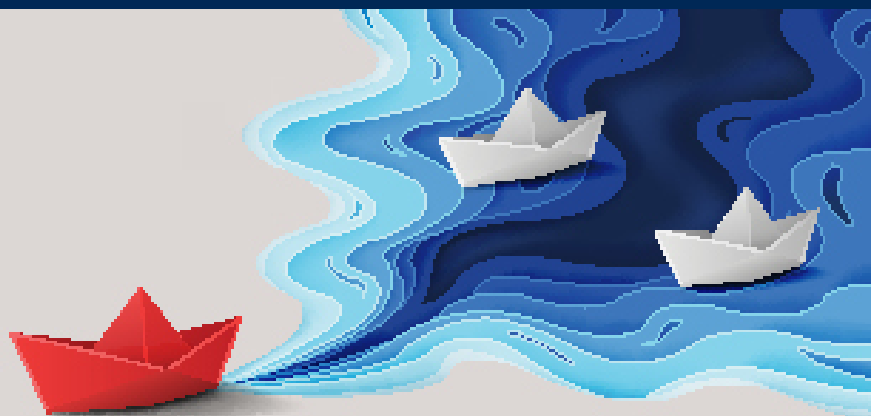


July 2022



RBI approval for takeover / acquisition of control of non-bank PSOs

The Reserve Bank of India (**RBI**) has issued a notification titled '*Requirement for obtaining prior approval in case of takeover / acquisition of control of non-bank PSOs and sale / transfer of payment system activity of non-bank PSO*' dated July 04, 2022 (**Notification**) and directed authorised non-bank payment system operators (**PSOs**) to seek prior approval of the RBI for (a) takeover or acquisition of control, which may or may not result in change of management; and (b) sale / transfer of payment activity to an entity not authorised for undertaking similar activities.

This update analyses some of the key features of the Notification.

Previous Regime

Any takeover or acquisition of control or change in management of a non-bank payment aggregators (**PA**)¹/ prepaid payment instrument (**PPI**)² issuer required a post-transfer intimation to RBI within 15 days along with certain details, including '*Declaration and Undertaking*' by each of the new directors, if any. In such cases, the RBI would typically examine the '*fit and proper*' status of the management and, if required, place suitable restrictions on such changes. Similarly, the authorisation issued to a white labelled ATM operators (**WLAO**) was not permitted to be assigned/transferred without prior approval of the RBI.³

Scope of the Notification

The Notification is addressed and applicable to all non-bank PSOs. Pursuant to provisions of Payment and Settlement Systems Act, 2007 (**PSS Act**), the RBI authorises entities to operate a payment system such as – PAs, PPI issuers, WLAO, cards payment networks, cross border money transfer, trade receivables discounting system, instant money transfer, Bharat bill payment operating units, Bharat bill payment central unit⁴. Accordingly, the Notification will be applicable to all non-bank PSOs which have been authorised by the RBI to operate payments system in India.

Intimation Requirement

- In the following cases, non-bank PSOs are not required to obtain prior RBI approval but inform RBI within 15 days of occurrence of such event:
 - Change in management / directors with complete details, including '*Declaration and Undertaking*' in the format as provided in Annex-2 of the Notification by each of the new directors. The RBI would examine the fit and proper status of the management / directors, and, if required, place suitable restrictions.
 - Sale / transfer of a payment activity to an entity authorised for undertaking similar activity. The entities shall issue prior public notice and the seller / transferor non-bank PSO shall also inform all stakeholders at least 15 calendar days before the actual sale / transfer. The public notice shall indicate the intention and reasons for such changes, particulars of the entities concerned, etc. The notice will be required to be published in at least one leading national and local vernacular newspaper. The seller /

1 Paragraph 5.2, Guidelines on Regulation of Payment Aggregators and Payment Gateways dated March 17, 2020.

2 Paragraph 5.10, Master Directions on Prepaid Payment Instruments (PPIs) dated August 27, 2021.

3 Paragraph, Annex-A to White Label ATM Guidelines dated June 20, 2012.

4 <https://www.rbi.org.in/Scripts/PublicationsView.aspx?id=12043>.



transferor PSO shall voluntarily surrender its CoA to RBI and post such sale, the buyer shall be liable for complying with any regulatory / supervisory action taken by RBI for periods prior to the sale / transfer.

RBI Approval Requirement

- Non-bank PSOs are required to obtain prior approval of RBI in the following cases (**Approval Event**):
 - Takeover / acquisition of control⁵, which may / may not result in change of management (**Takeover/Acquisition Event**). It is interesting to note that RBI here has not prescribed a percentage threshold (to define 'control') for approval unlike in cases of NBFCs (where an approval is required in the event of change in paid-up equity share capital in excess of 26%).
 - Sale / Transfer of payment activity to an entity not authorised for undertaking similar activity (**Sale of Business to Non-Licensed Entity**).
- **Takeover/Acquisition Event:**

In a takeover/acquisition, the transferor non-bank PSO is required submit an application to the RBI, along with the following documents:

 - In the event of change of directors, information about the proposed directors in the format as provided in Annexure 2 of the Notification;
 - In the event of change in shareholding, information in the format as provided in Annex-3 of the Notification. Such information includes:
 - Detailed profile of new shareholders including details of how the new shareholders will be associated with the non-bank PSO in the payment system and if there will be any change in the present payment system of the PSO by the virtue of the proposed change in shareholding;
 - Details of any earlier/ pending application for authorisation under the PSS Act, including details of any refusal;
 - Previous experience of the new shareholders in the payment systems area. Details of existing operations under tie-up and / or co-branding arrangement with any of the authorised payment system operator;
 - Sources of funds of the proposed shareholders;
 - Details of how the applicant propose to recover its investment and earn an income, that is, whether through cash flows or by levying joining fees, security fees, annual / operating charges, etc.;
 - Proposed shareholding pattern (*direct or indirect*), post the Takeover/Acquisition Event - Domestic shareholding and foreign shareholding, including public holdings. Investors with shareholding less than 5% may be mentioned as 'others' and cumulative shareholding by 'others' shall be provided. If required, RBI may ask for more details of the same at a later stage;
 - In case of foreign shareholders, the entity will be required to ensure compliance with RBI circular on '*Investment in Entities from FATF Non-compliant Jurisdictions*' dated June 14, 2021⁶;
 - The PSO entity will be required to submit a group structure chart of the group structure;
 - In the case of natural persons, the PSO should mention the nationality and current residential status of the new shareholder.
- **Sale of business to a non-Licensed Entity:** In a sale of business to non-licensed entity, the transferor non-bank PSO is required submit an application to the RBI and:
 - the buyer / transferee entity will be required to apply for an authorisation in Form A as prescribed under Regulation 3(2) of the Payment and Settlement Systems Regulations, 2008 along with the requisite application fee. This will be akin to a new authorisation and the procedure specified in the guidelines for respective payment activity will be applicable (except that the last available 'system audit report' would be sufficient in case a new system is not being set-up). It is to be noted that the requirement of the buyer/transferee to obtaining certificate of authorisation (**CoA**) / approval from the RBI is a pre-requisite for undertaking the sale / transfer;
 - if the acquiring entity is a bank, it shall apply to the RBI for its approval;
 - the seller / transferor PSO shall voluntarily surrender its CoA to RBI and post such sale, the buyer will be liable for complying with any regulatory / supervisory action taken by RBI for periods prior to the sale / transfer.

5 "Control" shall have the same meaning as assigned to it under clause (e) of sub-regulation (1) of regulation 2 of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011- "control" includes the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner.

6 New investors from or through non-compliant FATF jurisdictions, whether in existing PSOs or in entities seeking authorisation as PSOs, are not permitted to acquire, directly or indirectly, 'significant influence' as defined in the applicable accounting standards in the concerned PSO. In other words, fresh investments (directly or indirectly) from such jurisdictions, in aggregate, should account for less than 20% of the voting power (including potential voting power) of the PSO.



Client Updates

- *Approval timeline:* RBI has proposed a timeline of 45 calendar days to respond to the application post receipt of complete details from the PSO and the shareholder/buyer/management (as the case may be). However, the timeline will not be applicable in case of overseas principal in money transfer service scheme.
- *Public notice:* The notification envisages a waiting period of 15 calendar days - post receipt of the RBI approval, a public notice of at least 15 calendar days is required to be given before effecting the changes. Such public notice is required to be given either separately by the authorised non-bank PSO and the buyer / acquirer bank / non-bank, or jointly by them. The public notice should indicate the intention and reasons for such changes, particulars of the entities concerned, etc and be published in at least one leading national and local vernacular newspaper.
- *Intimation to stakeholders:* In addition to the public notice, the seller / transferor non-bank PSO is required to inform all stakeholders (agents, bankers, customers, merchants, etc.) of the changes, at least 15 calendar days before effecting the same.

Concluding Remarks

PAs have come off age to provide e-payment solutions to many online businesses and receive payments from customers and pool and transfer them on to the merchants. Similarly, PPI issuers have increased customer outreach by partnering with fintech players to offer prepaid card offerings, including the recently debated credit line loaded PPIs, popularly known as 'credit card challengers', resulting in increased credit penetration across India. Given the dependency of the merchants and customers on PAs and PPI issuers for online payment solutions, these PSOs have grown in scale by leaps and bounds and become an integral and systemic part of the Indian financial system. Therefore, the requirement to obtain prior RBI approval for transfer of control was imminent in view of this systematic presence.

Please feel free to address any further questions or request for advice to:

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