

**RBI
UPDATES**

1. Opening of Current Accounts by Banks - Need for Discipline

On **November 02, 2020** The Reserve Bank of India (RBI) vide Notification No. **DOR.No.BP.BC.27/21.04.048/2020-21** notified on opening of Current Accounts by Banks-Need for Discipline, in reference to its earlier Circular no.: DOR.No.BP.BC/7/21.04.048/2020-21 dated August 06, 2020.

In Para 4 of the Circular dated August 06, 2020, wherein the banks were advised that in respect of existing current and CC/OD accounts, banks shall ensure compliance with the instructions given in the Circular within a period of 3 months from the date of issue of the circular i.e. by November 05, 2020. RBI has since received several references from banks seeking clarifications on operational issues regarding maintenance of current accounts already opened by the banks. These references are being examined by the RBI and will be clarified separately by means of a FAQ. Pending the issue of FAQ on these operational issues, RBI decided that banks may ensure compliance with the instructions contained in Para 4 of the circular *ibid* by December 15, 2020.

The link for aforesaid Notification is as mentioned below:

<https://rbidocs.rbi.org.in/rdocs/notification/PDFs/NT62F0712EF9A7044379B8BC0D8E827BE67F.PDF>

2. Co-Lending by Banks and NBFCs to priority sector

On **November 05, 2020** RBI vide **Notification No. FIDD.CO.Plan.BC.No.8/04.09.01/2020-21** has notified about Co-Lending by Banks and NBFCs to Priority Sector rechristened as “Co-Lending Model” (CLM), to improve the flow of credit to the unserved and underserved sector of the economy and make available funds to the ultimate beneficiary at an affordable cost, considering the lower cost of funds from banks and greater reach of the NBFCs.

In terms of the CLM, banks are permitted to co-lend with all registered NBFCs (including HFCs) based on a prior agreement. The co-lending banks will take their share of the individual loans on a back-to-back basis in their books. However, NBFCs shall be required to retain a minimum of 20% share of the individual loans on their books.

The banks and NBFCs shall formulate Board approved policies for entering into Co-Lending and based on their approved policies, a Master Agreement may be entered which shall *inter-alia* include, terms and conditions of the arrangement, the criteria for selection of partner institutions, the specific product lines and areas of operation, along with provisions related to segregation of responsibilities as well as customer interface and protection issues, as detailed in the Annex.

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The Master Agreement may provide for the banks to either mandatorily take their share of the individual loans originated by the NBFCs in their books as per the terms of the agreement, or to retain the discretion to reject certain loans after their due diligence prior to taking in their books, subject to conditions specified in the Annex to the notification.

The banks can claim priority sector status in respect of their share of credit while engaging in the CLM adhering to the specified conditions.

The CLM shall not be applicable to foreign banks (including WOS) with less than 20 branches.

This circular supersedes the earlier circular FIDD.CO.Plan.BC.08/04.09.01/2018-19 dated September 21, 2018 on the same subject.

The link for the above notification and annex is as mentioned below:

<https://rbidocs.rbi.org.in/rdocs/notification/PDFs/NT6300DF94088B674E7FB6FC7EEC214B0200.PDF>

3. Discontinuation of Returns/Reports under Foreign Exchange Management Act, 1999

On November 13, 2020 RBI vide A.P. (DIR Series) Circular No. 05 notified on Discontinuation of Returns/Reports under Foreign Exchange Management Act, 1999 (FEMA) by AD Bank, Custodian and AMC. This is done a view to improve the ease of doing business and reduce the cost of compliance and the following 17 Returns/ Reports are discontinued to be reported by Reporting Entities like AD Bank, Custodian and Asset Management Company :-

1. Category-wise transaction where the amount exceeds USD 5000 per transaction
2. Category-wise, transaction-wise statement where the amount exceeds USD 25,000 per transaction
3. Statement of Purchase transactions of USD 10,000 and above (including transactions of their franchisees)
4. Extension of Liaison Offices (LOs)
5. Extension of Project Offices (POs)
6. FII/FPI daily
7. FII/FPI Return (Monthly)
8. FVCI reporting
9. Reporting of Inflow/Outflow details in respect of Mutual Fund by Asset Management Companies
10. Market value of FII Investment in India on fortnightly basis
11. Market value of FII Investment in India on Monthly basis
12. FII holdings as percentage of floating stock
13. Form DRR for Issue/transfer of sponsored/unsponsored Depository Receipts
14. ADR/GDR Movement Report- two way fungibility
15. Repatriation of Sales proceeds of underlying shares represented by FCCBs/GDRs/ ADRs
16. GDR/ADR underlying shares issued, re deposited and released monthly reporting
17. Monitoring of disinvestments by Overseas Corporate Bodies

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The Master Direction - Reporting under Foreign Exchange Management Act, 1999 dated January 01, 2016, shall accordingly be updated to reflect the above changes.

However, Form DRR which are to be reported by the Custodian to RBI at the time of issue/transfer of depository receipts for Issue/transfer of sponsored/unsponsored Depository Receipts (DRs) only the hardcopy filing of form DRR that has been discontinued. The domestic custodian may continue to report the form DRR on FIRMS application in terms of Regulation 4 (5) of FEM (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2019.

The link for the aforesaid circular and Annexure is as mentioned below:

<https://rbidocs.rbi.org.in/rdocs/notification/PDFs/APDIR05CE737874637145C7ACB6287F1848E5E9.PDF>

4. Foreign Exchange Management Act, 1999 (FEMA)- Compounding of Contraventions under FEMA, 1999

On **November 17, 2020** RBI issued a **Circular No. A.P. (DIR Series) Circular No. 06** on Compounding of Contraventions under Foreign Exchange Management Act, 1999 (FEMA). The **powers to compound the certain contraventions have been delegated to the Regional Offices/Sub-Offices** of the Reserve Bank for enhanced customer service and operational convenience.

The compounding powers stand delegated to the Regional Offices/ Sub Offices of the Reserve Bank to compound the **following contraventions** under FEM (Non –Debt Instruments) Rules, 2019 and FEM (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2019 :-

- a) Rule 2(k) read with Rule 5 on Permission for making investment
- b) Rule 21 on pricing guidelines
- c) Paragraph 3 (b) of Schedule I (Issue of shares without approval of RBI or Government, wherever required)
- d) Rule 4 (Receiving investment in India from non-resident or taking on record transfer of shares by Investee Company)
- e) Rule 9(4) and Rule 13(3) on Transfer of equity instruments
- f) Regulation 3.1(I)(A) on Mode of Payment
- g) Regulation 4(1), 4(2), 4(3), 4(6), 4(7) and 4 (11) on Reporting Requirements

Further, it has been decided to discontinue the classification of a contravention as ***‘technical’*** that was dealt with by way of an administrative/ cautionary advice and regularize such contraventions by imposing minimal compounding amount as per the compounding matrix as contained in the ‘Master Direction - Compounding of Contraventions under FEMA, 1999’ dated January 01, 2016, as amended from time to time.

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In partial modification of earlier instructions in reference to para 3(l) of A.P. (DIR Series) Circular No.73 dated May 26, 2016 with respect to public disclosure of Compounding Orders, it has also decided that in respect of the **Compounding Orders passed on or after March 01, 2020** a summary information, instead of the Compounding Orders, shall be published on the Bank's website in the following format:

Sr. No	Name of the Applicant	Details of contraventions (provisions of the Act/Regulation/Rules compounded)	Date of compounding order	Amount imposed for compounding of contraventions
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The link for the aforesaid Circular is as mentioned below:

<https://rbidocs.rbi.org.in/rdocs/notification/PDFs/APDIRS62545AA7432734B31BD5B59601E49AA6C.PDF>

5. Maintenance of Escrow Account with a Scheduled Commercial Bank

On **November 17, 2020** RBI issued a **Circular No.: DPSS.CO.PD.No.660/02.14.008/2020-21** on maintenance of Escrow Account with a Scheduled Commercial Bank.

An authorised PPI Issuer or a PA is required to maintain an escrow account with a scheduled commercial bank on an ongoing basis. With a view to diversify risk and address business continuity concerns, it has been decided to allow one additional escrow account in a different scheduled commercial bank. The relevant instructions are being modified as per Annex 1 and 2 to this circular (link given below).

Under Master Direction on Issuance and Operation of Prepaid Payment Instruments the Modifications are as under:

Para No. 12 : Deployment of Money Collected

- A. **Para No. 12.3** Non-bank PPI issuers are required to maintain their outstanding balance in an escrow account with any scheduled commercial bank. An additional escrow account may be maintained with a different scheduled commercial bank at the discretion of the PPI issuer. For the purpose of maintenance of escrow account, payment systems operated by non-bank entities for issuance of PPIs shall be deemed to be 'designated payment systems' under Section 23A of the PSS Act, 2007 (as amended in 2015).

Maintenance of escrow balance shall be subject to the following conditions:-

- (i) (Deleted)
- (ii) In case there is a need to shift the escrow account from one bank to another, the same shall be effected in a time-bound manner without unduly impacting the payment cycle to merchants. Migration shall be completed in the minimum possible time with prior **intimation** to RBI.

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(iv) Only the following debits and credits shall be permitted in the escrow account; **in case where an additional escrow account is being maintained, credit and debit from one escrow account to the other shall also be permitted. However, inter-escrow transfers shall be avoided as far as possible and if resorted to, auditor's certification shall clearly mention such transactions:**

Credits

- a. Payments received towards issue, load / reload of PPIs, including at agent locations.
- b. Refunds received for failed / disputed / returned / cancelled transactions.
- c. Payments received from sponsor bank towards settlement obligations from participation in interoperable payment systems, as permitted by RBI from time to time.

Debits

- d. Payments to various merchants / service providers towards reimbursement of claims received from them.
- e. Payment to sponsor bank for processing funds transfer instructions received from PPI holders as permitted by RBI from time to time.
- f. Payments made to sponsor bank towards settlement obligations from participation in interoperable payment systems, as permitted by RBI from time to time.
- g. Payment towards applicable Government taxes (received along with PPI sale / reload amount from the buyers).
- h. Refunds towards cancellation of transactions in a PPI in case of PPIs loaded / reloaded erroneously or through fraudulent means (on establishment of erroneous transfer / fraud). The funds shall be credited back to the same source from where these were received. These funds are not to be forfeited till the disposal of the case.
- i. Any other payment due to the PPI issuer in the normal course of operating the PPI business (for instance, service charges, forfeited amount, commissions, etc.).
- j. Any other debit as directed by the regulator / courts / law enforcement agencies

(v) The agreement between the issuer / operator and the bank maintaining escrow account shall include a clause enabling the bank to use the money in the escrow account only for purposes mentioned in these Directions.

(x) A certificate (format enclosed Annex-5 to the Master Direction on Issuance and Operation of PPIs) signed by the auditor(s), shall be submitted by the authorised entities to the respective Regional Office of DPSS, RBI on a quarterly basis certifying that the entity has been maintaining adequate balance(s) in the escrow account(s) to cover outstanding value of PPIs issued and payments due to merchants.

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In case, an additional escrow account is being maintained, it shall be ensured that balances in both accounts are considered for the above certification. This shall also be indicated in the certificate. The same auditor shall be employed to audit both escrow accounts. The certificate shall be submitted within a fortnight from the end of quarter to which it pertains. Entities shall also submit an annual certificate (Annex-5), signed by the auditor, coinciding with accounting year of the entity to RBI.

- B. **Para No. 12.4:** As an exception to paragraph 12.3 (vii), the non-bank PPI issuer can enter into an agreement with the bank maintaining the escrow account, to transfer "core portion" of the amount, in the escrow account to a separate account on which interest is payable, subject to the following:-
(e) Core portion **shall be calculated separately for each of the escrow accounts** and will remain linked to **the respective escrow account**. Escrow balance and core portion maintained shall be clearly disclosed in the auditors' certificates submitted to RBI on quarterly and annual basis.

Under Guidelines on Regulation of Payment Aggregators and Payment Gateways the following are the modifications:

Under Para No. 8. Settlement and Escrow Account Management:

- A. Para No. 8.1 : Non-bank PAs shall maintain the amount collected by them in an escrow account with any scheduled commercial bank. **An additional escrow account may be maintained with a different scheduled commercial bank at the discretion of the PA.** For the purpose of maintenance of escrow account, operations of PAs shall be deemed to be 'designated payment systems' under Section 23A of the PSSA (as amended in 2015).
- B. Para No. 8.2 : **In case there is a need to shift the escrow account from one bank to another, the same shall be effected in a time-bound manner without impacting the payment cycle to merchants, under advice to RBI**
- C. Para No. 8.9: Permitted credits / debits to the escrow account shall be as set out below; **where an additional escrow account is maintained, credit and debit from one escrow account to the other shall also be permitted. However, inter-escrow transfers should be avoided as far as possible and if resorted to, auditor's certification shall clearly mention such transactions.**
- D. Para No. **8.13:** A certificate signed by the auditor(s), shall be submitted by the authorised entities to the respective Regional Office of DPSS, RBI, where registered office of PA is situated, certifying that the entity has been maintaining balance(s) in the escrow account(s) in compliance with these instructions, as per periodicity prescribed in Annex 3 of Guidelines on Regulation of Payment Aggregators and Payment Gateways Circular. **In case, an additional escrow account is being maintained, it shall be ensured that balances in both accounts are considered for the above certification. This shall also be indicated in the certificate. The same auditor shall be employed to audit both escrow accounts.**
- E. Para No. **8.15.5:** The core portion **shall be calculated separately for each of the escrow accounts** and will remain linked to **the respective escrow account**. The escrow balance and core portion maintained shall be clearly disclosed in the auditors' certificates submitted to RBI on quarterly and annual basis.

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The link for the aforesaid Circular is as mentioned below:

<https://rbidocs.rbi.org.in/rdocs/notification/PDFs/NOT68A141A71A5CC24F4FBFB9DF8C9986B079.PDF>

6. Establishment of Branch Office (BO) / Liaison Office (LO) / Project Office (PO) or any other place of business in India by foreign law firms

On **November 23, 2020** RBI issued a **Circular No. A.P. (DIR Series) Circular No. 07** with respect to Establishment of Branch Office (BO) / Liaison Office (LO) / Project Office (PO) or any other place of business in India by foreign law firms.

The Supreme Court of India ("SC") had, by way of interim orders dated July 4, 2012 and September 14, 2015 ("Interim Orders"), in the case of Bar Council of India v. A.K. Balaji ("SC Case"), directed the Reserve Bank of India ("RBI") to not grant permission to any foreign law firms to set up liaison offices in India, after the date of the Interim Orders.

Pursuant to this direction, the RBI, in exercise of its powers under sections 10(4) and 11(1) of the Foreign Exchange Management Act, 1999 ("FEMA Provisions") issued a circular dated October 29, 2015 ("Circular"). By way of this Circular, RBI has informed all Category - I Authorised Dealer Banks ("AD-I Banks") that no fresh permission shall be granted to any foreign law firm to open liaison offices in India, till the existing policies are reviewed on the basis of, inter-alia, the final disposal of the SC Case. Although the foreign law firms that had obtained the permission to open liaison offices prior to the Interim Orders were allowed to continue to operate the offices, no renewal of such existing permission was allowed.

The SC Matter was disposed off on March 13, 2018 ("Final Order"), and it was held that advocates enrolled under the Advocates Act, 1961 alone are entitled to practice law in India and that foreign law firms/ companies or foreign lawyers cannot practice legal profession in India. The SC also held that foreign law firms/ companies or foreign lawyers or any other person resident outside India shall not be allowed to set up a branch office, liaison office, project office, or any other place of business under the Foreign Exchange Management Act, 1999 for the purpose of practicing legal profession in India.

Pursuant to the Final Order by the SC, the RBI, in exercise of its powers under the FEMA Provisions, has issued a circular on November 23, 2020, and **has directed the AD-I Banks to not grant approvals to any branch office, liaison office, project office, or any other place of business under the Foreign Exchange Management Act, 1999, to practice legal profession in India**. All other provisions of the BO/LO/PO policy shall remain unchanged. The AD-I Banks have also been directed to bring to the notice of the RBI, any such violations of the Advocates Act, 1961, that may come to their notice.

The link for the aforesaid Circular is as mentioned below:

<https://rbidocs.rbi.org.in/rdocs/notification/PDFs/APDIR0798DFED77933459F8FEDF0E4754D20B2.PDF>

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