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fig bulletin

a quarterly newsletter by cam financial institutions group

August 2023 - December 2023

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It gives me a great deal of pleasure to share with you the sixth issue of ‘Financial Institutions Group (**FIG**) Bulletin’, a quarterly newsletter produced by our FIG practice.

This issue takes the readers through an array of regulatory developments in the FinTech space, such as the implications of the new Digital Personal Data Protection Act, 2023 (**DPDP Act**), which provides a framework for the regulation of the flow of data, consent framework and the protection of digital personal data. The structure of DPDP Act is based on consent mechanism. DPDP Act has laid down many requirements for consent like it has to be clear, unambiguous, for specified purpose etc. As consent must be provided by a clear affirmative action, businesses can no longer use click wrap agreements. With the introduction of withdrawal of consent by the DPDP Act, there would be some disruption in the smooth delivery of services by businesses.

The Securities and Exchange Board of India (**SEBI**) in August of this year released a consultation paper on “Collating and defining use cases of Financial Information Users in the Account Aggregator Framework in Securities Markets”. In the consultation paper, certain hypothetical use cases have been mentioned by SEBI such as a registered investment advisor might seek information to curate financial investment plan, a registered portfolio manager might seek information on the portfolio/ financial assets of the client/ investor for managing a client’s portfolio or a verification of bank account by an intermediary.

This issue also gives its readers an overview of all the recent regulatory developments in the FinTech space. Some of the key highlights and developments from the regulators are: a) Enhanced accountability of mutual fund' Trustees; b) Reserve Bank of India’s (**RBI**) proposal for card users to choose their preferred choice of network; c) RBI’s revised norms on Investment portfolios; and d) Guidelines for Prevention and Regulation of Dark Patterns, 2023 (**Dark Patterns Guidelines**). Lastly, this edition of the bulletin talks about major deals and transactions that were recently executed by Cyril Amarchand Mangaldas. We hope you find this newsletter to be an insightful and engaging read.

We aim to discuss recent regulatory updates from the RBI, International Financial Services Centres Authority (**IFSCA**) and SEBI and their impact on business and the Indian market, which includes insights from Mr. Anand Sinha, former Deputy Governor of the RBI, and Mrs. Lily Vadera, former Executive Director of the RBI, now senior advisors with us, along with other key updates.

We hope you enjoy reading this newsletter. Please feel free to send your comments, feedback and suggestions to cam.publications@cyrilshroff.com.

Regards,

Cyril Shroff

Managing Partner
Cyril Amarchand Mangaldas

India's leading law firm

MESSAGE FROM OUR MANAGING PARTNER

Message from our Managing Partner, Mr. Cyril Shroff

It is with great pleasure that I introduce you to the sixth edition of the FIG Bulletin, crafted by our FIG.

This issue takes the readers through an array of regulatory developments in the FinTech space, such as the implications of the new DPDP Act, which provides a framework for the regulation of the flow of data, consent framework and the protection of digital personal data. This issue also gives its readers an overview of all the recent regulatory developments in the FinTech space. Some of the key highlights and developments from the regulators are: a) Enhanced accountability of mutual fund' Trustees, b) RBI's proposal for card users to choose their preferred choice of network, c) RBI's revised norms on Investment portfolios, and d) Dark Patterns Guidelines.

Lastly, this edition of the bulletin talks about major deals and transactions that were recently executed by Cyril Amarchand Mangaldas.

We hope you find this newsletter to be an insightful and engaging read. Please share any feedback or comments about the newsletter with us on cam.publications@cyrilshroff.com.

Regards,

Cyril Shroff
Managing Partner

MESSAGES FROM OUR FIG CO-HEADS

Message from FIG Co-Head, B. Sriram

I am glad to introduce to you the sixth issue of the FIG Bulletin, by our FIG.

This issue of the FIG Bulletin deals with the latest updates in the FinTech sector and the recent developments and updates by the RBI, SEBI and IFSCA. The RBI has revised the norms on investment portfolios and proposed for card users to choose their preferred choice of network (credit card portability). The issue also discusses updates by brought by the SEBI such as enhancing the accountability of mutual fund' Trustees and the recent consultation paper on Account Aggregator Framework.

Further, the issue discusses the Dark Patterns Guidelines which discusses the need for discouraging the use of dark patterns while obtaining consent. It also discusses the forms of dark patterns, the use of which must be discouraged by platform designers. The issue also covers the consent framework that is presented by the new DPDP Act. The consent framework would cover legacy data, new data sets and minors.

We hope you find this newsletter to be an insightful and engaging read. Please share any feedback or comments about the newsletter with us on cam.publications@cyrilshroff.com.

Regards,

B. Sriram
Senior Advisor

Message from FIG Co-Head, Santosh Janakiram

I am elated to present the sixth issue of the FIG Bulletin, brought to you by our FIG.

This issue contains perspective on recent developments in the FinTech sector and interesting insights on the new DPDP Act. In this issue we have also dealt with the SEBI Consultation Paper on Account Aggregator Framework.

Further this issue discusses the imminent changes brought by the Dark Pattern Guidelines in the design of online platforms. In this issue we have also dealt with the RBI's proposal for card users to choose their preferred choice of network.

Another fascinating development that we have tackled in this bulletin is the RBI's statement on Development and Regulatory policies and revised norms on Investment portfolios.

We hope you enjoy reading this newsletter.

Regards,

Santosh Janakiram
Partner and Co-Head - FIG

Consent Framework under the DPDP Act

Introduction

Indian law has seen numerous developments with respect to consent, data privacy, and protection, which ultimately led to the enactment of the DPDP Act. The right to privacy was recognised as an integral part of the fundamental right to life in the landmark Supreme Court judgment of *Justice K.S. Puttaswamy and Anr. v. Union of India and Ors.*[1] in 2018. While the concept of consent existed earlier in the Information Technology (Reasonable security practices and procedures and sensitive personal data or information) Rules, 2011 (**SPDI Rules**), the DPDP Act provides for qualifiers to consent such as free, specific, informed, unconditional and unambiguous.[2] While such qualifiers are very useful to safeguard the rights and interests of the general public, a consent framework must be designed by the data fiduciaries[3] and the consent managers.[4]

The significance of consent in data protection

- Consent is the linchpin of any robust data protection regulation, as it places the decision-making power in the hands of the data principals[5] themselves. The DPDP Act recognises this fundamental principle and lays down stringent provisions to ensure that consent is taken in a manner that cannot be later disputed by the parties involved. The DPDP Act attempts to ensure that consent has been provided intentionally by the data principal, that is, such consent is well-informed and free. These qualifiers of consent are also seen in the General Data Protection Regulation (**GDPR**) under Article 7[6] and Recital 32.[7]

1 Justice K.S. Puttaswamy v. Union of India, (2018) 1 SCC 809.
2 Section 6(1), DPDP Act.
3 Per Section 2(i) of the DPDP Act, *"Data Fiduciary means any person who alone or in conjunction with other persons determines the purpose and means of processing of personal data."*.
4 Per Section 2(g) of the DPDP Act, *"Consent Manager means a person registered with the Board, who acts as a single point of contact to enable a Data Principal to give, manage, review and withdraw her consent through an accessible, transparent and interoperable platform."*.
5 Per Section 2(j) of the DPDP Act, *"Data Principal means the individual to whom the personal data relates and where such individual is—*
(i) a child, includes the parents or lawful guardian of such a child;
(ii) a person with disability, includes her lawful guardian, acting on her behalf;".
6 Article 7, GDPR (Available here).
7 Recital 32, GDPR (Available here).

Consent framework in India

Consent must be taken from the data principal with a clear affirmative action.[8] Such an action must signify an agreement to process[9] personal data[10] of the data principal for the specified purpose[11] and be limited to such personal data as is necessary for such specified purpose.[12] To further ensure that the data principal is aware of the provision of consent, the request for such consent must be in a clear and plain language and an option must be provided to access the request in English or any language specified in the Eighth Schedule to the Constitution.[13] When a child or a person with disability is involved, the data fiduciary must obtain verifiable consent of the parent of such child or the lawful guardian.[14] The threshold of consent is higher (verifiable consent).

For every consent obtained, a notice must be provided to the data principal. The notice can either accompany the consent or should be provided prior to obtaining such consent from the data principal.[15] The notice must include the personal data that will be collected and the purpose for which it would be processed.[16] The purpose mentioned in this notice would be considered as the specified notice. The manner in which the consent can be withdrawn by the data principal and the grievance redressal mechanism must also be informed to the data principal through the notice.[17] Finally, it should include the manner in which a complaint can be made to the Data Protection Board of India.[18] For legacy data, the data fiduciary must provide a notice to the data principal (irrespective of obtaining consent) including the aforementioned information.[19]

Similar to the request for consent, the data principal must have access to the notice in English or any language specified in the Eighth Schedule to the Constitution.[20]

Concerns surrounding the consent framework

The implications of a strict consent framework on businesses are multi-faceted. Businesses would be expected to prepare and furnish notices and requests for consent including various purposes (which will be considered as specific purpose) and make it such that the consent can be withdrawn at any point of time by the data principal with relative ease.[21] Further, the consent must be provided using a clear affirmative action signifying an agreement with the data fiduciary regarding the processing of the personal data collected. This would make the use of a click-wrap to obtain consent difficult. In the world of technology, it is well known that customers prefer minimum clicks to achieve the desired results. Introducing a rigorous consent regime would make the structuring of requests for consent difficult in the technology sector.

The withdrawal of consent, particularly when multiple requests pertain to the same data principal, may potentially burdenthe data fiduciary by disrupting the processing of relevant data and smooth delivery of services to the data principal.

The mechanism of obtaining consent of parents (when children are involved) is more challenging as it requires verifiable consent. The scope of verifiable consent has not been mentioned in the DPDP Act. Therefore, the manner in which such consent can be acquired has not been clarified.

However, the stringent consent framework ensures that data principals have the opportunity to thoroughly understand the aspects surrounding the personal data collected. The DPDP Act attempts to safeguard the sacred right of the data principal to control the acquisition and use of their personal data. Grievance mechanisms and mechanisms to process a complaint with the Data Protection Board of India provide an additional layer of security to the data principals.

8 Section 6(1), DPDP Act.
9 Per Section 2(x) of the DPDP Act, "processing in relation to personal data, means a wholly or partly automated operation or set of operations performed on digital personal data, and includes operations such as collection, recording, organisation, structuring, storage, adaptation, retrieval, use, alignment or combination, indexing, sharing, disclosure by transmission, dissemination or otherwise making available, restriction, erasure or destruction;".
10 Per Section 2(t) of the DPDP Act, "personal data means any data about an individual who is identifiable by or in relation to such data;".
11 Per Section 2(za) of the DPDP Act, "specified purpose means the purpose mentioned in the notice given by the Data Fiduciary to the Data Principal in accordance with the provisions of this Act and the rules made thereunder;".
12 Section 6(1), DPDP Act.
13 Section 6(3), DPDP Act.
14 Section 9(1), DPDP Act.
15 Section 5(1), DPDP Act.
16 Section 5(1)(a)(I), DPDP Act.
17 Section 5(1)(a)(ii), DPDP Act.
18 Section 5(1)(a)(iii), DPDP Act.
19 Section 5(2), DPDP Act.
20 Section 5(3), DPDP Act.
21 Section 6(4), DPDP Act.

Guidelines for Dark Patterns Guidelines

The Centre has sought public comments on the draft Guidelines for Prevention and Regulation of Dark Patterns, released on September 7, 2023 (**Draft Dark Patterns Guidelines**). In an attempt to identify and regulate certain malpractices that manipulate and alter consumer choices, the Draft Dark Patterns Guidelines has defined *'dark patterns'* as *"any practices or deceptive design patterns using UI/UX (user interface/user experience) interactions on any platform; designed to mislead or trick users to do something they originally did not intend or want to do; by subverting or impairing the consumer autonomy, decision making or choice; amounting to misleading advertisement or unfair trade practice or violation of consumer rights"*.

In this increasingly expanding and penetrative digital space, consumer interests and e-commerce marketplaces are often compromised. After detailed deliberations with the stakeholders, the Draft Dark Patterns Guidelines specifies 10 (ten) dark patterns that any persons, platforms, sellers and the advertisers are prohibited to engage. Dark patterns are currently used in the following instances:

1. **False Urgency:** Where the user is misled into making an immediate purchase by falsely stating or implying an urgency or scarcity.
2. **Basket Sneaking:** It refers to inclusion of additional items such as products, services, payments to charity/donation at the time of checkout, without the consent and knowledge of the user.
3. **Confirm Shaming:** It involves using a phrase, video, audio or any other means to compel the user to purchase a product or service or continue with a subscription.
4. **Forced action:** Where the user is forced to buy any additional good(s) or subscribe or sign up for an unrelated service, in order to buy or subscribe to the product/service originally intended.
5. **Subscription trap:** A situation that makes cancellation of a paid subscription impossible or a complex and lengthy process.
6. **Interface interference:** It involves designing user interface in manipulative ways such that it; (a) highlights certain specific information; and (b) obscures other relevant information relative to the other information; to misdirect the user's intended action.
7. **Bait and switch:** These are done by advertising a particular outcome based on the user's action but deceptively serve an alternate outcome.
8. **Drip pricing:** Where prices are manipulated by either not disclosing them upfront or by revealing them surreptitiously within the user experience.
9. **Disguised advertisement:** It refers to posing or masking advertisements as different types of content, such as user-generated content, new articles or false advertisements.
10. **Nagging:** It typically occurs when an unrelated intend of purchase is imposed through overload of requests, options, or interruptions in order to disrupt the user's original intended transaction.

The Dark Patterns Guidelines came into effect from November 30, 2023.

Interplay of the Dark Patterns Guidelines and the DPDP Act for Fintechs

With the recent enactment of DPDP Act, the industry, including the Fintech industry is already facing the challenges with compliance. The Dark Patterns Guidelines intends to eliminate the identified dark patterns to safeguard the consumer interests in the digital space. Both DPDP Act and Dark Patterns Guidelines are in addition to and not in derogation of, other existing laws protecting the user from data leakage and malpractices of deceptive UI/UX. The DPDP Act's consent mechanism will further enhance the safeguards over dark patterns speculated under the Dark Patterns Guidelines. Consent, being the major requirement for processing personal data, must be free, specific, informed, unconditional and unambiguous

with a clear affirmative action. This will enable the user to make an informed decision and benefit from the e-commerce marketplaces/ platforms without falling in the snare of any dark patterns.

Further, every Fintech companies' technical and organisational measures are stipulated to ensure effective implementation of DPDP Act. Reasonable security and safeguard mechanisms involving processing, storing, correcting, updating, erasure, preventing breach of personal data and sharing with outsourced vendors will add on to the effective implementation of the Dark Patterns Guidelines and push for eradication of the existing dark patterns on the digital platforms of Fintech companies.

The periodic audit of the personal data management and compliance with DPDP Act will aid the Fintechs in identifying the dark patterns and save themselves from non-compliance of the Dark Patterns Guidelines.

Conclusion

The release of the Dark Patterns Guidelines is another step towards safeguarding the user from unfair and malpractices on the e-commerce front. The prohibition of dark patterns coupled with the safety mechanisms under DPDP Act will mitigate the ever-increasing scams in financial products like digital loans, credit cards, impersonation/ misidentification and duping users with offers pertaining to financial services. Identifying the dark patterns will guide the user to approach appropriate grievance redressal, which was difficult to enforce earlier. For instance, in case of *'basket sneaking'* dark pattern, the addition of an amount towards donation or charity or additional items (like subscription plans) at the checkout would now be easier to demonstrate while seeking grievance redressal.

However, the enforcement of certain dark patterns would be challenging. For instance, in case of *'false urgency'* dark pattern, if the user is notified by Fintech platforms (like CRED, Paytm, GPay, etc.) to pay the credit card bills on account of nearing the due date (where the payment made way before the due date towards such bills was not successful) would essentially be providing accurate information as-opposed to instances where the user is notified despite of successful payment of such bills. The false urgency created by certain digital lending applications for lending loans and luring the users to procure loans with attractive advertisements and less paperwork may also be an instance where the enforcement could be challenging. Thus, one can only hope for more clarity on the enforcement of the dark patterns and that the user achieves effective redressal.

Data and Digital Lending

Introduction

The DPDP Act notified on August 11, 2023, will affect all businesses, including DLA (as defined below) who collect, store and process data. The RBI had previously introduced the Digital Lending Guidelines (**DL Guidelines**) on September 2, 2022, focusing on data managed by Digital Lending Entities for underwriting and risk management. RBI aims to regulate the data collected by fintech entities by adopting privacy principles like transparency, accountability, consent, etc.

Digital lending is an automated lending process, largely by use of seamless digital technologies for customer acquisition, credit assessment, loan approval, disbursement, recovery, and associated customer service. The Regulated Entities[22] (**RE**) Digital Lending Application[23] (**DLA**) facilitates loan with Lending Service Provider[24] (**LSP**) entirely or partly undertaking one or more functions such as customer acquisition, underwriting support, pricing support, servicing, monitoring, recovery of specific loan or loan portfolio on behalf of Res.

DLG User Journey

a) **Consent Mechanism:** Under the DPDP Act, the Data Fiduciary[25] is required to obtain consent for processing personal data[26] from the Data Principal[27] which should be free, unambiguous, specific and informed, specifying the purpose of collection of data in a notice to the Data Principal. The Data Principal additionally has the option to withdraw the consent individually or through a consent manager. However, Data fiduciaries can process data without consent for legitimate use.

Per the DL Guidelines, REs have to ensure that collection of data by LSPs and DLA entities is on a need-basis with prior and explicit consent of the borrower. Consent is required to be availed at each stage of data collection, and borrowers have the right to withhold consent that has already been granted. REs are also required to seek explicit consent prior to sharing personal data with any third party. The REs must ensure that DLA entities do not access borrowers' phones, except for a one-time access for know your customer (**KYC**) /onboarding requirements. The DLG requires REs to ensure that LSPs and DLAs publish a comprehensive privacy policy, setting out the details of third parties that are allowed to collect personal information, a provision absent within the DPDP Act. The DL Guidelines also does not recognise the principle of legitimate use, however, the DPDP Act states that processing of personal data maybe done for a lawful purpose, subject to (i) consent of Data Principal; or (ii) for certain legitimate uses (i.e., without explicit consent of the Data Principal). Both the DPDP Act and DL guidelines have similar requirements pertaining to consent, with DPDP Act imposing certain additional obligations on data fiduciaries and granting additional rights to data principals.

b) **Notice Requirement:** The DPDP Act requires Data Fiduciary to give a notice in clear and plain language containing a description of personal data sought to be collected; purpose of processing of such personal data; details of the way Data Principals may exercise their rights to withdraw consent and grievance redressal;

22 Per Regulation 2.6 of DL Guidelines, 'Regulated Entities' include commercial banks, cooperative banks, NBFC and other regulated entities engaged in the business of lending.

23 Per Regulation 2.4 of DL Guidelines, Digital Lending Apps/Platforms (DLAs): Mobile and web-based applications with user interface that facilitate digital lending services. DLAs will include apps of the Regulated Entities (REs) as well as those operated by Lending Service Providers (LSPs) engaged by REs for extending any credit facilitation services in conformity with extant outsourcing guidelines issued by the Reserve Bank.

24 Per Regulation 2.5 of DL Guidelines, Lending Service Provider (LSP): An agent of a Regulated Entity who carries out one or more of lender's functions or part thereof in customer acquisition, underwriting support, pricing support, servicing, monitoring, recovery of specific loan or loan portfolio on behalf of REs in conformity with extant outsourcing guidelines issued by the Reserve Bank.

25 Per Section 2(l) of DPDP Act, 'Data Fiduciary' means person who, alone or in conjunction with other persons, determines the purpose and means of processing of personal data.

26 Per Section 2(t) of DPDP Act, 'personal data' means "any data about an individual who is identifiable by or in relation to such data". The DPDP Act extends to processing of online data or 'digital personal data' which does not include offline collection of personal data.

27 Per Section 2(j) DPDP Act, "Data Principal" means the individual to whom the personal data relates.

and details on how Data Principals may file a complaint. The DL Guidelines has a similar requirement for seeking consent from the borrower and requires that the purpose of obtaining borrower's consent is disclosed at each stage. The DLA may, therefore, be required to reissue notices at every stage. Per DL Guidelines, REs shall be responsible for the compliance and will be held liable in the event of any misuse of data by the LSPs. Similarly, per DPDP Act, when LSPs act as a Data Processor to any entity acting as Data Fiduciary, then the entity will be held liable for any data misuse. However, if the LSP is acting as a Data Fiduciary, it will be liable.

c) **Compliance:** The DPDP Act has laid down key compliances for Data Fiduciaries such as making reasonable efforts to ensure the personal data processed is accurate and complete, informing the Data Principal and the Data Protection Board- of any breaches, giving notice to the Data Principal setting out the purpose for collection and processing of personal data, sharing data only under a contract and store it for a period as required under law or contract, among others. Moreover, Data Processors can undertake data processing activities only through a valid contract with the Data Fiduciary.

d) **Data Retention/Storage:** Once the purpose for processing of data is complete, Data Fiduciary must delete it, unless retention is required under law. The DL Guidelines requires the entities to disclose the procedures for data storage, period of retention, data destruction practices and standards for handling security breaches. Minimal customer data is allowed to be stored in servers within India. Per the data localisation requirements under the DLG, REs are required to store data in India and ensure that LSPs and DLA engaged by them also store data in India. The DPDP Act does not provide for any data localisation requirements and has allowed cross border transfer of data except for countries notified by the Central Government.

e) **Grievance Redressal and Data Protection Board:** The DPDP Act contemplates establishment of a Data Protection Board. This means that REs, along with DLA and LSPs, engaged in digital lending will also fall within the purview of the Data Protection Board of India. For grievance redressal, the borrower may either approach the RBI Ombudsman or the Data Protection Board.

Conclusion

While there are no major deviations in terms of core data principles between the DPDP Act and DL Guidelines, the mode of operation between the two varies; for example: cross-border data transfer restrictions under the DL Guidelines via a vis the ability to freely transfer data under the DPDP Act, except to countries covered under the negative list. These variations and overlaps may result in uncertainty for entities subjected to these legislations.

Overview of the SEBI Consultation Paper on Account Aggregator Framework

The SEBI on August 1, 2023, published a consultation paper with a view to collate and define use cases of Financial Information Users (**FIU**) in the Account Aggregator Framework in Securities Markets (**SEBI Consultation Paper**).[28] The SEBI Consultation Paper lays down use cases that elaborate upon the Account Aggregator (**AA**) framework system as defined by the Financial Stability and Development Council (**FSDC**) and the RBI. It also requests for recommendations with respect to security practices in such a framework. In order to provide an overview of what the consultation paper has ideated, it is necessary to understand what the AA framework has been envisaged as.

An AA consolidates financial assets of consenting individuals such as savings bank deposits, fixed deposits, insurance policies, mutual fund holdings – so long as these assets are under the purview of a regulator – and make them retrievable at the option of the individual or as per her instructions. The idea was to reduce lags in information sharing due to processing times, paperwork, authentication, and multiplicity of documents. The AA structure was given recognition as an NBFC-AA by the RBI via the 2016 Account Aggregator (Reserve Bank) Master Direction (**2016 Master Direction**) as per which, the business of an account aggregator refers to the business of *"…providing under a contract, the service of, retrieving or collecting such financial information pertaining to its customer, as may be specified by the Bank from time to time; and consolidating, organizing and presenting such information to the customer or any other financial information user as may be specified by the Bank."* "Bank" as used here is an exhaustive category as can be found in the directions.[29]

One of major considerations in such a framework is the standard of data security that needs to be followed. While an AA facilitates information availability, it should not be able to see or store such data, necessitating encryption. To maintain a standard, the 2016 Master Direction lays down that AAs are to follow technical specifications framed by the Reserve Bank Information Technology (**ReBIT**).[30] ReBIT specifications are expected to be followed by the NBFC-AA, the Financial Information Provider (**FIP**) and the FIU, who are the key stakeholders in the AA framework.

Basis this framework, SEBI has floated this consultation paper to bring about a discussion on information related to financial assets within its ambit. It has identified certain hypothetical use cases, which are as follows –

i. A Registered Investment Adviser seeking information on financial assets of the client/ investor via the AA framework in order to devise a financial plan for the client.

ii. A Registered Portfolio Manager seeking information on the portfolio/financial assets of the client/investor via the AA framework with reference to managing the portfolio of the client.

iii. Verification of bank account wherever required when a client is on-boarded by an intermediary.

iv. Regulators accessing financial data submitted by regulated entity (as per regulations) via the AA framework.

[28] Available at https://www.sebi.gov.in/reports-and-statistics/reports/aug-2023/consultation-paper-on-collating-and-defining-use-cases-of-financial-information-users-in-the-account-aggregator-framework-in-securities-markets_74811.html

[29] "bank" means -

I. a banking company; or
ii. a corresponding new bank; or
iii. the State Bank of India; or
iv. a subsidiary bank; or
v. such other bank which the Bank may, by notification, specify for the purposes of these directions; and
vi. a co-operative bank as defined under clause (cci) of section 5 read with section 56 of the Banking Regulation Act, 1949 (10 of 1949) (BR Act);

[30] Paragraph 9, 2016 Master Direction.

The regulator has sought comments on improving the technological safeguards within the AA framework to prevent misuse of financial information, misappropriation, and unsolicited cross-selling/upselling – among others. The consultation paper was published merely days before the passing of the DPDP Act, which provides the overarching framework within which the AA would have to function. Currently, the AA framework provides for a detailed consent architecture, including a template which should include particulars given in the 2016 Master Directions.[31] As the provisions of the DPDP Act are to be read in addition to and not in derogation of any other law for the time being in force,[32] it ought to be applied in conjunction with the 2016 Master Directions. In this circumstance, the roles of the AA, the FIU, the FIP and the customer (i.e., the data principal) would have to be identified in the context of the DPDP Act. As the law is largely skeletal and assisting rules are yet to be enforced, the same would give a more concrete idea of the obligations that would apply to the existing AA framework.

[31] 6.3 The consent of the customer obtained by the Account Aggregator shall be a standardised consent artefact which shall contain the following details, namely:—
i. identity of the customer and optional contact information;
ii. the nature of the financial information requested;
iii. purpose of collecting such information;
iv. the identity of the recipients of the information, if any;
v. URL or other address to which notification needs to be sent every time the consent artefact is used to access information;
vi. consent creation date, expiry date, identity and signature/ digital signature of the Account Aggregator; and
vii. any other attribute as may be prescribed by the Bank.

[32] Section 38(1), DPDP Act.

SEBI Enhances Accountability of Mutual Fund Trustees

As per the regulatory framework, the Trustees hold the property of the Mutual Fund in trust for the benefit of unit holders and their primary role is to ensure that the Asset Management Companies (**AMC**) appointed by them, act in the best interest of the unitholders. At the same time, an AMC is responsible for managing the funds of the schemes, the board of directors of the AMC is also accountable to ensure that the interests of the unitholders are protected. However, in the aftermath of the Franklin Templeton debacle, SEBI has increasingly started to look towards the Trustees for accountability and to ensure governance at Mutual Funds.

To streamline the responsibilities at the level of the Trustees and AMCs, SEBI had constituted a working group to make recommendations for ensuring that Trustees can devote their attention to the fiduciary obligations and supervisory role cast upon them. Based on the recommendations of the working group and deliberations in the Mutual Fund Advisory Committee (**MFAC**), SEBI on July 7, 2023 issued a circular specifying the *'core'* responsibilities of Trustees of a Mutual Fund and introduced the following:

Core responsibilities of the Trustees:

Trustees must exercise independent due diligence on certain 'core responsibilities', specifically: (i) review the performance of AMC in its schemes; (ii) ensure that the AMCs have put in place adequate systems to prevent mis-selling to increase assets under their management and valuation of the AMCs; (iii) ensure that operations of AMCs are not unduly influenced by the AMC's sponsor, its associates and other stakeholders of AMC.

Trustees must take steps to ensure that the AMCs have implemented system level checks to prevent fraudulent transactions including front running by employees, and they are required to conduct AMC compliance assessment.. Trustees must further ensure that a suitable mechanism is put in place by the AMCs to generate system-based information for evaluation by the Trustees. The Trustees must review such checks periodically.

AMCs shall submit exception reports / analytical information to the Trustees, that add value to the process of exercising their oversight role. The Trustees must require the AMCs to furnish reports and alerts based on pre-decided parameters.

Third Party Assurances:

In order to focus on the core responsibilities, Trustees may rely on professional firms such as audit firms, legal firms, merchant bankers, etc (collectively third-party fiduciaries) for carrying out due diligence on behalf of the Trustees. Trustees may avail services of third-party fiduciaries to oversee that AMCs manage the operations of Mutual Fund schemes independently, discharge their role as a custodian of assets on behalf of unitholders, reviewing the net-worth of the AMC on a periodic basis.

Appointment of the Trustee Company:

A Trustee company, which has already been appointed as the Trustee of a Mutual Fund, must ensure compliance with the requirement of appointment of an independent director as Chairperson of the Board of Directors of Trustee company, within six months from the date of the SEBI circular.

Meetings between the Trustee Company and the AMC:

The board of directors of the AMCs and the board of directors of the Trustee Company must meet at least once a year to discuss the issues concerning Mutual Funds, if any, and future course of action, wherever required.

Regulatory Issues/ Restrictions for Indian Branches/ Wholly-owned Subsidiaries of Foreign Banks

While domestic banks have been given a general permission to set up branches in India,[33] foreign banks are required to obtain approval from the RBI[34] as well as the home country regulator[35] to set up an Indian branch/ wholly-owned subsidiary (**WOS**).[36] Such entities are subject to the regulatory framework laid down by the RBI.

1. **KYC standards**

   Branches of foreign banks are required to adopt the more stringent KYC / anti-money laundering (**AML**) standards in case there is a variance in the standards prescribed by the RBI and the home country regulators.[37]

2. **Credit offerings restrictions**

   Section 20(1) of the Banking Regulation Act, 1949 (**BR Act**) prohibits a bank from granting any loans and advances on the security of its own shares. It also prohibits loans and advances to directors and firms in which they hold substantial interest. These restrictions are applicable to Indian banks as well as Indian branches / WOS of foreign banks since the provision applies to all banking companies, including foreign banks. Further, the RBI has clarified that the sanction or grant of credit facilities to companies in India by foreign banks having branches in India should be in compliance with the spirit of Section 20 of the BR Act. Accordingly, a foreign bank branch in India should not lend to a firm / company in India, if a director in the foreign bank's Board abroad has (i) an interest in the firm / company or (ii) if the company is a subsidiary of any Indian / foreign parent in which the director is interested.[38]

3. **Marketing restrictions**

   Prior approval from the RBI is required for the schemes being marketed by branches/ WOS of foreign banks operating in India to residents either for soliciting FCY deposits for their foreign/overseas counterparts or for acting as agents for overseas mutual funds or any other foreign financial services company.[39]

4. **Setting up of administrative offices/ back offices**

   Unlike domestic banks with general permission to set up branches, setting up of administrative offices and back offices like services branches by foreign banks operating in India requires permission from the RBI and the same needs to be included in the Annual Branch Expansion Plan.[40]

5. **Regulatory compliance responsibility**

   Banks are required to have a system of separation of credit risk management function from the credit sanction process. The risk management function must be headed by a designated Chief Risk Officer (**CRO**).[41] Banks are also required to have an effective compliance culture, independent corporate compliance function and a strong compliance risk management programme both at bank and group level. Such an independent

33 Paragraph 4, RBI Notification on Rationalisation of Branch Authorisation Policy- Revision of Guidelines dated May 18, 2017 and Paragraph 3.1, RBI Master Circular on Branch Authorisation dated July 1, 2014.
34 Sections 22 and 23, The BR Act.
35 Paragraph 3(a), RBI Scheme for setting up of wholly owned subsidiaries (WOS) by foreign banks in India dated November 6, 2013; Parameter XVI(4), RBI Format for Information to be provided by foreign banks desirous of establishing presence in India.
36 Sections 19 and 23(1)(b) of Banking Regulations Act, 1949.
37 Paragraph 2(b)(iii), RBI Master Direction - Know Your Customer (KYC) Directions, 2016 dated February 25, 2016.
38 Query 1 of Annexure 2, RBI Master Circular – Loans and Advances – Statutory and other Restrictions dated July 1, 2015.
39 Paragraph B(13), RBI Master Direction - Liberalised Remittance Scheme (LRS).
40 Paragraph 10, RBI Notification on Rationalisation of Branch Authorisation Policy- Revision of Guidelines dated May 18, 2017 and Paragraphs 3.3 and 6, RBI Master Circular on Branch Authorisation dated July 1, 2014.
41 RBI Notification on Risk Management Systems – Role of the Chief Risk Officer (CRO) dated April 27, 2017.

compliance function is required to be headed by a designated Chief Compliance Officer (CCO). The CCO is required to have direct reporting lines to the Managing Director & Chief Executive Officer (CEO) and/or Board/ Audit Committee of the Board (ACB) of the bank.[42] The RBI has clarified that the same is applicable to foreign banks and that any reference to the Board would be treated as equivalent to the Regional or Head Office Compliance.[43]

The RBI has taken note of the concerns regarding regulatory compliance by foreign banks operating in India and this could be attributed to the fact that Business Heads at Indian branches of foreign banks used to report to the Functional Heads located overseas. Therefore, the RBI has directed that the CEO of Indian operations is responsible for effective oversight of regulatory and statutory compliance as well as the audit process and compliance in respect of all operations in India.[44]

42 RBI Notification on Compliance functions in banks and Role of Chief Compliance Officer (CCO) dated September 11, 2020.
43 RBI FAQs on Compliance functions in banks and Role of Chief Compliance Officer (CCO) dated February 2, 2021.
44 RBI Notification on regulatory and audit compliance dated May 11, 2011.

Legal Regime Governing Payment Systems at IFSCA

The International Financial Services Centre (**IFSC**) is the country's maiden financial services centre and is located in the Gujarat International Finance Tec-City (**GIFT City**). The Payment Systems and Settlement Act, 2007 (**PSS Act**) governs digital payments services and payment systems in India, however, as of today there are no specific regulations that govern payment systems and payment services within the IFSC jurisdiction. The IFSCA has released its latest consultation paper dated October 10, 2023, providing the proposed payment regulations.

Key takeaways and insights from these new proposed set of regulations are as follows:

a) **Strong governance and compliance requirements:**

Enhanced compliance requirements have been prescribed in the proposed regulations such as requirement to maintain a 'governance arrangement' document. The governance arrangement document will contain key information about the governance of the payment service provider such as the role and composition of the board, the senior management structure and procedure for their appointment, reporting lines, ownership structure, and internal governance policy.

b) **Cautious approach prescribed by IFSCA:**

i) An entity desirous of providing payment services may initially receive only an 'in principal approval' from the IFSCA before grant of final authorisation to act as a payment service provider within IFSC. During the in-principal approval phase, the entity is required to comply with *all directions* that may be specified by the IFSCA.

ii) Significant payment service providers (having a net worth of USD 2 million) are required to secure the funds received by them from a payment service user by obtaining a guarantee or undertaking from a 'safeguarding institution' (either an IFSC Banking Unit or a IFSC Banking Company) specifying that the safeguarding institution shall be fully liable to the customer.

iii) Payment Service providers are also required to put in place risk management frameworks detailing the risk management policy, procedures, and system to examine risks that may arise out of operating as a payment service provider.

c) **Informal introduction to virtual currencies in IFSC**

Virtual currencies have been termed as 'digital payment tokens'. Digital Payment Tokens are defined as a 'digital representation', which are not pegged against any currency, and which are accepted as a consideration for exchange of goods and services by the general public. With the inclusion of this definition within the payment systems regulations, it would be interesting to see whether cryptocurrencies aka digital payment tokens are recognised as legal tender within IFSC jurisdiction.

Conclusion

The IFSCA has taken the right step with its Draft Regulations, although it approached the matter a bit cautiously Its relatively simple regulatory regime coupled with global best practices and standards, with a touch of business-friendly environment will immensely facilitate the growth and stability of the IFSC as well as strengthen its position in the global payment ecosystem.

PA-CB Guidelines

Introduction

The Department of Payment and Settlement Systems of the RBI issued the Circular on Regulation of Payment Aggregator - Cross Border, on October 31, 2023 (**PA-CB Guidelines**), bringing all entities involved in online cross-border payments for the import and export of goods/ services under RBI's direct regulation. These entities are referred to as payment aggregators - cross-border (**Cross-Border PA**).

The RBI, by way of PA-CB Guidelines, has now opened up cross-border payment aggregation business for non-bank entities, which was earlier the exclusive domain of Authorised Dealer Category I Banks (**AD Banks**). Earlier, such entities involved in cross-border payments for import and export of goods and services tied up with AD Banks to operate as online payment gateway service providers (**OPGSPs**) and collection agents, and were supervised through such AD Banks.

The RBI has now taken a proactive step by bringing Cross-Border PAs under its direct supervision. This move not only provides additional flexibility, such as increased transaction limits (expected to boost total number of cross-border e-commerce transactions), but also shifts certain compliance responsibilities such as reporting of suspicious transactions to the Financial Intelligence Unit - India (**FIU-Ind**) from AD Banks to Cross Border PAs.

Key Features

1. The following key features continue from erstwhile regime for Cross-Border Pas:

a. **Accounts to be Maintained:**

   i. **Export Transactions:** Requirement to maintain export collection account (**Export Account**) with an AD Bank (INR and non-INR denominated). Separate Export Accounts to be maintained for each non-INR currency.

   ii. **Import Transactions:** Requirement to maintain an import collection account (**Import Account**) with and AD Bank.

b. **Permissible Transactions:** Only transactions for permissible goods/ services under the Foreign Trade Policy may be facilitated by Cross-Border Pas.

c. **Export/ Import Data Processing Monitoring System (EDPMS / IDPMS):** AD Banks to ensure the requirements under Foreign Exchange Management Act, 1999 (**FEMA**), including reporting and reconciliation of entries in EDPMS / IDPMS.

2. The following key features have been introduced *vide* the PA-CB:

a. **Categories of Cross-Border PAs:** (i) export only Cross-Border PA (**Export PA**); (ii) import only Cross¬Border PA (**Import PA**); and (iii) export and import Cross-Border PA (**Export-Import PA**).

b. **Flow of Funds:**

   i. **Export Transactions:** Export proceeds must be entirely credited to the Export Account and thereafter, settled directly in the account of Indian exporter/ merchant, or be routed through a domestic payment aggregator (**PA**).

   ii. **Import Transactions:** Payments for imports to be received in a PA escrow account, which shall then be transferred to the Import Account, and thereafter, be debited from the Import Account to the foreign importer/ merchant or foreign Pas.

c. **KYC Requirements:**

   i. **Import Transactions:** Customer due diligence, as per RBI's extant guidelines to be undertaken by Cross Border PAs on merchant or e-commerce platforms or overseas PAs, as the case may be. For transactions exceeding INR 2,50,000, it is mandatory to undertake customer due diligence on the buyer.

   ii. **Export Transactions:** Customer due diligence, as per RBI's extant guidelines to be undertaken by Cross Border PAs on Indian merchants or e-commerce platforms or domestic PAs, as the case may be.

d. **On-boarding:**

i. **Import Transactions:** Cross-Border PAs may directly on-board overseas merchants or enter into an agreement with e-commerce platforms/ foreign Pas.

ii. **Export Transactions:** Cross-Border PAs may directly on-board Indian merchants or enter into an agreement with e-commerce platforms/ domestic Pas.

e. **Transaction Limits:** The maximum value per unit of goods/ services must not exceed INR 25,00,000.

f. **Deadlines:**

i. **December 30, 2023:** Non-bank PAs that engage in Cross-Border PA activities must inform the RBI about their decision to continue or discontinue such activities.

ii. **January 31, 2024:** All existing non-bank Cross-Border PAs must comply with certain provisions[1] of the Guidelines on Regulation of Payment Aggregators and Payment Gateways, dated March 17, 2020 (**PA Guidelines**).

iii. **April 30, 2024:** All non-bank Cross-Border PAs must register with FIU-Ind and apply for authorisation.

iv. **July 31, 2024:** All existing non-bank Cross-Border PAs must submit evidence of application for authorisation to prevent closure of their bank accounts.

Implications:

a. **OPGSPs / Collection Agents:**

i. Now under direct regulation of RBI, as opposed to supervision through AD Banks.

ii. The PA-CB Guidelines has adopted certain requirements from the erstwhile Cross-Border PA regime, allowing flexibility in activity scope and additional compliance requirements leading to organisational changes.

iii. Will now require a locally incorporated entity to apply for Cross-Border PA authorisation, as opposed to a liaison office.

iv. Flexibility in terms of licensing i.e., Import PA/ Export PA/ Export-Import PA.

v. Flexibility to tie-up with domestic/ overseas PAs, as required for existing/ future business models.

vi. Transaction limits for OPGSPs, now set at INR 25,00,000 per unit of goods/ services, as opposed to ~INR 1,60,000 (USD 2000) for import and ~INR 8,30,000 (USD 10,000) for export transactions.

vii. Risk of bank accounts closure in case of failure to submit evidence of application for authorisation by July 31, 2024.

b. **Domestic Pas:**

i. Non-banks players may opt for single authorisation to undertake PA and Cross-Border PA business.

ii. Domestic PAs, awaiting final approval and presently not undertaking Cross-Border PA activity, can apply for Cross-Border PA only after final PA authorisation.

iii. Flexibility to tie-up with Cross-Border PAs, to provide cross-border payment services to existing Indian merchants.

c. **Foreign PAs/ E-commerce Entities:**

i. Flexibility to tie-up with Cross-Border PAs registered with the RBI, to provide services to their existing foreign merchants.

ii. Will be subject to customer due diligence (to be undertaken by Cross-Border PA) as per extant RBI guidelines.

iii. If a foreign PA has partnered with card networks directly to receive funds (for card payments) in an

[1] Provisions of the PA Guidelines relating to governance, merchant on-boarding, customer grievance redressal, dispute management framework, baseline technology recommendations, security, fraud prevention and risk management framework.

overseas jurisdiction, Cross Border PA authorisation/ tie-up with Cross-Border PA is not required.

Conclusion:

The PA-CB Guidelines is expected to develop the cross-border payment ecosystem:

i. The existing Cross-Border PAs are poised for a major transformation, both in terms of organisation and technology, to align with the stringent requirements of the PA-CB Guidelines. This will necessitate a substantial financial outlay to implement robust safeguards, establish safe and secure technological infrastructure and adhere to the comprehensive compliance and reporting requirements outlined in the PA Guidelines.

ii. The PA-CB Guidelines has opened up opportunities for FinTech players to explore Cross-Border PA services. This has the potential to bring technological expertise to the merchants / vendors and provide a one-stop solution for cross-border payments.

Master Direction on Classification, Valuation, and Operation of Investment Portfolio of Commercial Banks

The RBI plays a pivotal role in regulating and supervising the financial sector, ensuring its stability and security. In line with this objective, the RBI issued the Master Direction on Classification, Valuation, and Operation of Investment Portfolio of Commercial Banks (**MD**) in 2023. The MD aims to streamline the rules and guidelines pertaining to the investment portfolios held by commercial banks. The MD is a comprehensive framework that outlines the rules and regulations governing the classification, valuation, and operation of investment portfolios by commercial banks in India. It covers various aspects, including the types of permissible investments, the treatment of non-performing assets, and the reporting requirements, and is in sync with the significant development in global financial reporting standards, the linkages with the capital adequacy framework as well as progress in the domestic financial markets.

Classification of Investments

The MD provides clear guidelines for the classification of investments by banks into three categories: 'Held to Maturity' (**HTM**), 'Available for Sale' (**AFS**), and Fair Value through Profit and Loss (**FVTPL**). 'Held for Trading' (**HFT**) is a separate investment sub-category within FVTPL. Each category has distinct criteria and restrictions, ensuring that banks maintain a balanced portfolio that aligns with their risk appetite and financial stability.

1. HTM includes investments that banks intend to hold until maturity, and they are accounted for at amortized cost. HTM securities are considered low-risk and provide a stable source of income for the bank.
2. AFS investments are those that banks hold with the intention of selling them in the future, but not necessarily at a specific maturity date. They are marked to market, and their fluctuations impact the bank's balance sheet.
3. FVTPL are securities that do not qualify as an HMT or AFS such as Mutual Funds, Real Estate Investment Funds, Infrastructure Investment Trusts, etc.
4. HFT investments are intended for short-term trading and are marked to market at frequent intervals. These securities are highly liquid and subject to market volatility.

Valuation Principles

Valuation is a critical aspect of investment portfolios. The MD establishes robust valuation principles, ensuring that banks follow transparent and consistent methods for assessing the fair value of their investments. These principles help in determining the actual financial health of a bank and provide more accurate information to stakeholders.

1. **Fair Value:** Banks are required to value their investments at fair market value, ensuring that the portfolio reflects the true financial position of the bank.
2. **Mark-to-Market (MTM):** Securities held under AFS and HFT categories are subject to frequent MTM valuation to reflect their current market prices accurately.
3. **Amortized Cost:** Investments held under the HTM category are accounted for at amortized cost, allowing banks to recognise income over time.

Prudential Norms

The MD includes prudential norms that regulate the size and composition of investment portfolios. These exposure norms are designed to prevent undue concentration of risk and to ensure that banks maintain a diversified and balanced investment portfolio.

1. **Single Borrower Limit:** Commercial banks are subject to a single borrower limit, restricting their exposure to a single entity to mitigate concentration risk.
2. **Group Borrower Limit:** Similar to the single borrower limit, banks also need to adhere to group borrower limits to ensure diversification within their investment portfolio.
3. **Sectoral Limits:** Prudential norms include sectoral limits, which restrict the allocation of investments within specific sectors to manage sector-specific risks.

Investment in Government Securities

The MD emphasises the importance of government securities in terms of safety and fiscal liquidity for the banks. It outlines the requirements and limits with respect to investments in government securities to ensure financial stability and support government borrowing programs.

1. **Statutory Liquidity Ratio (SLR):** Commercial banks are required to maintain a specific percentage of their Net Demand and Time Liabilities (**NDTL**) in the form of government securities as part of the SLR. This ensures that banks have a stable source of liquidity.
2. **Investment in State Development Loans (SDLs):** The MD also provides guidelines for investment in State Development Loans, ensuring that banks support state government borrowing programmes.

Non-Performing Assets (NPAs)

For a comprehensive view of a bank's financial health, the MD addresses the treatment of NPAs in the investment portfolio outlining the rules for classification, provisioning, and reporting of NPAs and Non-Performing Investments (**NPIs**), ensuring transparency and accountability.

1. **Classification of NPAs:** The MD provides criteria for classifying assets / investments as NPAs based on the duration of overdue payments. For this, the criteria are directly mirrored from the Prudential Norms on Income Recognition, Asset Classification and Provisioning (**IRACP**). For example, if any credit facility availed by the issuer is NPA in the books of the bank, investment in any of these securities will be treated as NPI.
2. **Provisioning Requirements:** Banks are required to make adequate provisions for NPAs to cover potential losses, ensuring the accurate reflection of a bank's financial health.
3. **Disclosure:** The RBI mandates transparent reporting and disclosure of NPAs in financial statements to provide a true and fair view of the bank's asset quality.

Risk Management

Risk management is a core component of the MD. Banks are required to have robust risk management policies in place, covering credit, market, and liquidity risks associated with their investment portfolios. These policies help banks anticipate and mitigate potential risks effectively.

1. **Credit Risk Management:** Banks need to establish policies for credit risk assessment and mitigation, considering factors like credit rating, diversification, and counterparty risk.
2. **Market Risk Management:** Banks must have frameworks for managing market risk associated with investments, especially those categorised as AFS and HFT.
3. **Liquidity Risk Management:** Adequate liquidity risk management policies ensure that banks maintain sufficient liquidity to meet their obligations, especially during adverse market conditions.

Reporting and Disclosure

Transparency is another key aspect of the MD. Banks are required to regularly report and disclosue details of their investment portfolios to help stakeholders, including regulators and investors, make informed decisions.

1. **Periodic Reporting:** Commercial banks need to submit periodic reports to the RBI, detailing the composition and performance of their investment portfolios.

2. **Public Disclosure:** Banks are mandated to make specific disclosures public, ensuring that investors and depositors have access to essential information about the banks' investments.

Implications for Commercial Banks

The MD has taken a significant stride in ensuring stability and accountability of the Indian banking sector in the following manner:

1. Enhanced Governance and Compliance as per these regulatory changes will foster responsible management of investment portfolios and reduce the risk of financial instability.
2. Improved Risk Management at the end of banks which will adopt best practices and safeguards against market volatility and unexpected events. This, in turn, promotes long-term financial stability.
3. With stringent reporting and disclosure requirements, the MD enhances transparency in the banking sector. This is particularly beneficial for investors, depositors, and regulatory bodies, as it provides more accurate insights into a bank's financial health.
4. The prudential norms outlined in the MD encourage banks to diversify their investment portfolios, reducing the concentration of risk. This diversification can lead to more resilient banks in the face of economic fluctuations.
5. The MD indirectly affects the broader economy by influencing banks' investment decisions. It can encourage banks to invest in government securities, thereby supporting the government's borrowing programmes and contributing to economic stability.

Reserve Bank of India – Fintech Agenda 2023-24 (FIG Bulletin)

The RBI in its Annual Report 2022-23 (**Report**), published on May 30, 2023, outlined its strategic objectives for the year 2023-24. The triad of Central Bank Digital Currency (**CBDC**), Financial Technology (**FinTech**), and Regulatory Technology (**RegTech**) remain the core areas of focus. This underscores the RBI's intention to assert a leading role in the collective pursuit of establishing a digitally empowered economic framework. This signifies the central bank's commitment to harnessing technological advancements to shape a progressive financial landscape.

RBI Report sets Fintech goals for 2023-24

1) **Developing a framework for national FinTech ecosystem:**

   This signifies the RBI's proactive stance in anticipating and addressing the evolving dynamics of the financial technology landscape, with a particular focus on fostering innovation and ensuring regulatory compliance. The RBI is working on regulations that will be more developmental for fintech companies.

   In 2022, the RBI took significant measures to fortify the digital lending space. This included the issuance of comprehensive guidelines aimed at curbing illicit practices among specific participants and safeguarding customer data. Furthermore, the RBI adopted a stringent stance on "buy now pay later" products, imposing a prohibition on non-bank prepaid instruments. These actions underscore the RBI's commitment to maintaining integrity and security within the financial ecosystem, while also fostering a regulated environment for digital financial services.

2) **Conducting further pilots with various use cases in -both Retail and -Wholesale CBDCs:**

   On October 7, 2022, the RBI issued a concept note on CBDC, which is a digital form of currency notes issued by a central bank. The concept note outlines the aims, considerations, advantages, and potential drawbacks associated with the introduction of CBDC in India. This 'Digital Rupee' will augment the existing array of monetary mediums accessible to individuals. Although it shares fundamental similarities with physical banknotes, its digital nature is anticipated to render it more convenient, expeditious, and cost-effective. Furthermore, the digital currency encompasses all the transactional advantages inherent in other forms of digital currency. This initiative represents a forward-looking step towards modernising India's monetary landscape, leveraging technology to enhance accessibility and efficiency in financial transactions. Conducting further pilots with various use cases in both Retail and Wholesale CBDCs would allow FinTechs to create new products.

3) **Lightweight Payment and Settlement System (LPSS):**

   Systems like Real Time Gross Settlement (**RTGS**), National Electronic Funds Transfer (**NEFT**) and Unified Payments Interface (**UPI**) are structured for high transaction volumes and sustained accessibility, relying on advance information technology infrastructure. However, these systems can face breakdown during catastrophic events such as natural disasters or war. In order to be prepared for such situations, the RBI is conceptualizing a portable payment system which is lightweight and can be operated from anywhere.

4) **Developing RegTech tools for REs and exploring emerging SupTech tools:**

   The RBI is committed to fostering the growth of RegTech tools, with a keen focus on their adoption by regulated entities. By encouraging the utilisation of innovative RegTech solutions, the RBI aims to streamline regulatory processes and fortify the overall integrity of the financial ecosystem. This approach underscores the central bank's dedication to leveraging technological advancements for the betterment of

regulatory practices and ensuring a robust and resilient financial sector.

An example of such technology is DAKSH, which was launched by the RBI on October 6, 2022. This web-based, comprehensive workflow application is designed to enable the RBI to scrutinise compliance requisites with heightened precision. The ultimate aim is to bolster the culture of compliance within the supervised entities by employing a more targeted monitoring approach.

5) **Enhancing account aggregator technology for efficiency and growth :**

   'Account Aggregator' acts as an intermediary, collecting financial data of customers from FIPs and sharing it with FIUs such as lending banks\ agencies that provide financial services.

   Given the escalating number of participants within the ecosystem, the Reserve Bank is adopting a deliberated and nuanced strategy in collaboration with the ReBIT and other relevant stakeholders to rectify technical challenges and foster growth.

6) **Conduct of global hackathons 'HARBINGER' series:**

   On November 9, 2021, the RBI inaugurated its inaugural international hackathon, HARBINGER 2021. This event featured four distinct problem statements falling within the overarching theme of 'Smarter Digital Payments'. Impressively, the hackathon garnered active engagement. The theme of HARBINGER 2023-the second edition of RBI's international hackathon-was 'Inclusive Digital Services'. The resounding success of two editions of global hackathons motivates the Reserve Bank to continue fostering creativity and technological advancement in the financial sector through future innovation-driven endeavors.

CAM Thought: The RBI's 2023-24 FinTech agenda represents a visionary step in modernizing the financial landscape, focusing on CBDC and RegTech, This forward-looking approach demonstrates the central bank's commitment to technological leadership and and ensuring a resilient financial future for India.

SEBI Regulatory Updates

Online Resolution of Disputes in the Securities Market:

SEBI, *vide* circular dated August 11, 2023 (here), has expanded the scope of disputes resolution by establishing a common online dispute resolution portal (**ODR Portal**) to harness online conciliation and online arbitration for resolution of disputes arising in the Indian securities market.

Stock Exchanges and Depositories are required to collaborate with their empanelled online dispute resolution institutions to establish and operate the ODR Portal, thereby providing stakeholders with an access to resolve disputes.

CAM Thought: This will benefit both investors and intermediaries. Investors will benefit from a convenient and efficient way to resolve their disputes, while intermediaries will benefit from reduced costs and improved customer satisfaction.

Redressal mechanism for investor grievances enhanced by integrating SEBI Complaint Redressal (SCORES) Platform integrated with Online Dispute Resolution platform:

SEBI, *vide* circular dated September 20, 2023 (here), has linked the SCORES platform to the Online Dispute Resolution Platform. Consequently complaints lodged through SCORES will automatically be forwarded to the concerned entity against whom such complaint has been lodged.

CAM Thought: This move streamlines the existing investor grievance handling mechanism by making it more efficient.

SEBI provides additional manners of achieving minimum public unitholding for Infrastructure Investment Trusts (InvITs):

SEBI by way of a Circular dated June 27, 2023 (here) had prescribed the methods to achieve minimum public unitholding requirements for InvITs.

By way of a circular dated October 31, 2023 (here), SEBI has inter-alia prescribed issuance of units through preferential allotment to the public as an additional method for achieving minimum public unitholding by InvITs.

CAM Thought: This is indeed a welcome move and offers InvITs an additional avenue to achieve minimum public unitholding without having to undertake a public offer process.

SEBI extends timeline for compliance with enhanced qualification and experience requirements for Investment Advisers (IA):

Previously, SEBI had introduced a requirement for IAs to comply with certain enhanced qualification and experience requirements by September 30, 2023.[1] Based on representations received from various stakeholders and in view of the emerging landscape of the domain of investment advice, SEBI in its Board meeting, held on September 21, 2023 (here), decided to allow time up to September 30, 2025 to comply with these requirements.

CAM Thought: This relaxation allows IAs additional time to comply with the enhanced qualification and experience requirements.

1 SEBI (Investment Advisers) (Amendment) Regulations, 2020 (here).

IFSC Regulatory Updates - FIG Newsletter (August 1, 2023 - December 31, 2023)

1) Bullion Trading Members and Clearing Members in IFSC

IFSCA had initially provided 6 (six) months, from the date of operationalization of bullion exchange, to Trading Member, Clearing Member, Trading and Clearing Member and Self-clearing Member for fulfilment of prescribed net worth and base minimum capital related criteria. IFSCA extended this deadline and gave an additional period of 6 (six) months *vide* a circular dated January 27, 2023, i.e., till July 28, 2023. Vide the IFSCA circular dated August 07, 2023, an extension of additional 6 (six) months i.e., till January 28, 2024, or until the time IFSCA issues revised guidelines/ handbook/ circular specifying the requirements of minimum net worth and base minimum capital for bullion intermediaries, whichever is earlier, is granted.

CAM Thought: This IFSCA circular offers flexibility for market participants to meet regulatory standards.

2) Financial Action Task Force (FATF) High risk and other monitored jurisdictions June 2023

FATF *vide* public statement 'High-Risk Jurisdictions subject to a Call for Action' dated June 23, 2023 added the jurisdictions: (a) Cameroon; (b) Croatia; and (c) Vietnam to the list of Jurisdictions under Increased Monitoring based on the decision made at the

June 23, 2023, FATF plenary. The IFSCA released a press release dated August 16, 2023, to state that the regulated entities licensed/ recognised/ registered or authorised by the IFSCA are not precluded from doing legitimate trade and business transactions with the countries and jurisdictions mentioned therein.

3) IFSCA Banking Handbook – Opening of SNRR account with AD Bank in India

The IFSCA *vide* circular dated August 30, 2023 replaced para 6.a.ii of Module 2 of the IFSCA Banking Handbook Conduct of Business (**COB**) directions v 5.0 (**Handbook**) with the following, with immediate effect:

*"An IBU may open an INR account, in the form of a Special Non-Resident Rupee Account (**SNRRA**), with an AD Bank in India to defray its administrative expenses in compliance with the directions of the Reserve Bank of India in this regard."*

Earlier para 6.a.ii of Handbook provided that an IFSC Banking Unit (**IBU**) could open an INR account, in the form of a Special Non-Resident Rupee Account (**SNRRA**), with an Authorised Dealer (**AD**) bank in India (but not with the AD bank of which the IBU is a branch) to defray its administrative expenses.

CAM Thought: This circular relaxes the norms for opening of SNRRA by an IBU by allowing an IBU to open a SNRRA with an AD bank in India Including the AD bank of which the IBU is a branch.

4) AML measures under the International Financial Services Centres Authority (Anti Money Laundering, Counter-Terrorist Financing and Know Your Customer) Guidelines, 2022

The IFSCA *vide* circular dated August 31, 2023, provided additional compliance measures for the regulated entities under IFSCA (Anti Money Laundering, Counter-Terrorist Financing and Know Your Customer) Guidelines, 2022 (**AML-CFT Guidelines**), which are as follows:

a) A cross-border wire transfer where the amount to be transferred is equal to USD 1000, every bank which is an ordering institution shall also comply with the requirements specified under clause 7.7.3(a) of the AML-CFT Guidelines.

b) Clause 7.7.3. (b) of the AML-CFT Guidelines shall apply to all Cross- Border Wire Transfers which are bundled in a batch file.

c) The Intermediary Institution shall be required to take all reasonable measures, consistent with straight-through processing, to identify cross-border wire transfers that lack the information required under clause 7.7.6 (a) of the Guidelines.

CAM Thought: The circular attempts to strengthen the AML-CFT Guidelines by providing additional measures to be complied by regulated entities in cases where cross-border wire transfer is taking place.

5) Procedure for implementation of Section 51A of the Unlawful Activities (Prevention) Act, 1967 (UAPA) - modification-regarding.

The circular dated September 5, 2023, highlights the following modifications:

a) Expanding the scope of individuals/entities to *"real-estate agents, dealers of precious metals/stones (DPMS), other Designated Non-Financial Businesses and Professions (**DNFBPs**) and any other person."* by adding the term "any other person".

b) Requiring DNFBP are required to report transactions involving designated individuals / entities and freeze their assets when held and inform the Nodal officer of the State / Union Territory appointed for implementation of Section 51A of UAPA.

c) Mandating any person, either directly or indirectly, holding any funds or other assets of designated individuals or entities to freeze any transaction in relation to such funds or assets, without delay and without prior notice, by immediately informing the nearest Police Station, which in turn is required to inform the concerned UAPA Nodal Officer of the State/ Union Territory along with details of the funds/assets held.

The circular provides that it will apply to the Regulated Entities as per their nature of business in IFSC with immediate effect.

CAM Thought: This is an attempt by IFSCA to stay aligned with the objectives of the government to strengthen national security by improving financial oversight and counter-terrorism efforts.

6) Reading IFSCA AML-CFT Guidelines, 2022

Vide its circular dated September 8, 2023, the IFSCA provided the following guidance: In line with the amendments to the PMLA (Maintenance of Record) Rules, 2005 (**PMLA Rules**) for purposes of determining 'control' in a partnership firm, for identifying beneficial ownership, the threshold has been reduced to ten (10) percentage from fifteen (15) percentage.

CAM Thought: Since the PMLA Rules are also applicable to entities under IFSCA along with IFSCA (AML, CFT and KYC) Guidelines, 2022, entities in IFSC are bound by the diktat of this circular. However, it is the need of the hour to differentiate entities registered in IFSC from an AML, CFT and KYC compliance perspective and provide a single streamlined AML, CFT and KYC compliance code to ensure that compliance under multiple regulations does not result in a case of overcompliance, thereby reducing the ease of doing business.

7) Authorization of Scheme file under IFSCA (Fund Management) Regulations, 2022

The circular, notified on September 15, 2023, provides that all Fund Management Entities are required to seek authorisation from the Authority for each scheme filed under Chapters III, IV, and V of the IFSC (Fund Management) Regulations, 2022 (**FM Regulations**). Chapter III, IV, and V of the FM Regulations deal with Venture Capital Scheme, Exchange Traded Funds, Environmental, Social and Governance, respectively.

CAM Thought: The circular provides operational clarity on the authorisation requirement for schemes filed under Chapter III, IV, and V of the FM Regulations.

8) Modifications under the IFSCA AML-CFT Guidelines, 2022

The IFSCA *vide* its circular dated October 12, 2023, has made certain modifications to its AML-CFT Guidelines. The changes notified are as follows:

a) An explanation has been attached to the definition of a 'shell financial institution' in the guidelines. The explanation clarifies the meaning of 'physical presence' and states that existence of a senior management personnel is necessary to justify an IFSCA regulated entity's presence in IFSC. Mere existence of staff at the lower level does not justify physical presence.

b) With respect to life insurance policies, Regulated Entities are expected to take a further compliance measure at the time of payout, of identifying / determining whether the beneficial owner is a politically exposed person. If higher risks are identified, the senior management should promptly be informed and higher scrutiny must be undertaken before payout.

c) Implementation of enhanced due diligence measures has been made mandatory and specific, in proportion to the risks, while dealing with clients from countries for which FATF has called for enhanced security measures.

d) Record keeping requirements for intermediary institutions with respect to wire transfers has been fixed at six years, irrespective of any other time-period specified in any other law.

CAM Thought: Though the legal regime surrounding IFSC is in its gestation stage and modifications in the recent future are inevitable, the regulator is making constant efforts to make the guidelines surrounding anti-money laundering as foolproof as possible. It is necessary to provide a business-friendly environment with less regulatory interference within IFSC, but at the same time business enhancement shall not be at the expense of money being routed though IFSC for illegal purposes. Whether IFSCA will be available to achieve this aim by stringent AML, CFT and KYC guidelines or whether the same would result in over compliance, only practical application of the guidelines would reveal.

Market Updates

Cyril Amarchand Mangaldas advises Axis Bank on acquisition of additional 6.23% stake in Max Life for INR 1,612 crores

Axis Bank Limited infuses INR 1,612 Crores into Max Life Insurance Company by subscribing to shares on a preferential basis, resulting in the collective stake of Axis Entities i.e., Axis Bank Limited, Axis Capital Limited and Axis Securities Limited, in Max Life Insurance Company increasing to 19.02%. Together, the Axis Entities had purchased a 12.99% share in Max Life in 2021, with Axis Bank being entitled to purchase an extra 7% of the insurer in one or more tranches. The agreement was completed and executed on August 9, 2023, has received RBI approval and is slated to close in four to six months.

100% Acquisition of Chaitanya India Fin Credit Limited by Svantantra Microfin Private Limited

On August 8, 2023, Svatantra Microfin Pvt. Ltd., a group company of the Aditya Birla Group, acquired a 100% stake in Chaitanya India Fin Credit Limited. The acquisition, valued at INR 1,479 Crore, is part of Svatantra's strategic plan to focus on digital-first businesses. CAM represented Navi Finserv Limited and Navi Technologies Limited (**Navi**) in the 100% acquisition of their microfinance subsidiary by Svatantra. The deal is expected to be completed by 2023-end. The acquisition will transform Svatantra into the second-largest microfinance entity in India, with a combined asset under management of INR 12,409 Crores. It will also enable Svatantra to expand its reach to more than 3.6 million active customers through 1,517 branches across 20 states. Chaitanya India Fin Credit Limited was initially acquired by Navi Technologies in 2019, and the acquisition by Svatantra is part of the strategic plan to focus on digital-first businesses.

Elpro International agrees to invest INR 250 million in Jana Small Finance Bank

CAM advised Elpro International Ltd., a listed electrical equipment manufacturing entity, on the secondary acquisition of non-cumulative compulsorily convertible preference shares in Jana Small Finance Bank Ltd. from Hero Enterprise Partner Ventures. The deal followed multiple purchasers investing in the equity instruments of Jana. Jana Small Finance Bank is one of the leading small finance banks in India in terms of deposit sizes with the second most geographically diversified portfolio. Elpro International's investment in Jana Small Finance Bank is aimed at expanding its presence in the Indian market and contributing to the growth and development of the bank. The partnership with Jana Small Finance Bank is expected to bring synergies and enhance the overall value of both organizations.

SEBI penalized Star India Market Research (SIMR) for impinging on Regulatory norms

SEBI has imposed a fine of Rs. 20 lakh on SIMR, a SEBI-registered investment adviser actively providing market research to clients for investment, for violating regulatory norms. SEBI found that SIMR violated the Prohibition of Fraudulent and Unfair Trade Practices (**PFUTP**) rules by inducing clients to trade in the market. The regulator also noted that SIMR levied arbitrary fees on clients, sold multiple products in a short span to the same client, and sold products for overlapping periods, all of which were done to defraud clients and earn maximum fees. Additionally, SEBI found that SIMR did not function with honesty and diligence with regard to the client's best interests, and in turn, violated the code of conduct of Investment Advisers Regulations (**IA Regulations**). Furthermore, SEBI's Adjudicating Officer noted that there were 24 unique complaints pending against SIMR, and the company failed to redress the complaints, violating the provisions of IA Regulations.

Groww, an asset management company to launch its own tailored indexed mutual fund

Groww Mutual Fund, an asset management company primarily known for its fintech-based investments, has received approval from the SEBI to launch its first index fund, the Groww Nifty Total Market Index Fund. This is the first Nifty total market index fund in India, and it aims to

provide a broader view of the Indian equity/stock market by tracking the Nifty Total Market Index, which comprises companies across market caps - large cap, mid cap, and small-cap. The scheme follows a passive investment strategy and seeks to provide an opportunity to diversify portfolios and access a wide range of company stocks across sectors. The New Fund Offer (NFO) opened on October 3, 2023 and closed on October 17, 2023. The fund will allocate its assets across market caps, with a split of 72.03% in large-cap, 16.11% in small-cap, 8.60% in mid-cap, and 3.39% in micro-cap.

Perfios announces $229 million Series D funding by Kedaara Capital

Perfios, an Indian B2B SaaS fintech company, has raised $229 million in its Series D funding round led by Kedaara Capital, a leading private equity investor. The investment will be used to fuel Perfios' continued global expansion plans in North America and Europe, as well as to invest in new-age technologies to enhance its comprehensive stack of Decision Analytics SaaS products to solve the entire end-to-end customer journey across banking, insurance, and embedded commerce. Perfios, having a strong base in India, provides a range of services that let companies collect data for Application Programming Interface, provide insights into a customer's financial worthiness, and automate loan decisions. Kedaara intends to utilize a mix of primary fund raising and secondary sales to invest the funds. BVP and Warburg Pincus (US based private equity firm) have also invested in the funding process.

IFSC signals plan to move forward and set regulations for Asset Tokenization

The IFSCA has formed a seven-member committee to develop regulations and policy guidelines for the tokenization of real and physical assets and to examine the legal validity of smart contracts. The decision to frame regulations and policy guidelines for blockchain-based products is seen as a proactive approach by India towards regulating emerging technologies and enhancing its recognition on the global stage as a forward-thinking player in the blockchain space. The committee's mandate includes developing a risk management framework for digital tokens, examining the role of digital custodians in the asset tokenization model, and developing operational policy measures.

Competition Commission of India (CCI) Grants Approval for the IDFC First Bank - IDFC Limited Merger

IDFC First Bank and IDFC Limited have recently been approved for a merger by the CCI. The merger was approved on October 17, 2023, and the share-exchange ratio for the amalgamation of IDFC Limited with IDFC First Bank shall be

155 equity shares with a Rs. 10 face value of fully paid-up shares of IDFC First Bank for every 100 equity shares of face value of Rs. 10 each of fully paid-up of IDFC Limited. The merger aims to unify IDFC, FHCL, IDFC Ltd, and IDFC First Bank, simplifying their corporate structure and easing regulatory compliance.

HDFC Bank and HDFC Ltd. completed on July 01, 2023

HDFC Bank and HDFC Ltd. completed their merger on July 1, 2023, following the receipt of all requisite shareholder and regulatory approvals. The merger was announced on April 4, 2022, and was subject to obtaining the requisite consent and approvals. The merger was completed following the receipt of all requisite shareholder and regulatory approvals. As per the merger scheme, HDFC Bank issued and allotted 42 new equity shares of the face value of Re. 1/- each, credited as fully paid-up, for every 25 equity shares of the face value of Rs. 2/- each fully paid-up held by shareholders in HDFC Ltd. as on the Record Date, which was July 13, 2023. The merger created a financial services titan with a combined asset of over Rs. 18 lakh crore. The merged entity is now the world's fourth-largest bank by market cap.

India Grid Trust (IndiGrid) complete acquisition of 100% units in Virescent Renewable Energy Trust (VRET) on August 25, 2023

Indi Grid completed the acquisition of 100% units in VRET on August 25, 2023. The acquisition was valued at Rs. 4,000 crore and added 16 solar projects with a capacity of 538 MWp to the Indi Grid portfolio, pushing its Assets Under Management (AUM) to about Rs. 27,000 crore and the overall solar capacity to 676 MWp, comprising approximately 17% of its assets under management. VRET, a Sebi-registered infrastructure investment trust, was set up on February 25, 2021, and its units were listed on the NSE since September, 2021. Following the acquisition, the units of VRET will be delisted on or around August 29, 2023. The acquisition underscores Indi Grid’s commitment to driving sustainable energy growth in India.

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