

RBI DIRECTIONS ON PEER TO PEER LENDING PLATFORMS: FREQUENTLY ASKED QUESTIONS

1. INTRODUCTION

The Reserve Bank of India (the “RBI”) has published responses to frequently asked questions (“FAQs”)¹ regarding the Master Directions – Non-Banking Financial Company – Peer to Peer Lending Platform (Reserve Bank) Directions, 2017, issued by the RBI on October 4, 2017 and amended on November 9, 2017 (the “P2P Directions”).

1. KEY CLARIFICATIONS IN THE FAQs

2.1 Meaning of the term ‘person’ used in the P2P Directions

The RBI has clarified that, in relation to paragraph 4(iv) of the P2P Directions, which defines the term ‘*participant*’, the term ‘*person*’ shall include an individual, a body of individuals, a Hindu undivided family, a firm, a society or any artificial body, whether incorporated or not.

2.2 Electronic platforms connecting banks and NBFCs to borrowers

The RBI has clarified that electronic platforms that assist only banks, non-banking financial companies (“NBFCs”) and other regulated All India Financial Institutions (“AIFIs”) to *identify* borrowers will not be considered peer to peer lending platforms (“P2P Lending Platforms”). However, in cases where, apart from banks, NBFCs and AIFIs, or other retail lenders use the electronic platform for *lending*, the platform will have to register separately as a non-banking financial platform – peer to peer lending platform (an “NBFC-P2P”).

2.3 Leverage ratio and investible funds for an NBFC-P2P

The RBI has clarified that for an NBFC-P2P, customers’ funds lent or borrowed by using the platform is not reckoned as an outside liability of the NBFC-P2P, for the purpose of determining the leverage ratio of the NBFC-P2P.

Similarly, the RBI has clarified that the investible funds of an NBFC-P2P do not include funds of lenders and borrowers that flow through escrow accounts.

2.4 Time for achieving net owned fund requirement

To a query on whether an applicant is required to bring in the net owned fund of INR 2,00,00,000 (approximately USD 313,000) upfront at the time of making the application, the RBI has clarified that the applicant must submit the list of promoters and the source of funds for a minimum capital of INR 2,00,00,000 (approximately USD 313,000). The capital should be infused before issue of the certificate of registration. It has further been clarified that a change in the list of promoters will not be allowed to be made during this period.

¹ The responses to the FAQs are available at <https://www.rbi.org.in/Scripts/FAQView.aspx?Id=124>

2.5 Existing NBFCs operating as NBFC-P2Ps

The RBI has clarified that an existing NBFC will not be able to operate as an NBFC-P2P.

IndusLaw View:

Through the FAQs, the RBI has clarified some points we had raised regarding the P2P Directions, in our news alert published on October 25, 2017².

(a) *Do the P2P Lending Platforms have to fulfil the 50-50 test issued by the RBI to fall within the purview of the P2P Directions?*

The RBI, with its clarification that an existing NBFC cannot operate as an NBFC-P2P, has clarified that the 50-50 test set out by the RBI to qualify as a non-banking financial company is not applicable to an NBFC-P2P.

In other words, no entity, including an existing NBFC, can carry on the business of a P2P Lending Platform, without registering as an NBFC-P2P under the P2P Directions, regardless of whether such business is its principal business.

This is further substantiated by paragraph 6(3) of the P2P Directions which clarifies that an NBFC-P2P shall not undertake activities other than those stated in paragraphs 6(1) and 6(2) of the P2P Directions.

(b) *Who can be 'participants' in an NBFC-P2P?*

It has now been clarified that a participant may be an individual or a legal entity. However, if a P2P Lending Platform assists only banks, NBFCs and other regulated AIFs to identify borrowers, such a platform will not be required to register as an NBFC-P2P.

However, pursuant to the FAQs, the exemption is limited to '*electronic platforms*' which only assist banks, NBFCs and regulated AIFs to '*identify*' borrowers. This does not mean that entities providing additional services to banks and NBFCs, such as '*direct selling agents*', need to register as an NBFC-P2P, since they provide an exclusive service to banks and NBFCs, and will not qualify as providing an open, non-exclusive peer to peer platform.

However, if an entity does provide such an open, non-exclusive platform along with services extending beyond *identifying* borrowers, such an entity may have to register as an NBFC-P2P.

(c) *What is the rationale behind the requirement for an NBFC-P2P to maintain a leverage ratio?*

The RBI has clarified that, the outside liabilities for the purpose of calculating the leverage ratio, shall not include customers' funds. However, the rationale for the leverage ratio is still unclear, considering an NBFC-P2P does not lend on its own.

While the FAQs have clarified some queries under the P2P Directions, it will be interesting to see if the RBI issues any additional clarifications on some of the other queries that have been raised, including our queries from our news alert dated October 25, 2017, and how the interpretation of the P2P Directions evolves.

Authors: Suneeth Katarki, Namita Viswanath and Saumya Ramakrishnan

January 23, 2017

² This news alert can be accessed at <https://induslaw.com/publications/pdf/alerts-2017/infocex-newsalert-rbi-directions-on-peer-to-peer-lending-platforms.pdf?src=website&CTA=ReadMore&Date=26-Oct-2017>.

Practice Areas: Banking & Finance, Financial Services, Government & Regulatory, Telecom, Media & Technology

DISCLAIMER

This alert is for information purposes only. Nothing contained herein is, purports to be, or is intended as legal advice and you should seek legal advice before you act on any information or view expressed herein.

Although we have endeavored to accurately reflect the subject matter of this alert, we make no representation or warranty, express or implied, in any manner whatsoever in connection with the contents of this alert.

No recipient of this alert should construe this alert as an attempt to solicit business in any manner whatsoever.