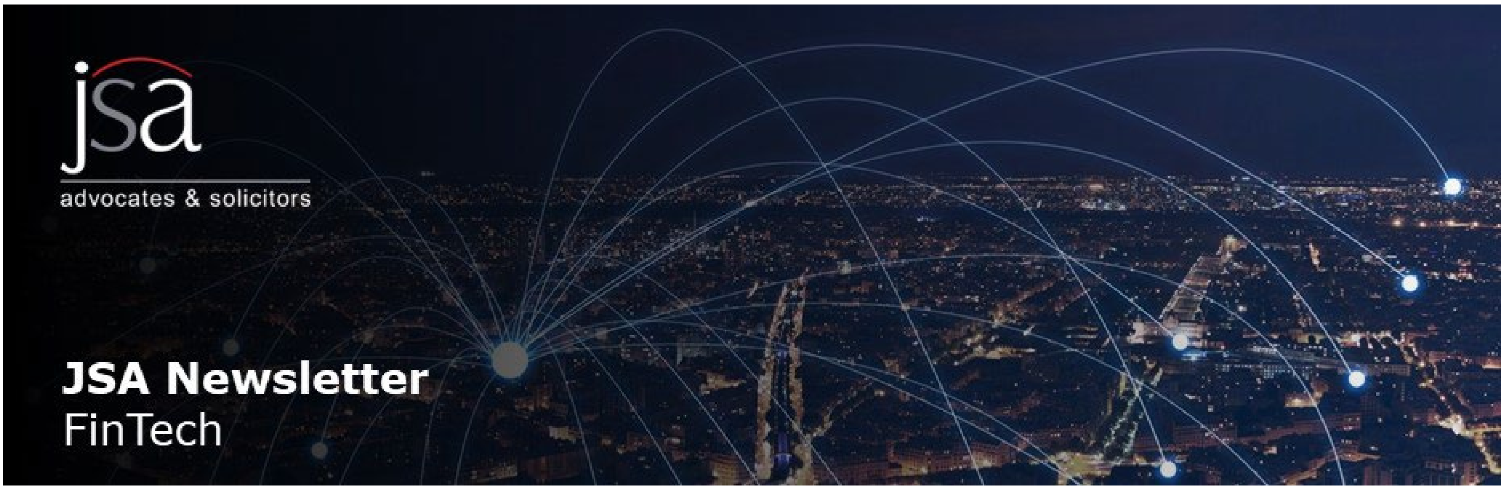



Fifteenth Edition – July 2022

# JSA FinTech Newsletter – Fifteenth Edition

## Introduction

This edition of the FinTech Newsletter focuses on the latest significant regulatory updates including (a) inter-operable card-less cash withdrawal ("**ICCW**") framework launched by the Reserve Bank of India ("**RBI**"), (b) requirement of prior approval from RBI for takeover/ acquisition of control of non-bank payment system operators ("**PSO**") and sale/transfer of payment system activity to a non-bank PSO, (c) Extension of card-on-file tokenization timeline, (d) RBI's Draft Master Directions on outsourcing of information technology ("**IT**") services, (e) RBI's ban on loading prepaid payment instruments through credit lines, (f) zero merchant discount rate ("**MDR**") policy on unified payments interface ("**UPI**") and RuPay, (g) Increase in e-mandate limit for recurring transactions, (h) central board of direct tax ("**CBDT**") guidelines for taxation of virtual digital assets ("**VDA**") and (i) RBI's 'Payments Vision 2025'.

## Inter-operable Card-less Cash Withdrawal Framework

### RBI launches ICCW framework

The RBI has introduced on May 19, 2022 the concept of ICCW through which users will be able to withdraw cash from automated teller machines ("**ATMs**") without using their debit/ATM cards. This service was previously provided by some banks to their customers but at their own ATMs. However, this framework strives to enable an interoperable system through which customers can withdraw cash from any ATM in the country without using their cards.

Customer authorization for ICCW transactions will be carried out through UPI (QR Codes), while settlement will be through the ATM network. National Payments Corporation of India ("**NPCI**") has also notified all members of UPI to obtain necessary certification from NPCI and participate in the ICCW framework.

The objective of this framework is to: (a) reduce card related frauds such as skimming, card cloning, device tampering and; (b) ensure interoperability of cardless cash withdrawal at ATMs.

This framework would positively impact account holders by simplifying cash withdrawal at ATMs by letting customers withdraw cash by merely possessing a UPI ID and a UPI app on their phones.

## Prior Approval for Takeover of Control of non-Bank Payment System Operators

### RBI mandates prior approval for takeover / acquisition of control of non-bank PSO and sale / transfer of payment system activity to a non-bank PSO


On July 4, 2022, RBI notified that in the event of any change in control (with or without any change in management), non-bank PSOs must obtain prior approval from the RBI. In order to apply for approval, the PSO has to submit an application to the department of payment and settlement systems, central office, RBI, along with information regarding proposed directors and complete details of the new shareholders.

In case a non-PSO is selling or transferring its payment system activity to another entity who is not authorized by RBI to undertake such activity, prior to sale, the purchaser has to seek prior authorization , in case the buyer is a bank) from RBI to carry out such activity and only after successfully receiving the authorization can the non-bank PSO apply to seek approval to carry out the sale.

In both of the above cases, after obtaining approval from the RBI, the non-bank PSO must provide a 15 (fifteen)day notice to (a) all stakeholders; and (b) the public ("**Public Notice**"), prior to effecting the change in control. The Public Notice must be published in a leading national and vernacular newspaper (with nexus to its registered office) and contain details of the entities involved and intentions / reasons for the change.

In addition, in case of change in management or directors as a result of the acquisition/sale/transfer, the non-bank PSO must also provide the complete details of each new director, including their 'Declaration and Undertaking' to the RBI within 15 (fifteen) calendar days of the completion of the transaction. The RBI is also empowered to examine the fit and proper status of each of the management/directors and place suitable restrictions, if it deems necessary.

Prior to this notification, non-bank payment aggregators and prepaid instrument issuers merely had to inform the RBI of any acquisition of control or change in management. However, it has been clarified by RBI that the requirements as per this notification are in addition to the previously prescribed requirements.

This requirement of prior approval has been imposed by RBI in its supervisory capacity to ensure control of non-bank PSOs is in the right hands and non-bank PSO authorization is not misused.

## Timeline for Card-on-File tokenization extended

### RBI extends deadline for card-on-file tokenization till September 30, 2022

The RBI, through its Guidelines on 'Regulation of Payment Aggregators and Payment Gateways', prohibited merchants and payment aggregators from storing card-on-file ("**CoF**") data. This was reiterated in a circular issued by the RBI dated September 7, 2021 on CoF tokenization, which made it clear that no entity in the card transaction / payment chain, other than token service providers (card networks and card issuing banks), will be permitted to store any CoF data.

RBI first introduced tokenisation in its notification titled 'Tokenisation – Card transactions' dated January 8, 2019 permitting authorised card payment networks to offer card tokenisation services to third-party app providers. Initially, entities storing card data were instructed to stop storing it by June 30, 2021. However, this deadline was extended till December 31, 2021, providing the option to tokenize card data instead. Based on inputs and representations by industry stakeholders, the RBI further extended the timeline for compliance to June 30, 2022 suggesting stakeholders to devise alternate methods to handle use case or post transaction activity which requires storage of CoF data.

As the deadline for compliance arrived, the RBI acknowledged that considerable progress has been made in terms of token creation. The RBI further noted that transaction processing based on tokens is yet to gain traction and an alternate system such as guest checkout has not been implemented. For these reasons, the RBI has further extended the deadline for storing CoF data till September 30, 2022, post which entities in the card transaction/ payment chain will have to purge all stored card data.

This extension has been welcomed by the industry as it will provide space for all parties involved to comply with the tokenization norms and help welcome a smoother transition. This extension will also help the payment players create public awareness about the token creation process and generate public trust.

## Draft Master Directions on Outsourcing of IT Services

### RBI releases draft Master Directions on outsourcing of IT Services

On June 23, 2022, the RBI released its draft master directions on outsourcing of IT services ("**Draft MD**"). The Draft MD does not prescribe any prior approval from RBI to outsource IT and information technology enabled services ("**IteS**"). However, it categorically reaffirms RBI's authority to monitor and inspect such arrangements.

All Regulated Entities ("**REs**") engaging in outsourcing of IT and ITeS are required to put in place a Board approved outsourcing policy for Outsourcing of IT Services, which incorporates, amongst other things, the role and responsibilities of the board of directors, board committee and senior management, IT function, business function, and oversight and assurance functions in respect of outsourcing of IT services. The policy must also include the criteria for selection of such activities and the service providers, parameters for defining material outsourcing, delegation of authority depending on risk and materiality, disaster recovery and business continuity plans, systems to monitor and review the operations of these activities, and termination processes and exit strategies.

As for engaging cloud services, REs are also required to address the lifecycle of data (till such data is permanently deleted) in the policy for Outsourcing of IT Services.

## Prohibition against PPI BNPL by NBFCs

### RBI bans loading of Prepaid Payment Instruments through Credit Lines

Prepaid payment instruments ("**PPIs**") are devices with stored value which can be used to purchase goods and avail services.

On June 20, 2022, RBI clarified that non-bank PPIs can only be loaded through cash, debit to a bank account, credit and debit cards and other permitted PPIs. This notification comes at a time when most FinTech companies are offering buy now pay later ("**BNPL**") card services by which credit line is extended to customers through partner banks and non-banking financial companies. The notification indirectly bans the provision of BNPL cards by FinTech companies.

The purpose behind issuing this notification is to control the currently unregulated BNPL market which extends credit to most Indians who can't otherwise get credit cards due to their income slab or other factors. The offering of unregulated BNPL services is seen to be risky as most of its users at present aren't aware of the risks associated with it and thus might get caught in a debt trap.

As a result of this notification, many FinTech companies in India have at present put a halt on their BNPL card services.

## Zero MDR Policy on UPI and RuPay

### The Parliamentary Standing Committee on Commerce recommends revising the Zero MDR Policy on UPI and RuPay transactions

MDR is the rate that banks or card networks charge merchants for processing payments. These rates vary based on various factors such as the card network, the mode of payment (debit card/credit card/ QR Code) and the overall turnover of the merchant.

The parliamentary standing committee on commerce ("**Committee**") in its report on 'Promotion and Regulation of E-Commerce in India' has asked the Ministry of Finance and the NPCI to revisit its stand on charging zero-MDR on transactions made via UPI and RuPay cards.

In an attempt to encourage digital payments in India, the Ministry of Finance had introduced the zero-MDR feature for payment by RuPay cards and UPI so that merchants would be encouraged to accept these modes of payment. However, this has led to loss of revenue to banks and non-bank PSPs, which has in turn impacted the development of digital payments infrastructure in India. The Committee therefore made this recommendation, keeping in view the overall development of digital payments in the country.

## E-Mandate Limit for Recurring Payments

### RBI increases the e-mandate limit for recurring payments without AFA to INR 15,000

On August 21, 2022, the RBI had released its framework for processing of e-mandate on cards for recurring transactions wherein it permitted the processing of e-mandate for recurring transactions on cards and PPIs with additional factor of authentication ("**AFA**") during e-mandate registration, modification, revocation and for the first transaction. Post this, subsequent transactions could be processed automatically. The transaction limit, however, was set at INR 2,000 (Indian Rupees two thousand only) (approx. $ 25 (US Dollars twenty five only)). This framework was subsequently extended to UPI as well. The limit was increased to INR 5,000 (Indian Rupees five thousand only) (approx. $ 62 (US Dollars sixty two only)) in December 2020.

The RBI has now notified a further extension of the maximum limit for transactions without AFA to INR 15,000 (Indian Rupees fifteen thousand only) (approx. $ 188 (US Dollars twenty five only)). Based on this notification, NPCI has also instructed all payer apps to capture UPI pin as an AFA only if the execution amount exceeds INR 15,000 (Indian Rupees fifteen thousand only).

This change will enable customers to make recurring bill payments of up to INR 15,000 (Indian Rupees fifteen thousand only) without having to authenticate the transaction each time by entering their pin or OTP, thereby ensuring a smoother payment experience.

## Guidelines for taxation of Virtual Digital Assets

### CBDT releases Guidelines for taxation of Virtual Digital Assets

The Government of India, through the Finance Act, 2022, enabled levying of tax on the income earned from transfer of VDAs at the rate of 30%. The Finance Act, 2022 further states that 1% tax deducted at source ("**TDS**") can be levied by the VDA marketplaces/exchange platforms at the time of credit of sums to the account of the resident or at the time of payment, whichever is earlier. However, the deduction is not required in the following cases:

1. The consideration is payable by a specified person (being an individual or a hindu undivided family ("**HUF**") who doesn't have any income under 'profits and gains of business or profession' or whose total sales/gross receipts does not exceed INR 1,00,00,000 (Indian Rupees one crore only) (approx. $ 125,438 (US Dollars one hundred twenty five thousand four hundred thirty eight only)) and the value or aggregate value of such consideration does not exceed INR 50,000 (Indian Rupees fifty thousand only) (approx. $627 (US Dollars six hundred twenty seven only)) during the financial years; or
2. The consideration is payable by any person other than a specified person and the value or aggregate value of such consideration does not exceed INR 10,000 (Indian Rupees ten thousand only) (approx. $ 125 (US Dollars one hundred twenty five only)) during the financial year.

This levy of TDS was made effective from July 1, 2022.

To that effect, the CBDT has issued guidelines clarifying the mechanism for tax deduction. These guidelines clarify that the person responsible for paying the seller will be responsible for deducting the tax.
For instance, in case of peer to peer transactions, the buyer is required to deduct tax, however, in case of transactions taking place through an exchange, if (a) the VDA is not owned by the exchange, the exchange will have to deduct the tax; and (b) the VDA is owned by the exchange, the buyer will have to deduct the tax.

## Payments Vision 2025

### RBI publishes its Payments Vision 2025 on its website

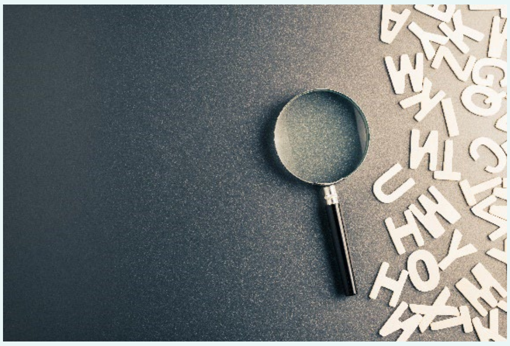

For its payments vision up to 2025, RBI has chosen the core theme of 'E-Payments for Everyone, Everywhere, Everytime' (4Es). Across the 5 (five) anchor goalposts of integrity, inclusion, innovation, institutionalization and innovation, RBI proposes to take up 47 initiatives to achieve its vision for 2025.

Some of the proposed initiatives include, but are not limited to, the following-

1. Exploring alternative authentication mechanism for digital payment transactions;
2. Broadening the scope of legal entity identifier (LEI) in all payment activities, particularly in areas like sanctions screening, know your customer , corporate invoice reconciliation and fraud detection to ensure greater precision and transparency;
3. Expansion of inter-operability to contactless transit card payments in offline mode;
4. Exploring mandatory domestic processing of payment transactions;
5. Creation of a digital payments protection fund to provide security cover to defrauded customers and issuers of payment instruments;
6. Revisiting guidelines for PPIs, to provide a more comprehensive framework for different types of PPIs including closed system PPIs;
7. Creation of a framework to directly regulate all significant intermediaries in the payments ecosystem;
8. Extension of Internal Ombudsman Scheme to all PSOs;
9. Regulation of bigtechs and fintechs in the payments space;
10. Making the payment systems more inclusive to benefit differently abled people;
11. Creation of a framework for Internet of Things devices and context-based payments covering aspects of data security, authentication, identity validation, etc.;
12. Migration of all RBI operated payment system messages to ISO 20022 Standard;
13. Linking credit cards and credit components of banking products to UPI;
14. Creation of a payment system for processing online merchant payments using internet/mobile banking instead of payment aggregators or payment gateways; and
15. BNPL services.

# Quick Snapshots

## HaRBInger



RBI launched its first global hackathon, the 'HaRBInger 2021-Innovation for Transformation' on November 9, 2021. The theme for HaRBInger 2021 was 'Smarter Digital Payments'. After the third phase of final evaluation which was held on May 26, 2022 and May 27, 2022, the RBI released the winners for different categories.

Some of the innovative ideas brought out by the winners in the hackathon include voice based authentication for P2P and P2M transactions, biometric smart card-based payment solution for people without mobile phones, user authentication based on monitoring of behavioral patterns such as typing speed, mouse movement, pattern of holding mobile phone, etc., virtual areas inside physical stores where customer can select products by merely speaking the name of the product into their mobile phone and automatic payment using voice authentication, etc.

## BBPOU minimum net-worth requirement reduced

RBI has reduced the minimum net-worth requirement for non-bank bharat bill payment operating units ("**BBPOUs**"). The minimum net-worth required to seek authorisation to operate as a BBPOU, which previously stood at INR 100,00,00,000 (Indian Rupees one hundred crores only), has now been reduced to INR 25,00,00,000 (Indian Rupees twenty five crores only).

## Status of payment infrastructure development fund ("PIDF")

In 2021, the RBI had announced the PIDF Scheme to subsidise deployment of points of sale ("**PoS**") infrastructure in tier 3(three) to tier 6 (six) centres and states in North-East India.

The beneficiaries of subsidies under the scheme include both bank and non-bank acquiring institutions.

As of April 2022, the total number of physical PoS devices deployed under the scheme stands at 4,11,492, (four lakh eleven thousand four hundred ninety two) while digital PoS devices stand at 1,14,05,116 (one crore fourteen lakhs five thousand one hundred sixteen).

## Regulatory sandbox

Regulatory sandbox is a framework that allows live, time-bound testing of innovations, overseen by the regulator (RBI). So far, the RBI has conducted regulatory sandboxes in three cohorts, first on retail payments, second on cross border payments and third on micro, small & medium enterprises ("**MSME**") lending. Currently, the test phase for the third cohort (MSME lending) has commenced. RBI has simultaneously released the theme for the fourth cohort, 'Prevention and Mitigation of Financial Fraud' and invited applications from participants. The last date to apply has been fixed for August 1, 2022.

## Cancellation of NBFC certificate of registration

RBI has cancelled the certificate of registration of 5 (five) NBFCs- UMB Securities Limited, Anashri Finvest Limited, Chadha Finance Private Limited, Alexcy Tracon Pvt. Ltd. and Jhuria Financial Services Private Limited, on account of violation of RBI guidelines on outsourcing and Fair Practices Code in their digital lending operations undertaken through third party apps and for charging excessive interest and resorting to undue harassment of customers for loan recovery.

## RBI lifts restrictions imposed on Mastercard

RBI has allowed Mastercard Asia / Pacific Pte. Ltd. ("**Mastercard**") to resume onboarding of new domestic customers. The RBI had earlier restricted Mastercard from onboarding new domestic customers onto its card network due to noncompliance with the RBI's data localisation norms.

## UPI accepted in France

NPCI's wholly owned subsidiary NPCI International Payments Limited has signed an memorandum of understanding with Lyra Networks to accept UPI and Rupay cards in France. After this move, UPI is now accepted/proposed to be accepted in six countries namely Singapore, Bhutan, Malaysia, United Arab Emirates, Nepal and France.

## Capturing Customer Location on UPI apps

NPCI has clarified that UPI apps may capture location/geographical details of customers only after the customer has consented to it. Such capture cannot be made mandatory and UPI services cannot be denied to a customer in case they refuse to allow access to location details. Additionally, when a customer has consented to capture of location details, these details should be correctly passed on to NPCI. NPCI has warned UPI apps of strict action in case incorrect location co-ordinates are passed on.

## Investments in Fintech Sector

- Mumbai-based fintech Financepeer, which specializes in education financing and for students and edtech content has raised $31,000,000 (US Dollars thirty one million only) in its Series B funding round. The funding is proposed to be used to accelerate its mission of bringing quality and accessible education across India. The round was led QED Investors and Avishkaar Capital. Other participants included US based ed-tech investor Ardent Ventures, DMI AIF- The Sparkle Fund, 9Unicorns, LC Nueva AIF and Maxar.vc.
- Indian crypto exchange CoinDCX raised more than $135,000,000 (US Dollars one hundred thirty five million only) in an oversubscribed Series D funding round, valuing the company at more than $2,000,000,000 (US Dollars two billion only). The round was led by Pantera and Steadview. Participants in the funding round included Kingsway, DraperDragon, Republic, Kindred as well as existing investors B Capital Group, Coinbase, Polychain and Candenza.
- Bengaluru based Neobank Open, a digital banking platform for small to medium sized enterprises, start-ups and freelancers raised $50,000,000 (US Dollars fifty million only) in a Series D funding round led by IIFL. The company's valuation now stands at $1,000,000,000 (US Dollars one billion only), making it India's 100th unicorn. The company plans to use the new funding to launch 3 (three) new products, Open Flo – a revenue-based financing product for e-commerce businesses, Open Settl – an early settlement credit offering, and Open Capital – a platform for lending working capital to SMEs.
- Indian alternative business-2-business ("**B2B**") financing start-up Recur Club has raised $30,000,000 (US Dollars thirty million only) in seed funding made up of a combination of equity and debt allocation from InfoEdge Ventures, Village Global and Titan Capital. As per the company, the seed fund will be used to scale the platform to unlock fast, flexible and hassle-free growth capital without dilution.
- Indian credit card start-up Slice has raised $50,000,000 (US Dollars fifty million only) in an ongoing Series C funding round led by Tiger Global.
- Delhi-based merchant commerce platform Pine Labs has announced its acquisition of Setu. Setu is a start-up providing low-cost Application Programming Interface (API) infrastructure to businesses.
- GetVantage, a revenue-based financing platform which provides equity free capital to small and medium-sized enterprises has raised $36,000,000 (US Dollars thirty six million only) in a growth funding round. The round was led by Varanium Nexgen Fintech Fund, DMI Sparkle Fund, Chiratae Ventures and Dream Incubator Japan. Other participants in the round include Sony Innovation Fund, InCred Capital and Haldiram's Family Office, among others. The new money is proposed to be used to grow its platform and scale its embedded finance product, enhance its tech infrastructure, expand its growing portfolio of B2B SaaS and subscription-driven businesses and explore new market opportunities across Southeast Asia.

## FinTech Practice

JSA is one of India's pioneering law firms in the FinTech space. JSA's FinTech group brings together an integrated multi-practice team to support clients with transactions, disputes and regulatory matters at the intersection of financial services and technology. Our practice leverages the experience and in-depth technology expertise of attorneys across practice areas and allows us to offer clients access to time-tested strategies and holistic advice. Our experienced attorneys are well positioned to assist clients navigate through the complex legal, regulatory and compliance landscape within which these businesses and their technologies operate. Our strong relationships with regulators, banks, insurers, funds, large technology companies and infrastructure and service providers mean that we understand the issues that affect every area of the financial technology ecosystem. This enables us to deliver incisive, informed and innovative advice across the FinTech spectrum. We work with financial institutions, as they adapt and transform, FinTech start-ups, from inception through to all rounds of funding, to IPO and beyond, large technology companies diversifying into FinTech and Investors and strategic acquirers as they identify and secure strategic opportunities in the FinTech space.

Our areas of expertise *inter alia* include: (a) Prepaid payment instruments and variations thereof, (b) Remittance (person-to-person and person-to-merchant) models and services, (c) Central treasury arrangements and collection agency models, (d) Artificial Intelligence (AI) and Machine Learning (ML) enabled payment systems, (e) Alternative lending and payment platforms, (f) blockchain enabled service offerings, including smart contracts, (g) crowdfunding and crowdsourced investments, (h) Cryptocurrencies, including initial coin offerings, (i) InsurTech products and business models, (j) investments, including PE/VC financing into fintech and financial services companies, (k) Invoice trading and receivable discounting platforms, (l) Payment services and solutions (both cross-border and domestic).

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13 Practices and
22 Ranked Lawyers

15 Practices and
18 Ranked Lawyers

7 Practices and
2 Ranked Lawyers

**IFLR1000 India Awards 2021**

10 Practices and
34 Ranked Lawyers

Banking & Finance Team of the Year

FinTech Team of the Year

Restructuring & Insolvency Team of the Year

Among Top 7 Best Overall Law Firms in India and 10 Ranked Practices

13 winning Deals in IBLJ Deals of the Year

6 A List Lawyers in IBLJ Top 100 Lawyer List

Banking & Financial Services Law Firm of the Year 2022

Dispute Resolution Law Firm of the Year 2022

Equity Market Deal of the Year (Premium) 2022

Energy Law Firm of the Year 2021

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