

RBI's circular on Cross Border Payment Aggregators

11 December 2023

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1 Introduction

On 31 October 2023, the Reserve Bank of India (RBI) issued a circular for the 'Regulation of Payment Aggregator - Cross Border' (**Circular**) with the intent of directly regulating all entities facilitating cross-border payment transactions for import and export of goods and services. The Circular categorises such entities as Payment Aggregator - Cross Border (**PA-CB**) and provides the framework for carrying out such activities including the categories of authorisations required, and net worth requirements.

The Circular streamlines the existing regulatory framework for entities facilitating such transactions. It effectively replaces some existing arrangements (such as processing by collection agents and online payment gateway service providers (**OPGSP**)) currently used in the industry for cross-border transactions thereby requiring them to adopt the framework applicable to PA-CBs and obtain necessary authorisations to continue operations.

Marking a key development in the ongoing efforts to regulate cross-border payments, the Reserve Bank of India has released a circular to regulate entities that facilitate cross-border payment transactions for import and export of goods and services. This update analyses the scope of the circular and compliance requirements that are relevant for entities operating in this space.

2 Overview of the existing framework

Prior to the Circular, cross-border transactions for import and export of goods and services were primarily enabled through the following arrangements:

- a. **Online payment gateway service providers:** OPGSPs were specifically governed under the RBI's circular on '*Processing and settlement of import and export related payments facilitated by Online Payment Gateway Service Providers*' dated 24 September 2015. OPGSPs did not need to obtain an authorisation from RBI but were required to have a standing arrangement with an Authorised Dealer (Category I) Bank (**AD Bank**) that was tasked with adhering to RBI's requirements. Under this framework, OPGSPs were subject to certain restrictions such as only being able to facilitate import of goods and software (and not specifically services) and a relatively low limit of USD 2,000 for imports.
- b. **Collection agents:** The arrangements between certain non-bank entities and AD Banks were specifically approved by the RBI, allowing such non-bank entities to operate as collection agents for foreign entities offering their goods and services in India. While there was no dedicated framework regulating collection agents, the approvals granted by RBI specified the terms and conditions that had to be adhered to by entities appointed as collection agents, including the timelines for remitting the proceeds collected, reporting and due diligence requirements in accordance with the Foreign Exchange Management Act, 1999 (**FEMA**).

Facilitation of transactions under these arrangements may now be treated as a PA-CB activity and be subject to the consolidated framework prescribed under the Circular, which permits PA-CB entities to facilitate import and export transactions for goods and services in online mode (thereby expressly covering digital services). However, it remains to be seen whether the specific collection agent approvals granted by the RBI are being entirely subsumed.

3 Scope of PA-CB activity

The Circular defines a PA-CB as an entity that facilitates cross-border payment transactions for import and export of permissible goods and services in online mode. In defining PA-CB activity broadly, the intent appears to be to provide a regulatory mechanism enabling domestic payment aggregators to undertake cross-border payment facilitation as well as cover intermediaries traditionally carrying out OPGSP activity. Consequently, such entities will need to open necessary bank accounts required by the Circular (e.g., Import Collection Account or Export Collection Account) and comply with the obligations thereunder.

Further, the definition of PA-CB refers to only entities facilitating cross-border payments in the '*online mode*'. Basis this definition, it is not clear whether the intention of the Circular is to cover only a certain subset of electronic payment methods seen in internet-based transactions (as typically facilitated by payment intermediaries - i.e., where there is a direct credit pull by the payment intermediary from the payer), or if direct bank to bank transfers initiated by the payer through methods such as RTGS and NEFT are also intended to be covered under this Circular.

The manner in which cross-border payments involving deferred payments will be dealt with also remains to be clarified, since the RBI's Guidelines on Regulation of Payment Aggregators and Payment Gateways dated 17 March 2020 (**PA Guidelines**) have been made applicable to PA-CBs. This is because while RBI had earlier clarified that the PA Guidelines (including the settlement timelines thereunder) address transactions where the payment is made in advance and goods are delivered in a deferred manner, the Circular makes the PA

Guidelines applicable to all PA-CBs (without any further qualifications on the deferred nature of '*Delivery versus Payments*'). As a result, the applicable timelines in relation to cross-border payments where goods are delivered in advance and payment is made in a deferred manner may need to be operationally assessed by PA-CBs.

4 Eligibility and authorisation requirements

The Circular envisages that PA-CB activity can be carried out by AD Banks (who do not require separate authorisation) or by non-bank entities. Non-bank entities are required to apply to RBI for authorisation by 30 April 2024 in the prescribed format as either:

- a. an Export only PA-CB (**Export PA**);
- b. an Import only PA-CB (**Import PA**); or
- c. an Export and Import PA-CB (**Import and Export PA**).

The Circular also prescribes certain timelines for payment aggregators (authorised or whose applications are pending with RBI) already engaged in PA-CB activities, and entities looking to commence PA-CB activities, to seek approval from RBI in relation to continuing with PA-CB activities, commencing PA-CB activities, or changing their category of PA-CB activity.

The RBI has prescribed three eligibility conditions for any entity that seeks to undertake PA-CB activity -

- a. **Net worth requirement:** Existing non-bank PA-CBs and new non-bank PA-CBs are required to have a net worth of INR 15 crores at the time of submitting the application for authorisation. Such net worth must be thereafter increased to INR 25 crores by (i) 31 March 2026 in case of existing non-bank PA-CBs; and (ii) by the end of the third financial year from the grant of authorisation, in case of new non-bank PA-CBs.
- b. **Registration with the Financial Intelligence Unit:** All non-bank PA-CBs (existing as on the date of the Circular) are required to register themselves with the Financial Intelligence Unit-India (**FIU-IND**). This is discussed in detail in point 6 below.
- c. **Compliance with the PA Guidelines:** All non-bank entities that apply for a PA-CB authorisation within the designated timelines are permitted to continue such services till they receive communication from RBI regarding the decision on their application. However, RBI has imposed a condition that all entities currently carrying out this activity should ensure adherence to the guidelines on governance, merchant on-boarding, customer grievance redressal and dispute management framework, baseline technology recommendations, security, fraud prevention and risk management framework under the PA Guidelines within a period of three months from the date of the Circular (and on an ongoing basis thereafter). Accordingly, entities that are covered under the scope of PA-CB activity will be required to scale up their technology and business practices within this three-month period - failing which their application may be refused by RBI. The Circular also provides that all other instructions issued by RBI regarding payment aggregators will be applicable to PA-CBs. Accordingly, instructions by RBI such as those relating to tokenisation, restrictions on storage of card credentials, etc., will be applicable to PA-CBs. Entities currently undertaking PA-CB activity will also need to assess any potential transition of existing fund flows to the flows contemplated under the Circular prior to the grant of authorisation by RBI.

5 Specific requirements for PA-CBs based on the category of PA-CB activity

The Circular sets out (i) separate requirements of fund flows and settlement for a PA-CB's import and export activities; and (ii) certain common requirements for all PA-CBs regardless of the category of activity undertaken by it. These are discussed below.

a. *Import PAs*

Import PAs are required to maintain an Import Collection Account (**ICA**) with an AD Bank. The Circular requires payments made by customers in India for the import of goods or services to first be collected in the escrow account of a PA, then transferred to the ICA, and finally debited from the ICA and transferred to the relevant overseas merchant accounts. An Import PA that does not have the authorisation to carry out domestic PA activity may therefore need to have an arrangement with a domestic PA for leveraging its escrow account, to facilitate the domestic leg of the transaction.

To offer import facilitation services, Import PAs are permitted to directly onboard overseas merchants or enter into agreements with e-commerce marketplaces and overseas entities offering payment aggregation services. They are also responsible for ensuring that (i) the onboarding is in accordance with the Reserve Bank of India (Know Your Customer) Directions, 2016 (**KYC Master Directions**); and (ii) they do not facilitate imports that are prohibited under India's Foreign Trade Policy.

Customers are permitted to make payments for imports using any payment instrument provided by Indian authorised payment systems (such as credit cards, debit cards, prepaid payment instruments and Unified Payments Interface) except small prepaid payment instruments, and in instances where the customer attempts to import goods or services whose per unit cost exceeds INR 2.5 lakh, then Import PAs are also required to undertake diligence of the customer per the KYC Master Directions.

b. *Export PAs*

Export PAs are required to maintain an Export Collection Account (**ECA**) with an AD Bank, that may be denominated in INR or foreign currencies. In case the Export PA intends to maintain ECAs in foreign currencies, it will be required to maintain separate ECAs for each foreign currency. In terms of payment flows, the Circular requires that all export proceeds be credited to the relevant currency ECA.

Similar to Import PAs, Export PAs must (i) ensure that no goods or services are exported in breach of India's Foreign Trade Policy; (ii) undertake diligence of the merchants, e-commerce marketplaces, and payment aggregators onboarded by them (as prescribed under the KYC Master Directions); and (iii) ensure that proceeds from the ECA are directly settled into the account of the merchant. The Circular clarifies that settlement by PA-CBs in foreign currencies may be offered to only those merchants that are directly onboarded by the PA-CB.

Further, while the Circular requires export proceeds to be remitted into the relevant ECA, it does not specify if these funds must be remitted directly from the overseas customer's account to the ECA. Given that the Circular recognises the onboarding of payment aggregators but does not limit this to only domestic payment aggregators, it is arguable that export proceeds being aggregated by an overseas payment aggregator outside India may be permitted so long as a PA-CB is involved in the fund flow within India.

c. *Common requirements for Import and Export PAs*

In case applicant entities or domestic PAs intend to operate as Import and Export PAs under the Circular, they will be required to comply with both points (a) and (b) above, with separate ICA and ECA accounts being maintained for import and export transactions, respectively. In case the PA-CB also undertakes domestic PA activities, they are required to keep the ICA and ECA separate from the domestic escrow account.

Similar to the PA Guidelines, the Circular designates PA-CBs as '*Designated Payment Systems*' under the Payment and Settlement Systems Act, 2007 (once they receive their authorisation from RBI). Additionally, the maximum value '*per unit*' of good or service that is sold or purchased must be INR 25 lakh. It is notable that this new limit differs from the limits prescribed for OPGSPs, which were on a per-transaction basis and not a per-unit basis. There is currently ambiguity as to how a '*unit*' of a good or service will be measured in practice.

Separately, the Circular (i) specifically requires PA-CBs to comply with prescriptions regarding permissible debits and credits under the PA Guidelines; and (ii) also generally requires PA-CBs to comply with all instructions issued to payment aggregators under the PA Guidelines.

It may be noted that while the Circular places specific compliance obligations regarding foreign exchange on PA-CBs, it also places an overarching obligation on AD Banks maintaining ICA and ECA accounts to ensure that all PA-CB transactions comply with the requirements of FEMA, including obligations regarding the reporting and reconciliation of entries in the Export Data Processing and Monitoring System or the Import Data Processing and Management System (as relevant). Due to this seeming overlap regarding regulatory obligations, it will be interesting to see how PA-CBs and AD Banks agree on their obligations from a foreign exchange compliance perspective.

6 Financial Intelligence Unit-India

Under the Circular, all non-bank PA-CBs (existing as on the date of the Circular) are required to register themselves with the FIU-IND. The FIU-IND is the national agency established under the Prevention of Money Laundering Act, 2002 (**PMLA**), and Prevention of Money Laundering (Maintenance of Records) Rules, 2005 (**Maintenance of Records Rules**), for receiving, processing, analysing, and disseminating information pertaining to suspicious financial transactions. Not only does the FIU-IND process requests and provide information to other domestic law enforcement agencies, but also to international investigation agencies.

Under the PMLA and Maintenance of Records Rules, it is mandatory for a '*reporting entity*' to maintain and furnish records of certain transactions to the FIU-IND on a periodic basis. Further, a host of compliance obligations are imposed on the reporting entity, which include appointing a designated director and principal officer, implementing a client due diligence program, verification of clients, evolving an ongoing internal mechanism for maintaining, classifying and furnishing information in the nature of suspicious transaction reports, cross border wire transactions, cash transactions, etc. Earlier, the requirement of registering with the FIU-IND was generally understood to be placed on '*reporting entities*' under PMLA. However, pursuant to the Circular, all non-bank PA-CBs seeking authorisation from RBI would, even prior to authorisation as a PA-CB, be required to register with the FIU-IND as a pre-requisite to their PA-CB application.

This pre-requisite to register with the FIU-IND appears to be in line with a recent judicial decision, where the Delhi High Court took the view that an OPGSP was liable to be viewed as a '*payment system operator*' as defined by the PMLA, and accordingly, a reporting entity for the purpose of the PMLA. The Circular confirms

the position that such entities, along with erstwhile collection agents, have the additional obligation of registering with and reporting transactions to the FIU-IND.

From a timeline perspective, given that the application to the RBI for authorisation is required to be made by 30 April 2024, the non-bank PA-CBs would need to complete their registration with the FIU-IND in advance to be eligible to apply to the RBI.

7 Conclusion

The Circular is a major step towards bringing regulatory certainty and consistency to cross border payment transactions that have been previously regulated either directly or indirectly under scattered regulatory frameworks issued by the RBI. It also indicates the rapid development that the cross-border payments space has undergone over the past couple of years.

The Circular is also significant because investigation agencies are becoming more interested in understanding the complex business models, fund flow, and licenses/approvals of players in the payment ecosystem. Considering the universal adoption of digital payments, the dynamic nature of technology, constant changes in the payment systems, and the rise of numerous players, investigation agencies are making a greater effort to understand the operating model of such players to keep a check on unlawful transactions.

For next steps, all entities engaged in the facilitation of import or export transactions will need to assess whether their offerings will require authorisation and if so, they will need to (a) comply with the requirements of the PA Guidelines and the Circular; and (b) commence their applications in the manner specified under the PA Guidelines and the Circular.

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