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IN PURSUIT OF A LEVEL PLAYING FIELD – RBI'S NEW DRAFT GUIDELINES FOR PAYMENT AGGREGATORS

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BACKGROUND

With India moving closer to the financial inclusion mission day by day, digital payments have seen wide acceptance. A large section of the population has found comfort and convenience in going cashless. Of late, there has been a frenzy of new age technology driven companies *(including some major fintech players that have become household names)* entering the Indian payments space.[1] These companies have become closely regulated by the Reserve Bank of India ("**RBI**") ever since the implementation of the Guidelines on Payment Aggregators and Payment Gateways on March 17, 2020[2] read with the subsequent clarifications issued thereto on March 31, 2021[3] (collectively, the "**PAPG Guidelines**").

Amidst this blitz of new players receiving authorization on a regular basis to operate as online payment aggregators, the RBI has made headlines by issuing a press release indicating its willingness to regulate a so far untouched segment of the payment aggregation business – i.e., offline payment aggregation.[4] This press release contains two draft circulars for public comments – (I) the draft circular on regulation of payment aggregators – physical point of sale ("**Draft PA-P Guidelines**"); and (ii) amendments to the existing PAPG Guidelines ("**Draft Amendments**") (Draft PA-P Guidelines and Draft Amendments collectively, the "**Draft Guidelines**"). In this article, we aim to outline and de-clutter the requirements proposed through the Draft Guidelines.

1. https://inc42.com/features/fintech-startups-india-payment-aggregator-rush-rbi-compliance/.
2. https://rbi.org.in/Scripts/NotificationUser.aspx?Id=11822&Mode=0
3. https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12050&Mode=0.
4. https://www.rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=57713.

TRACING THE REGULATION OF PAYMENT AGGREGATORS AND THE POLICY INTENT OF RBI

Before delving into the intricacies of the Draft Guidelines, it is important to contextualise the regulation of payment aggregation businesses and the policy intent of the RBI. The RBI initially started regulating all entities acting as payment 'intermediaries' i.e., entities that were involved in collection and settlement of monies received from customers for payment to merchants using any electronic/online payment modes through the erstwhile 'Directions for opening and operation of Accounts and settlement of payments for electronic payment transactions involving intermediaries, 2009' ("**Intermediary Guidelines**").[5] The Intermediary Guidelines *inter alia* prescribed requirements for such intermediaries to maintain nodal accounts with banks for collection and settlement of funds between merchants and their customers along with permissible debits and credits for such accounts and settlement cycles. These nodal accounts were treated as internal accounts of the banks. Particularly, the Intermediary Guidelines applied only to electronic/online payment modes and excluded entities which facilitate delivery v. payment transactions *(i.e., intermediaries who facilitate delivery of goods/ services immediately/simultaneously on the completion of payment)* ("**DvP Transactions**") from the definition of 'intermediaries'[6]. Accordingly, DvP Transactions were not statutorily required to be routed through the aforesaid nodal account.

Subsequently, a discussion paper was released on September 17, 2019, outlining the shortcomings of the Intermediary Guidelines and the consequent approach for the regulation of payment aggregators and payment gateways. Soon after, the RBI issued the PAPG Guidelines. The PAPG Guidelines separately recognised the categories of 'payment aggregators' (erstwhile intermediaries under the Intermediary Directions) and 'payment gateways', and for the first time, brought in the requirement of authorisation of non-bank payment aggregators, while only prescribing certain good to-have requirements for payment gateways.[7] Additionally, PAPG Guidelines, also categorically called out e-commerce marketplaces which were required to stop acting as payment aggregators unless they completely separated their business activities and obtained relevant authorisation from the RBI. It is relevant to note that like the Intermediary Guidelines, the PAPG Guidelines continued to specifically exempt DvP Transactions, and clarified that their applicability did not extend to any offline transactions including cash on delivery transactions.[8]

Separately, certain commonalities that can be seen between the Intermediary Guidelines and PAPG Guidelines is that both prescribed certain requirements such as settlement time periods within which the money remitted by a customer, was required to be settled by an online payment aggregator to merchant(s) as well as permissible debits and credits from the nodal / escrow account where all money collected by payment aggregators was pooled and thereafter settled from. This prescription of (i) stringent settlement cycles and tight regulation of credit to and debit from the pool account, by the Intermediary Guidelines as well as the PAPG Guidelines for all online payments made through third-party intermediaries, and (ii) the specific exclusion of DvP Transactions from their respective scopes, made it clear that the RBI initially only intended to regulate online transactions where the payment is made in advance while the goods are delivered in a deferred manner and intended to extend protection to the merchants who provided their offerings without upfront payments for such offerings. This was to ensure customer and merchant protection and minimise the chances of funds being misappropriated or the customer or merchants being defrauded.

It was only in the RBI's Statement on Developmental and Regulatory Policies dated September 30, 2022[9] did the RBI, for the first time, indicate its intention to also regulate offline payment to bring about parity in regulation covering activities and operations of online and offline payment aggregators. Pursuant to the said statement, the RBI has now issued the Draft Guidelines which for the first time not only intends to regulate the activities of offline payment aggregators but also brings DvP transactions under its ambit.

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5. https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=5379&Mode=0.
6. *See* paragraph 2.1 of the Intermediary Guidelines.
7. The PA-PG Guidelines do not require bank payment aggregators to seek authorisation given that they handle funds as a part of their regular banking activities. Similarly, payment gateways are also not required to obtain authorisation from the RBI given that they do not handle funds and merely act as technology providers.
8. The PAPG Guidelines in relation to payment aggregators inter alia also prescribed (i) net worth requirements; (ii) governance requirements; (iii) KYC related compliances; (iv) requirements on merchant onboarding; (v) usage of escrow accounts; (vi) permissible debits and credits for such escrow accounts; (vii) customer grievance redressal; (viii) settlement cycles; and (ix) base-line technology recommendations.
9. https://rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=54466.

APPLICABILITY OF THE DRAFT GUIDELINES

All bank and non-bank payment aggregators which facilitate face-to-face or proximity payment transactions ("**PA- Physical Point of Sale**" or "**PA-P**") are intended to be covered within the scope of the Draft Guidelines. The Draft Amendments define PA-Ps to mean payment aggregators which facilitate face-to-face / proximity payment for DvP Transactions[10]. Interestingly, the Draft Amendments define online payment aggregators as entities which facilitate e-commerce transactions in non-DvP Transactions ("**PA-Online**" or "**PA-O**")[11], thereby explicitly leaving out all DvP Transactions concluded online, such as flight and movie ticket bookings. This brings in inconsistency and disparity between online and offline DvP Transactions, given the similar nature of both these transactions where the delivery of goods / services takes place simultaneously/ instantaneously with the payment being made. In fact, to this end, cash-on-delivery ("**COD**") transactions are of a similar nature as well, where payment and delivery occur simultaneously, with the key difference that COD does not entail involvement of a third party to settle funds between the customer and the merchant and the settlement happens inter se. By virtue of this, the different treatment of COD transactions and exclusion of such transactions from the purview of PAPG Guidelines as well as the Draft Guidelines may be justified given the elimination of any risk for the customer or merchant *vis-à-vis* the money involved. However, the rationale for keeping the online DvP Transactions outside the purview of the regulations whilst regulating offline DvP Transactions remains unclear and creates a gap in the otherwise clear intent of RBI to administer the regulations for any and all transactions involving payment aggregators.

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10. *See* paragraph 1.1 (b) of the Draft Amendment.
11. *See* paragraph 1.1 (a) of the Draft Amendment.

REQUIREMENT OF RBI AUTHORISATION FOR PA-P BUSINESS AND PROPOSED TIMELINES

As per the Draft Guidelines, all non-bank PA-Ps, existing or proposed will be required to (i) within 60 (sixty) days of issuance of the final circular, intimate the RBI of their intention to seek authorisation for their business as PA; and (ii) by May 31, 2025, apply to RBI for authorisation as a PA-P in Form A of the PAPG Guidelines. Similar to the transition period provided to PA-Os at the time of release of PAPG Guidelines, PA-Ps will also be allowed to continue their operations in the interim and even after making the necessary application for authorisation, till the RBI concludes on the application[12].

Separately, non-bank PA-Os (which have been authorised under the PAPG Guidelines as PA-Os or are awaiting authorisation from RBI pending their application) which are *also* carrying on PA-P activities as on the date of the issuance of the Draft PA-P Guidelines, will not be required to make a fresh application for authorisation but will only be required to seek an approval from the RBI,[13] within 60 (sixty) days from the date of issuance of the final circular.[14] Further, in case of authorised PA-Os (or the ones pending authorisation) which intend to start PA-P business after the issuance of the Draft PA-P Guidelines, such entities will not be required to go down the authorisation route as well and a prior approval from the to RBI for their PA-P business will suffice[15]. That said, as part of the approval process in both scenarios, the RBI will require all entities to prove their compliance with prescribed requirements for their PA-P business as well.

It is noteworthy that the RBI has clarified in the Draft Guidelines that any entity authorised to carry out one of the payment aggregation businesses (either PA-P or PA-O) will only be required to obtain an approval to commence the other payment aggregation activity (as may be relevant) and not a separate authorization[16].

Compliance timelines: All entities carrying on the PA-P activities currently will be required to ensure compliance with requirements under the PAPG Guidelines, such as guidelines on governance, merchant on-boarding, customer grievance redressal and dispute management framework, baseline technology recommendations, security, fraud prevention and risk management framework *(as amended by the Draft Amendment)* within 3 (three) months from the date of the final circular and will have to ensure continued compliance thereafter[17].

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12. *See* paragraph 1.2 of the Draft Guidelines.
13. Department of Payment and Settlement Systems (DPSS), RBI, Central Office (CO).
14. *See* paragraph 1.3 of the Draft Guidelines
15. *See* paragraph 1.5 of the Draft Guidelines
16. *ibid*
17. *See* paragraph 1.4 of the Draft Guidelines

NET WORTH REQUIREMENTS FOR PA-PS

Similar to the requirement for the PA-Os under the PAPG Guidelines, non-bank payment aggregators who are already existing in the market and provide PA-P services are required to have a minimum net-worth of INR 15 Crores (Indian Rupees Fifteen Crores) at the time of submitting application to the RBI for authorisation *(which will be required to be evidenced by a certificate from their statutory auditor at the time of application along with the latest audited statement(s) of financial accounts)* and a minimum net-worth of INR 25 Crores (Indian Rupees Twenty-Five Crores) by March 31, 2028, which will be required to be maintained on an ongoing basis[18].

In case of new non-bank PA-Ps, which have not commenced operations prior to the date of the final circular, such entities shall also have to ensure a minimum net worth of INR 15 Crores (Indian Rupees Fifteen Crores) at the time of submission of application (*to be evidenced by a certificate from their statutory auditor regarding the current net worth along with provisional balance sheet)*, however, such entity will be required to attain INR 25 Crores (Indian Rupees Twenty-Five Crores) net worth by the end of the third financial year of grant of authorisation[19].

Failure of any existing PA-P entity to meet the said net-worth requirement or failure to apply within the stipulated timeline for authorisation will mandate the defaulting entity to wind up their PA-P business by July 31, 2025, and to this end, the banks of such PA-P entities will also be required to close all their associated accounts by October 31, 2025[20].

18. *See* paragraph 2 of the Draft Guidelines
19. *ibid*
20. *ibid*

PROPOSED CATEGORIES OF MERCHANTS UNDER DRAFT AMENDMENTS AND THE PURPOSE OF CATEGORISATION

The Draft Amendments classify merchants into 2 (two) categories i.e., (i) small merchants; and (ii) medium merchants. Interestingly, this division appears to be relevant only for physical / offline merchants, as small merchants are categorically defined as *physical merchants* who (i) only undertake proximity or face-to-face transactions with a business turnover of less than the threshold limit of INR 5 Lakhs (Indian Rupees Five Lakhs) per annum and (ii) are not registered under the Goods and Services Tax ("**GST**") regime[21]. Medium merchants have been defined as *physical or online merchants* who (i) undertake transactions with a business turnover of less than the threshold limit of INR 40 Lakhs (Indian Rupees Forty Lakhs) per annum and (ii) are not registered under the GST regime, and specifically excludes small merchants. Additionally, the Draft Amendments, for the first time, define a 'marketplace entity' as '*an e-commerce entity which provides an information technology platform on a digital or electronic network to facilitate transactions between buyers and sellers*', and explicitly clarifies that marketplace entities are also to be considered as merchants.[22]

The PAPG Guidelines had prescribed that the RBI Master Directions on Know Your Customer, 2016 ("**KYC-MD**")[23] would be applicable wherever a payment aggregator has an account-based relationship with a merchant and a KYC had to be done at the time of onboarding merchants *(except where the merchant uses a bank account on which a bank has already done KYC)*[24]. In furtherance to this, the Draft Guidelines have proposed a segregation of merchant categories into small and medium merchants for the purpose of prescribing different KYC requirements for each such category of merchant. Further, it states that for small merchants, payment aggregators must conduct contact point verification ("**CPV**"). CPV is generally understood to be a physical form of verification, of merchant's business establishment *(which might prove to be procedurally challenging and onerous)*. Further, payment aggregators must also verify such small merchant's bank account in which funds are settled[25]. Whereas, for medium merchants, payment aggregators must in addition to CPV also verify an officially valid document *(like passport or driving license*) of the proprietor or beneficial owner[26].

Where payment aggregators intend to undertake Video based Customer Identification Process ("**V-CIP**") for carrying out a part of the due diligence exercise (to the extent permitted), payment aggregators have been allowed to take the assistance of agents for such process subject to maintaining details of the agent assisting the merchant for the V-CIP process[27]. However, the Draft Amendments do not prescribe any specific requirements for merchants having business of a larger magnitude where the turnover may exceed INR 40 Lakhs (Indian Rupees Forty Lakhs) per annum, and accordingly, all compliances under KYC-MD will need to be followed with respect to merchants with business turnover of a larger magnitude.

Ongoing monitoring: The Draft Amendments mandate an additional requirement of ongoing monitoring by all payment aggregators of transaction activity of the merchant on an ongoing basis. Here, it would be the duty of the payment aggregators to migrate merchants to higher category of due diligence based on the transaction patterns and any consequent change in turnover of the merchant and accordingly, undertake additional due diligence[28]. In this regard, payment aggregators will also have the additional responsibility to ensure that the merchant transactions processed by it are in line with the merchant's business profile and will be required to place risk-based payment limits for the merchants[29].

The Draft Amendments further reiterate that payment aggregators will be expected to: (i) ensure complete and ongoing compliance to the wire transfer guidelines prescribed in the KYC-MD; (ii) register with the Financial Intelligence Unit-India ("**FIU-IND**") and provide such

21. *See* paragraph 1.2 of the Draft Amendments
22. *See* paragraph 1.3 of the Draft Amendments
23. Reserve Bank of India - Master Directions (rbi.org.in).
24. *See* paragraph 4.2 of the Clarification issued by the RBI on PAPG Guidelines dated March 31, 2021
25. *See* paragraph 4.2 (a) of the Draft Amendments.
26. *See* paragraph 4.2 (b) of the Draft Amendments.
27. *See* paragraph 4.2 (c) of the Draft Amendments.
28. *See* paragraph 4.3of the Draft Amendments.
29. *ibid*

information as may be sought by the FIU-IND; and (iii) make quarterly filings to the regional officer of the RBI regarding the progressive compliance of the prescribed KYC requirements for existing merchants[30]. In terms of timelines, (i) all existing authorised payment aggregators as well as payment aggregators which are awaiting authorisation, will be required to complete the prescribed due diligence process by September 30, 2025[31], and (ii) entities already providing PA-P services as on the date on which the Draft Guidelines become applicable, will be provided a maximum of 12 (twelve) months from the date of making an application before the RBI for authorisation,[32] to complete this process. While the effort required on the part of existing PA-O entities carrying out PA-P business as well as the PA-P entities, to complete the due diligence process for their respective PA-P merchants will be similar, the rationale for prescribing different timelines for completion of such process by both entities is unclear.

30. *See* paragraph 4.8 of the Draft Amendments.
31. *ibid*
32. Please note that the RBI has prescribed different timelines ranging from 3 (three) months to 6 (months) for the completion of KYC for existing merchants based on the gross processing value of the merchant onboarded.

OPERATION OF ESCROW ACCOUNTS

The extant PAPG Guidelines require PA-Os to pool customer funds in an escrow account for the purpose of settlement into merchant accounts[33]. The Draft Amendment has now proposed mandating funds in respect of offline DvP Transactions undertaken by PA-Ps to also be routed through such escrow account. While it does not appear to be a mandatory requirement for the escrow account for PA-P and PA-O to be common *(where the payment aggregator operates both as a PA-P and PA-O)*, having a common account may pose challenges, especially in cases where there are any regulatory or operational concerns with one of the businesses (either PA-O or PA-P), it may end up impacting the other business as well.

Separately, the RBI has also proposed to remove one of the prominent permissible debit categories which allowed payment aggregators to make payment to any other account (other than the merchant's) on specific directions from the merchant.[34] A plain reading of this proposed deletion[35] clearly indicates that debit of amounts from the escrow account to any account, other than the merchant's KYC compliant account is prohibited *(which earlier was specifically permitted)*. However, on the other hand, the Draft Amendment has parallelly introduced a clause stating that a payment aggregator must ensure that marketplaces do not collect or settle funds for services other than those offered on the platform,[36] which indirectly indicates that marketplaces may, by themselves, be allowed to settle money for certain transactions.

This raises several questions in relation to the intent of the RBI and the business practices that RBI may view as legitimate now. It seems that the proposed deletion of the permissible debit category (b) under the extant PA-PG Guidelines allowing payment aggregators to make payment to third-party on the instruction of the merchant, is intended to avoid abuse and prevent funds from going into unverified third-party accounts where the payment aggregators may not have undertaken KYC- thereby leading to money laundering risks. However, the proposed introduction of Clause 4.4 under the Draft Amendment, which alludes to marketplaces collecting and settling funds for services offered on their platform, has added to the uncertainty. Another question that arises in this context is on how payment aggregators will ensure marketplaces do not independently settle funds to accounts other than those of their respective merchants offering good/ services on such marketplaces' platforms, with the deletion of the aforesaid debit category. These ambiguities, if not adequately clarified in the final version of the Draft Guidelines, will create practical challenges as payment flows currently prevalent in the industry may have to be reworked. It remains to be seen how payment aggregators and marketplaces will interpret these issues and to what extent the Draft Guidelines will be amended in this regard basis stakeholder inputs to clarify this conflict and loopholes that arise from it.

In any case, the proposed deletion of the current permissible debit category (b) under PAPG Guidelines will explicitly restrict the current settled market practice of split settlement arrangements such as for buy-now-pay-later (BNPL) transactions or insurance payments or loan payments, where a portion of the money due to the merchant would be settled by the payment aggregator to a third-party on the merchant's instructions. Such transactions will not be permitted to be routed through a payment aggregator once these amendments come into effect and the business practices will have to be updated.

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33. *See* Paragraph 8 of the PAPG Guidelines.
34. Permissible debit category (b) under the PAPG Guidelines (Ref. Clause 8.9.1.2(b) of the PAPG Guidelines).
35. *See* Paragraph 3.4 of the Draft Amendments.
36. Clause 4.4 of the Draft Amendments.

OTHER CHANGES TO THE PAPG GUIDELINES

In addition to the aforesaid, the Draft Amendments intend to bring about certain other changes in the payment aggregation regime, such as specifically allowing non-bank payment aggregators to use agents to assist their merchants for onboarding subject to certain conditions such as (i) having a board-approved policy clearly laying down the framework for engaging agents; (ii) carrying out proper due diligence of the prospective agents; (iii) being vicariously liable for the agents, including safety and security aspects; (iv) preserving records and confidentiality of customer information in their own and the agent's possession; and (v) regular monitoring and annual performance review of agents[37].

Additionally, the Draft Amendments also specifically aim to extend the card-on-file restrictions to all payment aggregator facilitated transactions from August 1, 2025, where no entity, other than card issuer and/or card network, will be allowed to store any card data or information[38]. By this date, all previously stored card data will be required to be deleted by payment aggregators and other entities in the payment chain. That said, for limited purposes of transaction tracking and reconciliation, entities will be allowed to store limited data such as last four digits of card number and card issuer's name[39]. It is relevant to note that this burden of ensuring compliance with the card-on-file restrictions has been placed on card networks and can be expected to be passed on to different entities in the payment chain, by way of contractual obligations, including PA-Ps and PA-Os.

The Draft Guidelines clarify that to the extent the existing PAPG Guidelines are not amended by the Draft Amendment, the same shall apply *mutatis mutandis* to PA-Ps.

37. *See* Paragraph 5.1 of the Draft Amendments.
38. *See* Paragraph 7 of the Draft Amendments.
39. *Ibid*

CONCLUSION

RBI's initial concerns leading to the regulation of the payment aggregation space pre-PAPG Guidelines were mostly on delayed payments leading to systemic risks, lack of direct regulation and supervision over intermediaries facilitating payments, lack of redressal mechanisms for customers and merchants, the need for appropriation of roles and responsibilities among merchants and customers; among other things.[40] With the introduction of the PAPG Guidelines, the RBI had addressed most of these concerns. With the Draft Guidelines, the RBI now appears to bring about a marked pivot in regulation of the payment aggregation business – now venturing into the previously uncharted territory of offline payment aggregation. It appears that RBI intends to create a level playing field for both online and offline payment aggregators vis-à-vis the regulatory standards applicable to them.[41] In furtherance of this objective, the RBI has proposed to bring about uniform barriers for entry such as the requirement for authorization, net-worth requirements, same or similar compliance burden across the board for both online and offline payment aggregators.

The foregoing being said, while the intentions of the RBI are laudable, bringing about equality in terms of regulation for similar businesses but which operate in completely different circumstances (i.e., online and offline payments) may require further consideration. Several ambiguities remain that will need clarifications from the RBI. This ranges from the rationale behind the mandatory need for all DvP Transactions to be routed through escrow accounts in PA-P and not PA-O to questions on whether the removal of flexibility to merchants vide instructing payment aggregators to make payments to third parties impacts ongoing traditional arrangements with payment aggregators that comprise of multiple sub-merchants or models that involve multiple beneficiaries to the same transaction that the customer is aware of. That said, given that the Draft Guidelines are only a first iteration of the guidelines intended to be operationalised by the RBI and are subject to change based on stakeholder comments, the aforesaid apparent issues can be expected to be course corrected in time.

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40. https://rbidocs.rbi.org.in/rdocs//PublicationReport/Pdfs/DPSSDISCUSSIONPAPEREFCF5B7E17F9431185BD4FD57E540F47.PDF.
41. https://rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=54466.

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