consolidated financial statement is required to be maintained.

It is further provided that ‘groups’ are required to implement group-wide policies for the purpose of discharging obligations under the PMLMR Rules. These include verification of identity by reporting entities and maintenance of records amongst other procedures and compliances under Chapter IV of the PMLA.

### (ii) Non-profit organisations

The term “Non-profit organisation” (‘NPO’) has been amended to mean an entity or organisation constituted for religious or charitable purposes under section 2(15) of the Income-tax Act, which is registered as a trust or a society under the Societies Registration Act, 1860 or any similar

<sup>2</sup> Under the Income-tax Act, a VDA has been defined to mean any information, code, number or token generated through cryptographic means and which can be transferred, stored or traded electronically. It

also includes non-fungible token or any other token of similar nature.

<sup>3</sup> Notification no. S.O. 1074(E) dated 7 March 2023



legislation or a Company registered under section 8 of the Companies Act, 2013.

Accordingly, reporting entities will have to maintain records of transactions involving receipts by NPOs (including religious or charitable institutions) of more than INR 10 lakhs or its equivalent foreign currency.

Further, Banks/ Financial Institutions/ Intermediaries are required to register details of their NPO clients on the DARPAN portal of NITI Aayog and maintain such registration for 5 years from the end of business relationship with the client or account closure, whichever is later.

### (iii) Inclusion of Politically Exposed Persons

'Politically Exposed Persons' ('PEP') have now been defined under the PMLMR Rules as individuals who have been entrusted with prominent public functions by a foreign country, including the heads of States or Governments, senior politicians, senior government or judicial or military officers, senior executives of state-owned corporations and important political party officials.

This is to bring uniformity with the definition of PEP under the extant Foreign Exchange Regulations which is in line with the recommendations of the Financial Action Task Force ('FATF').

### (iv) Other amendments

- The beneficial owner of a client of a reporting entity shall be determined as under:

Type of client	Threshold for determining beneficial ownership
Company	Person having 10% or more of the capital/ profits of the company (earlier 25%).
Trust	Beneficiaries with 10% or more interest in the trust (earlier 15%).

- Along with basic details, the incorporation documents along with names and addresses of key persons of companies, partnership firms and trusts must be furnished as part of Know Your Customer ('KYC') documents to the reporting entity.

### Dhruva Comments

Transactions in VDA have been on the government's radar for a while with the introduction of an Income-tax and a corresponding withholding tax on transfer of VDA being introduced last year. Although the government had introduced a tax on VDA, there are no specific regulations framed to recognize the overall legality of transactions in VDA. Therefore, widening the ambit of reporting entities in respect of VDA transactions would only enable the government to gather more information relating to such activities.

By adding increased reporting requirements, the government is also keeping close watch over the amounts received by NPOs.

The government is clearly tightening the noose around activities surrounding proceeds of crime and given the wide scope of scheduled offenses which could trigger an investigation by the ED, one must ensure that all compliances/ reporting is done on a timely basis providing all prescribed information.

#### Contributors:

[Sandeep Bhalla](#) (Partner)

[Ashish Agrawal](#) (Associate Partner)

[Ritesh Thakkar](#) (Principal)

For any queries in relation to this regulatory alert, please feel free to reach out.



## ADDRESSES

### Mumbai

1101, One World Center, 11th floor,  
Tower 2B, 841 Senapati Bapat Marg,  
Elphinstone Road (West),  
Mumbai 400 013  
Tel: +91 22 6108 1000 / 1900

### Ahmedabad

B3, 3rd Floor, Safal Profitaire,  
Near Auda Garden,  
Prahlanagar, Corporate Road,  
Ahmedabad 380015  
Tel: +91-79-6134 3434

### Bengaluru

Prestige Terraces, 2nd Floor  
Union Street, Infantry Road,  
Bengaluru 560001  
Tel: +91-80-4660 2500

### Delhi / NCR

101 & 102, 1st Floor, Tower 4B  
DLF Corporate Park  
M G Road, Gurgaon  
Haryana 122002  
Tel: +91-124-668 7000

### Pune

305, Pride Gateway, Near D-Mart, Baner,  
Pune 411 045  
Tel: +91-20-6730 1000

### Kolkata

4th Floor, Unit No 403, Camac Square,  
24 Camac Street, Kolkata  
West Bengal 700016  
Tel: +91-33-66371000

### Singapore

Dhruva Advisors (Singapore) Pte. Ltd.  
20 Collyer Quay, #11-05  
Singapore 049319  
Tel: +65 9105 3645

### Dubai

WTS Dhruva Consultants  
Emaar Square Building 4, 2nd Floor,  
Office 207, Downtown,  
P.O. Box 127165  
Dubai, UAE  
Tel: +971 4 240 8477

## KEY CONTACTS

### Dinesh Kanabar

Chief Executive Officer  
dinesh.kanabar@dhruvaadvisors.com

### Sandeep Bhalla (Mumbai)

sandeep.bhalla@dhruvaadvisors.com

### Mehul Bheda (Ahmedabad)

mehul.bheda@dhruvaadvisors.com

### Ajay Rotti (Bengaluru)

ajay.rotti@dhruvaadvisors.com

### Vaibhav Gupta (Delhi/NCR)

vaibhav.gupta@dhruvaadvisors.com

### K. Venkatachalam (Pune)

k.venkatachalam@dhruvaadvisors.com

### Aditya Hans (Kolkata)

aditya.hans@dhruvaadvisors.com

### Mahip Gupta (Singapore)

mahip.gupta@dhruvaadvisors.com

### Nimish Goel (Dubai)

nimish.goel@dhruvaadvisors.com

---

Dhruva Advisors has been consistently recognised as the **“India Tax Firm of the Year”** at the ITR Asia Tax Awards in 2017, 2018, 2019, 2020 and 2021.

Dhruva Advisors has also been recognised as the **“India Disputes and Litigation Firm of the Year”** at the ITR Asia Tax Awards 2018 and 2020.

WTS Dhruva Consultants has been recognised as the **“Best Newcomer Firm of the Year”** at the ITR European Tax Awards 2020.

Dhruva Advisors has been recognised as the **“Best Newcomer Firm of the Year”** at the ITR Asia Tax Awards 2016.

Dhruva Advisors has been consistently recognised as a **Tier 1 Firm in India for General Corporate Tax** by the International Tax Review's in its World Tax Guide.

Dhruva Advisors has been consistently recognised as a **Tier 1 Firm in India for Indirect Taxes** in International Tax Review's Indirect Tax Guide.

Dhruva Advisors has also been consistently recognised as a **Tier 1 Firm in India for its Transfer Pricing** practice ranking table in ITR's World Transfer Pricing guide

#### Disclaimer:

This information contained herein is in summary form and is therefore intended for general guidance only. This publication is not intended to address the circumstances of any particular individual or entity. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation. This publication is not a substitute for detailed research and opinion. Before acting on any matters contained herein, reference should be made to subject matter experts and professional judgment needs to be exercised. Dhruva Advisors LLP cannot accept any responsibility for loss occasioned to any person acting or refraining from action as a result of any material in this publication