Compliance Matters

# India Regulatory Roundup

December 2021

***"The overall responsibility of fostering a culture of good governance in banks rests with their Board of Directors. The Board should set the 'tone at the top' and oversee Management's role in fostering and maintaining a sound governance, compliance, and risk culture. This responsibility has been bestowed on the Board and its Directors irrespective of the fact that who appoints them."***

**- M Rajeshwar Rao, Deputy Governor – RBI**
**Mint Annual Conclave, Mumbai**

## Prompt Corrective Action (PCA) Framework for NBFCs

The PCA Framework which had been introduced by RBI for Scheduled Commercial Banks in 2002, is now being put in place for NBFCs. This will be operational with effect from October 1, 2022, based on the financial position of NBFCs on or after March 31, 2022, as they have been growing in size and have substantial interconnectedness with other segments of the financial system. For NBFCs-D and NBFCs-ND, Capital and Asset Quality would be the key areas for monitoring in PCA Framework while for CICs, Capital, Leverage and Asset Quality would be the key areas for monitoring in PCA Framework. For NBFCs-D and NBFCs-ND, indicators to be tracked would be Capital to Risk Weighted Assets Ratio (CRAR), Tier I Capital Ratio and Net NPA Ratio (NNPA). For CICs, indicators to be tracked would be Adjusted Net Worth/Aggregate Risk Weighted Assets, Leverage Ratio and NNPA. Breach of any of the risk thresholds against the above indicators may result in invocation of PCA. NBFCs may be placed under PCA based on audited Annual Financial Results and/or the Supervisory Assessment made by the RBI. RBI would also initiate a range of mandatory or discretionary corrective actions based on risk thresholds. Taking the NBFC out of PCA Framework would be considered: a) if no breaches in risk thresholds in any of the parameters are observed as per four continuous quarterly financial statements, one of which should be Annual Audited Financial Statement (subject to assessment of RBI); and b) based on Supervisory comfort of the RBI, including an assessment on sustainability of profitability of the NBFC.

## Restriction on Storage of Actual Card Data (Card-on-File - CoF)

In RBI's Guidelines on Regulation of Payment Aggregators and Payment Gateways, authorised non-bank payment aggregators and merchants on-boarded by them were prohibited from storing card data (CoF) from June 30, 2021 then to December 2021 and further six months till June 30, 2022. Post this date, such data will be purged. Industry stakeholders are expected to devise alternate mechanisms in addition to tokenisation to handle post-transaction activity that presently involves storage of CoF data by entities other than card issuers/networks.

## Directions on Infusion of Capital in Overseas Branches and Subsidiaries

Banks are hitherto required to obtain RBI's prior approval for infusion of capital in their overseas branches and subsidiaries and retention of profits in, and transfer or repatriation of profits from these overseas centres. Such prior approval for these capital infusion/transfers (including retention/ repatriation of profits), shall not be required only by banks which meet the regulatory capital requirements (including capital buffers). They should seek approval of their boards for the same. Banks are required to analyse all relevant aspects including the business plans, home and host country regulatory requirements and performance parameters of their overseas centres and also ensure compliance with all applicable home and host country laws and regulations. Such instances are required to be reported to Department of Regulation, RBI within 30 days of such action.

## Draft MD on Minimum Capital Requirements for Operational Risk

The Draft Master Directions on Minimum Capital Requirements for Operational Risk have been released by RBI. The guidelines which will come into effect from April 1, 2023 proposes to replace all existing approaches viz. Basic Indicator Approach (BIA), The Standardised Approach (TSA)/ Alternative Standardised Approach (ASA) and Advanced Measurement Approach (AMA) for measuring minimum operational risk capital requirements with the new standardised approach (Basel III Standardised Approach). RBI has sought comments from stakeholders and the public by January 31, 2022.

## Framework for Facilitating Small Value Digital Payments in Offline Mode

RBI has advised the framework to enable small value digital payments in offline mode using cards, wallets, mobile devices, etc. Authorised Payment System Operators (PSOs) and Payment System Participants (PSPs) – Acquirers and Issuers (banks and non-banks) desirous of offering such services are required to comply with the regulatory guidelines. The upper limit of an offline payment transaction shall be Rs. 200 and the total limit for offline transactions on a payment instrument will be Rs. 2000 at any point in time. While offline payment transactions may be offered without Additional Factor of Authentication (AFA). Replenishment of used limit shall be allowed only in online mode with AFA.

## Scheduled Payments Banks and Small Finance Banks (SFBs) as Agency Banks

The embargo put in place from September 2012 by Department of Financial Services (DFS), Ministry of Finance (MoF) on further allocation of Government Business to private sector banks had been lifted by them in February 2021. RBI had therefore issued revised guidelines for authorising Scheduled Private Sector Banks as agency banks of RBI for conduct of Government Business attracting agency commission in May 2021. This is now being extended to Scheduled Payments Banks and SFBs after consultation with Government of India and interested entities that intend to undertake Government agency business may be appointed as an agent of RBI upon execution of an agreement with RBI, provided that the overarching regulatory framework prescribed for these banks is complied with.

## Penalty Corner

**RBI:**

**Punjab National Bank** was penalized Rs. 1.8 Crore by the RBI for holding shares in borrower companies, as pledgee, with the amount exceeding 30% of the paid-up share capital in these companies in contravention of sub-section (2) of section 19 of the Banking Regulation Act, 1949.

**MUFG** was imposed a monetary penalty of Rs. 30 Lakhs for non-compliance with provisions under RBI's guidelines on Loans and Advances – Statutory and other Restrictions. The Bank had breached regulatory guidelines by sanctioning loans and advances to companies whose board of directors included individuals who were directors on Boards of other Banks without seeking the prior approval from the Management Committee.

The RBI imposed a penalty of Rs. 30 Lakhs on **ICICI Bank** for non-compliance with certain directions issued by RBI on 'Levy of penal charges on non-maintenance of minimum balances in savings bank accounts' dated November 20, 2014. Statutory Inspection at the Bank revealed that charges levied against non-maintenance of minimum balance in savings accounts were not in accordance with regulatory directions prescribed by the regulator.

**One Mobikwik Systems Private Limited** and **Spice Money Limited** were penalised Rs. 1 Crore each by the Reserve Bank of India for breaching its regulatory requirements on net-worth for Bharat Bill Payment Operating Units (BBPOUs).

## Legal Entity Identifier for Cross-border Transactions

RBI has required AD banks to obtain the Legal Entity Identifier (LEI), a 20-digit number used to uniquely identify parties to financial transactions globally to improve the quality and accuracy of financial data systems, for cross border transactions. With effect from October 1, 2022, AD Category I Banks are required to obtain the LEI number from resident entities undertaking capital or current account transactions of Rs. 50 crore and above per transaction under FEMA, 1999. These banks shall put in place required systems to capture the LEI information and ensure any LEI captured is verified against the global LEI database.