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RBI NOTIFIES DIRECTIONS FOR REGULATION OF
PAYMENT AGGREGATORS – CROSS BORDER

INTRODUCTION

On 31 October 2023, the Reserve Bank of India (RBI) issued the circular on '*Regulation of Payment Aggregator – Cross Border (PA – Cross Border)*' (PA – CB Directions) addressed to all payment system providers and payment system participants. This follows the draft circular on '*Processing and settlement of small value Export and Import related payments facilitated by 'Online Export-Import Facilitators (OEIF) (erstwhile OPGSP)*' issued by the RBI on 7 April 2022 (Draft OEIF Directions).

KEY HIGHLIGHTS

The PA – CB Directions marks a significant deviation from: (i) the existing regulatory framework governing the facilitation of cross-border payment transactions for import and export of goods and services; and (ii) the Draft OEIF Directions issued by the RBI last year. We have outlined below a few key aspects of the PA – CB Directions, including deviations from the existing regulatory framework:

(a) Consolidated Regulatory Framework

- Prior to the issuance of the PA – CB Directions, the following non-bank entities were permitted to facilitate cross-border payment transactions for import and export of goods and services:
 - (i) Entities that had obtained registration with a 'Authorised Dealer Category – I' bank (AD Bank) as 'online payment gateway service providers' (OPGSPs); and
 - (ii) Entities that had obtained a bespoke approval from the RBI to act as a 'collection agent' (Collection Agent) on behalf of a foreign entity.
- While the activities of OPGSPs were governed under the circular on '*Processing and settlement of import and export related payments facilitated by Online Payment Gateway Service Providers*' issued by the RBI

on 24 September 2015 (OPGSP Guidelines), the activities of Collection Agents were governed under the terms and conditions specified in the bespoke approval obtained from the RBI.

- Further, OPGSPs and Collection Agents were not directly regulated by the RBI. Instead, the RBI imposed obligations on AD Banks to ensure that OPGSPs comply with the OPGSP Guidelines and Collection Agents comply with the terms and conditions specified in the specific approvals granted by the RBI for appointment of such Collection Agents.
- Under the PA – CB Directions, a 'Payment Aggregator – Cross Border' (PA – CB) has been widely defined to include all entities that facilitate cross-border payment transactions for import and export of permissible goods and services in online mode. Thus, both OPGSPs and Collection Agents would be categorised as PA – CBs, and will be subject to the direct regulatory supervision of the RBI.

Comments:

1. While the activities of existing cross-border payment service providers were regulated by the Foreign Exchange Department of the RBI (given applicability of Indian exchange control regulations to cross-border trade transactions), the PA – CB Directions marks a significant shift in the manner in which such cross-border payment facilitation activities would be supervised going forward. The PA – CB Directions have been issued by the Department of Payment and Settlement Systems (DPSS) of the RBI which also oversees the activities of domestic payment aggregators. While the PA – CB Directions have been issued as delegated legislation under both the payment & settlement as well as the exchange control legislations, it is very clear that the activities of PA –

CBs would primarily be subject to the regulatory oversight of the DPSS.

2. The PA - CB Directions permit facilitation of payments for all permissible cross-border trade transactions. This marks a significant departure from the OPGSP Guidelines, under which the RBI had provided limited flexibility for OPGSPs (for example, OPGSPs could support only import of goods and software). Similarly, approvals provided to Collection Agents were also limited in its ambit. The RBI has now relaxed the framework and has freely permitted payment intermediaries to support all types of import and export transactions as long as they are permitted under India's foreign trade policy.
3. It is pertinent to note that in the foreword to the PA - CB Directions, the RBI has specifically identified 'collection agent arrangements' in the context of cross-border payment transactions. In doing so, RBI has made it abundantly clear that Collection Agents would be treated as 'PA - CBs' and would be required to comply with the PA - CB Directions in its entirety, including the requirement to obtain specific registration as a PA -CB (discussed in greater detail below). Given the above, we would assume that AD Banks would have to monitor their existing Collection Agent arrangements, and ensure that the relevant entities obtain licensing as a PA - CB from the RBI.
4. However, we note that the PA - CB Directions do not provide clarity on the status of those entities which have obtained specific approval from the RBI for facilitating outward remittances through AD Banks under paragraph 10 of the 'Master Direction - Miscellaneous' issued by the RBI on 1 January 2016 ([Miscellaneous Master Direction](#)). Similarly, the PA - CB Directions also do not provide clarity on the status of entities which have entered into 'Rupee Drawing Arrangements' for facilitating trade transactions under the 'Master Direction - Opening and Maintenance

of Rupee/Foreign Currency Vostro Accounts of Non-resident Exchange Houses' issued by the RBI on 1 January 2016 ([RDA Master Direction](#)). Given the broad definition of 'PA -CB' (which includes all entities that facilitate cross-border trade transactions), it is unclear whether entities which have obtained approvals under the Miscellaneous Master Direction and the RDA Master Direction would be governed under the PA - CB Directions.

(b) Registration Requirements

- Non-bank entities

- (i) Under the PA - CB Directions, non-bank entities which provide PA - CB services (such as OPGSPs and Collection Agents) as on 31 October 2023 (Existing PA - CBs) are required to apply to the RBI for authorisation by 30 April 2024. This application has to be made in the same format as prescribed for payment aggregators under the Guidelines on Regulation of Payment Aggregators and Payment Gateways issued by the RBI on 17 March 2020 (Payment Guidelines).
- (ii) Further, the RBI has identified three categories of PA - CBs: (x) PA - CBs which only facilitate payments for export transactions; (y) PA - CBs which only facilitate payments for import transactions; and (z) PA - CBs which facilitate payments for both export and import transactions.
- (iii) At the time of submitting its application to the RBI, the applicant entity will be required to indicate any one of the aforementioned categories for which it wishes to obtain authorisation. After obtaining authorisation for a particular category of PA - CB, the authorised PA - CB must inform the RBI at least sixty days prior to commencing business in any

new category. However, such business in the new category can be commenced only after approval from the RBI.

- (iv) Lastly, all Existing PA – CBs must register themselves with the Financial Intelligence Unit – India (FIU-IND) prior to applying to the RBI for obtaining PA – CB authorisation. The FIU-IND is India's national agency responsible for dealing with information relating to financial transactions, and assists intelligence, investigation and enforcement agencies in pursuing the global efforts against money laundering and financing of terrorism.

Comments:

1. *In line with its objective to directly regulate the business activities of all entities involved in facilitating cross-border trade transactions, the RBI has introduced the requirement of obtaining authorisation as payment aggregator for all non-bank PA – CBs. This is a deviation from the RBI's proposed approach in the Draft OEIF Directions, under which 'online export-import facilitators' which only facilitated export transactions were proposed to be treated as 'payments gateways', and accordingly would not have been required to obtain authorisation as a payment aggregator.*
2. *Further, by explicitly requiring all Existing PA – CBs to register themselves with the FIU-IND, the RBI has indirectly clarified that such payment intermediaries would be treated as 'reporting entities' under the Prevention of Money Laundering Act, 2002 and the rules issued thereunder (PMLA). This comes in the aftermath of the appeal filed against the Delhi High Court's judgement in the case of PayPal Payments Private Limited v Financial Intelligence Unit India,*

where it was held that OPGSPs would be treated as 'reporting entities' and would be required register themselves with the FIU-IND (despite not being specifically categorised as such under the PMLA).

- AD Banks and non-bank payment aggregators

While AD Banks are not required to obtain separate approval from the RBI for providing PA – CB services, non-bank payment aggregators (*i.e.*, those payment aggregators which have applied for or already received authorisation under the Payment Guidelines) which are Existing PA – CBs are required to inform the DPSS within sixty days from the date of the PA – CB Directions (*i.e.* by 30 December 2023) about their existing cross-border payment facilitation activities, and whether they would like to continue engaging in such PA – CB activities (in which case they would be required to obtain specific approval from the RBI under the PA – CB Directions).

Even if such payment aggregators are not Existing PA – CBs, the RBI has clarified that such aggregators would require specific approval from the DPSS prior to undertaking any PA – CB activity.

Comment: The RBI has permitted domestic payment aggregators to also engage in cross-border payment facilitation activities by obtaining registration as a PA – CB. This would permit such domestic aggregators to directly onboard offshore merchants, and process payments for cross-border trade transactions. This allows such payment aggregators to leverage their existing systems and processes to also support cross-border transactions, and presents a good business opportunity for such aggregators to expand their offerings to include cross-border payment processing.

- (c) Immediate compliance requirements

- The RBI has clarified that all Existing PA – CBs must ensure compliance with certain specific aspects of the Payment Guidelines (as outlined below) within a period of three months from the date of the PA – CB Directions (i.e. by 31 January 2024).

- (i) Governance. This would *inter alia* entail that Existing PA – CBs: (x) are professionally managed; (y) ensure that their promoters and management satisfy the 'fit and proper criteria' prescribed by the RBI; and (z) adopt comprehensive merchant policy, customer grievance policy, privacy policy and terms and conditions.
- (ii) Merchant on-boarding. This would *inter alia* require that Existing PA – CBs: (x) adopt a board approved policy for onboarding of merchants; (y) run a background check on merchants prior to onboarding; and (z) ensure that agreements with merchants have specific provisions for security / privacy of customer data.
- (iii) Customer grievance redressal and dispute management framework. This would *inter alia* entail that Existing PA – CBs must: (x) appoint a nodal grievance officer whose details shall be prominently displayed on the website of the Existing PA – CB; (y) put in place a dispute resolution mechanism which contains transaction life cycle, detailed explanation of types of disputes, responsibilities of all parties, etc.; and (z) put in place (and also publicly disclose) a formal customer grievance redressal and dispute management framework.
- (iv) Baseline technology requirements. This would *inter alia* require Existing PA – CBs to: (x) carry out comprehensive security risk assessment to identify risk exposure and

remedial measures; (y) adopt data security standards and best practices such as PCI-DSS; and (z) undertake comprehensive security assessment of merchants.

- (v) Security, fraud prevention and risk management framework. This would *inter alia* entail that Existing PA – CBs must: (x) adopt a board approved information security policy for safety and security of payment system; (y) adopt a mechanism for monitoring, handling, and follow up of cyber security incidents and breaches along with reporting of such incidents and breaches with the CERT-In (Indian Computer Emergency Response Team); and (z) ensure compliance with data storage and localisation requirements, including restrictions on storage of customer card credentials by the PA – CB or its merchants.

The RBI has also clarified in the PA – CB Directions that failure by Existing PA – CBs to adhere to the aforementioned compliance requirements may result in the license application submitted by such Existing PA – CB being refused.

- The RBI has also clarified that all instructions issued by it to payment aggregators would be applicable *mutatis mutandis* to PA – CBs. Consequently, the authorised PA – CBs would be required to comply with all the compliance requirements prescribed under the Payment Guidelines (including in relation to data localisation, compliance with restrictions on storage of data, submission of monthly, quarterly and annual reports, etc.). For more details on the compliance requirements under the Payment Guidelines, please refer to our earlier analysis of the Payment Guidelines [here](#).

Comment: The RBI has significantly increased the compliance requirements for Existing PA – CBs. Such entities would now be required to immediately deploy

resources in order to meet the various compliance requirements (including the directions relating to ensuring adoption of baseline technology requirements and implementation of robust fraud prevention and risk management frameworks, data localisation requirements, etc.) within the prescribed deadline. The RBI has also clearly outlined its expectations while processing the license applications for PA – CBs, and has indicated that any failure to comply with these requirements would result in refusal for grant of the license. Given the above, it would be crucial for the Existing PA – CBs to evaluate its existing systems and processes to ensure full compliance with the prescribed requirements.

(d) Minimum capitalisation norms

- The RBI has prescribed that applicant entities must have an initial net-worth of INR 15 crores (~US\$ 1.8 million), which must be increased to INR 25 crores (~US\$ 3 million) within a three-year period. While Existing PA – CBs have to achieve the higher net-worth of INR 25 crores by 31 March 2026, new PA – CB applicant entities have to achieve such net-worth prior to the expiry of the third financial year after obtaining authorisation.
- Existing PA – CBs which fail to: (i) comply with the net-worth requirements; or (ii) apply to the RBI for authorisation by 30 April 2024, are required to wind-up their existing PA – CB operations by 31 July 2024. Further, the RBI has also directed AD Banks to close the relevant accounts of such Existing PA – CBs by 31 July 2024 unless such entities are able to provide evidence that they have applied to the RBI for authorisation as a PA – CB.

Comment: The minimum capitalisation norms prescribed under the PA – CB Directions are largely identical to the minimum capitalisation norms prescribed for domestic payment aggregators under the Payment Guidelines. It is pertinent to note that under the Payment Guidelines, applicants are required to submit a net-worth certificate from their chartered accountants, whereas the PA – CB Directions require applicants to submit a

net-worth certificate from their statutory auditors. Existing PA – CB entities must ensure that they are sufficiently capitalised prior to the end of the current financial year in order to meet the prescribed net-worth requirements.

(e) Transaction limits

The RBI has prescribed that PA – CBs can process payments for import and export transactions up to a maximum per unit value of goods / services (purchased or sold) of INR 25,00,000 (~US\$ 30,000).

Comment: This is a welcome change as the RBI has significantly increased the existing transaction limits prescribed under the OPGSP regime (which is US\$ 2,000 per import transaction, and US\$ 10,000 per export transaction). The RBI has also clarified that such limit would apply on each unit of goods or services sold / purchased (and not on a per transaction basis). The higher transaction limit introduced by the RBI would provide PA – CBs with sufficient leeway to process payments for cross-border trade transactions without the need to obtain specific approvals from the RBI (to process payments for transactions breaching the existing limits).

(f) Transaction Sourcing and Merchant Due Diligence

- For facilitating import transactions, the RBI has clarified that PA – CBs are permitted to: (i) directly onboard foreign merchants; and / or (ii) enter into arrangements with foreign e-commerce marketplaces or foreign payment aggregators for processing of payments for their merchants.
- Similarly, for export transactions, the RBI has permitted PA – CBs to: (i) directly onboard Indian merchants; and / or (ii) enter into arrangements with Indian e-commerce marketplaces or Indian payment aggregators for processing of payments for their merchants.
- The RBI has imposed a specific obligation on PA – CBs to conduct due diligence on the merchant / e-commerce marketplace / payment

aggregator (as applicable) in accordance with the 'Master Direction - Know Your Customer (KYC) Direction, 2016' issued by the RBI on 25 February 2016 (KYC Master Directions).

- Further, for import transactions, the RBI has also prescribed that PA - CBs must conduct due diligence on the Indian buyer if the per unit value of the goods / services imported is more than INR 2,50,000 (~US\$ 3,000).
- The RBI has also clarified that PA - CBs would be responsible for ensuring that they do not facilitate any payments for import / export transactions involving goods / services which are restricted / prohibited under the foreign trade policy (FTP) of India.
- The RBI has specified that AD Banks maintaining collection accounts for PA - CBs must ensure that all compliance requirements under Indian exchange control regulations are met with, including reporting and reconciliation of entries on the prescribed data processing and monitoring systems.

Comment: These requirements would necessitate PA - CBs to implement robust internal mechanisms for merchant onboarding, KYC due diligence checks and transaction end-use monitoring. Since PA - CBs would now be directly subject to the regulatory supervision of the DPSS, RBI, they would have to strictly demonstrate compliance with these requirements on an ongoing basis.

(g) Fund flows for import transactions

- For facilitating import transactions, PA - CBs must: (i) maintain an 'Import Collection Account' (ICA) with an AD Bank; and (ii) partner with an authorised domestic payment aggregator to collect funds received from Indian end users / customers who purchase goods / services.
- The prescribed fund-flows for import transactions facilitated by PA - CBs are as follows:

- (i) Monies collected from Indian end users / customers must be collected in the escrow account of the domestic payment aggregator;
- (ii) Thereafter, the payment aggregator must transfer the funds into the ICA;
- (iii) Lastly, funds collected in the ICA must be remitted to the relevant offshore beneficiary (foreign merchant / foreign e-commerce marketplace / foreign payment aggregator) with whom the PA - CB has entered into an arrangement for processing of payments.

- The RBI has clarified that the permissible debits and credits to the ICA, and the related settlement timelines would be identical to the requirements prescribed under the Payment Guidelines with respect to debits / credits and settlement timelines for monies collected in the designated escrow account of the domestic payment aggregator.
- The PA - CB Directions also state that payments for import transactions facilitated by PA - CBs may be undertaken using any payment instrument provided by an authorised payment system in India, except for 'small PPIs' (which are prepaid payment instruments issued after collecting minimum details of the holders).

Comments:

1. The fund flows prescribed under the PA - CB Direction for import transactions are similar to the fund flows prescribed for import transactions under the OPGSP Guidelines. However, there are a few key differences. The OPGSP Guidelines required balances held in the ICA to be remitted to the overseas exporter's account within two days from the receipt of funds in the ICA. Under the PA - CB Directions, the RBI has aligned the timelines for settlement of funds from the ICA with the timelines

prescribed under Payment Guidelines for settlement of funds from the escrow account of the domestic payment aggregators. This would provide greater flexibility to PA – CBs as settlement timelines from the ICA can now be linked to receipt of delivery confirmation intimation or expiry of applicable refund periods.

2. *Unlike the OPGSP Guidelines which required OPGSPs to provide their AD Bank with a copy of invoice and airway bill containing the name and address of the beneficiary (i.e., foreign customer) as evidence of the import transaction, the PA – CB Directions do not prescribe any such requirement for PA – CBs. The requirement of sharing airway bill was a practical impediment for OPGSPs (and their AD Banks), and by doing away with it, it appears that the RBI has eased the processing of import transactions by PA – CBs (while compared to OPGSPs).*
3. *Further, the restriction on collection of payments through small PPIs is aimed at ensuring that only electronic payment methods which involve completion of full KYC of the payor (or holder of the payment instrument) are permitted to be used for cross-border trade payments. Since PA-CBs facilitating imports necessarily need to partner with domestic payment aggregators for collection of funds from the end customers, compliances with permissible payment instruments for credits and debits will need to be specifically captured in the contractual arrangement between third-party payment aggregators and PA-CBs, and adequate monitoring and indemnity rights will need to be considered.*

(h) Fund flows for export transactions

- For facilitating export transactions, PA – CBs must maintain an 'Export Collection Account' (ECA) with an AD Bank. The ECA may be denominated in Indian Rupees (INR) and / or any non-INR currency (Foreign Currency). The RBI has prescribed that the ECA for each Foreign Currency must be separately maintained by the PA – CB.

- The prescribed fund-flows for export transactions facilitated by PA – CBs are as follows:
 - (i) All export proceeds must be credited into the ECA of the PA – CB.
 - (ii) Thereafter, the relevant amounts must be credited into the account of the relevant Indian beneficiary (merchant / e-commerce marketplace / payment aggregator) with whom the PA – CB has entered into an arrangement for processing of payments.
- The RBI has clarified that PA – CBs may facilitate settlement in Foreign Currency only for Indian merchants directly onboarded by them (and not for transactions involving settlement to Indian e-commerce marketplace platforms or payment aggregators).

Comment: Under the OPGSP Guidelines, the RBI had prescribed that the AD Bank facilitating the export OPGSP flows must first collect the export proceeds into its NOSTRO account outside of India, and thereafter repatriate such funds into the ECA of the OPGSP within seven days. The PA – CB Directions are silent on the fund flows which may be implemented outside India with respect to the collection of export proceeds, and only prescribe that all the proceeds must be credited into the relevant ECA of the PA – CB for onward settlement with the relevant Indian beneficiary.

(i) FEMA reporting requirements

The PA – CB Directions impose an obligation on the AD Banks (which maintain the ICA / ECA for PA – CBs) to ensure compliance with all requirements prescribed under Indian exchange control regulations for the underlying trade transactions, including reporting and reconciliation of entries in the Export Data Processing and Monitoring System (EDPMS) and the Import Data Processing and Monitoring System (IDPMS). The EDPMS and IDPMS are IT based data processing and monitoring platforms developed by the RBI in consultation with the Indian customs authorities.

Comment: The RBI has placed a compliance burden on the AD Banks (who maintain the collection accounts for PA – CBs) to ensure that all FEMA compliances relating to the underlying trade transactions are adhered to. This could lead to practical difficulties, as in certain cases such as for export transactions, the beneficiary banks (who maintain accounts for the merchants into which the collected funds are ultimately settled) are required to complete the reporting requirements for the underlying transactions (as opposed to the AD Banks who maintain the collection accounts for PA – CBs). It could be difficult for the AD Banks of the PA – CBs to monitor or supervise the completion of reporting obligations of the beneficiary banks. The RBI may provide further clarity in this regard to resolve the apparent contradiction between the PA – CB Directions and the current framework in relation to reporting of export transactions on the EDPMS platform.

CONCLUDING REMARKS

The liberalisation of the regulatory framework for cross-border payments has been long-awaited, and the RBI has ushered in a new era for cross-border payment

facilitators by relaxing key bottlenecks (such as transaction limits and operational hurdles in implementing arrangements through AD Banks) and mandating licensing of such entities as PA – CBs. The RBI has also imposed significant compliance burden on PA – CBs who will henceforth be subject to the direct regulatory supervision of the DPSS, RBI.

The RBI has clearly emphasised the need for such payment facilitators to implement robust merchant onboarding, customer grievance redressal, anti-money laundering and information security protocols. The new regulatory framework would make it easier for all parties in the cross-border payments ecosystem (including AD Banks, PA – CBs, payment aggregators, e-commerce platforms and merchants) to seamlessly process permitted trade payments in an efficient and regulatorily compliant manner.

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