

# Banking and Insurance

# NEWSLETTER

Jan - Feb 2023

## Contents

1. IRDAI Encourages More Investment In Sovereign Green Bonds
2. 2016 Demonetization Legal, Says The Supreme Court
3. Govt Notifies Six Insurance Regulations Of IRDAI
4. KYC Is Mandatory For All Insurance Buyers: IRDAI
5. RBI proposes "Expected Loss-Based Approach" for banks, shall replace "Incurred Loss" strategy
6. RBI Modifies Norms Related To Share Acquisition In Banks
7. RBI Gives BharatPe Nod To Operate As Online Payment Aggregator
8. YES Bank To Move To Supreme Court Against Ruling Of Bombay High Court
9. Paytm Payments Bank Get Final Nod From RBI



CENTRE FOR BANKING AND INSURANCE LAW

### Contributors

- Ashima Acharya
- Ayush Shandilya
- Biraj Kuanar
- Jahnvi Bhattathiripad

### Designers

- Subhashmin Moharana
- Pratha Barla

## IRDAI ENCOURAGES MORE INVESTMENT IN SOVEREIGN GREEN BONDS

The Insurance Regulatory and Development Authority of India (IRDAI), in its circular dated January 13 2023, encouraged investors to invest in sovereign green bonds, with the aim of de-concentrating and diversifying the infrastructure investment portfolio of insurers companies. As per newspaper reports from January 17, it has also been reported that this move aims to promote insurance companies to participate in environmental, social, and governance (ESG) initiatives to promote sustainable development and to prevent environmental degradation.

This is in line with the Government of India's plans to allow issuance of Sovereign Green Bonds (SGrBs) in the

Budget for 2022-2023, which comes with the aim of reducing the carbon intensity of the economy and as a strategy to achieve the Nationally Determined Contribution (NDC) under the Paris Climate Change Accord, 2015.

The circular also stated that investment in sovereign green bonds shall be treated as investment in infrastructure and shall be classed as Central Government Securities. Previously, the IRDAI and its members have had extensive discussions about the need to ensure proper diversification, minimize concentration in one class of assets, promote investments related to infrastructure, and frequently monitor insurers' investments.



## 2016 DEMONETISATION LEGAL, SAYS THE SUPREME COURT

On January 2, 2023, a Supreme Court constitution bench in the case of *Vivek Narayan Sharma vs Union of India* affirmed the Union government's 2016 demonetisation programme, which removed currency notes with denominations of 500 and 1,000 as legal tender, by a 4-1 vote. Justice Gavai, who delivered the majority judgment, stated that the 2016 demonetization decision was free from any legal or procedural errors and was not affected by the proportionality theory. According to the verdict, the records presented to the court demonstrated that the Centre and the Reserve Bank of India (RBI) had enough consultations before the decision was made.

As the suggestion came from the government as required by the RBI Act, it was stated that the action could not be deemed illegal. The judgment also went on to say that the legal validity of a policy choice cannot be determined by whether or not it achieves its intended goal; rather, it must be determined if the goal is reasonable and that all applicable laws have been followed.

In her dissenting opinion, Justice Nagarathna stated that the demonetisation decision circumvented both legal and procedural standards. She said that only legislation, not an executive order, could implement demonetisation. She also said that the consultation procedure was dubious since it omitted the central bank of the banks' opposing viewpoint on demonetisation.



## GOVT NOTIFIES SIX INSURANCE REGULATIONS OF IRDAI

On December 15, 2022, the government converted six important decisions made by the insurance regulator IRDAI's board on November 25 into guidelines for insurance companies. These six guidelines can be put into effect by insurers as soon as informed by the government. As per newspaper reports from January 20, 2023, the government's emphasis on the issue of penetration in the insurance sector is evident in the pace of the announcements and insurance industry professionals have predicted that the planned changes to the two insurance legislation, the Insurance Act of 1938 and the IRDA Act of 1999, for revamping the insurance sector, will be executed by the government in an expedited manner.

The guidelines issued include allowing an increase in the maximum number of tie-ups for Insurance Marketing Firms (IMF) and Corporate Agents (CA). The experience and qualification requirements for Appointed Actuaries have been made more lenient. Additional changes have been made to the Regulatory Sandbox Regulations to permit insurers and intermediaries greater experimentation. Additionally, changes have been made to the registration procedure for Indian insurance businesses to facilitate commercial operations and streamline the process of establishing an insurance company in India.



## KYC IS MANDATORY FOR ALL INSURANCE BUYERS: IRDAI

The Insurance Regulatory and Development Authority of India (IRDAI), as per newspaper reports on January 3, 2023, has mandated insured parties to provide their KYC information to their insurer regardless of purchase of a new insurance or the renewal of an existing insurance policy, according to new requirements for all types of insurance policies. Although the recommendations were originally published in August 2022, they became effective on January 1, 2023.

Know Your Client (KYC) is a process for identifying a client of a business while a digital account is being created. KYC information guarantees that policyholders obtain the full benefits of their insurance

coverage and aids in preventing fraud and money laundering. In order to avoid any delays or problems with their insurance coverage, policyholders must abide by this condition. Currently, only claims above Rs 1 lakh are subject to the submission of KYC documentation. KYC documentation will be required in accordance with the new insurance regulation even when buying a new policy. Insurance businesses will be able to increase customer satisfaction and forge closer bonds with their clients by offering a more effective and secure method, helping organizations succeed in the long run.



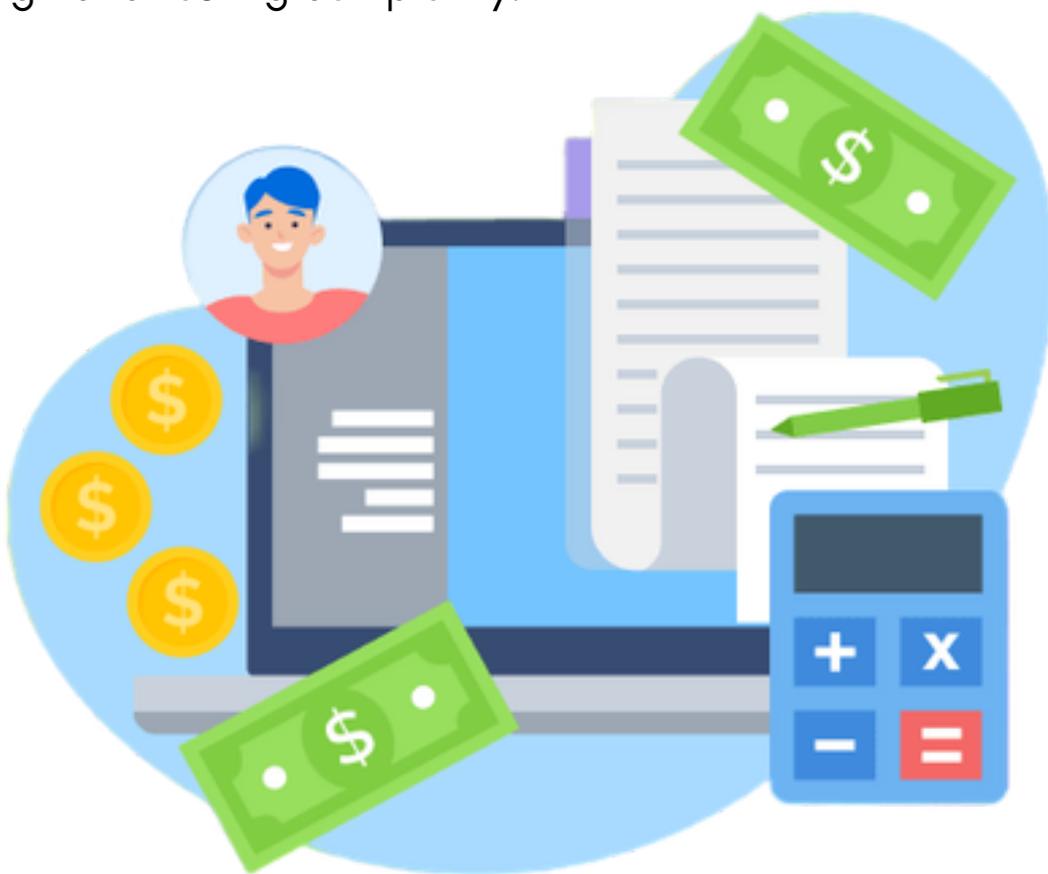
RBI PROPOSES  
"EXPECTED LOSS-BASED  
APPROACH" FOR BANKS,  
SHALL REPLACE  
"INCURRED LOSS"  
STRATEGY

The RBI wants to replace the "incurred loss" strategy for loan loss provisioning by banks with the more forward-looking "anticipated credit loss" approach to strengthen the banking sector. Under the proposed framework, banks will be required to classify financial assets (primarily loans, including irrevocable loan commitments, and investments classified as held-to-maturity or available-for-sale) into one of three categories—Stage 1, Stage 2, or Stage 3—based on their assessed credit losses at initial recognition and each subsequent reporting date and make necessary provisions. The suggested principles would allow banks to build and use their own methods for gauging predicted credit

losses to estimate loss provisions. Therefore, Indian banks shall make loan loss provisions using the "incurred loss" technique, which was the global standard until recently. The RBI will provide broad recommendations to commercial banks on credit risk model design to reduce model risk and variability. The guidance will clarify what banks should consider when assessing credit risk. The projected credit loss models presented by banks will have to be independently validated to determine whether they follow RBI advice, are based on good reasoning, calibrated use of all relevant data available to the bank, and have been properly back-tested and internally vetted to remove bias.



The forward-looking estimated credit loss technique to estimating loss provisions may result in excess provisions rather than a deficiency. The proposed standards apply to all scheduled commercial banks, excluding regional rural banks and smaller cooperative banks (based on a threshold to be decided based on comments). The RBI requested comments on the document through February 28, 2023. Implementation will be given enough time due to model design and testing complexity.



## RBI MODIFIES NORMS RELATED TO SHARE ACQUISITION IN BANKS

The Reserve Bank of India changed share acquisition and holding rules to keep bank ownership and control properly diversified and significant shareholders "fit and proper,". The central bank published "Master Direction - Reserve Bank of India (Acquisition and Holding of Shares or Voting Rights in Banking Companies) Directions, 2023". All Indian banks including LABs, SFBs, and PBs, must follow the guidelines. These directives aim to diversify banking companies' ultimate ownership and control and keep their big shareholders "fit and suitable."

The Master Direction requires anybody seeking to acquire a majority stake in a banking company to apply to the Reserve Bank for approval. The Reserve Bank's decision to grant or deny permission or grant permission for a smaller aggregate holding than

requested is binding on the applicant and the banking business. After such acquisition, if the aggregate holding falls below five percent, the individual will need RBI clearance to raise it to five percent or more of the paid-up share capital or complete voting rights. Banking firms must establish a method to obtain information on any change in significant beneficial owner or acquisition of 10% or more of the main shareholder's paid-up equity share capital.

The Reserve Bank will allow individuals, non-financial entities, and financial institutions related to significant industrial firms to buy 10% of a banking company's shares or voting rights. Financial institutions, government, and PSUs are limited to 15%. After 15 years, promoters might own up to 26% of the banking company's paid-up share capital or voting rights.



## RBI GIVES BHARATPE NOD TO OPERATE AS ONLINE PAYMENT AGGREGATOR

BharatPe has announced that the Reserve Bank of India (RBI) has granted them permission in principle to function as an online payment aggregator (PA). The company announced that Resilient Payments Private Ltd, a wholly-owned subsidiary of Resilient Innovations Private Ltd, had been granted an in-principle approval (BharatPe). The approval of RBI coincides with a spate of high-profile exits from the Sequoia Capital and Tiger Global-backed company, which has been embroiled in controversy since last year. It is currently involved in a legal dispute with its former co-founder, Ashneer Grover, over allegations of financial embezzlement.

Grover was dismissed in March of last year.

Payment aggregators are defined as organizations that enable e-commerce sites and businesses to accept a variety of client payment methods and the merchants shall not be required to develop their own payment integration system. The formal introduction of the payment aggregator framework in March 2020 stipulates that only entities authorized by the RBI may acquire and offer payment services to retailers. Multiple online payment gateways seeking the aggregator license came under intense scrutiny from the central bank for their know-your-customer (KYC)-related concerns, previous interactions with cryptocurrency exchanges and gaming applications, and failure to meet the net worth standards established by RBI. Several fintech companies, including Razorpay, Pine Labs, Open, Cahfree, and 1Pay, have received RBI clearance for PA in recent months. Over 185 fintech businesses and startups had submitted applications for a payment aggregator license.

## YES BANK TO MOVE TO SUPREME COURT AGAINST RULING OF BOMBAY HIGH COURT

YES Bank has stated that the Bank shall file a petition in the Supreme Court against the order of the Bombay High Court setting aside a 2020 order of the administrator to write off the additional tier-1 bonds of up to Rs 8,300 crore. "The judgment itself is not questioning the regulatory guidelines in terms of writing down. I think there are questions in terms of the process. There are legal opinions which interpret the whole issue in a different way and make a strong ground for making an appeal before the Supreme Court," Prashant Kumar, MD & CEO of Yes Bank, said in a post-earnings media call.

In addition, the bank also clarified that in the case of perpetual bonds, the bank has the discretion on interest payments however refused to comment on the above statement before the decision of the Supreme Court.

The High Court has put the implementation of its order on hold for six weeks, giving the lender time to file an appeal before the apex court. The bank does not expect any outflow of funds happening as an effect of implementation of the order, as stated by the bank in their official statement. The High Court, in its order, said the decision to write off the bonds was not valid as it was taken after the moratorium period of Yes Bank was completed. Justice SM Modak, the acting chief justice of the Bombay High Court said in the order that the administrator exceeded his powers and authority in writing off AT-1 bonds after the bank was reconstructed on March 13, 2020.



## PAYTM PAYMENTS BANK GET FINAL NOD FROM RBI

Paytm Payments Bank said it has received final approval from the Reserve Bank of India to operate as a Bharat Bill Payment Operating Unit (BBPOU). Under Bharat Bill Payment System (BBPS), a BBPOU is allowed to facilitate bill payment services of electricity, phone, DTH, water, gas insurance, loan repayments, FASTag recharge, education fees, credit card bill and municipal taxes. BBPS is owned by the National Payments Corporation of India. So far, Paytm Payments Bank Ltd (PPBL) has been undertaking this activity under in-principle authorisation from RBI. PPBL has got the final approval from RBI to operate as Bharat Bill Payment Operating Unit (BBPOU) under the Payment and Settlement Systems Act, 2007. As an entity under Bharat Bill Payment System (BBPS), PPBL

has got the final authorization to conduct bill payment and aggregation business as a BBPOU," the company said in a statement. Under RBI's guidance, PPBL will display all agent institutions onboard on its website. "Our vision is to drive financial inclusion by offering users greater access to digital services. With this approval, we will further increase the adoption of digital payments by merchant billers and enable them with secure, fast and convenient transactions. Through the Paytm app, users can make convenient payments for their bills and benefit from automatic payment and reminder services," a Paytm Payments Bank spokesperson said.

