



Recommendations

Board for Regulation and Supervision of Payment and Settlement Systems Regulations 2008

Board for Regulation and Supervision of Payment and Settlement Systems Regulations 2008

In exercise of the powers conferred by sub-section (1) read with clause (a) of sub-section (2) of Section 38 of the Payment and Settlement Systems Act, 2007 (51 of 2007), the Reserve Bank of India hereby makes the following regulations, namely:-

1. Short title and commencement:

- (1) These Regulations may be called the Board for Regulation and Supervision of Payment and Settlement Systems Regulations, 2008.
- (2) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions:

- (1) In these regulations, unless, the context otherwise requires:-
 - (a) 'Act' means the Payment and Settlement Systems Act, 2007 (51 of 2007);
 - (b) 'Bank' means the Reserve Bank of India constituted by the Reserve Bank of India Act, 1934 (2 of 1934);
 - (c) 'Central Board' means the Central Board of Directors of the Reserve Bank of India constituted under Section 8 of the Reserve Bank of India Act (2 of 1934);
 - (d) 'Board' means the committee known as the Board for Regulation and Supervision of Payment and Settlement Systems constituted under Section 3 of the Act;
 - (e) 'Director' means the Director of the Central Board nominated under clauses (b) and (c) of sub-section (1) of Section 8 of the Reserve Bank of India Act, 1934 (2 of 1934);
 - (f) 'General Regulations' means the Reserve Bank of India General Regulations, 1949 made under the Reserve Bank of India Act, 1934 (2 of 1934);
 - (g) 'Member' means a member of the Board;
- (2) All other words and expressions used herein and not defined, but defined in the Act or Reserve Bank of India Act, 1934 (2 of 1934) shall have the meanings respectively assigned to them in those Acts.

3. Composition of Board:-

- (1) There shall be a committee of the Central Board to be known as the "Board for Regulation and Supervision of Payment and Settlement Systems".
- (2) The Board shall consist of the following Members, namely:-
 - (a) Governor of the Bank who shall be the Chairperson of the Board;
 - (b) Deputy Governors of the Bank, out of whom the Deputy Governor who is in

charge of the Department of Payment and Settlement Systems, shall be the Vice-Chairperson of the Board;

(c) Not more than three Directors of the Central Board nominated by the Governor of the Bank.

(3) Two Executive Directors nominated by the Chairperson and the principal Legal Adviser in the Bank shall be permanent invitees to the meetings of the Board.

(4) Persons with experience in the fields of payment and settlement systems may be invited by the Board to attend its meetings either as permanent or as ad-hoc invitees. (adequate representation from independent agencies concerned in such payment system to be there.)

4. Functions and powers of the Board:

(1) The functions and powers of the Board shall pertain to the regulation and supervision of payment systems under the Act.

(2) In particular and without prejudice to the generality of the foregoing provisions, the functions and powers of the Board shall include the following matters, namely:-

- (a) the laying down of the policies relating to the regulation and supervision of the payment systems including electronic, non-electronic, domestic and cross-border payment systems affecting domestic transactions;
- (b) the laying down of the standards for both existing and future payment systems;
- (c) the authorization of the payment systems;
- (d) the determination of the criteria for membership of the payment systems including continuation, termination and rejection of membership; (require to define the term Members. Who can become member, its' required qualification or criteria)
- (e) Overseeing the administration of regulations and guidelines framed under the Act for the purposes of the above matters and the directions issued by the Bank from time to time to the operators of the payment systems and their members and taking such action as may be deemed necessary for ensuring the compliance;
- (f) creating necessary administrative structure within the existing rules and regulations for ensuring effective regulation and supervision of the payment systems;
- (g) such other matters as are deemed necessary for the effective regulation and supervision of payment systems.

5. Assistance to the Board:

(1) The Board shall be assisted by the Department of Payment and Settlement Systems which shall report to the Board. Who would be this other personnel? What would be the criteria for selecting such personnel?

- (2) The Board may, if necessary, obtain assistance from other personnel on deputation or on contract or tenure basis, as may be appointed by the Bank on the recommendation of the Board.

6. Vacation of Office:

A Member nominated under clause (c) of sub-regulation (2) of regulation 3 shall cease to hold office if he absents himself without the leave of the Chairperson from three consecutive meetings of the Board.

7. Powers on behalf of the Board by whom to be exercised

Notwithstanding anything contained in sub-regulation (1) of Regulation 17 of the General Regulations, but subject to the provisions of the Reserve Bank of India Act, 1934 and any regulation made by the Central Board in regard to expenditure to be incurred by or on behalf of the Bank and any direction which may be given by the Central Board generally or in particular with regard to the conduct of the business of the Bank, the powers of the Board may be exercised by the following persons to the extent mentioned hereunder:-

- (a) The Chairperson and in his absence the Vice-Chairperson may also exercise all powers and do all acts and things, which may be exercised or done by the Board;
- (b) Without prejudice to the provisions of clause (a), the Chairperson may, by general or special order, delegate to the Vice-Chairperson or a member, subject to such conditions and limitations, if any, as maybe specified in the order, any of the powers exercisable by him under these regulations as he may deem necessary for the efficient administration of the functions of the Board;
- (c) Any other officer of the Bank, if authorized, and to the extent that he is so authorized by the Board, may exercise all the powers in relation to matters pertaining to the Department of Payment and Settlement Systems.

8. Applicability of the General Regulations:

The following provisions of the General Regulations shall apply, *mutatis mutandis*, as specified below, namely:-

- (a) Regulations 3, 4, 7, 13 and 24 of the General Regulations shall apply to the Members of the Board. (Reg. 3,4,&7 deals with obligations & immunities of Directors & Members of Local Board, Reg.13 deals with Acts of Directors & Members of Board valid notwithstanding subsequent discovery of disqualification., Reg.24 deals with Remuneration of Directors & Members of Local Board.)
- (b) Regulations 3 and 24 shall apply to the invitees to the meetings (if interested agencies Companies wanted to become invitees, then, what is the procedure to become invitees?) of the Board referred to in sub

regulations (3) and (4) of regulation 3, the invitees to the meetings of the sub-committees referred to in sub-regulation (2) of regulation 10 and the members of the advisory committees.

9. Meetings of the Board and Quorum:

- (1) The Board shall ordinarily meet at least once in three months at such place as may be decided by the Chairperson from time to time.
- (2) Members shall be given sufficient notice to enable them to attend the meetings.
- (3) The quorum for holding a meeting of the Board shall be three Members and shall include the Chairperson or the Vice-Chairperson and a Member nominated under clause (c) of sub-section (2) of regulation 3.
- (4) Save as otherwise provided in these regulations the provisions of the Reserve Bank of India Act, 1934 (2 of 1934) and the General Regulations shall apply to meetings of the Board, as if they were meetings of the Central Board.

10. Constitution of Sub-Committees and Advisory Committees:

- (1) The Board may constitute Sub-Committees or Advisory Committees for providing assistance or advice in the performance of its functions, as may be considered necessary from time to time.
- (2) A Sub-Committee shall have power to invite persons with experience in the fields of Payment and Settlement Systems to attend the meetings of that Committee. (adequate representation from independent agencies/companies like Traditional, New, Internet/Mobile based and ideally if IAMAI Payments, having interest in such payment system to be there) The Clause is providing for invitees but is at the discretion of the Board. There should be a compulsory representation of invitees from independent agencies. The existing clause interprets “may be invited”, if is changed to “shall be invited”, the purpose shall be solved.)

11. Report to the Central Board:

The Board shall submit a report to the Central Board on an annual basis.

File No.....

Name

Designation

Payment and Settlement Systems Regulations, 2008

In exercise of the powers conferred by sub-section (1) read with clauses (b) to (f) of sub-section (2) of Section 38 of the Payment and Settlement Systems Act, 2007 (51 of 2007), the Reserve Bank of India hereby makes the following regulations, namely:-

Chapter I Preliminary

1. Short title and commencement:

- (1) These Regulations may be called the Payment and Settlement Systems Regulations, 2008.
- (2) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions:

- (1) In these regulations, unless, the context otherwise requires:
 - (a) 'Act' means the Payment and Settlement Systems Act, 2007 (51 of 2007);
 - (b) 'Bank' means the Reserve Bank of India constituted by the Reserve Bank of India Act, 1934 (2 of 1934);
 - (c) 'Authorisation Certificate' means the Certificate containing the authorisation issued by the Bank under sub-section (1) of Section 7 of the Act. **(Terms like "Member" and "Staff" appearing in the body of Regulations needs to be defined in the present context.)**
- (2) All other words and expressions used herein and not defined, but defined in the Act or the Reserve Bank of India Act, 1934 (2 of 1934) shall have the meanings respectively assigned to them in those Acts.

Chapter II Authorisation of Payment Systems

3. Submission of application for authorization for commencing or carrying on a payment system:

- (1) Every person desirous of commencing or carrying on a payment system (hereinafter referred to as 'applicant') shall submit an application under sub-section (1) of Section 5 of the Act to the Bank for grant of authorization under sub-section (1) of section 7 of the Act.
- (2) The application under sub-regulation (1) shall be made in Form 'A' addressed to

the Chief General Manager of Department of Payment and Settlement Systems at Central Office of the Bank at Mumbai, or to such other office or officer of the Bank as may be specified by it in this behalf.

- (3) The application under sub-regulation (1) shall be accompanied by a non-refundable fee of Rs.10,000/- in the form of cash or electronic funds transfer or cheque or payment order or demand draft drawn in favour of the Bank.
(The provision should be made for regularization and for granting authorization of existing payment system. Separate Form for registration of existing system should be provided. Would the authorization be applicable retrospectively for such systems, if not what are the implications? What is the status of activities of such systems of prior to Act in effect.)

4. Grant of Authorisation Certificate:

- (1) On consideration of the particulars furnished by the applicant, if the Bank is satisfied that the requirements under sub-section (1) of Section 7 of the Act are fulfilled, it may issue an authorization certificate in Form 'B' to the applicant to commence or carry on a payment system and specify the date on which the authorisation shall take effect.(in case of existing payment system authorization shall take retrospective effect to regularise its earlier transactions) (The Clause mentions that if the Bank is satisfied, “it may issue” an authorization certificate. The said phrase should be changed to “it shall issue”, because if the Bank is satisfied with the given requirements, it should not be subjective, but an authorization should be given).(There should be a provision wherein it should be provided the time limit within which the Bank shall communicate its decision about acceptance or rejection of application and that if within such time limit the decision is not communicated the application shall be deemed to be accepted and the Authorisation Certificate granted.) [Perhaps a tiered system can be created to avoid regulatory burden on smaller companies, however, still allowing the Bank notice of smaller payment systems. Under this approach payment systems below a certain volume or size would “register” and larger ones would obtain authorization.]
- (2) The Bank, while granting authorization, may impose such conditions(it is very subjective. conditions should be reasonable & specific) as it may deem fit, and the authorization so granted shall be in force subject to satisfaction of such conditions.(proposed conditions for granting authorization should be reasonable and in conformity with existing payment system and should not affect adversely the business of existing payment system)
- (3) The Bank may levy such amount(should be specifically fixed, reasonable, and published for the public information)(High deposits if fixed by the bank may deter new as well small / medium existing players an opportunity to grow and may might curb innovation. The deposit to be put up should be in slabs and should be(our suggestion) in a single digit percentage of the average weekly or monthly liability (as the case may be) with the service provider.

This deposit can be in a bank guarantee format so that small and medium players can earn interest on this deposit with the bank.) as may be specified by it in the authorisation certificate, towards fees for authorization to be in force under clause (c) of sub-section (2) of Section 7 of the Act. (It needs to be mentioned in which form the fees for authorization can be paid. Whether it has to be in cash or electronic fund transfer or cheque or payment order or by demand draft needs to be specified. Also, when and within what time limit is the fees to be paid needs to be mentioned.) [It is unclear if this is an amount related to customer liabilities or a fee for authorization. If related to customer liabilities, it should be tied to amounts held, should not exceed actual liabilities, in addition, it should be clear that funds need not be held by the Bank as a guarantee, but held in licensed financial institutions, not commingled with corporate funds, held for the benefit of others (“FBO”), be highly liquid assets, that can be invested in low risk investments. It is not reasonable for a business to put too large an amount of money into non-usable guarantees, if there is some method to ensure the customer funds are secured in some way. This approach is used in Singapore, Australia, ELMI for EU,]

- (4) Where the Bank considers it necessary for the proper conduct (standard code of conduct should be prepared in consultation with the agencies interested in payment systems) of the payment system, it may require the applicant to furnish a security deposit (to whom? And under what circumstances?) under clause (d) of sub-section (2) of Section 7 of the Act, of such amount (should be specific) as may be specified by the Bank from time to time. High deposits if fixed by the bank may deter new as well small / medium existing players an opportunity to grow and may might curb innovation. The deposit to be put up should be in slabs and should be (our suggestion) in a single digit percentage of the average weekly or monthly liability (as the case may be) with the service provider. This deposit can be in a bank guarantee format so that small and medium players can earn interest on this deposit with the bank.) [Same comment above, a security deposit is one method that could be used if tied in some way, such as percentage, to the user balances (and the payment system holds balances), but an FBO account set at some percentage or matching user funds, that is investible/useable, this would make sense. It would also be key to have some general guidance in the regulation when this might be applicable. Perhaps when there is a certain threshold of balances held as compared to capital or something similar.]

Chapter III

Payment Instructions and Determination of Standards

5. Every system provider, with respect to the format of payment instructions and other matters specified in clauses (a) to (f) of sub-section (1) of Section 10 of the Act, shall be governed by the regulations, guidelines and instructions, set out in the Schedule, as modified from time to time. **(if any payment system does not covered under the regulations, guidelines and instructions set our in the Schedule, then, what is the provision for such payment system?) (Standard guidelines to be prepared taking in to account the representations made by payment system likely to be affected due to such regulations)**

Chapter IV

Furnishing of Returns, documents and other information

6. Submission of Returns, documents etc.

- (1) Every system provider shall be bound to submit to the Bank such returns, documents and other information as may be required by the Bank from time to time.
- (2) Without prejudice to the generality of the above, every system provider shall submit the following returns/documents to the Bank, namely:-
 - (a) Monthly return, either in electronic form or paper format or both, containing the number of participants in the payment system operated, payment instructions processed, both in terms of volume and value, and number of instructions returned, with reasons. **(How, please clarify) (if it covered under 6.(c) why it required to furnish the same on the date of occurrence also)**
 - (b) Monthly returns containing the details of the defaults in fulfilling the payment obligations by the system participants.
 - (c) Quarterly certificate from the bankers about functioning of system provider's account with them. **(what to do if there are multiple bankers, from which banker said certificate to be obtain) [what manner of report? What is the purpose? A report from the bank should not be necessary as it is not indicative on its own of volume, defaults or risk.]**
 - (d) Quarterly statement regarding any disputes between participants or between participants and the system provider. **[Since the payments in most system will be small in nature, most disputes will be small in nature. Perhaps a threshold of disputes above a certain threshold or that are material would be more appropriate]**
 - (e) Annual returns relating to the staff strength, income and expenditure. **(Define Staff strength Management or total, specify whether audited / unaudited) [Perhaps just an unaudited financial statement would be appropriate which includes the number of employees]**

- (f) Annual return from the system provider showing changes in its Board of Directors or partners, as the case may be, changes in shareholding pattern whereby the aggregate shareholding of an individual or a group becomes equivalent to 5 % or more of the paid up capital of the system provider and changes in Memorandum or Articles of Association of the system.
- (3) The returns and documents referred to in clauses (a) to (g) of sub-regulation (2) shall be submitted by the system provider in the form specified by the Bank from time to time.
- (4) The returns and documents under sub-regulation (1) and those referred to in clauses (a) to (g) of sub-regulation (2) shall be submitted by the system provider from its registered office to the office of the Bank (Department of Payment and Settlement Systems, Central Office) situated in Mumbai. Provided that the Bank may at any time, direct that the returns and documents under sub-regulation (1) and those referred to in clauses (a) to (g) of sub-regulation (2) be submitted to any other office of the Bank as may be specified. **(All the information provided by the system provider including without limitation to its customers and their personal details should be kept confidential. The compliances expected of the system provider seem to be too cumbersome and may prove to be expensive.) [A recommendation would again be to set thresholds for reporting requirements based upon the volume and size of the payment system, such that larger systems with high volumes and larger amount of customer funds held should provide these reports, but below the threshold, no reports.]**

7. Furnishing of accounts and balance sheets:

- (1) Every system provider shall furnish to the Bank within three months from the date on which its annual accounts are closed and balanced, a copy of its audited balance sheet as on the last date of the relevant year together with a copy of the profit and loss account for the year and a copy of the Auditor's report. Provided that the Bank may, on an application made by the system provider, extend the said period of three months for furnishing of returns by a further period not exceeding three months. **(What about Partnership firms. Whether audited / unaudited Balance sheet) [If this information is provided, much of the above information is not necessary as it would be included]**
- (2) The system provider shall also publish, a copy of its balance sheet, profit and loss account and Auditor's report submitted to the Bank under sub-regulation (1), in any two leading newspapers, one in English and the other in Hindi, within a period of one month from the date of submission of the same to the Bank. **(This regulations should be in conformity with the Cl.41 & 49 of SEBI Guidelines or provisions of Companies Act in case of furnishing accounts/balance sheets and publication of balance sheet in news paper to ensure efficiencies and avoid duplication and possible confusion in different formats to be furnished under existing laws However the cost of publication in two leading newspapers will be quite prohibitive for new smaller and mid size players. They should be alternatively allowed to publish it on their own websites.) [Why would it be necessary to**

publish this information if provided to the Bank? The Bank would provide authorization, so long as all requirements are met above, so it would be presumed that the Bank had the public's interest in mind in the approval alleviating the need for publication.]

ADDITIONAL POINTS TO BE CONSIDERED:-

- 1) While details like Form etc is provided for process of seeking the authorization by Payments Systems it does not provide adequate details and additional regulation on entities which can claim exemption or process / form for anyone who falls under Sec 4 (1) a to d. this would mean that even if a person wish to apply for exemption, do they need not fill up the Authorisation Form at all etc. additional clarity here may be required. Similarly the Authorisation Forms proposed primarily assumes that a Payment System is proposing to start as a new project, the Form may either need to be suitably modified to accommodate existing and new payments systems or RBI would need to provide additional Form for existing Payment Systems.
- 2) The format of the forms for authorization etc provides for various financial burden on Payments systems in terms of Membership Fee and Security Deposit, and no specific details are provided as to how the same would be applicable and how would they ensure that it does not add economic burden to the payments systems and makes the business model impractical for many new entities. While these details are likely to be provided in Rules/Guidelines however if all of them are to be reviewed in isolation the impact may be critical and any change in later may need further changes in already finalized regulation etc.
- 3) Definition of Payment system is not coming thru.
 - a. For e.g: CCAvenue.com, a master aggregator, who processes transactions using a gateway - will he be considered a payment system? or will MasterCard / Visa clearance as a payment system be sufficient.
 - b. Will a payment system with a closed user group / specific purpose group of 100 users be considered a payment system or is there a size/ network/ transaction benchmark required to be recognized as a payment system.
- 4) The RBI may rate payment participants on a fixed review period and the RBI rating may be shared with Public through Internet sites/ advertising etc.