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Reserve Bank of India: COVID-19 Regulatory Package

In response to the developments surrounding the outbreak of the COVID-19 pandemic and the ensuing disruptions in financial systems, the Reserve Bank of India ("**RBI**") released a 'Statement on Regulatory and Developmental Policies' ("**RBI Statement**") on March 27, 2020. The RBI Statement was closely followed by a circular issued by the RBI ("**RBI COVID-19 Circular**"; together with the RBI Statement, the "**RBI COVID-19 Framework**"), also dated March 27, 2020, setting out detailed instructions pursuant to the RBI Statement. Broadly, the approach adopted under the RBI COVID-19 Framework seeks to address the stress on financial conditions by: (a) expanding liquidity in the system; (b) ensuring access to bank credit on easier terms; (c) relaxing repayment pressures in relation to term loans and improving access to working capital; and (d) improving the functioning of markets. We discuss some of the key features of the RBI COVID-19 Framework below:

Applicability and Scope of the RBI COVID-19 Circular

The RBI COVID-19 Circular applies to:

- all commercial banks (including regional rural banks, small finance banks and local area banks), co-operative banks (collectively, "**Banks**"), all-India financial institutions ("**Financial Institutions**") and non-banking financial companies ("**NBFCs**") (including housing finance companies) (Banks, Financial Institutions and NBFCs are collectively referred to as "**Specified Lenders**");
- all term loans (i.e. loans repayable after a specified period) granted by Specified Lenders; and
- working capital facilities sanctioned in the form of cash credit/ overdraft by Specified Lenders ("**Specified Working Capital Facilities**").

Term Loans: Relaxations/ Restructuring Options under the RBI COVID-19 Circular

- The RBI has permitted Specified Lenders to allow a moratorium of 3 (three) months on the payment of any instalments falling due between March 1, 2020 and May 31, 2020 ("**Moratorium Period**").
- 'Instalment' includes the following amounts: (i) principal and/ or interest components; (ii) bullet repayments; (iii) equated monthly instalments; and (iv) credit card dues.
- There will be a corresponding extension in the repayment schedule and the residual tenor of the term loan by 3 (three) months beyond the Moratorium Period i.e. the timeline for repayment can be extended for 3 (three) months from the date of ***each*** instalment falling due during the Moratorium Period.
- In respect of term loans, borrowers are not required to demonstrate economic stress on account of the COVID-19 pandemic to be able to avail relief measures by Specified Lenders under the RBI -19 Framework.

Working Capital Facilities: Relaxations/ Restructuring Options under the RBI COVID-19 Circular

- Specified Lenders may:
  - defer recovery of interest during the Moratorium Period. The accumulated

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interest is required to be recovered by the Specified Lenders immediately after the expiry of the Moratorium Period.
  - recalculate the drawing power under the Specified Working Capital Facilities by reducing margins and/ or by reassessing the working capital cycle.
- While the RBI COVID-19 Framework does not specify trade financing, in our view, book debt receivable financing structures/ trade financing should be covered within the scope of measures contemplated under the RBI COVID-19 Circular.
- The recalculation of drawing power is contingent on the Specified Lender being satisfied that the economic fallout of the COVID-19 pandemic necessitates such relaxation. Whether or not the Specified Lenders took such consideration into account will be subject to regulatory scrutiny.

Treatment of Interest

- The RBI COVID-19 Circular does not contemplate any waiver of interest during the Moratorium Period and accordingly, interest will continue to accrue on all unpaid amounts.
- In relation to terms loans, Specified Lenders have the flexibility to capitalize interest or require payment at the end of the Moratorium Period.
- In case of Specified Working Capital Facilities, Specified Lenders are required to recover payment of deferred interest immediately upon the expiry of the Moratorium Period.

Impact on Asset Classification and Credit History of Borrowers

- Any deferment or rescheduling of payment offered by Specified Lenders under the RBI COVID-19 Framework will not be required to be treated by such Specified Lenders as a concession or change in terms due to financial difficulty of the borrower.
- No provisioning or deterioration in asset quality will be triggered under the Reserve Bank of India (Prudential Framework for Resolution of Stressed Assets) Directions, 2019 dated June 7, 2019 solely as a result of any relief granted by Specified Lenders under the RBI COVID-19 Framework. Asset classification shall be determined on the basis of:
  - revised due dates and the revised repayment schedule, in case of term loans;
  - application of accumulated interest immediately after the Moratorium Period as well as the revised terms formulated by the Specified Lenders, in case of Specified Working Capital Facilities.
- Rescheduling of payments, including interest, will not qualify as a default on part of the borrower and shall not be reported by the Specified Lenders, either for purposes of supervisory reporting or to credit information companies. Therefore, credit history of borrowers will not be adversely impacted.

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Is it mandatory for Banks and/ or NBFCs to implement the RBI COVID-19 Framework?

The RBI COVID-19 Framework does not require Specified Lenders (including Banks and NBFCs) to mandatorily offer a moratorium plan to one or more borrower groups. It is up to each Specified Lender to frame a policy approved by its board of directors re: a moratorium plan as contemplated by the RBI-COVID 19 Circular for eligible/ stressed borrowers. In the event that Specified Lenders do roll out board-approved policies/ schemes implementing the RBI COVID-19 Framework, they are also required to formulate objective eligibility criteria for borrowers which criteria must be made publicly available. Several banks have already announced moratorium schemes for borrowers under the RBI COVID-19 Framework.

Does the RBI COVID-19 Framework give effect to an automatic moratorium? Are borrowers under an obligation to continue to service their loans?

The RBI COVID-19 Framework does not give effect to an automatic moratorium. In the absence of a specific, board-approved

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plan/ scheme formulated and formally communicated to borrowers by their Specified Lenders, borrowers are expected to continue to service interest and principal payments on loans extended to them as per original terms and conditions.

Do borrowers have the ability to 'opt out' of a moratorium scheme/ policy implemented by Specified Lenders?

The RBI COVID-19 Framework does not restrict borrowers from continuing to service their term loans as per existing terms without availing of any moratorium. Given the cost implications for borrowers on account of deferred/ capitalized interest, it is expected that policies/ schemes formulated and extended by Specified Lenders will be consent-based and shall ask eligible borrowers to specifically "opt in".

Can a borrower who may have already made payment of an instalment falling due in March still 'opt in' to a moratorium scheme implemented by a Specified Lender?

Yes, a borrower may 'opt in' even after having made payment of an instalment falling due in March. The Specified Lenders may consider refunding the instalment made in March and allowing such borrower the benefit of the moratorium scheme/ policy during the Moratorium Period.

Can borrowers adjust their repayment schedules to take benefit of moratorium policies/ schemes implemented by Specified Lenders in accordance with the RBI COVID-19 Framework?

No, an instalment payable in accordance with the original terms and conditions of the loan availed by a borrower must fall within the Moratorium Period for the borrower to be able to avail of benefits available under moratorium policies/ schemes implemented by Specified Lenders.

Does the RBI COVID-19 Framework apply to trade credit from vendors or suppliers?

No, trade credits from suppliers or vendors are not covered by the RBI COVID-19 Framework. Suppliers and vendors do not qualify as "Specified Lenders" as defined by the RBI.

Does the RBI COVID-19 Framework extend to NCDs issued by foreign portfolio investors ("FPI")?

The definition of "Specified Lenders" does not include FPI entities. Consequently, NCDs issued by FPIs will not be eligible for any moratorium benefit under the RBI COVID-19 Framework.

Does the RBI COVID-19 Circular stipulate any record-keeping/ reporting requirements for Specified Lenders?

Wherever the exposure of a Specified Lender to a borrower is INR 50,000,000 (Indian Rupees fifty million) or above as on March 1, 2020, the Specified Lender is required to develop a management information system on the relief provided to its borrowers, including borrower-wise and credit-facility wise information regarding the nature and amount of relief granted.

How will loan accounts in default on March 1, 2020 be treated under the RBI COVID-19 Framework?

Loan accounts already in default as of March 1, 2020 will not be able to avail of the benefits under the RBI COVID-19 Framework. A Specified Lender can extend the benefit of a moratorium plan (framed in accordance with the RBI COVID-19 Framework) only to loan accounts that are standard as of March 1, 2020.

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