Eighteenth Edition, (January – March 2023)

What's new?

What's New?

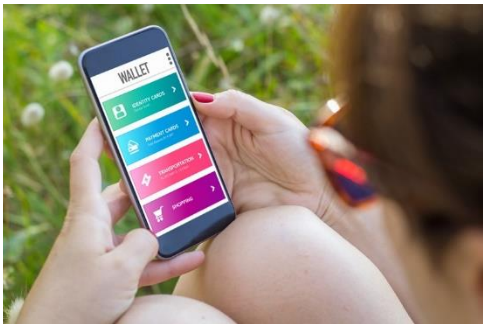
NPCI permits onboarding of non-resident accounts with international mobile numbers onto the UPI framework

The National Payments Corporation of India ("**NPCI**") has permitted onboarding of non-resident accounts in India (such as non-resident ordinary (NRO) and non-resident external (NRE) accounts) having international numbers onto the unified payments interface ("**UPI**") framework. Previously, as per UPI circular dated October 15, 2018, NPCI had permitted non-residents to avail UPI services using their non-resident accounts in India. However, this was limited to accounts linked to Indian phone numbers (starting with +91).

Now, NPCI has permitted non-residents to be onboarded onto UPI using their non-resident accounts linked to mobile numbers from 10 (ten) different countries including Singapore, Australia, USA, Qatar and Oman (having their respective country codes).

This move is in furtherance of NPCI's goal to make UPI a global phenomenon, and all members of the UPI ecosystem are now required to enable this functionality by April 30, 2023.

UPI for inbound travellers



The Reserve Bank of India ("**RBI**") has announced a facility to enable all inbound travellers visiting India (starting with visitors from G-20 countries) to make local payments using UPI while they are in India. Currently, this facility will be available at select international airports (Bengaluru, Mumbai and New Delhi international airports). Eligible travellers would be issued prepaid payment instruments ("**PPI**") wallets linked to UPI for making payments at merchant outlets.

In furtherance of this announcement, RBI has amended the Master Directions on Prepaid Payment Instruments, permitting banks and non-bank PPI issuers to issue Indian Rupee ("**INR**")-denominated full-KYC PPIs to foreign nationals and non-resident Indians visiting India. RBI has also prescribed rules for such issuance – including physical verification of passport and visa at the point of issuance. Notably, since these PPIs may be loaded/reloaded using foreign exchange (by cash or through any other payment instrument), only entities authorised to deal in foreign exchange under Foreign Exchange Management Act, 1999 are permitted to convert foreign exchange received at the time of loading/reloading the PPI into INR.

As a start, 2 (two) banks (ICICI bank, IDFC First bank) and 2 (two) non-bank PPI issuers (Pinelabs Private Limited and Transcorp International Limited) have commenced issuing such UPI-linked wallets.

Incentive for RuPay debit cards and low-value BHIM-UPI transactions

As part of the government's initiatives to promote digital payments, on January 11, 2023, the Union Cabinet approved promotional incentives worth INR 2,600,00,00,000 (Indian Rupees two thousand six hundred crore) (approx. $318,000,000 (US Dollars three hundred and eighteen million)) for RuPay debit cards and low-value transactions of BHIM-UPI ("**P2M**") for FY 2022-23.

This incentive will help offset the significant infrastructural costs incurred by payment service providers, given that both RuPay and UPI are offered to customers free of cost, thereby providing no direct income to these service providers.

This incentive is to be provided to acquiring banks to promote Point-of-Sale (PoS) and e-commerce transactions using RuPay debit cards and P2M. As part of this incentive, acquiring banks will be paid a percentage of the value of eligible transactions processed during the financial year 2022-23.

The provision of this incentive is an attempt to facilitate the building of a robust digital payment ecosystem and to promote digital transactions through India's proprietary payment systems - RuPay debit cards and BHIM-UPI.

PSBs to set up a joint digital platform to connect with FinTech companies

PSB Alliance Private Limited, a consortium company formed by public sector banks ("**PSBs**"), is in the process of finalising a technology service provider which will create and manage a cloud-based joint digital platform connecting FinTech companies that will support supplier finance, channel finance, term loans and factoring solutions.

Once set up, this platform will enable FinTechs to connect to conduct all preliminary checks through third-party APIs and account aggregators, and then pass such FinTech-sourced business to the internal systems of all PSBs based on a pre-defined logic. This information will then help banks determine whether or not to grant loans to such applicants based on their internal policies and standards.

This platform will enable FinTechs to leverage their customer connectivity and provide better access to credit for small businesses.

Clarity on FLDG

In January 2023, several FinTechs approached RBI asking for a detailed framework to clarify the permissibility of first loan default guarantee ("**FLDG**") arrangements with banks and non-banking financial companies ("**NBFC**"), as well as a fresh set of guidelines to better help non-regulated entities understand their scope of operations.

FLDG is a risk-sharing mechanism under which third parties (such as FinTech companies) guarantee to compensate default in a loan portfolio of a regulated entity, up to a certain percentage.

While the Digital Lending Guidelines ("**DL Guidelines**"), released in September 2022, have not prohibited FLDG structures, there is a lack of clarity on the extent to which such activity is permitted. Due to this, banks and NBFCs have been moving away from FLDG partnerships.

That said, many in the industry believe that what is prohibited is limited to securitisation of cash flows arising from FLDGs and not FLDG structures themselves. The DL Guidelines state that FLDG must be in compliance with Master Direction – Reserve Bank of India (Securitisation of Standard Assets) Directions, 2021 ("**Securitisation Guidelines**") – therefore, issuance of FLDG up to a specified percentage as allowed under the Securitisation Guidelines should be allowed by regulated and unregulated entities. However, there continues to be a lack of clarity on FLDG, and we would recommend that FLDG arrangements be vetted and verified by qualified legal counsel in light of the DL Guidelines.

To further verify compliance with the DL Guidelines and the Securitisation Guidelines, RBI has also asked banks to submit reports on the various agreements they have with FinTech companies. This is to enable RBI to pinpoint certain critical aspects of their arrangements – such as which entity has the ultimate ownership of the customer; whether the full responsibility of assessing customer creditworthiness lies with the regulated entity or the FinTech or is split between the 2 (two); and which entity is ultimately bearing the credit risk of the contract.

Ban on digital lending applications

On February 06, 2023, the Ministry of Electronics and Information Technology ("**MeitY**") issued a directive to internet service providers and app stores to ban and block 94 digital lending applications, including many large and popular applications – citing discrepancies in those applications and material prejudice to the sovereignty and integrity of India.

However, as a relief to these applications, this ban was revoked on February 10, 2023, after MeitY conducted meetings with industry players. During these meetings, MeitY sought documentation relating to (a) shareholding structure and list of investors of these applications; (b) compliance with data localisation, data and technical security audits; (c) details on customer grievance and redressal mechanisms available; and (d) operation within regulatory ambit.

This move was undertaken as part of the Government's crackdown on illegal lending applications that indulge in predatory practices in India.

MoF notifies KYC requirements for entities dealing in VDA

The Ministry of Finance ("**MoF**") has notified an amendment ("**Notification**") to the Prevention of Money Laundering Act, 2002 ("**PMLA**"). By virtue of the Notification, 5 (five) activities have been included within the scope of 'designated business or profession', and any entity engaged in providing any of them will be considered a 'reporting entity' under the PMLA.

These activities are:

a) Exchange between virtual digital assets ("**VDA**") and fiat currencies;

b) Exchange between one or more forms of VDAs;

c) Transfer of VDAs;

d) Safekeeping or administration of VDA or instruments enabling control over VDAs; and

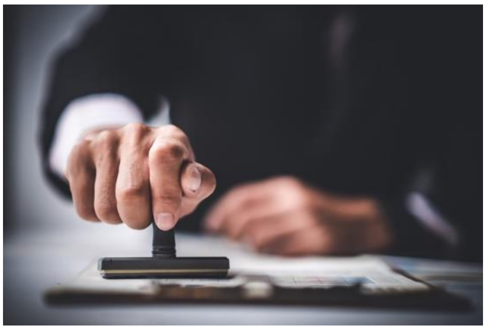
e) Participation in and provision of financial services related to an issuer's offer and sale of a VDAs.

Thus, crypto and VDA businesses will now be subject to compliance obligations under the PMLA. This includes obligations such as verifying customer identity, undertaking enhanced due diligence, maintaining records and furnishing information to the authorities. Moreover, crypto and VDA trading activities can now be investigated by the Enforcement Directorate. Further, entities engaged in the aforementioned activities will also have an obligation to report suspicious activities to the Financial Intelligence Unit – India.

While several entities dealing in VDA previously implemented know your customer ("**KYC**") and anti-money laundering obligations as a best practice, it will now be mandatory for these entities to comply with these requirements.

These developments have been welcomed by the industry on the ground that they would accord legitimacy to the crypto ecosystem,

Licenses and approvals



As a welcome surprise, RBI has released a list of all payment aggregator ("**PA**") applicants who have been granted in-principle approval. Several entities had applied for a PA license prior to July 2022. However, until now, RBI had not released any consolidated update on the status of their applications due to which there was lack of clarity in the industry.

Now, RBI through this list has clearly indicated which applicants can commence onboarding on merchants (such as Google India Digital Services Private Limited, Pine Labs Private Limited, Amazon (Pay) India Private Limited and Zomato Payments Private Limited), which applications are pending (such as Juspay Technologies Private Limited and Tata Payments Limited) and which of them have been returned or withdrawn (such as PayU, Ola Financial Services Private Limited and CAMS Payment Services Private Limited). RBI proposes to update the list every fortnight.

In the seventeenth edition of our newsletter, we discussed the cancellation of PayTm Payment Services Limited's ("**PPSL**") PA application – where RBI had instructed PPSL to reapply in 120 (one hundred twenty) days. RBI has now granted PPSL an extension of time to resubmit its application since PPSL is still awaiting approval from the Government of India for past downstream investment. In the meantime, RBI has clarified that PPSL can continue its online PA business for existing business partners but is prohibited from onboarding new merchants.

Separately, PayTm Payments Bank Ltd. has been permitted to operate as a Bharat Bill Payment Operating Unit under the Bharat Bill Pay System and CRIF Connect Private Limited, a subsidiary of credit bureau CRIF S.p.A has been permitted to operate as a NBFC – account aggregator.

Quick Snapshots

1. **UPI PayNow linkage:** The Prime Ministers of India and Singapore have launched a real-time payment systems linkage between their respective payment systems UPI (India) and PayNow (Singapore). This will enable citizens of both countries to transfer funds in a safe, instant and cost-effective manner using their mobile phones. While only P2P transactions are currently permitted, transfers can be made using UPI-ID, phone number or virtual payment address.

2. **RuPay credit cards now live on UPI:** In the seventeenth edition of our newsletter, we discussed the linkage of RuPay credit cards with UPI. In furtherance of this, HDFC Bank has gone live with this offering. The customers of HDFC Bank can now link their RuPay credit cards on UPI with any UPI-enabled application. With this, HDFC Bank is the first private sector bank in the country to go live on UPI with its RuPay credit cards. NPCI is also collaborating with several PAs to enable merchant transactions through RuPay credit cards on UPI.

3. **Clarifications on DL Guidelines:** On February 14, 2023, RBI issued clarifications on the DL Guidelines in the form of FAQs. These clarifications, *inter-alia*, reiterated the restriction against participation of a lending service provider in the fund flow of a digital loan. For a detailed analysis, please refer to the JSA prism of February 25, 2023. However, the FAQs have received criticism for not providing clarifications on many issues which industry players are grappling with – including FLDG.

4. **RBI restricts LRS for SBM:** On January 23, 2023, RBI issued a directive directing State Bank of Mauritius ("**SBM**"), a FinTech favourite, to stop all liberalised remittance scheme ("**LRS**") transactions. This restriction has affected several of SBM's FinTech partners, such as Niyo, who solely depended on SBM to enable international transactions and Vested Finance, a platform that enabled investing on the US stock exchange. Due to this, Niyo had to temporarily suspend transactions on its forex card. However, RBI had relaxed the restriction imposed on SBM by allowing ATM/POS transactions under LRS until March 15, 2023.

5. **HaRBInger 2023:** RBI has announced the second edition of its global hackathon – HaRBInger – calling for innovative ideas to solve the following problem statements:

   a) Innovative, easy-to-use, digital banking services for differently abled;

   b) RegTech solutions to facilitate more efficient compliance by regulated entities;

   c) Exploring use cases/solutions for CBDC-Retail transactions, including transactions in offline mode; and

   d) Increasing Transactions Per Second (TPS)/ throughput and scalability of blockchains.

6. **Interchange fee on UPI transactions:** NPCI has recommended levying an interchange fee of up to 1.1% (one point one per cent) from April 1, 2023. This interchange will apply to merchant UPI transactions of over INR 2,000 (Indian Rupees two thousand) (approx. $ 24 (US Dollar twenty four)) using PPIs such as e-wallets or pre-loaded cards. NPCI has, however, clarified that these charges will not apply to bank account to bank account based UPI payments and no such charges would be imposed on customers.

7. **RBI and CBUAE sign MoU to enable innovation in FinTech:** RBI and the Central Bank of the United Arab Emirates ("**CBUAE**") have signed a memorandum of understanding ("**MoU**") to enhance cooperation and jointly enable innovation in financial products and services. Under the MoU, the 2 (two) central banks will collaborate on various emerging areas of FinTech, especially central bank digital currencies ("**CBDCs**") and explore interoperability between CBDCs of the two nations. This engagement is expected to reduce costs, increase efficiency of cross border transactions and further the economic ties between India and UAE.

8. **NPCI launches RuPay SoftPos with PIN on Glass Solution:** NPCI has introduced the RuPay SoftPos with PIN on Glass – a mobile based solution for acceptance of RuPay card transactions. This solution will enable merchants to accept and process card-based payment transactions using a smartphone or tablets that will function as an electronic point-of-sale terminal. NPCI has invited merchant acquiring banks to obtain certification for this solution.

9. **IFSC authority constitutes an expert committee to make GIFT City a global FinTech hub:** The International Financial Services Centres ("**IFSC**") authority has constituted an expert committee tasked with formulating a roadmap for developing Gujarat International Finance Tec-City ("**GIFT City**") as a global FinTech phenomenon. The committee, which has representation from large capital funds, FinTechs, law firms, start-ups and other sector experts, will identify measures to encourage Indian FinTech start-ups abroad to relocate to India, particularly in IFSC in GIFT City.

10. **Offline payments using UPI:** IDFC First Bank is joining RBI's pilot project to enable offline payments, in collaboration with Swedish company Crunchfish, which provides support for offline retail payments. This project will give access to digital payments even when there is no network.

Fin-Tech and Budget 2023-24

The Union Budget was presented by the Finance Minister of India on February 1, 2023. We have summarised some key proposals impacting the financial sector.

1. **National Financial Information Registry**: The government has proposed the setting up of a national financial information registry, a central repository of financial information, which will provide for real time credit information. This will enable efficient flow of information for easier credit access.
2. **Subsidy cuts on zero MDR transactions**: The government has made cuts to the outlay allocated for compensating FinTechs and banks for zero merchant discount rate ("**MDR**") on transactions through UPI and RuPay debit cards. The allocation has been reduced to INR 1,500,00,00,000 (Indian Rupees one thousand five hundred crore) (approx. $181,000,000 (US Dollars one hundred and eighty one million)) for FY 23-24, as opposed to INR 2,137,00,00,000 (Indian Rupees two thousand one hundred and thirty seven crore) (approx. $259,000,000 (US Dollars two hundred and fifty nine million) which was allocated in FY 22-23. Prior to the presentation of the budget, FinTechs had called for incentives equivalent to INR 8,000,00,00,000 (Indian Rupees eight thousand crore) (approx. $970,000,000 (US Dollars nine hundred and seventy million)).
3. **Simplification of KYC:** The government has proposed simplifying the KYC process. At present, compliances are uniform across industry. The government plans on changing this to make the process more pragmatic and risk-based. The simplification of KYC procedures for businesses should be positive for the industry, allowing faster and more streamlined onboarding of customers.
4. **Common Business Identifier**: To promote ease of doing business, permanent account numbers of businesses are proposed to be used by certain government digital systems as an identifier. The government will issue a legal mandate to enable this activity.
5. **Entity DigiLocker**: The DigiLocker platform (an online service for digitization of documents offered by the MeitY under the Digital India initiative) is proposed to be expanded for both individuals and businesses. Previously, DigiLocker facility was enabled only to citizens. Now, an Entity DigiLocker is proposed to be set up for micro, small and medium enterprises , large businesses and charitable trusts. The entity DigiLocker can be accessed by FinTech players to store and exchange customer data in a fast and secure manner.
6. **National Data Governance Policy**: The government has proposed to formalise the National Data Governance Policy, providing access to anonymized data. Through this, FinTech and other businesses will be able to access such data. The framework is proposed to allow for secure sharing of non-personal data.
7. **Tax on foreign private equity and venture capital funds:** 'Angel tax' provisions are proposed to be expanded requiring private companies which issue shares to non-resident investors to pay tax on the amounts received above fair market value (FMV). This and existing 'angel tax' provisions are bitterly opposed by foreign investors and Indian companies, particularly given the current slowdown in funding for start-ups and growth companies.

Investments in The Fintech Sector

Below are some of the notable investments in the FinTech sector this quarter:

1. In January 2023, PhonePe raised $350,000,000 (US Dollars three hundred and fifty million) in a funding round led by General Atlantic. This investment marked the first tranche of up to $1,000,000,000 (US Dollars one billion) fundraise that commenced in January 2023. Further, in February 2023, PhonePe raised another $100,000,000 (US Dollars one hundred million) in primary capital from Ribbit Capital, Tiger Global and TVS Capital Funds. With this fresh capital, PhonePe plans to make significant investments in

infrastructure, including the development of data centers and help build financial services offerings at scale in the country. The company also plans to invest in new businesses, including insurance, wealth management and lending.

2. KreditBee raised $100,000,000 (US Dollars one hundred million) in a funding round led by Advent International. KreditBee plans to use the proceeds to achieve it vision of serving over 400,000,000 (four hundred million) middle income population in the country.

3. Mintifi, a digital lending platform for distributors and retailers has raised $110,000,000 (US Dollars one hundred and ten million) in a fresh funding round led by PremjiInvest. Mintifi plans to use the proceeds to increase its presence across key sectors and to add new offerings like business-to-business payments and dealer management systems.

4. FinTech start-up SarvaGram Solutions ("**SarvaGram**") has raised $35,000,000 (US Dollars thirty five million) in a fundraising round that saw participation from Elevation Capital, Elevar Equity,TVS Capital Funds and Temasek. With this funding, SarvaGram plans to expand its distribution network by adding 75 (seventy five) outlets by the end of financial year 2024. It also plans to expand its on-ground franchisees – known as 'SarvaMitra' – to 3x of its current strength across different states in India and strengthen its technology layer.

5. Varthana, a Bangalore-based NBFC, has raised $7,000,000 (US Dollars seven million) from MicroVest through debt financing. This funding will enable Varthana's vision of supporting and transforming affordable education in rural India and providing loans to affordable private schools on a pan-India basis.

6. Fello, a game-based savings app has raised $4,000,000 (US Dollars four million) in a funding round led by Courtside Ventures. The round also saw participation from Kube Ventures, Y Combinator and angel investors such as Kunal Shah and Lalit Keshre, among others. Fello plans to use the proceeds to deepen its gamified financial products, hire more staff and expand its user base in tier-1 and tier-2 cities in India.

7. FinTech start-up GrayQuest has raised INR 56,00,00,000 (Indian Rupees fifty six crore) (approx. $7,000,000 (US Dollars seven million)) in its Series A round led by Pravega Ventures. Prominent entrepreneurs such as Kunal Shah and Anupam Mittal also participated in this round. GrayQuest will use the proceeds to further enhance its product offerings and scale distribution across the education ecosystem.

8. Software-as-a-service startup Zaggle has raised INR 50,00,00,000 (Indian Rupees fifty crore) (approx. $6,000,000 (US Dollars six million)) in debt from Vivriti Asset Management. Zaggle plans to use proceeds to grow its products.

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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24 Ranked Lawyers

16 Practices and
11 Ranked Lawyers

7 Practices and
2 Ranked Lawyers

11 Practices and
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