

## **NEWS**

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# **High Court Ruling in India Throws Lifeline to Cryptocurrency, Banks Stay Cautious**

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India's banks will most likely refrain from entering into new business with cryptocurrency firms after the country's Supreme Court lifted a two-year prohibition on the provision of accounts or other financial services to the budding industry, sources told *ACAMS moneylaundering.com*.

A directive issued by the country's central bank, the Reserve Bank of India, on April 6, 2018, ordered banks and other institutions to cease commerce with any firm trading, exchanging, hosting or otherwise dealing in cryptocurrency, on the basis that bitcoins and other digital tokens threatened the safety, soundness and integrity of the financial system.

Last month, in a wide-ranging, 180-page decision, the Supreme Court in New Delhi recognized RBI's right to regulate cryptocurrency firms but sided with the industry's chief lobbyist, the Internet and Mobile Association of India, or IMAI, and a handful of other firms in finding the central

bank's decision disproportionate.

“Since access to banking is the equivalent of the supply of oxygen in any modern economy, the denial of such access to those who carry on a trade which is not prohibited by law is not a reasonable restriction,” the justices wrote in their decision.

The justices also found that RBI failed to show evidence that any of the lenders or other institutions under its supervision suffered actual damages by handling accounts and funds for cryptocurrency clients, overturning a key pillar of the central bank's justification for the ban.

Banks are now free to unfreeze any accounts they held for cryptocurrency firms prior to the directive, but most will continue shunning the industry after the RBI pledged to challenge last month's ruling, said an India-based compliance professional who asked to remain unnamed.

Moreover, RBI's issuance of the now-overruled directive also suggests that links between banks and cryptocurrency firms will draw rigorous scrutiny from the regulator.

“The immediate implication is that companies involved in cryptocurrencies can resume trading and citizens can buy or sell cryptocurrencies,” the person wrote in an email. “They had stopped [operating] in India since no Indian bank account was allowed to be used for cryptocurrencies.”

While technically not an outright ban on cryptocurrency, the directive dealt a near-death blow to the industry.

Unocoin, a preeminent cryptocurrency trading platform, reduced its staff from more than 100 employees in February 2018 to just 14 in the days after the directive took effect. Zebpay, India's largest cryptocurrency exchange at the time,

closed down later that year.

To gain acceptance, cryptocurrency firms should avoid exchanging government-issued cash, confine peer-to-peer transfers to domestic transactions only and vet their clients in accordance with the anti-money laundering rules that govern the traditional financial-services industry, Bharat Chugh, an attorney with L&L Partners in Delhi, told *moneylaundering.com*.

“Financial institutions may determine that heightened due diligence is important in this context and may develop special red flags that apply to dealings in cryptocurrency markets,” Chugh wrote in an email. Banks and other institutions should also consider documenting and reporting cryptocurrency-linked transactions above a predetermined threshold.

The Indian government has yet to agree on a unified approach to cryptocurrency, which does not currently fall under AML rules or domestic oversight.

Bills circulated in 2018 and 2019 respectively took opposite tacks, with the first calling for the establishment of a supervisory framework for cryptocurrency and the second for barring the industry altogether. Both stalled early in the legislative process.

“Given the Supreme Court’s decision, [the proposals] may be amended to include a more robust regulation that may be a little more favorably disposed towards cryptocurrency trading and use,” said Amit Kumar, president of AAA International Security Consultants in McLean, Virginia.

Next year’s planned evaluation of India by the Financial Action Task Force may help move the ball forward, Kumar wrote in an email.

FATF advised governments in June 2019 to ensure that cryptocurrency firms obtain licenses and comply with “the full range” of anti-financial crime rules

(<https://www.moneylaundering.com/news/cryptocurrency-iranian-lenders-require-additional-scrutiny-fatf/>). The group also recommended that exchanges collect and share data on the originators and beneficiaries of transactions.

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