Personal Financial Management
India

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UPDATED 31 MARCH 2021

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Cambridge Centre for Alternative Finance

UNIVERSITY OF CAMBRIDGE Judge Business School

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Relevant Regulations

1. Banking
2. Payments
3. Credit
4. Insurance
5. Investments
6. Data protection
7. Consumer protection
8. AML / KYC
9. Competition
10. Taxation

The Cambridge Centre for Alternative Finance (CCAF) and BFA Global have produced this deck to support fintech startups working in India and those seeking to enter the Indian fintech market in navigating the regulatory environment.

This deck provides **an overview of India's regulation of personal financial management**.

Each slide in this deck provides high-level facts about each of the relevant regulations as well as a link to the original source. Not all regulations included in the deck may be relevant based on the nuances of your particular business model.

01 Banking

Banking: **General overview**

Main regulator:
Reserve Bank of India Act, 1934 (as amended) establishes the Reserve Bank of India (RBI) as the primary regulator of the currency and credit intermediation in India.

Key regulation:
The RBI Act, 1934 together with the Banking Regulation Act, 1949 provide a framework for the regulation and supervision of banks in India

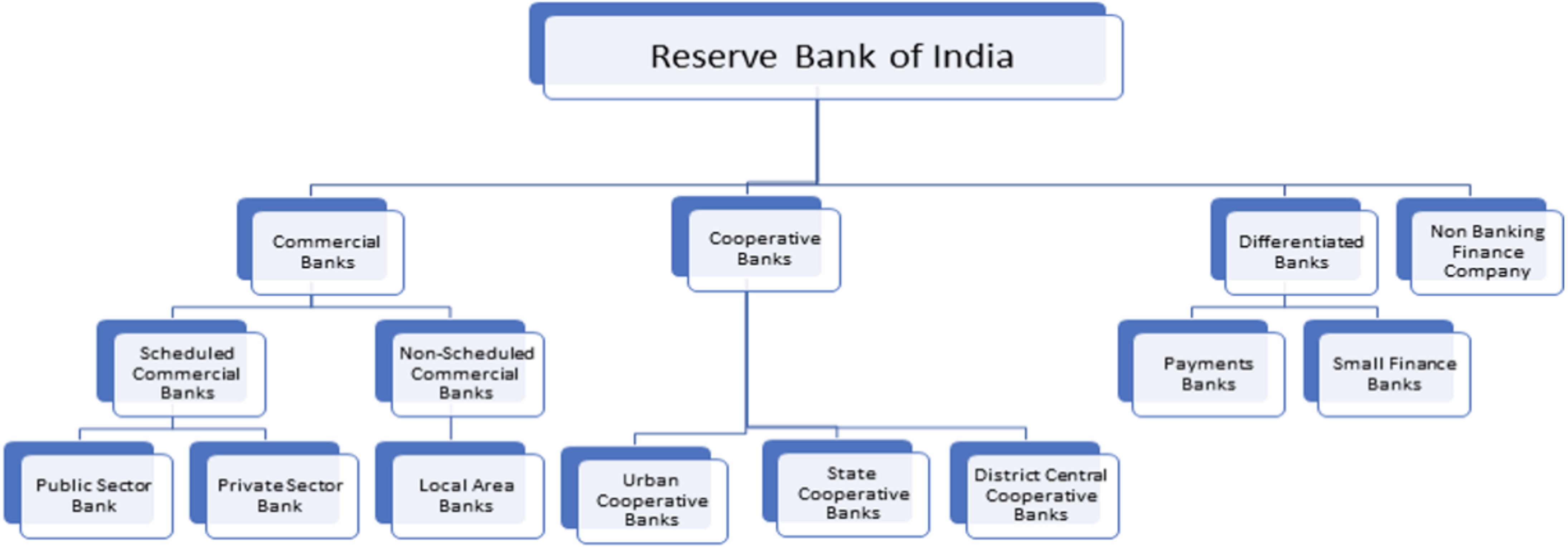
There are 14 different types of entities supervised by the RBI, of which 13 are types of banks.

Banking activities:
Section 6(1) of the Banking Regulation Act, 1949 (as amended) lays down a comprehensive list of business activities that a bank can engage in, including raising deposits, contracting public and private loans, and other such activities incidental to these services. The Act further establishes regulations on corporate governance and winding-up of banking companies.

Other relevant legislation:
The Companies Act, 1956, as amended Act of 2013 is applicable to any financial institution operating in India, all of which need to be registered as a Company. Other key statutes regulating the banking industry are the Foreign Exchange Management Act, 1999 (FEMA) and the Payment and Settlement Systems Act, 2007

Sources: Reserve Bank of India Act, 1934, Banking Regulation Act, 1949, Companies Act of 1956 as amended, the Foreign Exchange Management Act 1999 Payment and Settlement Systems Act, 2007

Banking: **Entities supervised by the RBI**



There are 14 different types of entities supervised by the RBI, of which 13 are types of banks.

Banking: **Main bank categories***

Sl.no	Types of Banks	Features
1.	Commercial Banks	Commercial Banks refers to both scheduled and non-scheduled commercial banks which are regulated under Banking Regulation Act, 1949. Commercial banks operate on a 'for-profit' basis. They primarily engage in the accepting deposits and extending loans to the general public, businesses, and the government.
2.	Scheduled Banks	Scheduled banks are covered under the 2nd Schedule of the Reserve Bank of India Act, 1934. To qualify as a scheduled bank, the bank must conform to the following conditions: - Has a paid-up capital of US$7,000 and above - Satisfies the central bank conditional that its affairs are not carried out in a way that causes harm to the interest of the depositors - Is a corporation rather than a sole-proprietorship or partnership firm
3.	Public Sector Bank	These are the nationalized banks and account for more than 75% of the total banking business in the country. The majority of shares in these banks are held by the government.
4.	Private Sector Bank	These include banks in which major stake or equity is held by private shareholders. All the banking rules and regulations laid down by the RBI are still applicable to private sector banks.
5.	Foreign Banks	A foreign bank is one that has its headquarters in a foreign country but operates in India as a private entity. These banks must follow the regulations of its home country as well as the country in which they are operating (in this case, India). Regulations governing the private sector banks are also applicable to Foreign banks.
6.	Non-Scheduled Banks	Banks which are not listed in the second schedule of the RBI Act, 1934. Banks with a reserve capital of less than US$7000 qualify as non-scheduled banks. Unlike scheduled banks, they are not entitled to borrow from the RBI for normal banking purposes, except in emergency or "abnormal" circumstances.

Sources: Reserve Bank of India Act, 1934, Banking Regulation Act, 1949

*In addition to the 11 main bank categories set out in this table, there are other three banking types in India - local area banks, cooperative banks (with further categorization at national, state, and district levels), and regional rural banks. However, since these models cater to the rural population in the country and inherently have different governing structures that are not suitable for private FinTechs to start their business in the country, we have excluded these models from this table.

Banking: **Main bank categories**

Sl.no	Types of Banks	Features
7.	Cooperative Banks	Cooperative banks operate in both urban and non-urban areas. All banks registered under the Cooperative Societies Act, 1912 are considered cooperative banks. These are banks run by an elected managing committee tasked with protecting members' rights and a set of "communally developed and approved bylaws and amendments." Unlike commercial banks, which are driven by profit, cooperative banks work on a "no profit, no loss" basis. They are regulated by the RBI under the Banking Regulation Act, 1949 and Banking Laws (Application to Co-operative Societies) Act, 1965.
8.	Urban Cooperative Banks	Urban Cooperative Banks refers to the primary cooperative banks located in urban and semi-urban areas. These banks essentially lend to small borrowers and businesses centered around communities, localities, and workplace groups.
9.	State Cooperative Banks	A State Cooperative Bank is a federation of the central cooperative banks which acts as custodian of the cooperative banking structure in the State.
10.	Small Finance Banks	This is a niche banking segment in the country and aims to provide financial inclusion to sections of society that are not served by other banks. The main customers of small finance banks include micro industries, small and marginal farmers, unorganized sector entities, and small business units. These banks are licensed under Section 22 of the Banking Regulation Act, 1949 and are governed by the provisions of the RBI Act, 1934 and FEMA, 1999.
11.	Payments Banks	This is a new model of banking in India. It was conceptualized and received sign-off by the RBI with restricted operations. Maximum of INR 200,000 (US$2,761) allowed per customer. Like other banks, they also offer para-banking services like ATM cards, debit and credit cards, net-banking, and mobile banking.

Sources: Reserve Bank of India Act, 1934, Banking Regulation Act, 1949, the Foreign Exchange Management Act 1999, Banking Laws (Application to Co-operative Societies) Act, 1965

Banking: **Alternative models for fintechs**

In addition to the 13 bank types, the RBI also supervises **Non-Banking Financial Companies (NBFCs)**

- The applicable regulations for NBFCs are Reserve Bank of India Act, 1934 and the Companies Act of 1956, amended Act of 2013
- There are different categorizations of NBFCs operational in India depending on their liability structure. This includes deposit taking and non-deposit taking NBFCs depending on on activities performed.
- Since most NBFCs are focused on financing/credit, they are dealt with in more detail in Section 5.3 of this deck on Credit.

Typically, fintech firms in India are registered as a licensed NBFC to perform business in the country due to the difficult regulatory process to qualify for a banking license. Another informal route for fintech startups to go to market is to partner with an existing licensed banking or NBFC entity to start their business.

Sources: Reserve Bank of India Act, 1934, Companies Act of 1956 as amended

Banking: **Bank licensing**

Who:
All entities seeking any type of banking license, including Payment Banks.

How much:
No application fees are required for a banking license (either as a Universal Bank* or differentiated banking licensing category such as small finance bank, and payments bank)

Capital requirements:
The licensee bank is required to hold minimum paid-up capital of INR 5 billion (US$69 million) at all points in time. The guidelines also prescribe a minimum capital adequacy ratio and mandate that the licensee get listed on the stock exchange within six years of beginning operations.

How:
License application must be submitted to the RBI along with other supporting documents, such as individual promoter self-declaration forms, details of shareholding patterns, past annual reports of all promoter group entities, project report/business plan, etc. (see Appendix II of **Guidelines for 'on tap' Licensing of Universal Banks in the Private Sector)**

*Universal Banks generally refer to the combination of commercial banking and investment banking, i.e., issuing underwriting, investing and trading in securities. For more information on the concept and derivation of universal banking, please see the discussion paper on the Banking Structure in India – the Way Forward.

Sources: Guidelines for 'on tap' Licensing of Universal Banks in the Private Sector, Guidelines for 'on tap' Licensing of Small Finance Banks in the Private Sector, 2016, Guidelines for Licensing of Payments Banks

Banking: **Bank licensing (cont.)**

How:

- Part II clause (A) & clause (B) of the Guidelines lays down the 'fit and proper' criteria for the promoters of the licensee bank. It requires promoters to hold minimum 10 years of senior level experience in the banking industry, sound credentials, and integrity, amongst other requirements.
- There are certain additional licensing conditions that apply to NBFCs that either act as promoters or convert themselves into a bank (see Clause (J) of the Guidelines). After reviewing the application, the RBI will grant an in-principle approval, which is valid for 18 months from the grant date. Applicant banks that continue to adhere to all compliance requirements are then issued a permanent license at the end of the 18-month period. The requirements for licensing and application applicable to NBFCs are discussed in the Section 5.3
- Registration to become a **Payments Bank** requires submission of Form III in terms of Rule 11 of the Banking Regulation (Companies) Rules, 1949 along with other additional information.
- The regulatory approval timelines to apply for different types of banking licenses can be found here.

Sources: Guidelines for 'on tap' Licensing of Universal Banks in the Private Sector, Banking Regulation (Companies) Rules, 1949, Guidelines for Licensing of Payments Banks

Banking: **Agent banking**

Key legislation:

- Agent banking in India is governed by the RBI circular "**Financial Inclusion by Extension of Banking Services- Use of Business Facilitators and Correspondents**" ("Business Facilitator Circular"). These guidelines introduce the 'Business Facilitator' model under which a bank may use intermediaries to perform facilitation services and the 'Banking Correspondent' model where the entities conduct the banking business on behalf of the banks.
- The "**Guidelines on Managing Risks and Code of Conduct in Outsourcing of Financial Services by banks**" circular prohibit outsourcing of core 'banking' activities such as loan approval, KYC, internal audits, etc. It also lays out risk management procedures and essential terms and conditions of an outsourcing agreement.

How:

- No separate registration is required with the RBI to become an agent or an intermediary.
- The Business Facilitator Circular describes the entities eligible to act as agents and their permitted scope of activities depending on the type of model they follow
    - For Business Facilitators, general activities include identification of borrowers, processing of loan applications through verification of data, awareness programs on savings, and other money management activities.
    - Business Correspondents engage with disbursal of the small ticket loans, collection of debt, deposits, remittance amount, and sale of microinsurance products.
    - Eligible entities are all Scheduled Commercial Banks including the Regional Rural Banks (RRBs)
- The RBI also regulates the quantum of commission/ the fee that can be paid to the agents (Section 4). Furthermore, Section 5 of the circular lays down the essential terms and conditions of the bank-agent relationship.

Sources: Financial Inclusion by Extension of Banking Services- Use of Business Facilitators and Correspondents Circular, Guidelines on Managing Risks and Code of Conduct in Outsourcing of Financial Services by banks

Banking: **Deposit insurance**

Key regulation:

- **The Deposit Insurance and Credit Guarantee Corporation Act, 1961** (as amended) established the Deposit Insurance and Credit Guarantee Corporation (DICGC).

Institution obligations:

- DICGC provides insurance to all kinds of deposits made in the commercial and cooperative banks throughout India.
- The Act defines the functions and method of operation for DICGC.
- This RBI's FAQ page contains answers to awareness-based questions on deposit insurance related to banking in India fulfilled by the DICGC.
- **Chapter V of the Deposit Insurance and Credit Guarantee Corporation Regulations, 1961** (as amended) explains provisions for premium payments to DICGC.

Customer protection:

The maximum amount insured for each depositor in a commercial and cooperative bank is capped at INR 5,00,000 (US$6,903).

Payments Banks:

Payments Banks can accept demand deposits (i.e., current deposits and savings bank deposits) from individuals, small businesses, and other entities. Eligible deposits mobilized by the Payments Bank are also covered under the deposit insurance scheme of the DICGC

Sources: Deposit Insurance and Credit Guarantee Corporation Act, 1961, Deposit Insurance and Credit Guarantee Corporation Regulations 1961

02 Payments

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Payments: **General overview**

Main regulator:
The Reserve Bank of India is the primary regulator of the payment systems and has the power to determine compliance standards, conduct audits and inspections, etc.

Key regulations:
The Payment and Settlement Systems Act, 2007 (as amended) and Payment and Settlement Systems Regulations, 2008 (as amended)

Scope:
- Section 2(1)(i) of the Act defines a payment system as "a system that enables payment to be effected between a payer and a beneficiary, involving clearing, payment or settlement service or all of them, but does not include a stock exchange".
- To operate a payment system, prior authorization is required from the RBI.

Sources: The Payment and Settlement Systems Act, 2007 (as amended), Payment and Settlement Systems Regulations, 2008 (as amended)

Payments: **Other payment categories**

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Payment aggregators & payment gateways:

The **Guidelines on Regulation of Payment Aggregators and Payment Gateways, 2020** distinguishes between 'payment aggregators' and 'payment gateways'.

- Payment gateways provide technology infrastructure to route and facilitate the processing of an online payment transaction without handling funds itself.
- Payment aggregators provide a wider coverage and extend to all the entities that facilitate e-commerce sites and merchants to accept various payment instruments from customers to complete their payment obligations without the need for merchants to create a separate payment integration system of their own.

New umbrella entities:

In 2020, the RBI released a framework for the authorization of a pan-India New Umbrella Entity (NUE) for Retail Payments.

- The umbrella entity must be a Company authorized by the RBI under Section 4 of the PSS Act, 2007.
- NUE will set up, manage, and operate new payment systems, especially in the retail space comprising but not limited to ATMs, White Label, PoS, and Aadhaar based payments; remittance services; developing new payment methods and standards; and technologies in the country and internationally.
- NUE would operate in clearing and settlement systems. It would also identify and manage relevant risks such as settlement, credit, liquidity, and operational and preserve the integrity of the systems.
- NUE would have independence to conduct other suitable business intended to further strengthen the retail payments ecosystem in India

Sources: Guidelines on Regulation of Payment Aggregators and Payment Gateways, 2020, The Payment and Settlement Systems Act, 2007 (as amended), Framework for authorisation of pan-India Umbrella Entity for Retail Payments

Payments: **Acquiring a payment system license**

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Who: Applies to all systems that enable payment to be effected between a payer and a beneficiary, involving any combination of clearing, payment, or settlement services, but does not include a stock exchange

How much: Fee of INR 10,000/US$137.84)

How: The RBI considers various factors while deciding upon a licensing application, such as: (i) technical standards or design of the payment system (ii) financial status, experience, and integrity of the senior management (iii) terms and conditions of the proposed payments system, etc. (for more details see Form A included as an appendix in the PSS Regulations, 2008). The Act also lists various circumstances under which the license may be revoked (see Section 8 of the Act).

For Payment Aggregators and Payment Gateways

Section 3 of the Guidelines on Regulation of Payment Aggregators and Payment Gateways, 2020 ("Guidelines") provides more details on the authorization process. It requires the applicants being regulated by another financial sector regulator to produce a no-objection certificate from their respective regulators. This certificate should be submitted along with the application form. These guidelines have established new standards for payment aggregators like a minimum net worth requirement of INR 150 Million (US$2,070,091.50) at the time of licensing and minimum net-worth of INR 250 Million (US$3,450,152.50)thereafter, technical standard compliance, and restrictions on e-commerce websites acting as a payment aggregator.

Sources: Payment and Settlement Systems Regulations, 2008 (as amended), Guidelines on Regulation of Payment Aggregators and Payment Gateways, 2020

Payments systems: **Use of agents**

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Key legislation:

RBI circular on "Managing Risks and Code of Conduct in Outsourcing of Financial Services by Banks"

How:

- Payment system operators are permitted to outsource certain tasks by appointing agents. There is no prior approval required for appointing agents.
- If the payment system is operated by a bank, then its agents are bound by the RBI circular on "Managing Risks and Code of Conduct in Outsourcing of Financial Services by Banks".
- While agents do not require specific registration or licensing with the RBI, their activities are closely governed by the RBI circular.
  - Clause 5.5 mandates the requirements of the outsourcing arrangement between the payment system operator and the third-party agent.
  - As per clause 1.17 of annexure II of the RBI guidelines, payment system operators are required to include a "right to audit" clause in their outsourcing agreements. This clause aims to maintain data security.
  - Third-party agents are required to annually submit independent security audit reports to the principal payment system operator.

Sources: Managing Risks and Code of Conduct in Outsourcing of Financial Services by Banks, Guidelines on Regulation of Payment Aggregators and Payment Gateways, 2020

Payments systems: **Other requirements**

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Reporting obligations:

Section 6 of the **Payment and Settlement Systems Regulations** sets out reporting obligations for the payment system providers, including:

- monthly data of payments processed,
- monthly data of payment defaults,
- dispute statements, and
- audited financial statements.

Corporate governance obligations:

- Section 5 of the **RBI Guidelines for Payment Aggregators and Gateways** prescribes corporate governance obligations for payment system providers. Promoters and senior management must satisfy 'fit and proper' criteria.
- All payment system providers must adhere to the KYC/AML laws (ex. the RBI "**Master Direction - Know Your Customer (KYC) Directions**")

Holding client funds:

- Non-bank payment system providers are required to hold the client funds in an escrow account with a scheduled commercial bank.
- RBI Guidelines prescribes rules for settlement procedures and escrow account management (Section 8), risk management (Section 10), and merchant on-boarding (Section 7).

Sources: Payment and Settlement Systems Regulations, 2008 (as amended), Guidelines on Regulation of Payment Aggregators and Payment Gateways, 2020 Master Direction- Know Your Customer (KYC) Directions,

Payments: **E-money issuers**

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In India e-money is referred to as prepaid payment instruments (PPIs). PPIs facilitate money transfer through digital wallets or payment cards as long as the PPI has been registered for interoperability.

Key legislation: "Master Direction on Issuance and Operation of Prepaid Payment Instruments" (the (Directions"). Section 2.3 defines PPIs as payment instruments that "facilitate purchase of goods and services against the value stored on such instruments." The RBI has categorized PPIs into three broad categories (i) Closed system PPI (ii) Semi-closed system PPI and (iii) Open system PPI.

Parameter	Closed PPI	Semi-closed PPI	Open PPI
Issuers	Any entity	Any banking or non-banking entity	Only banking entities
Approval from RBI	Not required	Required	Required
Functionality	To avail goods and services solely from the issuing entity. Cannot be used for payments/settlement for third party transactions.	To purchase goods and services from a group of clearly identified merchant locations/establishments. Cash withdrawal or redemption is restricted (whether the issuing entity is a banking entity or not).	To purchase goods and services, including financial services, remittance facilities, etc. Banks issuing an open PPI also facilitate cash withdrawal at ATMs, Points of Sale (PoS), and Business Correspondents (BCs).
Transferability of Funds	Restricted	Permitted (Subject to KYC)	Permitted (Subject to KYC)
Examples	*Big basket* (grocery portal) and *Makemytrip* wallets	*Paytm*, *Freecharge*, *Mobikwik*	*Debit cards, Credit cards, Prepaid cards*

Sources: Master Direction on Issuance and Operation of Prepaid Payment Instruments

Payments: **E-money issuers (cont.)**

Restrictions:

- At any point of time, the outstanding amount held in the full-KYC PPI must not exceed INR 100,000 (US$1,381).
- In the case of Semi-closed PPI, funds transfer is allowed from a 'full-KYC' PPI within a limit of INR10,000 (US$138) per month, per holder. However, an enhanced limit of INR 100,000 (US$1,381) per month, per beneficiary can be availed if the beneficiary is 'pre-registered' by PPI holder.

Interoperability: All PPIs that are fully compliant with KYC regulations are encouraged to voluntarily allow interoperability with other PPIs. However, a recent RBI announcement has proposed mandatory interoperability between the fully compliant KYC PPIs.

Deposit insurance: Non-bank PPI issuers are required to maintain their outstanding balance in an escrow account with a scheduled commercial bank. An additional escrow account may be maintained with a different scheduled commercial bank at the discretion of the PPI issuer. Any such deposits maintained with the scheduled commercial banks would be insured by the DICGC

Sources: Master Direction on Issuance and Operation of Prepaid Payment Instruments, Prepaid Payment Instruments (PPIs) – Guidelines for Interoperability, RBI Press Release on Developmental and Regulatory Policies

Payments: **Acquiring a PPI license**

Who: Any non-bank entity interested in setting up payment systems for issuance of PPIs

How much: Fee of INR 10,000 (US$138.01)

Capital requirements: The issuer must maintain minimum net-worth of INR 50 Million (US$690,130.60) at the time of licensing application. By the end of its third financial year from the date of grant of permanent license, the issuer must maintain minimum net-worth of INR 150 Million (US$2,070,391.80).

How: An authorization application based on Form A of Payment and Settlement Systems Regulations, 2008 must be submitted to the RBI.

- The RBI considers multiple factors to review applications, such as 'fit and proper' status of the applicant, customer service and efficiency, technical requirements, safety and security arrangements, etc. (see Section 5 of the Directions).
- After deciding the applicant satisfies requirements, the RBI grants an in-principle approval that is valid for six months. The applicant needs to file a System3 Audit Report (SAR) and net-worth certificate within these six months to obtain a permanent license (Section 5.4 of the Directions)
- RBI prescribes guidelines concerning issuing of PPIs (Section 7 of the Directions), Anti-money laundering procedures (Section 6 of the Directions), cross-border transactions (Section 8 of the Directions), risk management (Section 15 of the Directions), and reporting requirements (Section 19 of the Directions.

Sources: Form A of Payment and Settlement Systems Regulations, Payment and Settlement Systems Regulations, 2008, Master Direction on Issuance and Operation of Prepaid Payment Instruments

Payments: **Digital infrastructure**

In 2016, India launched the **Unified Payment Interface (UPI)** allowing an individual to access their bank accounts from registered apps and make transactions with any other bank.

- UPI is managed and operated by the National Payments Corporation of India (NPCI)
- It permits the transfer of funds by using the unique virtual payment address (VPA) of each customer, unlike the traditional reliance on bank account details.
- It enables real-time, instantaneous, and mobile-based, bank-to-bank payments. The system is dependent on mobile technologies and telecommunication infrastructure which makes it *easily accessible, affordable, and supportive of universal domestic remittance facilities* to users.

UPI Models

Sl. No	Types of UPI	Mechanism	Uses
1	Bharat Interface for Money (BHIM)	App based interface for pushing payment transactions using UPI	Bank-to-Bank payments, pay and collect money using a mobile number, a virtual payment address or Aadhaar enabled payments
2	Bharat BillPay	App or web-based interface for recurring payments using UPI	Electricity bills, telecom bills, DTH bills, gas bills, water bills, etc.
3	UPI QR code	A single unified QR code capable of accepting payments and providing seamless transactions across banks for all cardholders and UPI users. It is used for app-based person to person (P2P) as well as person to merchant (P2M) dynamic transactions using virtual payment addresses. This is implemented by NPCI.	Scan QR code to send money from the UPI account of one person to another person's UPI account to facilitate peer to peer transactions.
4	Bharat QR code	A single unified QR code capable of accepting payments and providing seamless transactions across banks for all card holders and UPI users. It is used only for app-based P2M dynamic transactions using virtual payment address. This is implemented by NPCI.	Scan QR code to purchase products and services in grocery store, vending machines, restaurants etc.

Payments: **Digital infrastructure (cont.)**

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Interoperability between QR codes:
In order to streamline the QR code infrastructure, the RBI in October 2020 decided to allow two interoperable QR codes (UPI QR code and Bharat QR code) to remain. At the same time, it mandated all Payment System Operators (PSOs) that use proprietary QR codes to shift to one or more of the interoperable QR codes. The migration process must be completed by March 31, 2022. It also banned further issuance of proprietary QR codes by any PSO for any payment transaction.

EFT mechanisms:
There are three electronic fund transfer mechanisms available in the Indian digital money transfer system:

- Real Time Gross Settlement (RTGS),
- National Electronic Funds Transfer (NEFT), and
- Immediate Payments Service (IMPS).

RBI has made both NEFT and RTGS operational on a 24x7 basis and waived transaction charges through it to incentivize digital payments.

Payments: **Becoming a money remittance operator**

Key regulation:

Foreign Exchange Management Act, 1999 (as amended) governs foreign exchange and money remittance businesses.

The RBI further issued "Master Direction- Money Changing Activities" to regulate this sector.

Scope:

- Select banks (as Authorised Dealers Category-I) to carry out all permissible current and capital account transactions
- Select entities (as Authorised Dealers Category-II) to carry out specified non-trade related current account transactions, all the activities permitted to Full Fledged Money Changers (FFMC), and any other activity as decided by the Reserve Bank.
- Select financial and other institutions (as Authorised Dealers Category-III) to carry out specific foreign exchange transactions incidental to their business/activities
- Select registered companies as FFMCs to undertake purchase of foreign exchange and sale of foreign exchange for specified purposes viz. private and business travel abroad.
- There are also special provisions for Payment Banks and PPIs.

Sources: Foreign Exchange Management Act, 1999 (as amended), Master Direction- Money Changing Activities, RBI FAQ on Money Changing Activities, Guidelines for Licensing of Payments Banks, Master Direction on Issuance and Operation of Prepaid Payment Instruments, RBI Money Transfer Service Scheme

Payments: **Becoming a money remittance operator (cont.)**

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Licensing

- Section 10 of the Act requires entities to hold an appropriate license to operate a foreign exchange/remittance business. Detailed licensing requirements for FFMC and Authorized Dealer Category-II can be found in clause 3 of RBI directions. The application must be accompanied by documents such as memorandum of association, audited financial statements, board resolutions, etc. (see Section-I Clause 3(ii)).
- The RBI directions also describe authorization of additional branches (Section-II Clause 1 to 5), appointment and operations of agents/franchisees (Section-III Clause 1 to 9), and record-keeping/ reporting requirements (Section V Clause 15 to 16).

Sources: Foreign Exchange Management Act, 1999 (as amended),

Payments: **Other cross border remittance channels**

Liberalized Remittance Scheme

Allows for a free transfer of any remittance up to US$250,000. However, this scheme is only available to resident individuals, not corporates and partnership firms.

Rupee Drawing Arrangement (RDA)

The RDA is a channel to receive cross-border remittances from overseas jurisdictions.

- Authorised Category I banks enter into tie-ups with the non-resident Exchange Houses in Financial Action Task Force (FATF) compliant countries to open and maintain their Vostro Accounts.
- There is no limit on the remittance amount or on the number of remittances. However, there is an upper cap of INR1.5 Million (US$20,706) for trade-related transactions.
- No cash disbursement of remittances is allowed under RDA. The remittances have to be credited to the bank account of the beneficiary.

Money Transfer Service Scheme (MTSS)

The MTSS is a way of transferring personal remittances from abroad to beneficiaries in India.

- Only personal remittances into India, such as remittances for family maintenance or remittances favouring foreign tourists visiting India, are permissible.
- There is a tie-up between reputed money transfer companies abroad known as Overseas Principals and agents in India known as Indian Agents that disburse funds to beneficiaries in India at the prevailing exchange rate.
- A cap of US$2,500 is placed on individual remittances. In addition, only thirty remittances can be received by a single individual beneficiary during a calendar year. Also, amounts up to INR 50,000 (US$690) may be paid in cash to a beneficiary in India. These can be loaded onto a prepaid card issued by banks. Any amount exceeding this limit must be paid by means of account payee cheque, demand draft, payment order, etc., or credited directly to the beneficiary's bank account. However, in exceptional circumstances where the beneficiary is a foreign tourist, higher amounts may be disbursed as cash.

Sources: Master Direction - Liberalised Remittance Scheme (LRS), Master Direction – Opening and Maintenance of Rupee/Foreign Currency Vostro Accounts of Non-resident Exchange Houses, RBI Money Transfer Service Scheme

Payments: **Remittances by PPIs & Payment Banks**

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PPIs for Cross-border outward transactions:

- KYC compliant, reloadable, semi-closed, and open system PPIs issued by banks with AD-I license are permitted to be used in cross-border outward transactions.
- This is only permissible for current account transactions under the Foreign Exchange Management Act, 1999 (i.e., purchase of goods and services) and not for cross-border outward fund transfer or for remittances under the Liberalised Remittance Scheme.

Payment Banks

- The Guidelines for Licensing of Payments Banks permits Payments Banks to handle cross-border remittance transactions in the nature of personal payments/ remittances on the current account, after proper approval from the RBI.

Sources: Master Direction on Issuance and Operation of Prepaid Payment Instruments, Guidelines for Licensing of Payments Banks

03 Credit

Credit: **NBFCs**

- In India, only a bank or a non-banking financial company (NBFC) is allowed to develop a credit business.
- NBFCs are categorized into 8 types based on:
  - the type of liabilities as Deposit and Non-Deposit accepting NBFCs,
  - the kind of the activity they conduct, and
  - for non deposit taking NBFCs, by their size into systemically important and other non-deposit holding companies (NBFC-NDSI and NBFC-ND).
- The categorization of fintech firms is generally dependent on the products and services they offer, and fintechs should apply for a NBFC license under their relevant category. For example, fintech firms that provide either digital lending products or vehicle and consumer loans fall into the NBFC - Investment and Credit Company (NBFC-ICC) category. Other options include NBFC-P2P (as a peer-to-peer lender), NBFC-MFI (microfinance institution) or a general NBFC entity.

Broad Categorization	Features
NBFC - Investment and Credit Company (NBFC-ICC)	Includes Asset Finance companies (AFC), Investment Companies (IC) and Loan Companies (LC). ● AFC is an institution that finances physical assets supporting productive/economic activity, such as automobiles, tractors, lathe machines, generator sets, earth moving and material handling equipment, and moving on own power and general-purpose industrial machines. These businesses' principal purpose is aggregate financing of real/physical assets supporting economic activity. Income from this lending must not exceed 60% of its total assets and total income respectively. ● IC is a financial institution whose principal business is the acquisition of securities. ● LC is a financial institution that provides financing by making loans or advances or otherwise for any activity other than its own but does not include an AFC. A deposit taking NBFC-ICC shall invest in unquoted shares of another company which is not a subsidiary company or a company in the same group of the NBFC an amount not exceeding 20% of its owned fund.

Sources: Reserve Bank of India Act, 1934, Banking Regulation Act, 1949, Companies Act of 1956 as amended, RBI Harmonisation of different categories of NBFCs

Credit: **NBFCs (cont.)**

Broad Categorization	**Features**
Systemically Important Core Investment Company (CIC-ND-SI)	CIC-ND-SI is an NBFC whose business is the acquisition of shares and securities that satisfies the following conditions: 1. it holds at least 90% of its total assets in the form of investment in equity shares, preference shares, debt, or loans in group companies; 2. its investments in equity shares (including instruments compulsorily convertible into equity shares within a period not exceeding 10 years from the date of issue) in group companies constitutes at least 60% of its total assets; 3. it does not trade its investments in shares, debt, or loans in group companies except through block sale for the purpose of dilution or disinvestment; 4. it does not conduct other financial activity referred to in Section 45I(c) and 45I(f) of the RBI act, 1934 except investment in bank deposits, money market instruments, government securities, and loans to and investments in debt issuances of group companies or guarantees issued on behalf of group companies; 5. its asset size is INR 1 billion (US$14 million)or above; and 6. it accepts public funding
Infrastructure Debt Fund Non-Banking Financial Company (IDF-NBFC)	IDF-NBFC is a company registered as a NBFC to facilitate the flow of long-term debt into infrastructure projects. IDF-NBFC raise resources through issue of Rupee or Dollar denominated bonds of minimum 5-year maturity. Only Infrastructure Finance Companies (IFC) can sponsor IDF-NBFCs
Infrastructure Finance Company (IFC)	IFC is a non-banking finance company a) which deploys at least 75% of its total assets in infrastructure loans, b) has a minimum Net Owned Funds of INR 3 billion (US$41.4 million), c) has a minimum credit rating of ‘A ‘or equivalent d) and a CRAR of 15%.

Credit: **NBFCs (cont.)**

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Broad Categorization	**Features**
Non-Banking Financial Company-Micro Finance Institution (NBFC-MFI)	NBFC-MFI is a non-deposit taking NBFC with at least 85% of its assets meeting the following qualifying criteria: a. loan disbursed by an NBFC-MFI to a borrower with a rural household annual income not exceeding INR 1,000,000 (US$1,381) or urban and semi-urban household income not exceeding INR 1,600,000 (US$2,209); b. loan amount does not exceed INR 50,000 (US$138.1) in the first cycle and INR 1,000,000 (US$1,381) in subsequent cycles; c. total indebtedness of the borrower does not exceed INR 1,000,000 (US$1,381); d. tenure of the loan is not less than 24 months for loan amount in excess of INR 15,000 (US$201.75) and allows prepayment without penalty; e. loan is extended without collateral; f. aggregate amount of loans, given for income generation, is not less than 50% of the total loans given by the NBFC-MFIs; and g. loan is repayable in weekly, fortnightly, or monthly installments at the choice of the borrower.
Non-Banking Financial Company-Factors (NBFC-Factor)	NBFC-Factor is a non-deposit taking NBFC engaged in the principal business of factoring. The financial assets in the factoring business should constitute at least 50% of its total assets and its income derived from factoring business should not be less than 50% of its gross income.
Mortgage Guarantee Companies (MGC)	MGC is a financial institution for which at least 90% of the business turnover is mortgage guarantee business or at least 90% of the gross income is from mortgage guarantee business and net owned fund is INR 100 crore (US$13,500,000).
NBFC-Non-Operative Financial Holding Company (NOFHC)	NBFC-NOFHC is a financial institution through which promoter or promoter groups are permitted to set up a new bank. It's a wholly-owned Non-Operative Financial Holding Company (NOFHC) which holds the bank and all other financial services companies liable to regulations promulgated by the RBI and other financial sector regulators to the extent permissible under the applicable regulatory prescriptions

Credit: **NBFC licensing**

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- NBFCs are required to register with the RBI before commencing operations.
- In order to successfully register, the applicant must:
  - be registered as a company under Section 7 of the Companies Act, 2013 or 1956 (as amended)
  - engage in the activities described on the FAQ page of the RBI website
  - have minimum net owned funds of INR 20 million (US$0.28 million)
  - meet the RBI's 'Asset-Income Test', i.e. NBFC's financial assets (such as loans and equity investments) constitute more than 50% of its total assets and income from financial assets constitute more than 50% of its gross income.
- The regulatory approval timelines to apply for different types of NBFC licenses depend on the business activity as set out here.

Exemption

NBFCs can commence business without obtaining a certificate of registration and are not required to meet these requirements if the given NBFCs are regulated by other regulators. For example, Venture Capital Funds/Merchant Banking companies/Stock broking companies registered with SEBI, Insurance Companies holding a valid Certificate of Registration issued by IRDA.

Sources: Reserve Bank of India Act, 1934, Banking Regulation Act, 1949, Companies Act of 1956 as amended, NBFC forms, Amendment to NBFC regulations,

Credit: **Digital credit**

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- All digital lenders must be registered as a bank/NBFC or have a partnership arrangement with an existing bank or NBFC to initiate digital lending activity.
- Due to increased activity in credit intermediation through these digital models, the RBI issued a circular in June 2020 detailing the directions and circulars that digital lending platforms that partner with the concerned NBFCs/Banks must follow. In December 2020, the RBI released a Press Release cautioning the public about unauthorized digital lending platforms in the market. The RBI clarified that legitimate public lending activities could only be undertaken by banks and NBFCs registered with the RBI.
- The RBI set up a Working Group (WG) in January 2021. The objective of the WG is to create a comprehensive framework on digital lending in India to protect consumers from illegal lending and regulate credit intermediation through the digital lenders in the country.

Digital Lending Models in India

- Digital loan platforms by Banks or NBFCs
- Digital lending marketplaces (under the partnership model or as a peer-to-peer lender)
- Buy Now, Pay Later
- Small and Medium Enterprise Financing
- Supply Chain Financing

Sources: Loans Sourced by Banks and NBFCs over Digital Lending Platforms: Adherence to Fair Practices Code and Outsourcing Guidelines, RBI Cautions against unauthorised Digital Lending Platforms/Mobile Apps, Reserve Bank constitutes a Working Group on digital lending including lending through online platforms and mobile apps

Credit: **P2P lending**

Key regulation:

The Master Directions – NBFC – Peer to Peer Lending Platform Directions, 2017 provide a framework for the registration and operation of NBFCs in India that operate a peer-to-peer lending platform. These platforms can also undertake activities relating to debt crowdfunding.

Licensing process:

- An NBFC-P2P requires a Certificate of Registration from the RBI (Section 5)
- It must have a net owned fund greater than INR 20 Million (US$276,260.20) .
- Registration is required by filling out this form.
- The RBI created a webpage to help new entrants navigate the registration requirements and document checklists to facilitate registration and commencement of business

Capped exposures:

- The P2P Directions cap the aggregate exposure of a lender to all borrowers across all P2P platforms to INR 5 Million (US$69,020).
- The exposure of a single lender to the same borrower across all P2P platforms is capped at INR 50,000 (US$691).
- Aggregate loan taken by a borrower at any point of time, across all P2Ps is also subject to a cap of INR 1 Million (US$13,804). Additionally, the maturity of loans provided must not exceed 36 months.

Sources: The Master Directions – NBFC – Peer to Peer Lending Platform Directions, 2017

Credit: **Microfinance banks and businesses**

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Key regulation:

Non-Banking Financial Company-Micro Finance Institutions (Reserve Bank) Directions, 2011.

NBFC Framework:

Microfinance institutions are categorized as a non-deposit-taking NBFC and are regulated as NBFC-MFIs.

The Directions provide for certain eligibility criteria for the NBFC to enter the Microfinance business (Section 1) and provide requirements for the loans disbursed by the MFI (Section 1).

Trusts/Co-ops:

Microfinance institutions that take the form of a trust or co-operative society are not specifically governed by the RBI but by the respective State or provincial Registrar of cooperatives societies or the underlying regulating authority, with which the trust or co-operative society is registered.

Small finance banks

As an extension to the provision of microfinance and low-cost, small-sized loans, the RBI has allowed for 'on tap' licensing of Small Finance Banks that provide savings opportunities to the underserved and supply credit to small business units, marginal farmers, and micro and small industries. These banks provide these services through high technology and low-cost operations.

Further details regarding eligibility criteria and application procedures can be found in the Guidelines for 'on tap' Licensing of Small Finance Banks in the Private Sector

Sources: Non-Banking Financial Company -Micro Finance Institutions (Reserve Bank) Directions, 2011, Guidelines for 'on tap' Licensing of Small Finance Banks in the Private Sector

Credit: **Credit Bureaus**

- Credit Reference Bureaus also known as Credit Information Companies (CIC) are governed by **Credit Information Companies (Regulation) Act, 2005** (CICRA) and the **Credit Information Companies Regulation, 2006**.
- Entering the credit information business requires registration and approval from the RBI. The Regulations provide for the process of registration and the requisite forms that are needed to be filled can be found on Section 4 of the Regulations.
- The Regulations also describe privacy principles that the CICs are required to follow while collecting and working with the personal data as well as the accountability of CICs when conducting their business (Section 17 of the Regulations).
- Per Section 15 of the CICRA, every credit institution must become member of at least one CIC. Section 17 of CICRA stipulates that a CIC may seek and obtain credit information from its members (Credit Institution/CIC) only.
- In 2015, the RBI set up a committee to recommend the data format for furnishing credit information to CICs. After receiving the report, it issued a Directive mandating all credit Institutions to become members of all CICs.

Sources: Credit Information Companies (Regulation) Act, 2005 , the Credit Information Companies Regulation, 2006, RBI Report on Data Format, Membership of CICs Directive

04 Insurance

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Insurance: **Overview**

Key regulation: The Insurance Act, 1938 (as amended) and the **Insurance Regulatory and Development Authority of India Act, 1999** (as amended)

Main regulator: Insurance Regulatory and Development Authority of India (IRDAI)

Overview of regulation of e-insurance and Insurtech activities:

- Guidelines on Repositories and Electronic Issuance of Policies Guidelines, 2015 detail the establishment and regulate the functioning of **Insurance Repositories (IR)**. These are companies licensed by IRDAI that maintain records of insurance policies in electronic form on behalf of insurers. It mandates every insurer issuing and maintaining 'e-insurance policies' utilize the services of an IR and enter into service level agreements with one or more IRs
- IRDAI Issuance of e-Insurance Policies Regulations, 2016 creates different thresholds for annual premiums and sums insured for different lines of **e-insurance businesses.**
- IRDAI Guidelines on Insurance e-commerce, 2017 enables insurers and insurance intermediaries to set-up **Insurance Self-Network Platforms** to sell and service insurance policies.
- IRDAI Insurance Web Aggregators Regulations, 2017 regulates **web aggregators** that maintain insurance price comparison and insurance information comparison websites as an insurance intermediary.

Sources: The Insurance Act, 1938 (as amended), the Insurance Regulatory and Development Authority of India Act, 1999, Guidelines on Repositories and Electronic Issuance of Policies Guidelines, 2015, IRDAI Issuance of e-Insurance Policies Regulations, 2016, RDAI Guidelines on Insurance e-commerce 2017, IRDAI Insurance Web Aggregators Regulations, 2017

Insurance: **Licensing requirements**

Key regulation: The Insurance Regulatory and Development Authority (Registration of Indian Insurance Companies) Regulations, 2000 prescribes the licensing requirements for Indian insurance companies.

Licensing process:

- An applicant wishing to apply for a license is required first to make a requisition for registration application. This requisition must be accompanied by other documents, including a memorandum of association, articles of association, details of directors and principal officer, and a statement indicating class of insurance business and sources of shared capital (see Sec. 5(2)).
- Upon acceptance of the requisition, the applicant can apply for the license. The application must be accompanied by an application fee of INR 50,000 (US$690.13) per class of insurance business (see Sec. 15) and other documents such as proof of minimum capital, prospectus, etc. (see Sec. 10).
- Applicants must demonstrate at least INR100 crore (US$13,500,000) of paid up equity share capital, if the application for grant of certificate is for life insurance business or general insurance business. The capital entry requirement for regular insurers and micro insurers under the present regulation are the same, but there is a proposal under consideration to reduce these requirements for micro insurers (see slide 66 for details).
- The IRDAI, while granting authorization, considers factors such as past record of promoters, capital structure, nature of insurance products, etc. (see Sec 12).

Source: The Insurance Regulatory and Development Authority (Registration of Indian Insurance Companies) Regulations, 2000,

Insurance: **Foreign reinsurers & sandbox**

- The licensing and authorization of branches of foreign reinsurers is governed by IRDAI (Registration and Operations of Branch Offices of Foreign Reinsurers other than Llyod's) Regulations, 2015 (as amended). The regulations prescribe the procedure of requisition (Section 3 to 10), licensing authorization (Section 11 to 17), and other operational issues (Section 28).
- The IRDA also issued the IRDAI (Regulatory Sandbox) Regulations on July 26, 2019 with the objective of striking a balance between the orderly development of the insurance sector and the protection of interests of policyholders while also facilitating innovation.

Sources: IRDAI (Registration and Operations of Branch Offices of Foreign Reinsurers other than Llyod's) Regulations, 2015, IRDAI (Regulatory Sandbox) Regulations, 2019

Insurance: **Microinsurance**

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Key regulation:

IRDAI (Microinsurance) Regulations 2015 governs micro-insurance policies, which promote insurance coverage among economically vulnerable sections of society. Insurance policies for Micro, Small and Medium Enterprises (MSME) are considered microinsurance policies.

Licensing process:

- No separate licensing is required for an insurance business to enter the microinsurance business.
- A life insurer business can offer a life microinsurance product but is required to have a tie-up with a general insurer business to provide general microinsurance products, Meanwhile, a general insurer business can offer a general microinsurance product but is required to have a tie-up with a life insurer business to provide life microinsurance products (Sec 3).
- For the purpose of distribution and solicitation, all intermediaries registered with the IRDAI are also empowered to distribute microinsurance products without needing a separate registration.

Entry level capital:

- The license application for microinsurance requires evidence of INR1 Billion (US$1381 million) or more in paid up equity share capital. This applies to both life insurance businesses and general insurance businesses.
- The IRDAI committee has proposed a reduction in entry-level capital requirements for standalone micro-insurance companies to INR200 million(US$28 million) from the current requirement of INR1 billion (US$1381 million). The goal of the proposed change is to accelerate the expansion of this segment of the insurance market in India.

Sources: IRDAI (Microinsurance) Regulations 2015, The Insurance Regulatory and Development Authority (Registration of Indian Insurance Companies) Regulations, 2000, Press Article on IRDAI proposition

05 Investment

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Investment: **Licensing process & sandboxes**

Key regulation: Securities and Exchange Board of India Act, 1992

Main regulator: The Securities and Exchange Board of India (SEBI)

Licensing process*:

There are separate registrations required for each type of investment activity:

- SEBI (Investment Advisers) Regulations, 2013 regulate Investment Advisers and SEBI (Alternative Investment Funds) Regulations, 2012 regulate various types of Investment Funds
- The Depositories Act, 1996 provides for regulation of depositories in securities. It mandates all depositories to obtain a Certificate of Registration from SEBI before commencing business. The SEBI (Depositories and Participants) Regulations, 2018 created the requite form along with associated fees.

Sandboxes:

- SEBI created the Innovation Sandbox Framework to enable fintech firms and entities not regulated by the SEBI to conduct 'offline testing' of their products or services based on market data provided by stock exchanges, depositories, and qualified registrars and share transfer agents.
- SEBI developed the Regulatory Sandbox Framework which permits entities regulated by SEBI to experiment with fintech solutions in a live environment and on a limited set of real customers for a fixed time frame.

*Foreign investment must additionally comply with the requirement of investment under the Foreign Exchange Management Act, 1999 and the annual consolidated Foreign Direct Investment Policy Circular issued by the Department for Promotion of Industry and Internal Trade

Sources: Securities and Exchange Board of India Act, 1992, SEBI (Investment Advisers) Regulations, 2013, SEBI (Alternative Investment Funds) Regulations, 2012, The Depositories Act, 1996, The SEBI (Depositories and Participants) Regulations, 2018, the Foreign Exchange Management Act 1999, Foreign Direct Investment Policy Circular

Investment: **Wealthtech & InvestTech**

SEBI issued the following guidelines and regulations to regulate the wealthtech/InvestTech platforms and activities:

- The SEBI Broad Guidelines on Algorithmic Trading, 2012 and SEBI Broad Guidelines on Algorithmic Trading for National Commodity Derivatives Exchanges, 2016 permit stockbrokers to provide **algorithmic trading** with the prior permission of the stock exchange. Stockbrokers must have risk controls and proper systems to carry out algorithmic trading in compliance with the guidelines.
- SEBI Investment Advisor Regulations, 2013 mandate all entities/individuals providing **robo-advisory services** get registered as an investment advisor
- **Equity crowdfunding** remains to prohibited in India (See next slide).

Sources: SEBI Broad Guidelines on Algorithmic Trading 2012, SEBI Broad Guidelines on Algorithmic Trading for National Commodity Derivatives Exchanges 2016, SEBI (Investment Advisers) Regulations, 2013

Investment: **P2P equity crowdfunding**

Different types of crowdfunding are regulated under different regulations:

- A consultation paper on crowdfunding was released by SEBI in 2014 which proposed a regulatory framework for governing **security-based crowdfunding** methods for startups and MSMEs. However, SEBI did not subsequently release any guidelines. Therefore, equity crowdfunding remains prohibited in India.
- The other recognized forms of crowdfunding that are permitted in India are **donation/social-based lending** crowdfunding, **pre-order** crowdfunding, **reward-based** crowdfunding, and **debt-based** crowdfunding as P2P lending (see section on 5.3 on Credit)
- Additionally, **pooled managed investment funds** are currently regulated under the SEBI (Alternative Investment Funds) Regulations, 2012 (as amended)

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Sources: SEBI Consultation Paper on Crowdfunding, SEBI (Alternative Investment Funds) Regulations, 2012,

Investment: **Virtual and crypto assets**

Crypto assets trading and currency usage is not systematically regulated in India and the regulatory status is unclear:

- In April 2018, the RBI promulgated a circular prohibiting all entities regulated by RBI to provide services to entities involved in trading virtual currencies. However, in March 2020, the Supreme Court of India declared the circular to be constitutionally invalid.
- The central government plan to introduce the Cryptocurrency and Regulation of Official Digital Currency Bill, 2021, whose purpose is to create a framework to facilitate an official digital currency issued by the RBI and to "prohibit all private cryptocurrencies in India".
- According to a notification released by the Ministry of Corporate Affairs (MCA), every company that has participated in cryptocurrency transactions will have to disclose the following facts from financial year 2021-2022: (a) Cryptocurrency holdings by the date of the financial statements, (b) The total profit or loss on transactions involving these crypto or virtual currencies, (c) Deposits or advances received from any person for the purpose of trading or investing in these currencies

Sources: RBI 2018 Circular on Virtual Currencies, Supreme Court Decision on Virtual Currencies, Press Article on Cryptocurrency and Regulation of Official Digital Currency Bill, Notification by the Ministry of Corporate Affairs on Cryptocurrency Transactions

06

Data protection

Data protection: **National provisions**

Key Laws:
Information Technology Act, 2000 ("IT Act") and its corresponding Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011 ("IT Rules"), and the Indian Constitution

Main provisions:
India does not currently have national legislation governing data protection or privacy. Therefore, regulation is fragmented:

- Personal data is recognized as a fundamental right under Article 21 of the **Indian Constitution**, as ruled by the Supreme Court of India.
- The **IT Act** provides legal recognition of transactions carried out via electronic data interchange and other means of electronic communication.
- Section 43A of the IT Act confers liability on companies which possesses, deals, or handles any sensitive personal data in a computer for any wrongful loss or gain to any person caused due to negligence in implementing and maintaining reasonable data security practices and procedures
- Section 72A of the IT Act states that if any person secures access to personal information while providing contractual services and discloses the data without the consent of the concerned person(s) to any other person shall be punished with a fine and/or imprisonment.
- IT Rules provides individuals with the right to access and correct their information on online platforms. It also mandates that any company collecting sensitive personal information publishes an online privacy policy to which users must agree. Companies must obtain consent of the individual before disclosing sensitive personal information except in the case of law enforcement.
- A comprehensive data protection law - the Personal Data Protection Bill 2019 is currently pending before Parliament

Sources: Information Technology Act, 2000, Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011, Justice K. S. Puttaswamy v. Union of India, Personal Data Protection Bill 2019

Data protection: **Sectoral provisions**

The primary legal instruments that address data protection in the financial sector include:

Credit:

- The Credit Information Companies (Regulation) Act, 2005 (CIC Act) and the Credit Information Companies Regulation, 2006 (CIC Regulations) recognize credit information companies (CICs) as collectors of information and requires they adhere to privacy principles at the collection stage and uphold those principles during use and disclosure of credit information. CICs are further required to ensure the credit information they hold is accurate, complete, and protected against loss or unauthorized use, access, and disclosure.

KYC data:

- KYC norms limit the categories of information that banks and financial institutions can seek from their customers. Once such information is collected, there is an obligation on banks to keep it confidential. Any such information collected must not be divulged by the regulated entities under the RBI's purview for the purpose of cross-selling or for any other purpose without the explicit permission of the customer.
- There are similar regulations such as the Master Circular on Credit Card, Debit Card and Rupee Denominated Co-branded Prepaid Card Operations of Banks and Credit Card issuing NBFCs, the Master Circular on Customer Services, 2009, and the Code of Banks Commitment to Customers etc. These create restrictions on the cross-selling of information and impose customer confidentiality obligations

Sources: The Credit Information Companies (Regulation) Act, 2005, the Credit Information Companies Regulation, 2006, Master Direction - Know Your Customer (KYC) Direction, 2016, Master Circular on Credit Card, Debit Card and Rupee Denominated Co-branded Prepaid Card Operations of Banks and Credit Card issuing NBFCs, the Master Circular on Customer Services, 2009, the Code of Banks Commitment to Customers

Data protection: **Sectoral provisions (cont.)**

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Insurance:

- In the Insurance sector, Insurance Act, 1938 and regulations issued thereunder by the IRDAI, such as IRDAI (Maintenance of Insurance Records) Regulations, 2015, IRDAI (Health Insurance Regulations), 2016, IRDAI (Protection of Policyholders' Interests) Regulations, 2017, and IRDAI (Outsourcing of Activities by Indian Insurers) Regulations, 2017 impose confidentiality provisions.
- Intermediaries in the insurance sector such as corporate agents, third party administrators (TPAs), and web aggregators serve as a bridge between customers and insurance companies by facilitating the process of purchasing insurance products and assisting in the servicing of policies and assessment of claims. These intermediaries also bear confidential information and thus are subject to obligations relating to data protection and preservation of confidentiality, as prescribed by the IRDAI. Each type of intermediary is subject to its own regulations and Code of Conduct. With relation to TPAs, the IRDAI (Third Party Administrators – Health Services) Regulations, 2016 prohibits TPAs from sharing the data and personal information of customers they receive from servicing insurance policies or claims.

A report by the Ministry of Electronics and Information Technology has mapped the various financial sector laws that contain data protection provisions.

Sources: Insurance Act, 1938, IRDAI (Maintenance of Insurance Records) Regulations, 2015, IRDAI (Health Insurance Regulations), 2016, IRDAI (Protection of Policyholders' Interests) Regulations, 2017, IRDAI (Outsourcing of Activities by Indian Insurers) Regulations, 2017, IRDAI (Third Party Administrators – Health Services) Regulations, 2016

Data protection: **Date localization & cybersecurity**

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Data localization:

As there is no comprehensive framework, data localization requirements can be found in sectoral regulations on data protection:

- Per India's 2013 Companies Act, Indian registered companies must maintain their books of account for audit and inspection only in India.
- The IRDAI mandates that all original policyholder records be maintained in India.
- On April 6, 2018, the RBI issued a circular titled Storage of Payment System Data, which mandated that all payment system providers store their payment systems data on servers located within the territorial jurisdiction of India. However, for the foreign leg of the transaction, it is permitted to store the data in the foreign country, if required.

Cybersecurity:

- The RBI, under the Guidelines on Regulation of Payment Aggregators and Payment Gateways, provides comprehensive baseline technology recommendations for Payment Gateways.
- The SEBI released Master Circulars on creating Cyber Security Resilience Framework for Stockbrokers and for Asset Management Companies.

Sources: 2013 Companies Act, IRDAI (Outsourcing of activities by Indian Insurers) Regulations, 2017, Storage of Payment System Data Circular, Guidelines on Regulation of Payment Aggregators and Payment Gateways , Cyber Security Resilience Framework for Stockbrokers and Cyber Security Resilience Framework for Asset Management Companies

Data sharing: **Open banking**

- Under India's Open Banking approach, customers control their data via NBFCs called Account Aggregators (AAs). AAs act as licensed intermediaries that are responsible for the customers' consent management and consolidate customers' financial information held with different financial entities and spread across financial sector regulators. AAs acts as an intermediary between Financial Information Provider (FIP), such as banks, non-banking financial companies, insurance companies, insurance repositories, pension funds, etc., and Financial Information User (FIU), which are entities regulated by any financial sector regulator. The flow of information occurs through Application Programming Interfaces (APIs).
- The transfer of information requires explicit customer consent and with appropriate agreements/authorizations between the AAs, the customers, and the FIPs. Data cannot be stored by the AA or used by it for any other purpose. The regulations also set out explicit and robust data security and customer grievance redressal mechanisms. To protect customers' interest, the AAs are not permitted to undertake any other activity.
- Further, to facilitate seamless movement of data and consent-based sharing, a set of core technical specifications were framed in November 2019 by the Reserve Bank Information Technology Private Limited (ReBIT), a wholly owned subsidiary of the RBI, for adoption by all regulated entities acting either as FIPs or FIUs.
- To protect users' critical financial information and enforce a mechanism for obtaining proper consent from customers, AAs must obtain consent through a standardized electronic consent format as prescribed under regulations. AAs must inform the customer of all the necessary attributes contained in the consent format and the customer's rights to file complaints. Customers are able to revoke consent, following which a new consent would have to be obtained. Explicit onus has also been placed on FIPs to verify the validity of the consent, its specified date and usage, and the credentials of the AA.

Sources: Master Direction- Non-Banking Financial Company - Account Aggregator (Reserve Bank) Directions, 2016

07

Consumer protection

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Consumer protection: **National provisions**

Key Laws: Consumer Protection Act, 2019

Main provisions:

- The Consumer Protection Act provides for speedy redressal of all consumer complaints through designated consumer protection redressal forums at the District, State, and National levels.
- The Act vested wide-ranging powers with these redressal forums, starting from search, seizure, and summons to meet the needs of the changing times.
- The Consumer Protection Act also includes e-commerce platforms and electronic service providers under its purview to apply more accountability to online platforms and service providers.

Sources: [Consumer Protection Act]

Consumer protection: **Sectoral provisions**

Each financial sector regulator has issued its own consumer protection provisions:

RBI:

- The RBI has formulated a "Charter of Customer Rights" for banks based on global best practices around consumer protection. Banks are required to either prepare their own board-approved policy incorporating the five rights of the Charter or suitably integrate their existing customer service policy with the "Model Customer Rights Policy" formulated by Indian Banks' Association (IBA) / Banking Codes and Standards Boards of India (BCSBI).
- The RBI has three ombudsman schemes - one for banks, a second for NBFCs and a third for digital transactions. The RBI has suggested a potential new ombudsman scheme to unify these schemes to make the mechanism simpler, efficient, and more responsive.
- The ombudsman scheme for digital transaction is implemented by the RBI to enable a protection mechanism for digital payments service providers with relation to unauthorized electronic fund transfers (EFTs) and other digital transaction issues. The scheme contains detailed complaint procedures and a dispute resolution mechanism with a strict timeline for resolving issues. The Ombudsman can award monetary damages for any breach of regulations.

IRDAI:

- The IRDAI issued the IRDAI (Protection of Policyholders' Interests) Regulations, 2017 to ensure the interests of insurance policyholders are protected. Per Regulation 17, every insurer must have in place proper procedures and effective mechanisms to resolve complaints and grievances of policyholders and claimants efficiently and speedily.

Sources: Charter of Customer Rights, Model Customer Rights Policy, Banking Ombudsman Scheme, 2006, The Ombudsman Scheme for Non-Banking Financial Companies, 2018, The Ombudsman Scheme for Digital Transactions, 2019, RBI Press Release, Ombudsman Scheme for Digital Transactions, 2019, IRDAI (Protection of Policyholders' Interests) Regulations, 2017

Consumer protection: **Sectoral provisions (cont.)**

SEBI:

- SEBI set up the Office of Investor Assistance and Education to protect the interests of investors. It issued SEBI (Aid for Legal Proceedings) Guidelines, 2009 to help investors raise complaints and the SEBI (Investor Protection and Education Fund) Regulations, 2009 whose funds are used to protect investors and promote investor education and awareness.
- SEBI also established online investor complaints redressal system called "SCORES" to address investor complaints against listed companies or regulated entities in the securities market.

Unified complaints forum:

- All the financial regulators, along with state and law enforcement authorities, created a single consumer awareness and complaints forum where consumers can lodge complaints against any illegal activity carried out by the offending entities.
- The forum can be accessed here.

Sources: SEBI Website on Investor Assistance and Education, SEBI (Aid for Legal Proceedings) Guidelines, 2009, SEBI (Aid for Legal Proceedings) Guidelines, 2009, SCORES Website

08

Anti-money laundering (AML)/know your customer (KYC)

AML/KYC: **Key laws & main provisions**

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Key Laws:

- Prevention of Money Laundering Act, 2002 (PMLA, as amended)
- PML (Maintenance of Records) Rules, 2005
- Aadhaar Act
- Master Direction - Know Your Customer (KYC) Direction, 2016

Master Direction KYC:

- Applies to all entities regulated by RBI.
- These directions lay out KYC guidelines (Sec. 5), Customer Identification procedures (Sec. 13 and 14), and Customer Due Diligence procedures (Chp. 6) for each type of customer.
- RBI's officially valid KYC documents include passports, permanent account number cards issued by income tax authorities, driving licenses, voter identity cards, and job cards issued under the rural employment guarantee scheme.

Digital KYC:

On February 25, 2016, RBI introduced "Digital KYC" mechanisms in Section 3 of its amended Master Direction on KYC.

- Digital KYC involves capturing a live photo of the customer and an officially valid document or the proof of possession of Aadhaar where offline verification cannot be completed.
- RBI has further introduced Video based Customer Identification Process (V-CIP) which involves a customer-consent requirement to undertake the Customer Identification Process (CIP).
- Digital KYC and V-CIP KYC is permitted for all entities regulated by RBI.

Sources: Prevention of Money Laundering Act, 2002 (PMLA, as amended), Master Direction - Know Your Customer (KYC) Direction, 2016, Amendment to Master Direction (MD) on KYC

AML/KYC: **Key laws & main provisions (cont.)**

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PML Rules:

- Lay out the procedure and manner of maintaining, and time for furnishing, information and verification of records of the client identity.
- Mandate record maintenance of and allow sectoral regulators to issue their own procedures for maintenance of records.

Aadhaar Act (EKYC):

- Aadhaar Act established the Unique Identification Authority of India (UIDAI), which manages the specific data collected about Indian citizens. The UIDAI permits the instant verification of biometric and demographic details of the holder through e-verification which is routed via the Aadhaar database (i.e., e-KYC).
- However, the Supreme Court's judgement in *Justice Puttaswamy (Retd.) v. Union of India* denied private entities access to the UIDAI server for e-verification of holder information for KYC. It also restricted the use of Aadhaar as a mandatory KYC document for a limited number of services and permitted banks' access to Aadhaar only with the consent of the holder.

- In collaboration with the industry, the UIDAI released new e-KYC systems to ensure smooth continuation of business. These include the use of XML files, masking of data, and use of QR codes. The accounts opened through these e-KYC mechanisms have certain restrictions on usage.

Sources: PML (Maintenance of Records) Rules, 2005, Aadhaar Act, *Justice Puttaswamy (Retd.) v. Union of India*, UIDAI Paperless Offline KYC

AML/KYC: **Securities, outsourcing & confidentiality**

Investment

SEBI issued Guidelines on Anti-Money Laundering (AML) Standards and Combating the Financing of Terrorism (CFT)/ Obligations of Securities Market Intermediaries. This Master Circular requires all SEBI-registered entities have AML policies in place and lays out the manner and procedure to maintain records.

Outsourcing KYC

Banks, NBFCs, and other Regulated Entities (RE) may engage third parties for data collection for KYC purposes and rely on the third party's customer due diligence. However, REs are required to ensure that decision-making to determine compliance with KYC norms is not outsourced.

Confidentiality

There are Secrecy Obligations and restrictions on sharing KYC information (Section 56 of Master Directions). Information collected from customers for the purpose of opening an account is treated as confidential and related details cannot be divulged for the purpose of cross selling or for any other purpose without the express permission of the customer.

Sources: Guidelines on Anti-Money Laundering (AML) Standards and Combating the Financing of Terrorism (CFT) /Obligations of Securities Market Intermediaries, Master Direction - Know Your Customer (KYC) Direction, 2016,

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09 —

Competition

Competition: **Relevant legislation & regulatory powers**

Competition Act:

- The Competition Act, 2002 regulates various types of business activities.
- Section 3 of the Act prohibits vertical and horizontal anti-competitive agreements (e.g. between cartels) which causes or is likely to cause an appreciable adverse effect on competition (AAEC).
- Section 4 prohibits market players from abusing their "dominant position" by clearly prohibiting practices like predatory pricing that create a barrier to entry for new players.
- Section 5 regulates combination agreements (i.e. mergers or acquisitions) to prohibit them from hindering fair competition in the market.

Competition Commission of India:

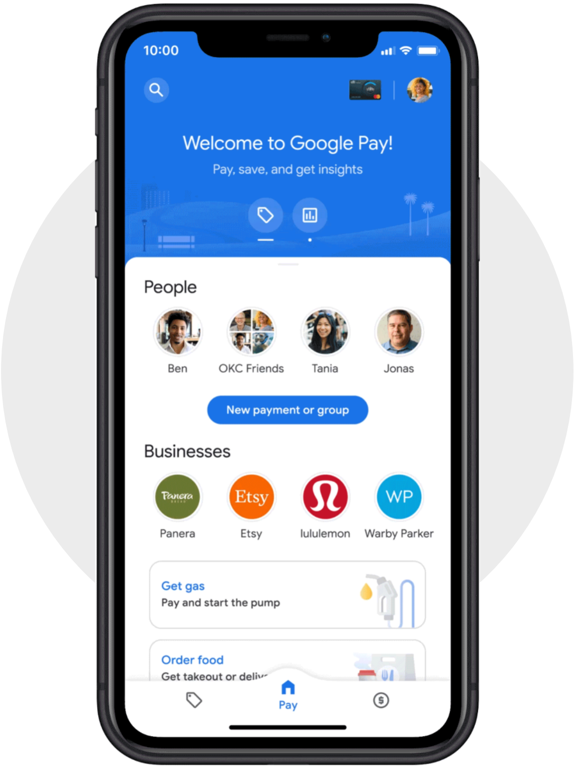
- The Competition Act, 2002 establishes the Competition Commission of India (CCI). The CCI is responsible for eradicating anti-competitive practices, promoting and sustaining competition in markets, protecting consumers' interests, and ensuring freedom of trade for other participants in markets (Section 18)
- Section 19 of the Act empowers the CCI to initiate an inquiry against a business organization for violation of Section 3 or 4.
- Section 19 also stipulates the factors the CCI will consider in determining if an arrangement or an activity causes an AAEC and if it should be deemed void.
- Section 20 empowers the CCI to initiate an inquiry against combination agreements for violations of Sections 5 and 6 and outlines the factors that must be considered to determine whether an agreement causes an AAEC in the market.

Sources: The Competition Act, 2002,

Competition: **Focus on fintech**

- The NPCI recently released a circular and Standard Operating Procedure mandating all Third-Party Application Providers such as Google Pay and PayPal to not exceed 30% of the overall volume of transactions processed in UPI payments.
- As recently as November 2020, the CCI ordered detailed investigation into Google Pay's activities for possible violations of Section 4 of the Competition Act.

G Pay



Sources: NPCI Circular, NPCI Standard Operating Procedure, CCI Google Pay Investigation

10 — Taxation of financial services

Taxation: **Financial services**

Tax incentives:

- The Start-up India initiative seeks to promote and incentivize startups by providing certain tax waivers for startups incorporated after 1 April 2016.
    - This includes a 100% tax rebate on profits for a total period of 3 years within a period of 10 years.
    - The tax incentive scheme has been extended until the end of the financial year 2022.
- A new section 54 EE was inserted in the Income Tax Act for eligible startups to exempt their tax on long-term capital gains within a period of six months from the date of transfer of the asset if such a long-term capital gain or a part thereof is invested in certain funds designated by Central Government as exemptible. To date the Central Government has not designated any funds as exemptible.
- There are tax rebates for merchants accepting more than 50% of their transactions digitally and for merchants providing cash back incentives to consumers for making payments of their GST Bills via prescribed digital modes.

Normal tax rate:

- If the given financial service does not fall within any exemption or promotion scheme of the Government of India, then it shall be subject to corporate tax regime under the Income Tax Act 1960.

Sources: Start-Up India Website, Income Tax Act 1960, Section 54 EE, DNA Press Article on Tax Exemption, GST Regime

For more information and further guidance on engaging with regulators see [Fintech Regulation in India]

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