

Cryptocurrency in Financial Statements - A Comparative Analysis

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Executive Summary

The Ministry of Corporate Affairs (MCA) on March 24, 2021, came out with a notification *inter alia* mandating disclosures of cryptocurrency holdings by companies in their balance sheets. These changes have been effectuated by making requisite amendments to Schedule III of the Companies Act, 2013. The notification specified that companies are now required to report the profit or loss accrued due to trade or investment in any type of cryptocurrency or virtual currency, the amount of cryptocurrency that the company holds on the reporting date, and the deposits or advances from any person that have been made for the purposes of trading or investing in cryptocurrencies or virtual currencies.

The decision on new disclosure requirements comes amidst parliamentary discussions on cryptocurrency and speculations of another attempt at prohibition. Meanwhile, this step has been welcomed by the cryptocurrency industry in India as it signals towards a more positive approach being taken by the government with regards to corporate cryptocurrency transactions in India. Moreover, while it opens up new possibilities of scrutiny of such transactions, this measure will also be beneficial in identifying key policy gaps in cryptocurrency regulation in India when we look at corresponding requirements in foreign jurisdictions.

In this Issue Brief, the policy landscape in the United States of America (USA), United Kingdom (UK), and Japan is discussed and particular emphasis is placed upon definition, accounting practices, and taxation, with respect to cryptocurrencies. It is thus identified that such jurisdictions have taken concrete steps in this regard by providing clear guidance (such as through HMRC's Cryptoassets Manual and ASBJ's advisory notification on accounting for cryptocurrencies).

Then, the regulations in India are looked into comprehensively and specific policy recommendations are made, as it is ascertained that no clear steps have been taken in the aspects that have been mentioned above. Although the March MCA Notification is a positive step on corporate cryptocurrency transactions, the following steps are needed further: *firstly*, a clear and comprehensive definition of cryptocurrency and cryptoassets must be laid down, preferably through a central legislation; *secondly*, a separate category for cryptocurrencies under the Indian Accounting Standards (Ind AS) should be created; and *thirdly*, complete guidance on applicable taxes on cryptocurrency transactions, by individuals and corporates, must be provided.

It is thus concluded that while the government is willing to engage with various stakeholders, with positive intent, comprehensive and definitive steps are the need of the hour. This is essential to safeguard the large number of cryptocurrency investors in India, and to quell the uncertainty that is created by speculative measures such as banks declining services for cryptocurrency transactions.

Introduction

In recent years, cryptocurrencies and cryptocurrency regulation have been frequently discussed topics in India. When the cryptocurrency market in India was still in its infancy, the Reserve Bank of India (RBI) was at the forefront of the regulation debate – starting with the first press release in 2013 cautioning the users of virtual currencies against risks,¹ then two more press releases in 2017 reiterating the warning.² This was followed by a 2018 Circular prohibiting RBI regulated entities from facilitating cryptocurrency transactions,³ a decision which was overturned by the Hon'ble Supreme Court of India (SC) in March 2020.⁴

While support for cryptocurrencies was slowly originating, a high level Inter-ministerial Committee was also set up in November 2017 by the Government of India to look into various issues pertaining to virtual currencies and to propose specific actions with respect to these.⁵ The Committee in its report in July 2019 recommended a ban on private cryptocurrencies in India,⁶ and a draft legislation was

¹ Reserve Bank of India, Press Release: 2013-2014/1261, “RBI cautions users of Virtual Currencies against Risks” (Dec. 24, 2013), https://rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=30247.

² Reserve Bank of India, Press Release: 2016-17/2054, “RBI cautions users of Virtual Currencies” (Feb. 01, 2017), https://www.rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=39435; Reserve Bank of India, Press Release: 2017-2018/1530, “Reserve Bank cautions regarding risk of virtual currencies including Bitcoins” (Dec. 05, 2017), https://rbi.org.in/scripts/BS_PressReleaseDisplay.aspx?prid=42462.

³ Reserve Bank of India, RBI/2017-18/154, “Prohibition on dealing in Virtual Currencies (VCs)” (Apr. 06, 2018), <https://www.rbi.org.in/scripts/NotificationUser.aspx?Id=11243&Mode=0>.

⁴ Internet and Mobile Association of India (IAMAI) v. Reserve Bank of India (RBI), (2020) 10 SCC 274, *the judgment can be accessed here*: https://main.sci.gov.in/supremecourt/2018/19230/19230_2018_4_1501_21151_Judgement_04-Mar-2020.pdf.

⁵ “Cryptocurrency Regulation in India – A brief history”, *The Centre for Internet and Society* (Mar. 05, 2020), <https://cis-india.org/internet-governance/blog/cryptocurrency-regulation-in-india-2013-a-brief-history>.

⁶ “Report of the Committee to propose specific actions to be taken in relation to Virtual Currencies”, *Department of Economic Affairs, Ministry of Finance* (Feb. 28, 2019), <https://dea.gov.in/sites/default/files/>

also prepared by the government to bring this into effect, but it was never introduced in the parliament.⁷

Come 2021, cryptocurrencies have achieved phenomenal levels of popularity and support around the world and India is no different, with Indian investments in cryptocurrency estimated to be over \$1.5 billion in value.⁸ The government however, had other plans as it was set to propose another legislation titled ‘Cryptocurrency and Regulation of Official Digital Currency Bill, 2021’, which was slated to be introduced in Parliament in the Budget Session of 2021, but is yet to be introduced. While the draft of this Bill is not publicly available, news reports claim that it would be another attempt to ban private cryptocurrencies in India.⁹

Meanwhile, amidst parliamentary discussions on cryptocurrency and appeals from various stakeholders against its prohibition,¹⁰ the government took another significant step in a different direction when in March this year, the Ministry of Corporate Affairs (MCA) released a Notification providing for mandatory disclosure of cryptocurrency holdings by companies.¹¹ The Notification has been noted to be a positive step which might signal the government’s intent towards regulation instead of complete prohibition. It is important to consider the implications that this Notification will have on companies holding cryptocurrencies, along with the issues associated with it, and this discussion forms the basis of this Issue Brief.

[Approved%20and%20Signed%20Report%20and%20Bill%20of%20IMC%20on%20VCs%2028%20Feb%202019.pdf](#).

⁷ Ibid.

⁸ George Mathew & Sunny Verma, “RBI plans and an upcoming Bill: Where are digital currencies headed?” *The Indian Express* (Apr, 23, 2021), <https://indianexpress.com/article/explained/cryptocurrency-bitcoin-rbi-7285249/>.

⁹ Ibid.

¹⁰ Rajeev Kumar, “Is there a future for Cryptocurrency in India? A look at recent discussions in Parliament”, *The Financial Express* (Apr. 03, 2021), <https://www.financialexpress.com/money/is-there-a-future-for-cryptocurrency-in-india-a-look-at-recent-discussions-in-parliament/2226036/>; “Internet and Mobile Association urges govt to regulate, not ban cryptocurrency”, *Hindustan Times* (Mar. 11, 2021), <https://www.hindustantimes.com/india-news/internet-and-mobile-association-urges-govt-to-regulate-not-ban-cryptocurrency-101615457160624.html>.

¹¹ Amendment to Schedule III to the Companies Act, 2013, *Ministry of Corporate Affairs, Government of India* (Mar. 24, 2021), http://www.mca.gov.in/Ministry/pdf/ScheduleIIIAmendmentNotification_13042021.pdf.

Here, I first delve into the intricacies of the March 24 Notification released by the MCA. Second, I briefly look at some specific cryptocurrency regulations (definitions, disclosure requirements, accounting standards, and taxation being the relevant areas) in a few foreign jurisdictions. Finally, I bring the discussion back to India to identify the key policy gaps in these areas that need to be filled in light of the MCA Notification, and also focus on solutions that we can emulate from such foreign jurisdictions.

March MCA Notification

On March 24, 2021, the MCA came out with a Notification that *inter alia* mandated that any company that has traded or invested in any type of cryptocurrency or virtual currency during the financial year must disclose in their ‘Statement of Profit and Loss’, the profit or loss that has occurred due to these transactions — along with amount of cryptocurrency that the company holds on the reporting date.¹² Additionally, the companies are now also required to disclose the deposits or advances from any person that have been made for the purposes of trading or investing in cryptocurrencies or virtual currencies.¹³ Requisite amendments have been made to Schedule III of the Companies Act, 2013 (“the Act”) for effectuating the same. Since amendments have been made to all the three Divisions under the Schedule, these are thus applicable to all the companies which need to comply with the *Companies (Accounting Standards) Rules, 2006*, and the *Companies (Indian Accounting Standards) Rules, 2015*, including Non-Banking Financial Companies (NBFCs).¹⁴

The directions came into force on the 1st of April, 2021 and have prescribed additional disclosures in the financial statements of companies from the Financial Year (F.Y.) 2021 - 2022. The aforementioned Schedule provides for the general instructions according to which the ‘Balance Sheet’ and ‘Statement of Profit and Loss’ of a company are

¹² Ibid.

¹³ Ibid.

¹⁴ Schedule III, Companies Act, 2013, available at: https://www.mca.gov.in/Ministry/pdf/CompaniesAct_2013.pdf.

prepared, as mandated under Section 129 of the Act,¹⁵ which are then also required to be filed with the Registrar of Companies (ROC) every year.¹⁶

The decision to bring in new disclosure requirements has been met positively by various industry professionals and stakeholders who believe that the step might point towards a more positive approach by the government with regards to cryptocurrency transactions in India, indicating that regulation and not prohibition should be the way forward.¹⁷ Sohail Merchant, the CEO of Pocketbits (an Indian cryptocurrency exchange), who is also a member of IAMA's Blockchain and Crypto Assets Council (BACC) opined that the move is expected "to bring transparency, legitimacy, and structure to the [cryptocurrency] industry", while another member of BACC, Sumit Gupta, who is the CEO & Co-founder of CoinDCX (another Indian cryptocurrency exchange) said that, "With companies across the world adding crypto assets to their books, this is a timely initiative by the MCA."¹⁸

Thus, the changes that have been brought in by the March 24 MCA Notification make it clear that the intent of the government is to establish that the companies undertaking transactions involving cryptocurrencies are identified and that these transactions do not remain undocumented. This significant step ensures that these transactions are properly and completely reflected in the financial statements of the company and will undeniably allow all the stakeholders to make informed decisions and at the same time, opens up a new door of opportunities for the Indian regulators to bring in new oversights over corporate cryptocurrency transactions in India. On the question of the type of oversights that need to be put in place and to identify key

¹⁵ Section 129, Companies Act, 2013, available at: https://www.mca.gov.in/Ministry/pdf/CompaniesAct_2013.pdf.

¹⁶ Section 137, Companies Act, 2013, available at: https://www.mca.gov.in/Ministry/pdf/CompaniesAct_2013.pdf.

¹⁷ "Members Of Blockchain And Crypto Assets Council Of IAMA Welcome MCA's Move On Cryptocurrency Investment Disclosure", *BW Businessworld* (Mar. 27, 2021), <http://www.businessworld.in/article/Members-Of-Blockchain-And-Crypto-Assets-Council-Of-IAMA-Welcome-MCA-s-Move-On-Cryptocurrency-Investment-Disclosure/27-03-2021-385012/>; Rounak Jain, "Indian companies will have to disclose cryptocurrency holdings from April 1 – industry insiders welcome decision", *Business Insider India* (Mar. 26, 2021), <https://www.businessinsider.in/policy/news/government-mandates-companies-to-disclose-cryptocurrency-holdings-from-april-1/articleshow/81704174.cms>.

¹⁸ "Members Of Blockchain And Crypto Assets Council Of IAMA Welcome MCA's Move On Cryptocurrency Investment Disclosure", *BW Businessworld* (Mar. 27, 2021), <http://www.businessworld.in/article/Members-Of-Blockchain-And-Crypto-Assets-Council-Of-IAMA-Welcome-MCA-s-Move-On-Cryptocurrency-Investment-Disclosure/27-03-2021-385012/>.

policy gaps in India, it is imperative that we try to understand the state of affairs in other jurisdictions around the world.

A Look at Other Jurisdictions

In countries around the world in recent years, there have been multiple corporate entities that have started investing in cryptocurrencies in large amounts,¹⁹ which also reflect in their annual financial statements. These include the electric car maker Tesla which had invested around \$1.5 billion in cryptocurrency in February of 2021,²⁰ the business intelligence firm MicroStrategy Inc. which holds over 90,000 bitcoins,²¹ and the software company Meitu which had bought 15,000 ether and 379.1 bitcoins in March this year.²² Thus, amidst the growing corporate interest in cryptocurrencies, it is essential to look into the definition, necessary accounting practices, disclosure requirements, taxation policy and other relevant regulations to identify the types of policy models that corporations face in various countries. The present study looks into the regulations in the United States of America (USA), the United Kingdom (UK), and Japan.

a. USA

In the United States, there is no uniform national definition that is used to describe cryptocurrencies or the type of crypto assets that are included under this term. The Internal Revenue Service (IRS), however, in a notice in 2014 described the term virtual currencies as being “a digital representation of value that functions as a medium of exchange, a unit of account, and/or a store of value.” It went on to describe something called ‘convertible’ virtual currency which is a “Virtual currency that has an

¹⁹ Damanick Dantes, “Bitcoin on the Balance Sheet? Corporate Buying Might Become a Global Trend”, *CoinDesk* (Mar. 11, 2021), <https://www.coindesk.com/bitcoin-balance-sheet-corporate-treasurers-global>.

²⁰ “Elon Musk’s Tesla Invests \$1.5 Billion in Bitcoin, Will Accept the Cryptocurrency for Purchases”, *Gadgets360* (Feb. 09, 2021), <https://gadgets.ndtv.com/transportation/news/tesla-elon-musk-bitcoin-invest-usd-1-5-billion-cryptocurrency-accept-purchase-customers-dogecoin-2366302>.

²¹ As of April 05, 2021, MicroStrategy holds about 91,579 bitcoin at a total purchase price of \$2.23 billion, Kevin Reynolds, “MicroStrategy Buys \$15M More of Bitcoin”, *CoinDesk* (Apr. 05, 2021), <https://www.coindesk.com/microstrategy-buys-15m-more-of-bitcoin>.

²² Kevin Reynolds, “Software Firm Meitu Buys \$22M of Ether, \$17.9M Bitcoin for Its Treasury”, *CoinDesk* (Mar. 07, 2021), <https://www.coindesk.com/software-firm-meitu-buys-22m-of-ether-17-9m-bitcoin-for-its-treasury>.

equivalent value in real currency, or that acts as a substitute for real currency”, and bitcoin is cited as an example of such ‘convertible’ virtual currency.²³ Additionally, the note further clarifies that it only addresses the U.S. federal tax consequences for transactions involving such virtual currencies,²⁴ and moreover, these are to be considered ‘property’ and are not regarded as ‘currency’.²⁵ While several states in the US have proposed or formulated regulations affecting cryptocurrencies, no further attempts have been made at the federal level to comprehensively define the term cryptocurrency or virtual currency.²⁶

As far as disclosure requirements go, currently, there are no regulations in the US at the federal level that provide for mandatory disclosures of cryptocurrency holdings or investments in the financial statements filed by companies.²⁷ Yet, as a general practice and in order to provide a clearer picture to various stakeholders, many US companies choose to do so voluntarily. This is not an easy task however, since the US Generally Accepted Accounting Principles (U.S. GAAP) does not provide any specific rules about how cryptocurrency can be included in the accounts, and moreover the Financial Accounting Standards Board (FASB) has not taken up the project to look into accounting for cryptocurrencies,²⁸ which could have provided some direction. Thus, in light of the guidance issued by the American Institute of Certified Public Accountants (AICPA),²⁹ cryptocurrencies are usually classified by the companies as “intangible assets” in their financial statements.

²³ Section 2, “Notice 2014-21:”, *Internal Revenue Service, United States of America*, <https://www.irs.gov/pub/irs-drop/n-14-21.pdf>.

²⁴ *Ibid*, Section 3.

²⁵ *Ibid*, Section 4.

²⁶ Joe Dewey, “Government Attitude & Definition | Blockchain Laws and Regulations 2021 | USA”, *Global Legal Insights (GLI)*, <https://www.globallegalinsights.com/practice-areas/blockchain-laws-and-regulations/usa#chaptercontent1>.

²⁷ Joe Dewey, “Reporting Requirements | Blockchain Laws and Regulations 2021 | USA”, *Global Legal Insights (GLI)*, <https://www.globallegalinsights.com/practice-areas/blockchain-laws-and-regulations/usa#chaptercontent10>.

²⁸ “Tentative Board Decisions”, *Financial Accounting Standards Board (FASB) Board Meeting* (Oct. 21, 2020), https://www.fasb.org/jsp/FASB/FASBContent_C/ActionAlertPage&cid=1176175405562.

²⁹ “Accounting for and auditing of digital assets”, *Association of International Certified Professional Accountants (AICPA)*, <https://www.aicpa.org/content/dam/aicpa/interestareas/informationtechnology/downloadabledocuments/accounting-for-and-auditing-of-digital-assets.pdf>.

Under this practice, the value of the relevant cryptocurrencies at the time of the purchase is recorded into the statements. This system however, presents an interesting problem, since under the U.S. GAAP rules for intangible assets, if the value of the cryptocurrency drops, the company is required to write down the value of their holdings in their records, but at the same time if the price of the cryptocurrency rises, the gains cannot be logged into the records until and unless the company sells the assets.³⁰ Thus, even if the market value of cryptocurrency goes up, as long as cryptocurrencies are classified as intangible assets, unless they decide to offload those assets, it remains to be seen as to what the companies in the US stand to gain.

Another important aspect to this cryptocurrency debate is taxation, which is also complicated and is separate from its status under the U.S. GAAP.³¹ As has been stated before, the 2014 IRS notice had declared that ‘convertible’ virtual currencies, such as bitcoin, are to be treated as property for taxation purposes.³² The IRS also maintains an FAQ on the cryptocurrency taxation policy for federal tax payers “who hold virtual currency as a capital asset”, and thus companies who currently hold cryptocurrencies might be liable to pay capital gains tax on any future cryptocurrency sale,³³ although the exact nature of this process remains unclear. It would follow that since such a tax liability might exist, companies are mandated to keep records of any transactions involving cryptocurrencies and disclose them to the IRS.

b. UK

In the United Kingdom, Her Majesty's Revenue and Customs (HMRC) provides a very comprehensive and thorough definition of cryptocurrencies (which are actually referred to as cryptoassets). The internal manual titled ‘Cryptoassets Manual’, which

³⁰ Accounting for Digital Assets under the US GAAP, “Corporates Investing in Crypto”, Deloitte, <https://www2.deloitte.com/us/en/pages/audit/articles/corporates-investing-in-crypto.html>; Tom Wilson et al., “Explainer: Bitcoin on your balance sheet? Here's what you need to know”, *Reuters* (Mar. 08, 2021), <https://www.reuters.com/article/us-crypto-currency-bitcoin-treasury-expl-idUSKBN2B00FP>.

³¹ Tax Treatment and Challenges from an Investment Perspective, “Corporates Investing in Crypto”, Deloitte, <https://www2.deloitte.com/us/en/pages/audit/articles/corporates-investing-in-crypto.html>

³² Section 4, “Notice 2014-21”, *Internal Revenue Service, United States of America*, <https://www.irs.gov/pub/irs-drop/n-14-21.pdf>.

³³ “Frequently Asked Questions on Virtual Currency Transactions”, *Internal Revenue Service, United States of America*, <https://www.irs.gov/individuals/international-taxpayers/frequently-asked-questions-on-virtual-currency-transactions>.

derives from the positions set out in the policy papers released by the HMRC entitled *Cryptoassets: tax for individuals (December 2018)* and *Cryptoassets: tax for businesses (November 2019)*, states that - “Cryptoassets (also referred to as ‘tokens’ or ‘cryptocurrency’) are cryptographically secured digital representations of value or contractual rights that can be: (i) transferred, (ii) stored, (iii) traded electronically.” It then goes on to comprehensively describe the various types of cryptoassets such as Exchange Tokens, Utility Tokens, Stable Coins, etc.³⁴ The manual also extensively delves into the technological aspects of these assets,³⁵ and makes it clear that these are not to be considered as currency or money under any circumstance.³⁶

While cryptocurrency exchanges and other businesses offering such services are supposed to be registered with the Financial Conduct Authority (FCA),³⁷ like the US, the UK also does not have any specific regulations that mandate the disclosure of cryptocurrency and cryptoasset holdings by companies in their financial statements (balance sheets & statements of profit and loss). The disclosure requirements by the HMRC for tax purposes are discussed below. Moreover, although the UK has delved into widespread studies into this domain with the formation of a cross-authority Cryptoassets Taskforce in 2018,³⁸ along with other periodic discussions, there are currently no guidelines with respect to accounting practices for cryptocurrencies or cryptoassets under the UK Generally Accepted Accounting Principles (U.K. GAAP).³⁹

On the tax front, the HMRC of the UK provides clear guidance to both individuals and corporations on the tax liabilities over cryptocurrency or cryptoasset transactions. It

³⁴ “CRYPTO10100 - Introduction to cryptoassets: what are cryptoassets”, *Cryptoassets Manual - HMRC Internal Manual, United Kingdom*, <https://www.gov.uk/hmrc-internal-manuals/cryptoassets-manual/crypto10100>.

³⁵ “CRYPTO10000 - Introduction to cryptoassets: contents”, *Cryptoassets Manual - HMRC Internal Manual, United Kingdom*, <https://www.gov.uk/hmrc-internal-manuals/cryptoassets-manual/crypto10000>.

³⁶ “CRYPTO10100 - Introduction to cryptoassets: what are cryptoassets”, *Cryptoassets Manual - HMRC Internal Manual, United Kingdom*, <https://www.gov.uk/hmrc-internal-manuals/cryptoassets-manual/crypto10100>.

³⁷ “FCA establishes Temporary Registration Regime for cryptoasset businesses”, *Financial Conduct Authority, United Kingdom* (Dec. 16, 2020), <https://www.fca.org.uk/news/press-releases/fca-establishes-temporary-registration-regime-cryptoasset-businesses>.

³⁸ “Cryptoassets Taskforce: Final Report”, United Kingdom (Oct. 2018), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/752070/cryptoassets_taskforce_final_report_final_web.pdf.

³⁹ Jon Wedge, “Cryptocurrency Accounting”, *BKL London, UK* July 23, 2019), <https://www.bkl.co.uk/insights/cryptocurrency-accounting-frs-ifs/>.

states that: “If a company or business is carrying out activities which involve exchange tokens, they are liable to pay tax on them.”⁴⁰ The list of such activities includes - “(i) buying and selling exchange tokens, (ii) exchanging tokens for other assets (including other types of cryptoassets), (iii) ‘mining’, and (iv) providing goods or services in return for exchange tokens.”⁴¹

Additionally it also specifies that the type of tax that will be imposed upon the company will be decided after looking into who was involved in the business and the type of activities that were carried out. These taxes include one or more of the following: “(i) Capital Gains Tax (CGT), (ii) Corporation Tax (CT), (iii) Corporation Tax on Chargeable Gains (CTCG), (iv) Income Tax (IT), (v) National Insurance Contributions, (vi) Stamp Taxes, and (vii) VAT.” The actual amount of tax that needs to be paid will depend on the income, expenditure, profits and gains of the company. Thus, the HMRC requires that these be declared to them on an annual company tax return.⁴²

c. Japan

With Japan being one of the most progressive and foremost countries with respect to cryptocurrency regulation,⁴³ it is crucial to look into the model that exists here. Recent changes in the Payment Service Act, 2009, which is the leading legislation on cryptocurrency regulation in Japan, has seen the introduction of more stringent regulations along with that of the term crypto-assets in place of virtual currency,⁴⁴ thus providing a complex, but wider and more inclusive definition. In short, it defines cryptoassets as something that is used as a payment method or is exchanged with an unspecified person in a digital manner, and is not denominated in fiat currency.⁴⁵

⁴⁰ “CRYPTO40050 - Cryptoassets for businesses: which taxes apply”, *Cryptoassets Manual - HMRC Internal Manual, United Kingdom*, <https://www.gov.uk/hmrc-internal-manuals/cryptoassets-manual/crypto40050>.

⁴¹ Ibid.

⁴² Ibid.

⁴³ “Cryptocurrency Regulations in Japan”, *ComplyAdvantage*, <https://complyadvantage.com/knowledgebase/crypto-regulations/cryptocurrency-regulations-japan/>.

⁴⁴ Ibid.

⁴⁵ Taro Awataguchi & Takeshi Nagase, “Cryptocurrency Regulation | Blockchain Laws and Regulations 2021 | Japan”, *Global Legal Insights (GLI)*, <https://www.globallegalinsights.com/practice-areas/blockchain-laws-and-regulations/japan#chaptercontent2>.

While no clear disclosure requirements for companies are present in Japan either, apart from the ones for taxation purposes, the accounting standards for cryptocurrency here are well developed. The Accounting Standards Board of Japan (ASBJ) on March 14, 2018, issued an advisory notification titled '*Practical Solution on the Accounting for Virtual Currencies under the Payment Services Act*', which came into effect on April 1, 2018.⁴⁶ These standards are applicable to all the cryptocurrencies except for the ones that are issued by the entity that is using these standards.⁴⁷ The notification states that cryptocurrencies are indeed considered 'assets' for accounting purposes in Japan,⁴⁸ but as for the type of asset, it does not fall into any of the existing categories and provides a new independent category for these.⁴⁹

The new independent category specifies two types of cryptocurrencies that need to be reflected in balance sheets for entities who hold cryptocurrencies for themselves - those with an *active market* (value reflected at market rate), and those without an *active market* (value reflected at cost, but written down to the estimated disposal value if such value is lower than cost).⁵⁰ *Active market* here is defined as "a market in which transactions for the virtual currency take place with sufficient frequency and volume to provide pricing information on an ongoing basis."⁵¹ Thus, this new standard allows a fairly accurate representation of the value of cryptocurrencies in the financial statements of companies that might hold these, and will also be helpful for all the stakeholders.

The policy on the taxation front is also clear in Japan. Before 2017, the sale of cryptocurrency was subject to consumption tax where the seller was located in Japan, now however, the sale of cryptocurrencies that constitute cryptoassets under the

⁴⁶ Para 1, "About the Practical Solution on the Accounting for Virtual Currencies under the Payment Services Act", *Accounting Standards Board (ASB), Japan*, https://www.asb.or.jp/en/wp-content/uploads/2018-0315_2_e.pdf.

⁴⁷ *Ibid*, at Para 7.

⁴⁸ *Ibid*, at Para 19.

⁴⁹ *Ibid*, at Para 29.

⁵⁰ *Ibid*, at Para 12.

⁵¹ *Ibid*, at Para 13.

Payment Services Act, 2009 are exempted from consumption tax.⁵² Further, the National Tax Agency of Japan has specified that profits generated by the sale or use of cryptoassets are to be treated as miscellaneous income, and taxable accordingly.⁵³ However, it was also specified that in case a corporation holds cryptocurrency as a business asset, and uses it as a payment method, it will be treated as business income according to the profit or loss accrued from its use.⁵⁴ Thus, companies in Japan too are mandated to disclose their cryptocurrency holdings in their tax returns.

Policy Landscape in India

After looking into the cryptocurrency regulations in the above jurisdictions, we return to the landscape in India and discuss the present policy status and issues in the areas of definition, accounting practices, and taxation, within the domain of cryptocurrency regulation.

1. Definition

Even after numerous discussions and attempts on regulating cryptocurrency, India does not currently have an official definition for either cryptocurrencies or cryptoassets. While the RBI has released precautionary Notifications in 2013 and 2017, along with a prohibitory circular in 2018, it made no attempts to actually define cryptocurrencies, virtual currencies, or cryptoassets, although it laid down examples of the same and made it clear that these are not legal tender.⁵⁵ Moreover, the Hon'ble Supreme Court during the course of the hearing which ultimately quashed the 2018 RBI Circular had extensively discussed the definition and nature of cryptocurrencies by looking into its treatment in other jurisdictions,⁵⁶ but the ultimate goal of this

⁵² Taro Awataguchi & Takeshi Nagase, "Taxation | Blockchain Laws and Regulations 2021 | Japan", *Global Legal Insights (GLI)*, <https://www.globallegalinsights.com/practice-areas/blockchain-laws-and-regulations/japan#chaptercontent6>.

⁵³ Yasuhigto Yagihashi, "Japan's Tax System Series Vol.1 | What is the tax classification of crypto assets?", *BTCBOX Blog* (Sept. 30, 2020), <https://blog.btcbox.jp/en/archives/11102>.

⁵⁴ *Ibid.*

⁵⁵ Refer footnotes 1 & 2.

⁵⁶ Page 70 Onwards, *Internet and Mobile Association of India (IAMI) v. Reserve Bank of India (RBI)*, (2020) 10 SCC 274, *the judgment can be accessed here*: https://main.sci.gov.in/supremecourt/2018/19230/19230_2018_4_1501_21151_Judgement_04-Mar-2020.pdf.

exercise was to establish the extent of RBI's oversight over cryptocurrencies and not to establish a definition of cryptocurrency in India. Cryptocurrency legislations (which will certainly include a comprehensive definition of cryptocurrency) have also been proposed multiple times, the latest one being in 2021 itself, but they have never seen the light of the day, and are thus, not helpful.⁵⁷ The only draft proposed by a government agency which is available in the public domain is the *Banning of Cryptocurrency & Regulation of Official Digital Currency Bill, 2019* proposed by the Interministerial Committee on Virtual Currencies in its report dated February 28, 2019. However since it is only a draft Bill attached to a Committee Report, it cannot be used as a reliable tool for interpretation of the definition of cryptocurrencies.

Moving on to the recent MCA Notification on cryptocurrency disclosure requirements for companies, while the amendment has made the reporting requirements of cryptocurrency companies absolutely clear (please refer to the discussion above), the decision makers have once again failed to clarify as to what they mean when they refer to cryptocurrencies or virtual currencies. The question of whether these disclosure requirements would also include holdings in cryptoassets such as Stable Coins, Utility Tokens, Non-Fungible Tokens (NFTs) etc, thus remains unanswered. Specifying the nature and scope of these terms will also be beneficial in decisions on taxation, foreign exchange regulation, anti-corruption measures and other policy actions.

Recommendation: It is thus extremely important for policy makers to provide for an inclusive and comprehensive definition of cryptocurrencies and cryptoassets, preferably through a central legislation, as this vital measure will form the basis of any other regulation that will be brought in. Approaches from the UK and Japan in this regard can be particularly helpful as they provide instructive definitions. Moreover, a guide, like the Cryptoassets Manual used by the HMRC which also delves into the technological aspects, can go a long way in regard.

2. Accounting Practices

⁵⁷ Refer footnotes 6 & 9.

Accounting Practices in India followed by companies need to be in consonance with the Indian Accounting Standards (Ind ASs),⁵⁸ which are developed by a committee known as the Accounting Standards Board (ASB) which functions under the aegis of a legislative body called the Institute of Chartered Accountants of India (ICAI).⁵⁹ Like the accounting standards of many other countries, the Ind ASs do not currently specify the accounting practices for cryptocurrencies or cryptoassets, even though the MCA has mandated that companies holding cryptocurrencies need to disclose the same in their financial statements, as has been discussed above.

Since the Ind ASs are largely in line with the International Accounting Standards (IAS) and the International Financial Reporting Standards (IFRS) which are developed by the International Accounting Standards Board (IASB) and the IFRS Foundation,⁶⁰ it is important to look at their approach too. The IFRS Interpretations Committee after much deliberation had held in June 2019 “that a holding of cryptocurrency meets the definition of an *intangible asset* in IAS 38”.⁶¹ Moreover, the Committee also concluded that cryptocurrencies, when held for sale in the ordinary course of business, can be accounted for as *inventories* under IAS 2.⁶² The intangible asset approach is in line with the practice followed in countries like the US and UK. Thus, it would seem appropriate that companies in India too follow the same and account for cryptocurrencies in their balance sheets as intangible assets under Ind AS 38, and under certain circumstances as inventories under Ind AS 2.

Although the problem associated with classifying cryptocurrency as intangible assets under the US GAAP can be resolved under the Ind AS 38 as it allows for a revaluation of the asset at fair value when an active market exists,⁶³ thus allowing for a more

⁵⁸ Section 3(1), Companies (Indian Accounting Standards) Rules, 2015, *available here*: http://mca.gov.in/Ministry/pdf/Notification_20022015.pdf.

⁵⁹ “Accounting Standards Board (ASB)”, *Institute of Chartered Accountants of India (ICAI)*, <https://www.icai.org/post/accounting-standards-board>.

⁶⁰ Para 1.1, “IFRS, US GAAP, Ind AS, and India GAAP, Similarities & Differences”, *PWC India* (July 2017), <https://www.pwc.in/assets/pdfs/publications/2017/ifrs-us-gaap-ind-as-and-indian-gaap-similarities-and-differences.pdf>.

⁶¹ “Holdings of Cryptocurrencies”, International Financial Reporting Standards (IFRS) Interpretations Committee (June 2019), <https://www.ifrs.org/content/dam/ifrs/supporting-implementation/agenda-decisions/holdings-of-cryptocurrencies-june-2019.pdf>.

⁶² *Ibid.*

⁶³ Para 72, “Indian Accounting Standard 38 - Intangible Assets”, *Institute of Chartered Accountants of India (ICAI)*, <https://indasaccess.icai.org/download/2020/compendium-indas/326/326asb-cias-2020-21-vol2-37.pdf>.

accurate representation of actual value, but it presents its own set of problems, one being the volatility of cryptocurrency prices. Although, a detailed study on cryptocurrencies was sought to be carried out by the ICAI in January 2018,⁶⁴ but it amounted to no tangible results.

Recommendation: Thus, in light of the growing corporate interest in cryptocurrencies, clarifications and significant steps on accounting practices for cryptocurrencies is the need of the hour, ideally through the introduction of an independent category for cryptocurrencies. This approach, taken by agencies such as the Japanese Accounting Standards Board, is more suitable in the long run as it provides a clearer picture to all the stakeholders.

3. Taxation

India currently does not have a clear taxation policy on cryptocurrency holdings or transactions. Interestingly, in March this year, the Minister of State for Finance, Anurag Thakur, in reply to a question on cryptocurrencies in the Rajya Sabha, stated that any gains arising from transfer of cryptocurrencies or cryptoassets are subject to income tax.⁶⁵ Moreover, he specified that any service which facilitates these transactions are also subject to transaction under the Goods and Services Tax (GST) regime.⁶⁶ But with no records collected by the Income Tax Department, and with virtually no guidance from the Central Board of Indirect Taxes and Customs (CBIC), the body which classifies services under the GST, it is difficult envisage as to how taxation on cryptocurrency transactions and holdings will be imposed currently. Thus, although the government has clearly specified that these transactions do attract both direct and indirect taxation, a clear mechanism for the same needs to be laid down promptly.

⁶⁴ "ICAI to carry out study on cryptocurrency", *DD News* (Jan. 26, 2018), <http://ddnews.gov.in/business/icai-carry-out-study-cryptocurrency>.

⁶⁵ Sandeep Soni, "Bitcoin Alert! Govt says crypto gains taxable as income, GST applicable on services by crypto exchanges" *The Financial Express* (Mar. 28, 2021), <https://www.financialexpress.com/market/bitcoin-alert-govt-says-crypto-gains-taxable-as-income-gst-applicable-on-services-by-crypto-exchanges/2222192/>.

⁶⁶ *Ibid.*

Recommendation: While there have been numerous discussions on how cryptocurrency transactions will fit into the existing taxation norms,⁶⁷ separate and clear guidelines for both individual taxpayers and corporations, like those issued by the HMRC in the UK, will be the ideal way to go.

Conclusion

While the March 24 MCA Notification will bring in more transparency and legitimacy to corporate transactions in India, the regulatory landscape with respect to cryptocurrencies is still suffering from fundamental problems such as lack of clear and official terminology, along with absence of guidance in areas such as accounting and taxation. Thus, finding immediate solutions to these problems is a pressing need and essential to any subsequent step, which should lie in regulation and not prohibition.

Although a positive approach is also being taken by the government through its willingness to engage with stakeholders,⁶⁸ public and private banks in India have started declining services for cryptocurrency transactions,⁶⁹ thereby causing problems to many of India's 7 million reported cryptocurrency investors.⁷⁰ According to news reports, this move by the banks is a result of RBI informally urging them to reconsider their ties with cryptocurrency business,⁷¹ even after the SC had declared the circular doing this to be unconstitutional. These reports once again highlight the lack of a consistent and authoritative approach towards cryptocurrency regulation, an issue

⁶⁷ Vijay Pal Dalmia, "Taxation Of Cryptocurrencies In India", *Mondaq* (Jan. 07, 2021), <https://www.mondaq.com/india/tax-authorities/1023174/taxation-of-cryptocurrencies-in-india>.

⁶⁸ "Will ensure interests of crypto investors are protected: Anurag Thakur" *Livemint* (Apr. 12, 2021), <https://www.livemint.com/news/india/will-ensure-interest-of-crypto-investors-is-protected-anurag-thakur-11618215067597.html>.

⁶⁹ Harshit Rakheja, "One Year After SC Order, Indian Banks Again Wary Of Crypto Trades" *Inc42* (May 05, 2021), <https://inc42.com/buzz/one-year-after-sc-order-indian-banks-again-wary-of-crypto-trades/>.

⁷⁰ Manas Tiwari, "Govt must find way to reimburse 7 million Indians holding over \$1bn if Bitcoin is banned, says WazirX CEO" *India Today* (Feb. 18, 2021), <https://www.indiatoday.in/technology/news/story/govt-must-find-way-to-reimburse-7-million-indians-with-assets-over-1bn-if-cryptocurrency-is-banned-says-wazirx-ceo-1770381-2021-02-18>.

⁷¹ Nupur Anand, "India's cenbank tells lenders to re-consider ties with crypto exchanges, traders", *Reuters* (may 13, 2021), <https://www.reuters.com/technology/indias-cenbank-tells-lenders-re-consider-ties-with-crypto-exchanges-traders-2021-05-13/>.

which has plagued the industry since its inception and will continue to do so unless concrete steps are taken.

Finally, it is safe to conclude that although we have come a long way towards a practical regulatory approach, there is still a great deal of issues to ponder and work upon.