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Changes to Prevention of Money Laundering Act 2002 (PMLA)

Why in news?

Recently finance ministry placed all transactions involving virtual digital assets (VDA) under the purview of PMLA.

What is the Prevention of Money Laundering Act (PMLA)?

- **Aim** – The main focus of the PMLA is
    1. To prevent money-laundering
    2. To provide for confiscation of property derived from or involved in money-laundering

Key features of PMLA

- **Confiscation of property** - The PMLA deals with the confiscation of both movable and immovable property.
- **Intermediaries** - The Act provides that every banking company, financial institution and intermediaries should maintain a record of transaction.
- **Appellate Tribunal** - The Appellate Tribunal was established by Central Government to hear appeals against the dealers of Adjudicating Authority and authorities under this Act.
- **Special Courts** - The Central Government shall constitute the Special Courts in consultation of the Chief Justice of India to try the offence of Money Laundering.
- **Location of an entity** - The third party of any entity in the country shall not be located in any country classified as 'high risk' by the Financial Action Task Force (FATF)

The Enforcement Directorate is the main agency probing allegations under PMLA

What are the recent changes in the PMLA?

Bringing five types of activities under PMLA

- Exchange between virtual digital assets (VDA) and fiat currencies
- Exchange between one or more forms of VDA
- Transfer of VDA
- Safekeeping or administration of VDA or instruments enabling control over them
- Participation in and provision of financial services related to an issuer's offer and sale

of a VDA.

VDA *is any data, code, number, or token generated using cryptography or another method*

Fiat currencies *are government-issued currency that is not backed by a physical commodity, such as gold or silver, but rather by the government that issued it.*

Changes in the Prevention of Money-laundering (Maintenance of Records) Rules, 2005

- Defining the term - politically exposed person(PEP)
- Every banking company or financial institution must shall register the details of clients on the DARPAN Portal of Niti Aayog.
- The rules broadens the *definition* of a *non-profit organization* to now also include organizations that function for charitable purposes including relief to the poor, education or medical relief etc.
- The new rules add more data retention requirements to NGOs

'Politically exposed persons' (PEPs) - Individuals entrusted with prominent public functions by a foreign country, including 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.

What are the impacts of changes in PMLA?

Impact on Crypto exchanges

- If activities related to exchange of VDAs are carried out for or on behalf of another person, it shall be regarded as an activity under PMLA
- The crypto-entities are required to verify the identity of clients and beneficial owners, and maintain records of transactions for 5 years from the date of transaction
- The crypto exchanges must maintain records of identity, files and correspondences of clients for 5 years

Impact on Foreign portfolio investors

- FPIs will have to rework the mechanism for maintenance of records because of the change in threshold for determining beneficial ownership

Quick facts

Financial Action Task Force

- Financial Action Task Force (FATF), commonly referred to as the world's terrorism financing watchdog, is an inter-governmental decision-making body.

- It was established in 1989 during the G7 Summit in Paris to develop policies against money laundering.
- Its Secretariat is located in ***Paris.***
- It set standards and promotes effective implementation of:
    - Legal, regulatory and operational measures for combating money laundering.
    - Identify national-level vulnerabilities with the aim of protecting the international financial system from misuse.
- In 2010, ***India became the 34th member country*** of FATF.
- FATF maintains two types of lists.
    - **Black List** - Countries knowns as Non-Cooperative Countries or Territories (NCCTs) are put in the blacklist.
    - These countries support terror funding and money laundering activities.
    - The FATF revises the blacklist regularly, adding or deleting entries.
    - **Grey List** - Countries that are considered safe haven for supporting terror funding and money laundering are put in the FATF grey list.

References

1. The Hindu Business Line |PMLA
2. The Hindu Business Line |Crypto Currencies