



TRILEGAL

PRESENTS

**3rd MNLU NAGPUR
NATIONAL
TECHNOLOGY LAW
MOOT, 2024**

15-17 March, 2024

MOOT PROPOSITION

KNOWLEDGE PARTNER



MOOT PROPOSITION

- I. The Republic of Bravia is a sovereign country in the Indian subcontinent with laws that are *mutatis mutandis* with that of the Republic of India. The Reserve Bank of Bravia (**RBB**) is the country's central bank. The RBB performs various functions, including issuing currency, monetary policy formulation, regulating the Bravian banking system and maintaining financial stability in the country.

- II. Virtual currencies emerged with the advent of digital technology and the desire for decentralised, borderless financial systems. The concept gained momentum globally in the early 2000s, with attempts to create digital cash and alternate forms of currency. However, it wasn't until 2009 till the first decentralised cryptocurrency, Bitcoin, was introduced by an unknown person or group using the pseudonym Satoshi Nakamoto. Bitcoin's underlying technology, blockchain, revolutionised the way transactions were recorded, providing transparency and security without the need for intermediaries, such as banking channels. The success of Bitcoin paved the way for a myriad of virtual currencies, each with its unique features and purposes, shaping the landscape for digital finance globally. In the same vein, the Republic of Bravia also witnessed a significant rise in the use and popularity of virtual currencies, which took off in the early 2010s, and by 2020 there were several individuals in Bravia accepting virtual currency for various transactions and trading in virtual currencies at a global scale.

- III. However, in the Republic of Bravia, the evolution of virtual currencies took a unique path shaped by regulatory responses and market dynamics. Initial enthusiasm and participation in the global cryptocurrency boom were met with caution by the RBB. The RBB expressed concerns over the potential risks associated with virtual

currencies, releasing several press releases from 2013 to 2017 cautioning the public on the risks associated with engaging in transactions involving virtual currencies. These press releases identified the inherent challenges in effectively regulating virtual currencies given their decentralized nature, which makes it difficult to monitor and trace potential terrorism funding or money laundering activities involving such virtual currencies.

- IV. Subsequently, on 6 April 2018, the RBB issued a circular prohibiting financial institutions and payment system providers, from offering services to, or facilitating the activities of, any individuals or entities engaged in the acquisition or settlement of virtual currencies.
- V. Multiple writ petitions challenging the RBB's circular were presented before the Supreme Court of Bravia (**SCB**), the country's highest Constitutional Court. In 2020, the SCB set aside the circular on the grounds of proportionality. It held, amongst other things, that although RBB has wide pre-emptive powers to regulate virtual currencies, including the right to enforce prohibitions, such measures must be enforced in a proportional manner. Consequently, the ban was found to be disproportionate by the SCB. Following this verdict, the Republic of Bravia saw a rise in the number of virtual currency service providers such as exchanges and wallet providers. The decision of the SCB allowed businesses and individuals to actively engage in cryptocurrency transactions, contributing to the ongoing development and integration of virtual currencies into the country's financial landscape.
- VI. One such pioneering entity is CryptoCorp Private Limited (**CCPL**), which is incorporated under the laws of Bravia and has been at the forefront of the digital and financial revolution in the Republic of Bravia. CCPL operates an online platform

providing access to a crypto- asset/virtual digital asset (**VDA**) exchange for (i) online trading of VDAs by the use of fiat currency or any VDA, (ii) enabling transaction of fiat currency funds which include deposit and/or withdrawals to facilitate the foregoing, (iii) online storage and custody of VDAs to facilitate the foregoing, and (iv) other services such as liquidity services (together, **Services**). The above-mentioned Services are provided through a non-custodial wallet, which enables the secure storage of VDAs for residents of Bravia.

- VII. CCPL also offers its users comprehensive tools to monitor and analyse their cryptocurrency portfolios, offering insights into investment performance and market trends. Users can also participate in blockchain networks' proof-of-stake consensus mechanisms, earning rewards by actively contributing to the security and governance of supported cryptocurrencies.
- VIII. GILT is a gold-backed token issued by Jems Aurora Inc. (**JAI**), an entity incorporated under the laws of Delaware, USA, to individuals located across the world, including Bravia. Individuals located in Bravia may purchase any number of GILT tokens. Each GILT token represents an interest in 10 grams of gold stored in vaults located across the world including in Bravia. Subscribers may sell/transfer their GILT tokens with others or redeem them for the value of the gold accumulated as on the date of redemption. For this purpose, JAI has engaged CCPL to provide Bravian subscribers access to wallets where they may hold their GILT tokens.
- IX. Recently, the Central Government of Bravia has taken steps towards regulating the virtual currency landscape by introducing amendments and regulations to the Income Tax Act 1961, the Prevention of Money Laundering Act, 2002, the Companies Act, 2013, the Financial Intelligence Unit – Bravia Guidelines 2023 and the Bravian

Computer Emergency Response Team Directions, 2022.

- X. The Bravian Financial Intelligence Unit (**FIU**) is the national agency responsible for receiving, processing, analysing, and disseminating information relating to suspect financial transactions to enforcement agencies and foreign FIUs. While carrying out an investigation, the FIU issued a show cause notice requiring them to: (i) reveal and verify the identity of CCPL wallet holders, (ii) provide details about specific suspicious transactions, and (iii) provide information regarding the permissibility of transactions facilitated for Bravian subscribers of GILT. As a part of this, the funds held in the wallets offered by CCPL have also been frozen.
- XI. Directorate of Enforcement (**ED**), the domestic law enforcement agency of Bravia is responsible for enforcing economic laws and combating financial crimes and has been routinely investigating the virtual currency industry. As the timeline for responding to the FIU's notice has lapsed, the ED moved in and blocked access to the wallet services provided by CCPL under the Prevention of Money Laundering Act, 2002. Several media outlets have reported accounts of aggrieved Bravian citizens who were using CCPL's wallet services, contending that the ED has unjustly restricted access to their lawfully earned money, while the ED has maintained their stance that the exchange between VDA and fiat currencies are included under the PMLA by virtue of notification issued by Department of Revenue, Ministry of Finance, Government of Bravia, dated 7 March 2023 (**ANNEXURE – A**).
- XII. On basis of the actions of ED, a few Bravian legal luminaries have commented that the notification dated 7 March 2023 is ultra vires to the Constitution and Parent Act and that the government has exceeded their power under sub-clause (vi) of clause (sa) of sub-section (1) of section 2 of the Prevention of Money-laundering Act, 2002.

XIII. Subsequently, CCPL has filed a Writ Petition challenging FIU's investigation, ED's proceedings and the Notification dated 7 March 2023 in the Supreme court of Bravia, and the following questions have been raised for consideration:

- a. *Whether the present petition is maintainable under the Constitution of Bravia.*
- b. *Whether the Services provided by CCPL are regulated under the laws of Bravia.*
- c. *Whether the ED has the legal authority to freeze funds held in the wallets provided by CCPL.*
- d. *Whether the FIU can ask for the personal data of CCPL's clients, under the provisions of Digital Personal Data Protection Act, 2023, pursuant to this investigation.*

Note to Participants: *The Republic of Bravia has adopted the Constitution of India verbatim and all the laws and regulations including the prevailing circumstances in India are applicable for the purposes of this moot proposition.*

ANNEXURE – A

MINISTRY OF FINANCE

(Department of Revenue)

NOTIFICATION

the 7th March, 2023

In exercise of the powers conferred by sub-clause (vi) of clause (sa) of sub-section (1) of section 2 of the Prevention of Money-laundering Act, 2002 (hereinafter referred to as the Act), the Central Government hereby notifies that the following activities when carried out for or on behalf of another natural or legal person in the course of business as an activity for the purposes of said sub-clause, namely:-

- (i) exchange between virtual digital assets and fiat currencies;
- (ii) exchange between one or more forms of virtual digital assets;
- (iii) transfer of virtual digital assets;
- (iv) safekeeping or administration of virtual digital assets or instruments enabling control over virtual digital assets; and
- (v) participation in and provision of financial services related to an issuer's offer and sale of a virtual digital asset.

Explanation:- For the purposes of this notification “virtual digital asset” shall have the same meaning assigned to it in clause (47A) of section 2 of the Income-tax Act, 1961.

Director (Headquarter)

