



January 2025

## Draft bill on the banning of unregulated lending activities

On December 13, 2024, the Department of Financial Services under the Ministry of Finance released a draft bill titled 'The Banning of Unregulated Lending Activities (BULA)' ("**Draft Bill**") with the intension of curbing unregulated lending (including digital lending) in India.

With the view of protecting consumers' interests in relation to unregulated lending activities, the Reserve Bank of India ("**RBI**") incorporated a working group on digital lending and in November 2021, the working group submitted a report highlighting the need to introduce a set of measures to ban unregulated lending in India. Whilst the RBI has released guidelines on digital lending previously, the Draft Bill proposes to ban all unauthorised entities or persons from undertaking any public lending business activity (including digital lending). The Draft Bill has been addressed to governmental and regulatory bodies and industry associations. The Ministry of Finance is currently not seeking comments from the public. The Draft Bill is open to comments from stakeholders until February 13, 2025.

### Key provisions

The important aspects covered under the Draft Bill are:

1. **Ban of 'Unregulated lending activities':** The Draft Bill proposes a ban on all 'Unregulated lending activities' (including digital lending). Lenders are also restricted from directly or indirectly promoting, operating or issuing any advertisement pursuant to an 'Unregulated lending activity'.

The Draft Bill defines 'Unregulated lending activities' as those activities which do not fall under the definition of 'Regulated lending activities' (the definition of which covers lending activities regulated under the laws listed in the first schedule of the Draft Bill and includes acts such as the RBI Act, 1934, the Banking Regulations Act, 1949, the Factoring Regulation Act, 2011 and the Companies Act, 2013). The Draft Bill also provides that the Appropriate Government, (which may be the Central Government, or a State Government in relation to a specific State or the Government of the Union Territory in relation to Delhi and Puducherry) in consultation with the concerned regulator may classify certain activities as 'Unregulated lending activities'.

2. **Wrongful inducement in lending practices:** Persons/entities will be prohibited from knowingly making statements, promises or forecasts which are false, deceptive, or misleading, digitally or otherwise, to induce another person to apply for or take a loan from unregulated lenders.
3. **Competent Authority:** The Draft Bill provides for the Appropriate Government to set up an authority (referred to in the Draft Bill as the "**Competent Authority**") to enforce the provisions of the Draft Bill. The Competent Authority will consist of one or more officers of the Government not below the rank of secretary.

If the Competent Authority believes a lender is lending money (digitally or otherwise) in contravention of the Draft Bill, it can provisionally attach the lender's accounts and/or assets. The Competent Authority will have the same powers as vested in a civil court under the Code of Civil Procedure, 1908 while conducting any investigation or inquiry into potential violations. Further, the Competent Authority also has the power to summon any person whose attendance is considered to be necessary to give evidence during the course of any investigation or proceedings.

4. **Designated court:** The Appropriate Government will constitute one or more designated courts for jurisdictions in respect of any matter to which the provisions of the Draft Bill apply.
5. **Central database:** The Central Government may designate an authority (whether existing or to be constituted) to create, maintain and operate an online database for information on lenders operating in India. This database will allow for the public to search for information about lenders who are regulated and to report illegal or cloned lenders.
6. **Information of business by lenders:** All lenders will be required to intimate the Competent Authority about its lending activities. If the Competent Authority has reason to doubt that a lender is involved in unregulated activities or practices, the Competent Authority may direct such lender to furnish detailed information on the lender's loans and activities. Such information will be shared by the Competent Authority with the Central Bureau of Information, and the State Police. There is an obligation on a regulated lender to report to the Competent Authority if they have reasons to believe that any of their clients is a lender and acting in contravention to the provisions of the Draft Bill.
7. **Offences and punishments:** The Draft Bill introduces the following penalties for those engaged in unregulated lending practices:
  - a) lenders who contravene the provisions of the Draft Bill in relation to the ban on unregulated lending activities, will face imprisonment for a term of at least 2 (two) years and upto 7 (seven) years, along with fines of at least INR 2,00,000 (Indian Rupees two lakh) upto INR 1,00,00,000 (Indian Rupees one crore);
  - b) lenders whose lending activities (digitally or otherwise) contravene the provisions of the Draft Bill and use unethical or unlawful means to harass and recover loans, will be subject to imprisonment which will range from a term of 3 (three) years to 10 (ten) years and with a fine amounting to not less than INR 5,00,000 (Indian Rupees five lakh) and up to twice the amount of the loan; and
  - c) where any newspaper or other publication of any nature contains or promotes or advertises any unregulated lending activities, the Appropriate Government may direct such newspaper of publication to publish a full and fair, free-of-cost retraction.

## Conclusion

The Draft Bill was introduced after the digital lending industry in India was plagued with reports of illegal and predatory activities from unregulated lenders. The Draft Bill outlines 20 (twenty) existing pieces of legislation in its first schedule which govern the regulated lending practices. All lending practices that fall outside the purview of these legislations mentioned will be deemed to be unregulated. In 2022, RBI notified the Digital Lending Guidelines dated September 2, 2022, with a view to curb unfair practices by regulated entities. A significant concern in the digital lending industry in India is that the borrowers/ consumers are not made aware of who the real lenders are due to the lack of physical interaction in the transaction process. The Draft Bill aims to reduce this aspect by providing access to a centralised database of information on all regulated lenders.

However, there are certain areas of concern in the Draft Bill which would need to be addressed by the stakeholders and clarified before notification. The enforcement powers that have been bestowed in the Competent Authority by the Draft Bill risk being misused without stringent oversight. Attaching the accounts or assets of the lenders without due process could pose a threat to operations that are running on the right side of the law.

The Draft Bill also proposes additional compliances for regulated lenders in terms of providing information to be retained in the central database and reporting any perceived cases of non-compliance by their clients.

While further clarifications and updates maybe expected on the Draft Bill, this is a welcome initiative to keep up with the ever-evolving lending industry as the Draft Bill aims to promote a competitive, accountable, and responsible lending industry with the highest concern for the end customer.

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**This Prism has been prepared by:**



**Abhishek Ray**  
Partner



**Zahan Kalyaniwalla**  
Senior Associate



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For more details, please contact [km@jsalaw.com](mailto:km@jsalaw.com)

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