Fintech Law: An Overview

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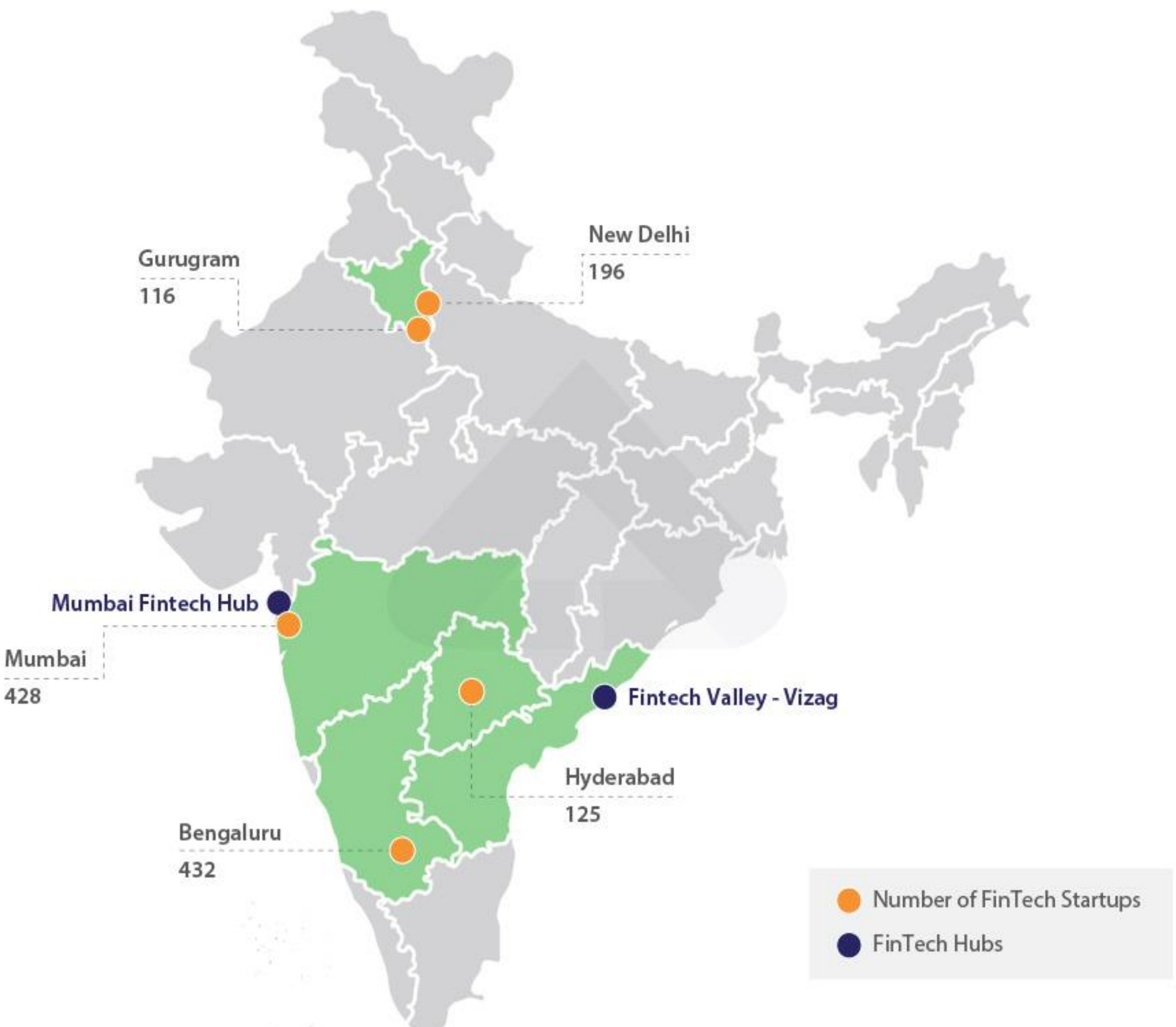
Outline of the Class

- An Overview of Fintech Eco System
- Regulatory Sanbox – Global Perspectives
- Regulation of Fintech – Initiatives from RBI, SEBI, IRDI
- Significance of Data Privacy and Protection for Fintech Sector
- Sanctions Prescribed by Indian Regulators for failing to Comply with Data Privacy Laws
- Data Privacy Approaches followed by Fintech Sector – A Discussion from Consent Oriented to Rights based Approach


Fintech Law and Policy

Major FinTech Clusters in India



Source: Invest India

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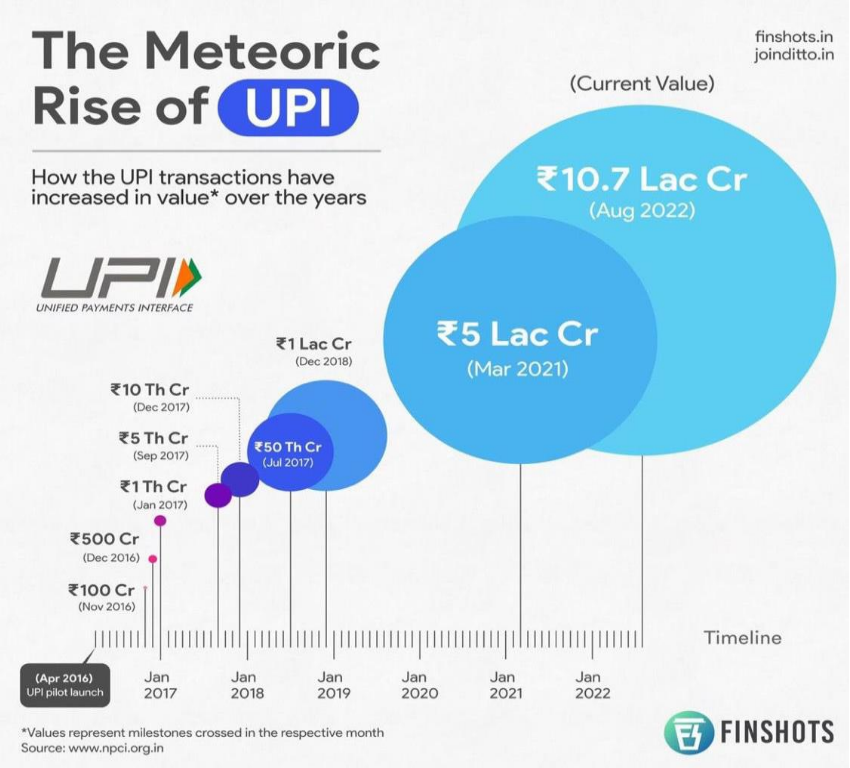
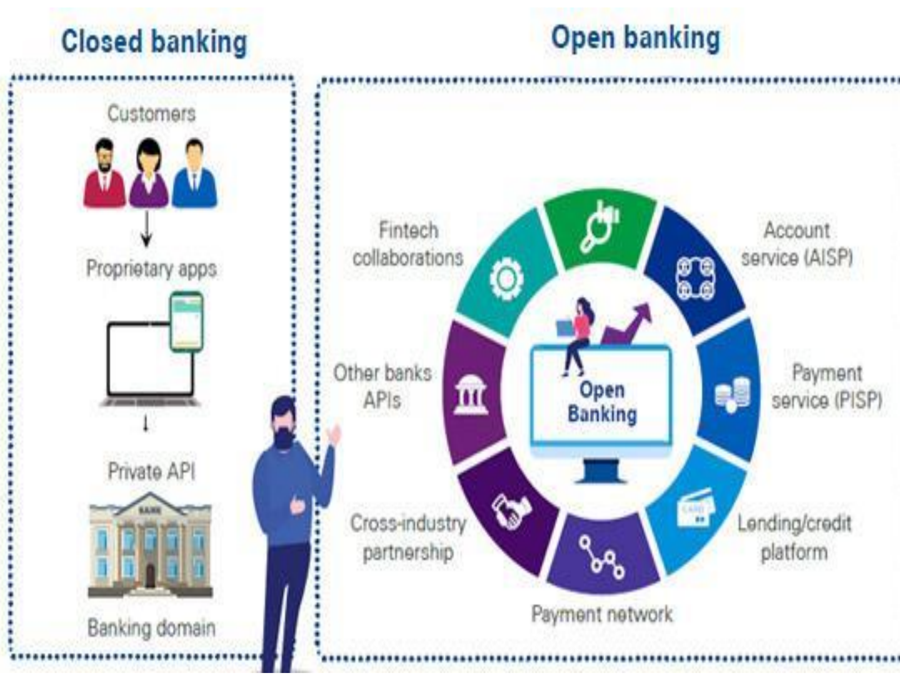
A overview of **FinTech ecosystem**

- The FinTech sector in India has shown tremendous growth, with it being one of the fastest in the world.
- There are around 2100 FinTech companies in India, with the bulk of them (almost 67 percent) having been set up in the last five years.
- The current valuation of India's FinTech companies is USD 31 Billion, which is expected to nearly triple to USD 84 billion by the year 2025 (InvestIndia 2021).
- More than 50 FinTech companies are valued at greater than USD 100 million, covering a wide array of areas such as broking, insurance, and software as a service. One key growth sector has been neo-banking, with almost 15 companies vying for that space.



FinTech ecosystem

- In 2020, FinTech SaaS and InsurTechs saw total investments of $145 Mn and $215 Mn respectively, repre senting a 4-5X growth over their 2015 funding flow.
- Amongst India's 50+ FinTechs with more than $100 Mn valuation, there are 4 Wealth and Broking FinTechs, 5 InsurTechs and 8 SaaS FinTechs.
- UPI is expected to grow significantly with the participation of domestic and international players (Paytm, Walmart and Google) continuing to dominate the segment, with a heavy focus on development the payments infrastructure through investments.
- Neo-banks in India are emerging as a key segment for growth in the space – with over 15 Neo-banks currently in India, several of them under development or in beta stages. The segment has been growing steadily, with several private banks partnering with these Fintechs to explore synergies and better means of service-delivery.



Services Offered By Fintech Industry

- **Crowdfunding Platforms:** Further, the platforms allow entrepreneurs and early-stage businesses to raise funds from all over the world, allowing them to bypass geographical boundaries and reach international markets and investors.
- **Mobile Payments:** Mobile payment applications and gateways are one of the most prevalent uses of fintech. Additionally, such applications allow users to carry out banking activities without physically visiting a bank. For example, companies like Venmo and Interac allow customers to send and receive money through smartphones at minimal transaction fees.
- **Robo-Advisors:** Robo-advisors are online investment management services that use algorithms to optimally allocate assets and generate portfolios for customers. Moreover, they allow users of all age groups to engage in investment activities at low fees with minimal manual effort.
- **Insuretech:** The term insure tech refers to the application of technology to the insurance model, which allows companies to provide tailored insurance services and data security. Further, insuretech helps streamline the insurance process through online claims filing and policy management.

Services Offered By Fintech Industry

- **Regtech:** Regtech (regulatory technology) focuses on the automation of compliance processes for financial institutions. Further, it offers fast and cost-effective management of large amounts of data, including transaction records and compliance documents, such as corporate tax returns.
- **Blockchain and Cryptocurrency:** Blockchain uses encryption technology to create cryptocurrencies, a promising new medium of exchange that is more secure and better than cash. In effect, blockchains offer vast possibilities to disrupt and change conventional business models.
- A notable emerging blockchain application is that of **smart contracts**. These are digital, self-executing contracts that can electronically facilitate, verify, and implement agreements. Experts say that these blockchain products are likely to change how future deals will be executed.

Some of the key Reg Tech processes and their benefits are as under:

- **Alternative reporting methods:** Technology that allows data to be provided (or taken) in a different way.
- **Shared utilities**: Technology that allows firms to share services via the cloud and/or online platforms.
- **Semantic tech and data point models**: Technology that converts regulatory text into a programming language.
- **Shared data ontology**: A formal naming and definition of the types, properties, and interrelationships of entities.
- **Robo-Handbook**: Interactive echnology that allows firms to understand the impact of regulations on their systems and processes.
- **Big data analytics**: Advanced analytics solutions that can interpret vast amounts of structured and unstructured data that could be stored in 'data lakes' (storage repositories).
- **Risk and compliance monitoring:** Technology that allows an always-on, noninvasive surveillance of transactions, behaviour and communications.
- **Inbuilt compliance**: Regulatory requirements can be coded into automated rules which are applied when relevant.
- **System monitoring and visualisation**: Technology that captures and traces all messages created by systems and their interactions.

The emerging focus of Reg Tech for regulators may include the following:

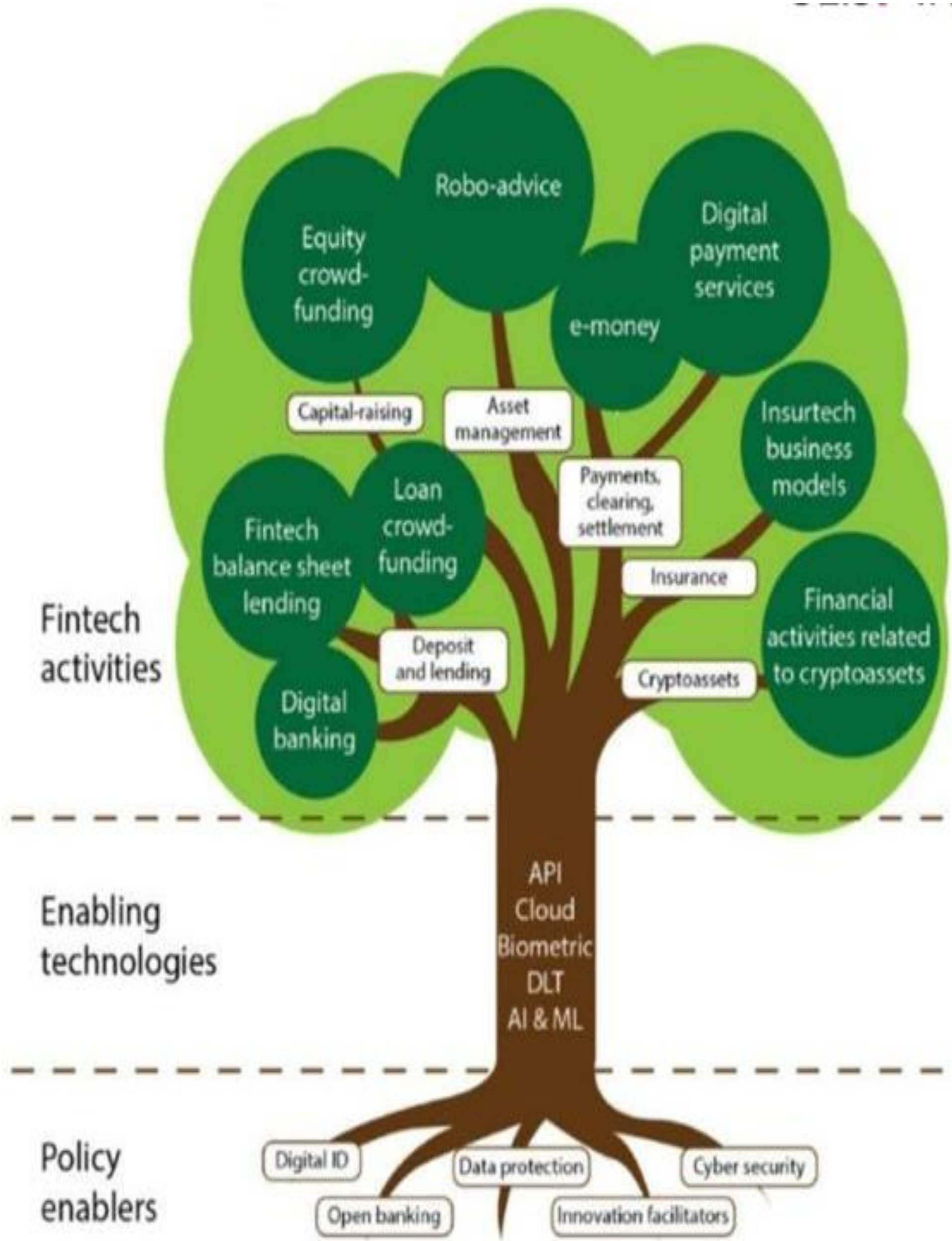
Regulatory Reporting: streamlining the existing regulatory reporting structure across the value chain

- Risk and compliance monitoring
- Protecting Customer interest
- Detecting Financial Crime

SupTech - is technology to be used by the regulators and supervisors to support supervision. The objectives of SupTech are seamless and straight through data collection / reporting, data analysis and decision making, streamlined licencing, market monitoring and surveillance, KYC / AML / CFT (i.e. Know your customer/Anti money laundering/Combating the financing of terrorism), cyber security data or evidence based policy making.

The FinTech Tree:

A taxonomy of the Fintech environment



Scope of fintech

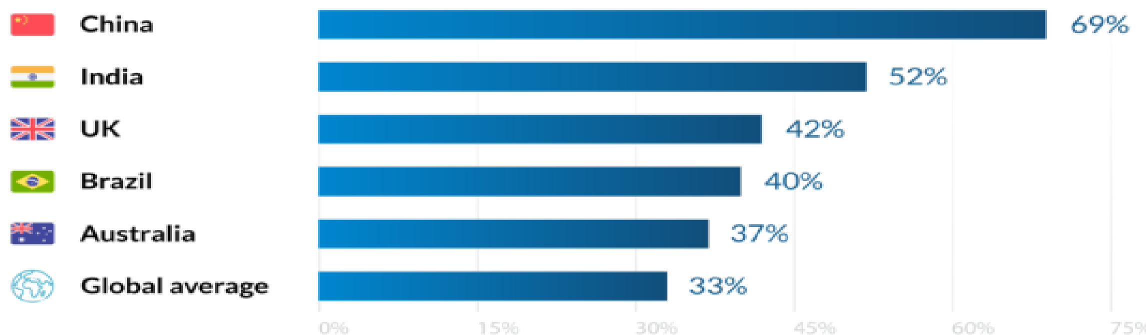
- Fintech has revolutionized many different markets, most notably the banking, trading, insurance and risk management industries.
- Fintech companies, which include startups, technology companies and established financial institutions, utilize emerging technologies, such as big data, artificial intelligence, blockchain and edge computing to make financial services more accessible and more efficient.

3 Key Fintech Trends You Should Know

FinancesOnline
REVIEWS FOR BUSINESS

1 Percentage of digitally active consumers who use fintech

Source: Business Insider Intelligence

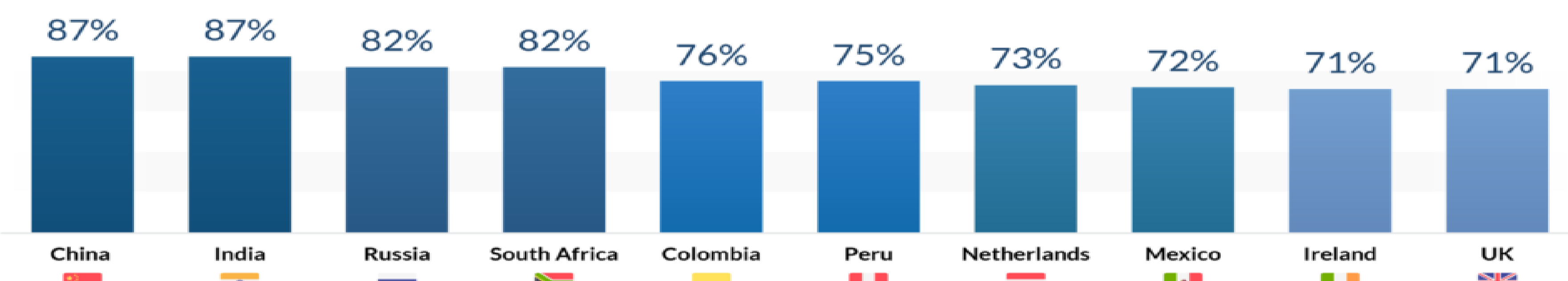


2 Key digital technologies that fintech plan to invest in in the next 12 months

Source: Deloitte 2019

3 Consumer fintech adoption rates

Source: EY



Steering Committee on Fintech

- To consider various issues relating to development of Fintech space in India
- To make Fintech related regulations more flexible to enhance entrepreneurship in areas where India has distinct comparative strengths
- To evaluate how Fintech can be leveraged to enhance financial inclusion of MSMEs

CHAIRMAN	Secretary, Department of Economic Affairs
MEMBERS	Secretary, Ministry of Electronics and Information Technology Secretary, Department of Financial Services Secretary, Ministry of Micro, Small and Medium Enterprises Chairperson, Central Board of Excise and Customs Chief Executive Officer, Unique Identification Authority of India Deputy Governor (DG), Reserve Bank of India
CONVENER	Joint Secretary (Investment), Department of Economic Affairs

TERMS OF REFERENCE

- Take stock of the global developments in the sector
- Analyze the regulatory regime spread over various entities
- Consider ways to leverage it in critical sectors of the economy
- Develop regulatory interventions to enhance the role of Fintech
- Promote ease of doing business in the Fintech sector
- Means of using data with information utilities for financing MSMEs
- Work with Government agencies like UIDAI to explore creation and use of unique enterprise identification number
- Consider international cooperation opportunities in Fintech

Regulatory Sandbox

- RS usually refers to live testing of new products or services in a controlled/test regulatory environment. The RS allows conducting field tests to collect evidence on the benefits and risks of new financial innovations. While carefully monitoring and containing their risks.

Benefits

- It fosters "learning by doing"
- It facilitates the testing of products viability at less cost
- Additionally, provides a structured and institutionalized environment for evidence-based regulatory decision-making
- leads to better outcomes for consumers through an increased range of products. Similarly, services reduced costs and improved access to financial services.

Regulatory Sandbox – Global Perspectives

- Across the world, many nations have agreed to sandboxes, and at present, 46 initiatives are implemented in different stages (WorldBank 2020).
- The concept could be mapped out to the U.S. Project Catalyst. It was a program formed by Consumer Financial Protection Bureau in 2012 for encouraging customer-friendly improvement and start-ups for financial services (BakerMcKenzie 2020).
- The program is an important extension of the Consumer Protection Act and Dodd-Frank Wall Street Reform, providing consumers with clear, spirited, and modern marketplaces. The U.K.'s Financial Conduct Authority (FCA) recognized the modern regulatory sandbox in 2015.
- It called the framework a safe place for companies to test new products, trade concepts, models, and services and to deliver optimal results without incurring standard regulatory costs.
- Of the 99 companies that applied for FCA's fifth cohort in 2019, 29 were accepted, including small start-ups and established banks (InvestIndia 2021).

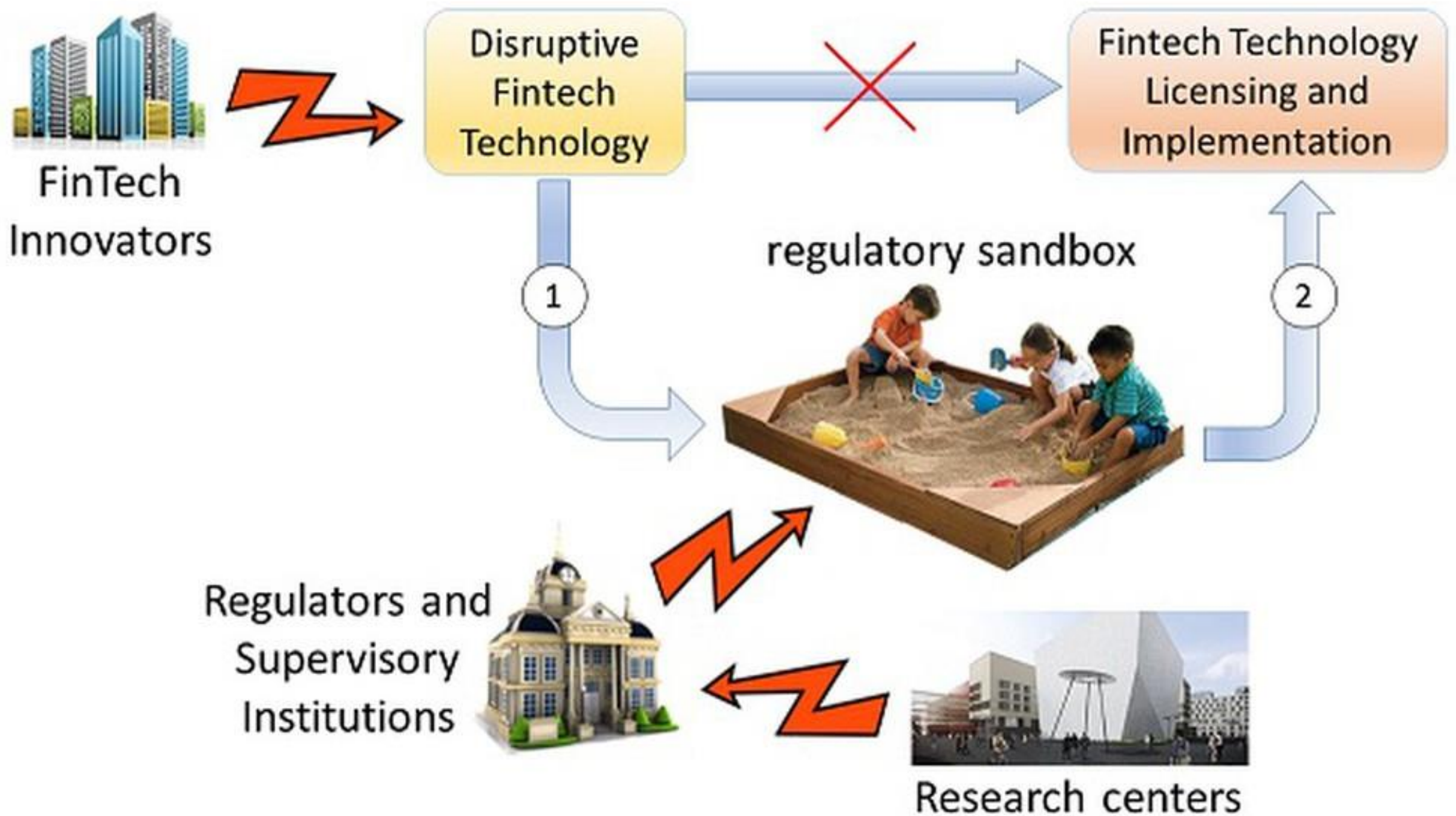
Regulatory Sandboxes in India

- In 2016 RBI initiated an inter-regulatory functioning team to look at the new and finer aspects of FinTech. RBI also released guidelines for the sandbox in August 2019 after the suggestions made by the working group. Furthermore, both the SEBI and the IRDAI have announced their plans for regulatory sandboxes. The SEBI regulates India's securities markets, whereas IRDAI regulates the insurance and re-insurance sectors (Dayal and Narayanan 2021).
- Maharashtra already has policies for encouraging financial start-ups. The government launched a sandbox exposing bank application programming lines to endorse open banking proposals. Several private bank institutions, such as ICICI Bank, YES Bank, and HDFC Bank, have an initiative where programmers and developers are asked to create a new application through banking APIs (BakerMcKenzie 2020).
- Indian regulators decided on a diverse approach compared to the U.K.'s FCA sandbox. For example, the FCA sandbox allows testing for the products in different sectors such as Know Your Customers (KYC), debt, insurance, and securities. On the contrary, Indian regulators promote new concepts through premeditated sandboxes for each division. However, sandboxes in India are currently in an emerging period as Indian regulators are still standardizing the regulations.

IRDAI's Regulatory Sandbox

- IRDAI is tasked with licensing and regulating India's insurance and re-insurance sectors. It looks at products and services in the insurance sector and has a separate section for reviewing requests. According to IRDAI's plan, any application willing to promote and bring innovation in insurance can enter the program. Though, it requires a demonstration of the new invention to the regulators. There is no detailed test period, but it ends when the number of customers reaches 10,000 or when the insurance premium reaches INR 50 lakh (Dayal and Narayanan 2021).

SEBI WORKING REGULATORY SANBOX ON FINTECH



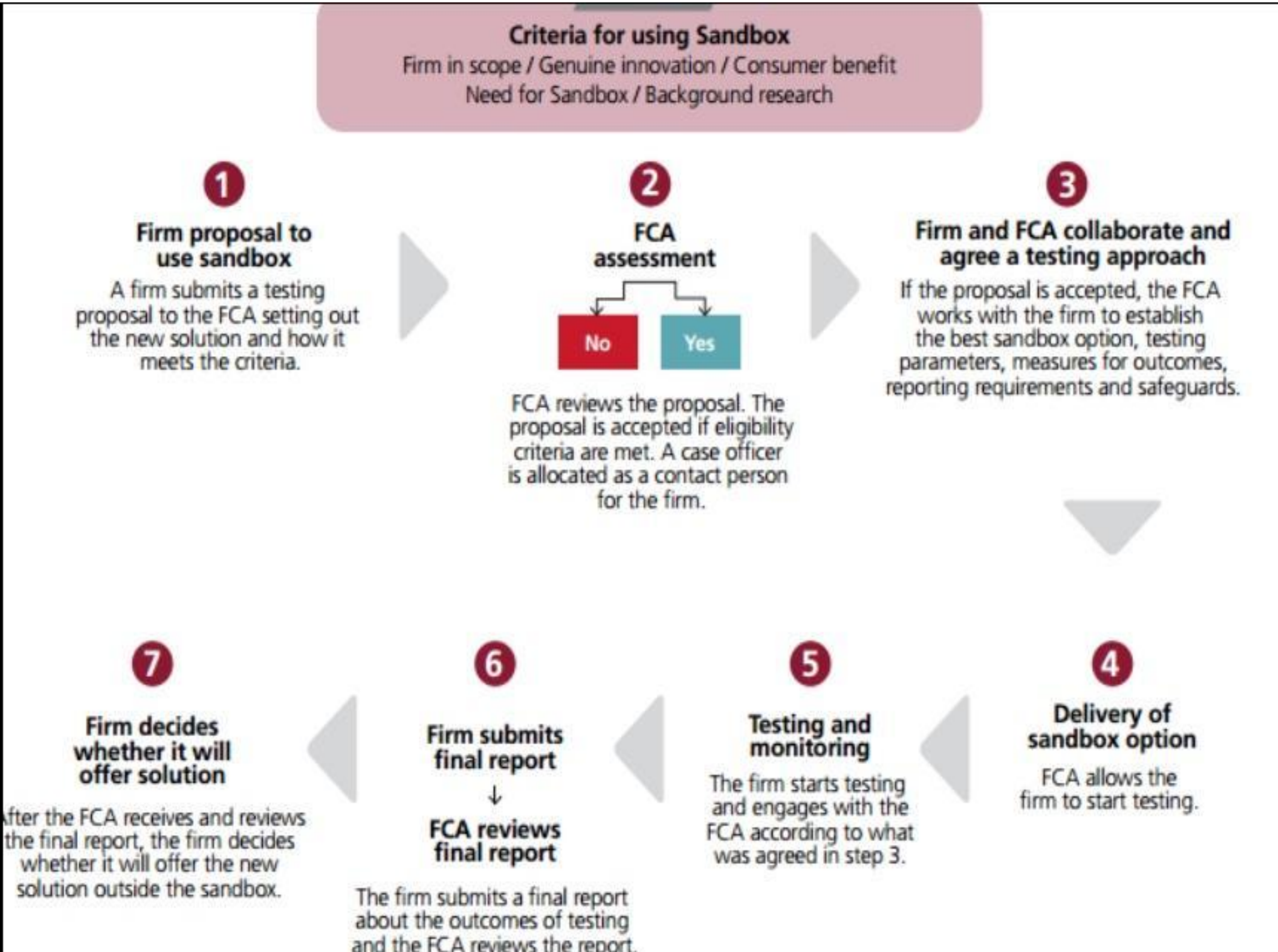
HOW THE SANDBOX WORKS

- The RS is proposed to work by selecting cohorts of participants, each with a limited number of entities (proposed to be 10-12 entities initially).
- Cohorts will be based on themes (e.g., financial inclusion, payments, KYC etc.) and are taken through an end-to-end sandbox process under the oversight of the FinTech Unit (“**FTU**”) of the RBI.
- The estimated timeline for each RS cohort is approximately six months.

Stages

Each thematic cohort of the RS shall have the following five stages and timeline:

Stage	***Indicative time period***	**Description**
Preliminary Screening	4 weeks	The FTU will evaluate the shortlisted applicants and check if they are meeting the eligibility criteria.
Test Design	3 weeks	The FTU will finalize the test design through an iterative engagement with RS applicants.
Application Assessment	3 weeks	The FTU will vet the test design and propose regulatory modifications, if any.
Testing	12 weeks	This is the crux of the RS, where the solution will actually undergo testing. The FTU will gather empirical evidence from the testing.
Evaluation	4 weeks	The RBI will evaluate the final outcome of the testing on the basis of the expected parameters, and assess its viability.


Criteria for using Sandbox
Firm in scope / Genuine innovation / Consumer benefit
Need for Sandbox / Background research
1
Firm proposal to use sandbox
A firm submits a testing proposal to the FCA setting out the new solution and how it meets the criteria.
2
FCA assessment
No
Yes
FCA reviews the proposal. The proposal is accepted if eligibility criteria are met. A case officer is allocated as a contact person for the firm.
3
Firm and FCA collaborate and agree a testing approach
If the proposal is accepted, the FCA works with the firm to establish the best sandbox option, testing parameters, measures for outcomes, reporting requirements and safeguards.
4
Delivery of sandbox option
FCA allows the firm to start testing.
5
Testing and monitoring
The firm starts testing and engages with the FCA according to what was agreed in step 3.
6
Firm submits final report
FCA reviews final report
The firm submits a final report about the outcomes of testing and the FCA reviews the report.
7
Firm decides whether it will offer solution
fter the FCA receives and reviews the final report, the firm decides whether it will offer the new solution outside the sandbox.

Global perspective

- It is essential to delve into some established international structures to understand the regulatory sandbox better.
- Three different countries – China, the U.K., and Australia – have been chosen for a deeper analysis to comprehend the functional aspects of such a setup

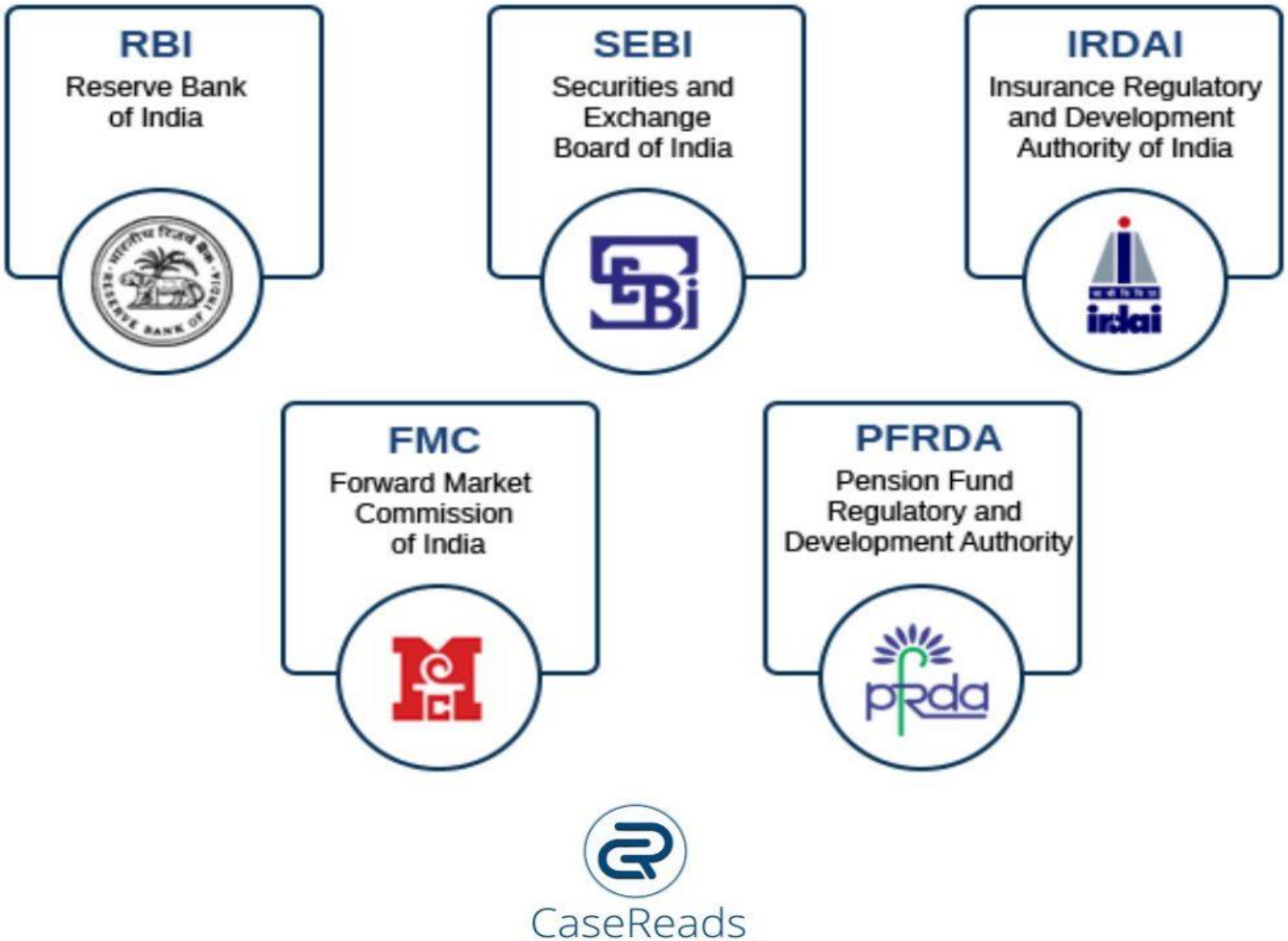
Trans-governmental attempts to facilitate cooperation among regulators

- One of the best examples of trans-governmental cooperation among regulators can be seen in the case of the E.U. (European Union). In the context of current discourse, the study of this initiative attains great relevance.
- The risk of market fragmentation primarily accelerated this cooperation. This cooperation was also compounded by potential difficulties in scaling and deploying innovative products across the E.U. market (Allen, 2020).
- The group of experts on "Regulatory Obstacles to Financial Innovation" recommended the creation of a pan-E.U. regulatory sandbox. While the intricacies of such a cooperative effort are time-dependent, it brings the concept of such a positive symbiotic existence to the fore.
- Arrangement of cross-border testing between nationally operated sandboxes can accelerate product market penetration and make it more attractive as a business destination.
- Some of the proposed aspects to be covered under this cooperative framework are: Circumscribed scope in granting permissions for multilateral trading facilities and securities settlement systems; Limits and safeguards for consumer and investor protection, market integrity, and financial stability; Creation of a harmonized framework from which national authorities can grant exemptions and take alternative measures; Specific permissions to be valid across the European Union for a time-limited period.

GFIN (Global Financial Innovation Network)

- This group includes several countries, such as Australia, Abu Dhabi, and the U.K. Some of the other jurisdictions involved are Bahrain, Dubai, Guernsey, Hong Kong, and Singapore.
- Canada's AMF (Autorité des marchés financiers) and OSC (Ontario Securities Commission), along with twelve other regulators, have proposed the creation of this group for the formation of a single Global Financial Innovation Network (GFIN).
- This body aims to foster existing collaborations, speed the process of information sharing, and create easier approach mechanisms for regulators in foreign jurisdictions (BakerMcKenzie, 2020). Better relations would translate to more compatible forms of regulation and thus lead to greater advantages in operation. Some areas of benefit would be new product development, counter-terrorist financing, payments, and financial crime.
- This framework would allow firms to test their ideas and products across multiple geographies and gain real-time insights. It would also ensure a well-rounded feedback loop, making the products more robust and suited to consumer needs.

Regulatory Bodies in India



Difference Between Fintech and Banking Sector

Fintech Companies	**Banking Sector Industry**
They majorly focus on managing customer experiences	Additionally, They majorly focus on the management of risk
They incline towards mobile functionality, data analysis, ease of accessibility, cloud computing, and personalisation	Further, they incline towards supply credit, economic growth, trust, security, and capitalisation
Area of premises is solely based on customer satisfaction and good user experience	They strive towards integrating good UX patterns to make sure customers have a seamless transaction
They main to provide 24*7 services to all areas of the world including remote areas where banks fail to provide services	Banks have been trying to ease the financial transactions for customers in remote areas but have somehow been less successful in attaining it
They have higher penetrations due to mobile connectivity	The physical distribution of banks is a major issue to resolve.
They are consumer-oriented	Further, they are process-oriented
They heavily depend on the technology	Moreover, they are very traditional in their approach

Payment and Settlement Systems Act, 2007

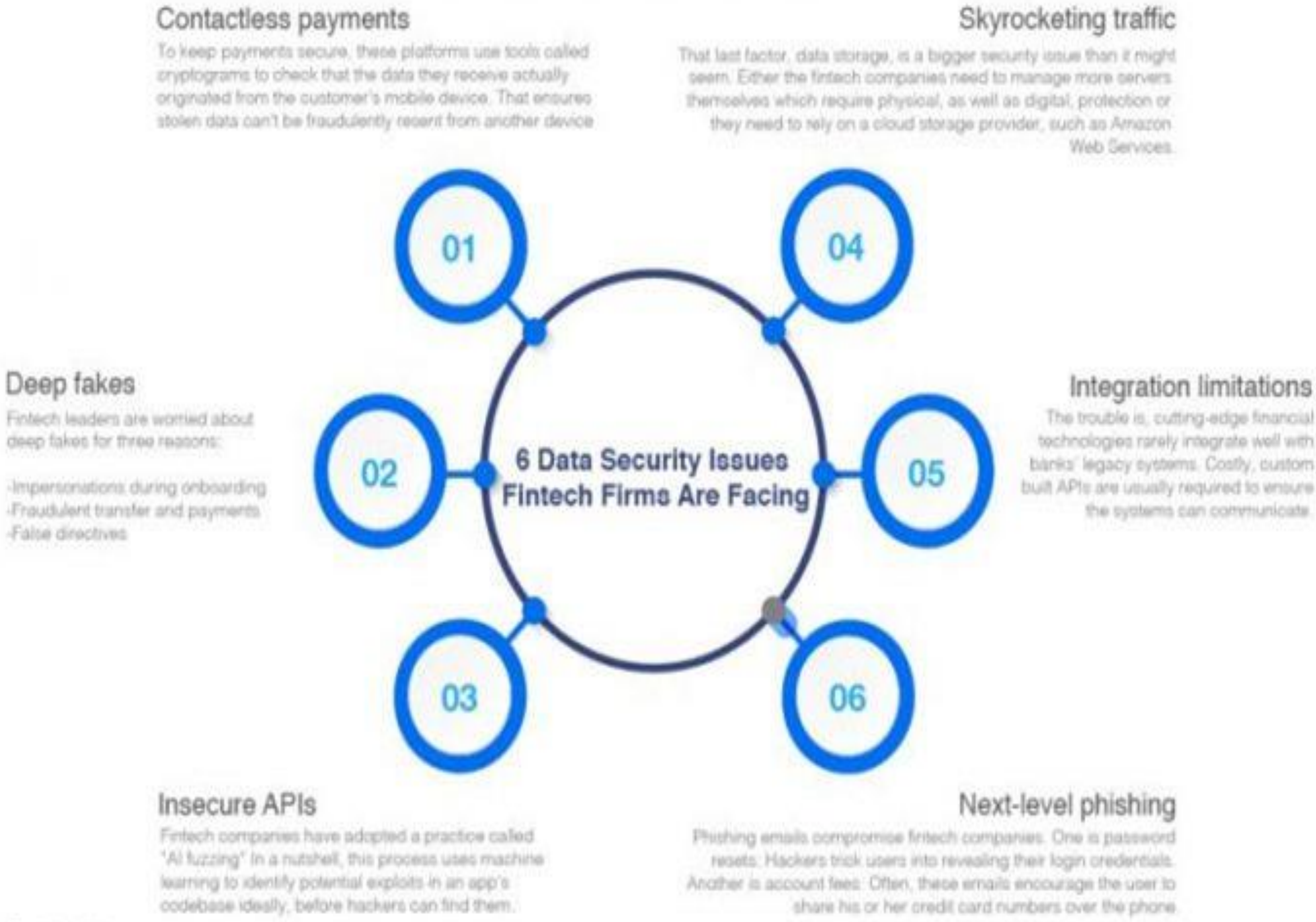
- which provides for the regulation and supervision of financial transactions in India. Under the PSS Act, 2007, two Regulations have been made by the RBI, namely, the Board for Regulation and Supervision of Payment and Settlement Systems Regulations, 2008 (BPSS Regulationswhich provides for the regulation and supervision of financial transactions in India. Under the PSS Act, 2007, two Regulations have been made by the RBI, namely, the Board for Regulation and Supervision of Payment and Settlement Systems Regulations, 2008 (BPSS Regulations) and the Payment and Settlement Systems Regulations, 2008 ('PPS Regulations, 2008').
- The BPSS empowers for authorizing, prescribing policies and setting standards for regulating. Further, supervising all the payment and settlement systems in the country. Additionally, exercises its powers on behalf of the RBI under the PSS Act, 2007.
- The PPS Regulations, 2008 lays down the procedural requirements for commencing or carrying on a payment system.

RBI Guidelines on Fintech

- **Regulation of Prepaid Payment Instruments by the RBI**: Prepaid Payment Instruments ("PPIs") are instruments that facilitate the purchase of goods and services, including financial services, remittance facilities, etc., against the value stored on such instruments. Further, on October 11, 2017, the RBI issued the Master Direction on Issuance and Operation of Prepaid Payment Instruments ("PPI Master Directions") under section 18 read with section 10(2) of the P&SS Act.
- **Regulation of Payment Intermediaries by the RBI:** The Directions For Opening And Operation Of Accounts And Settlement Of Payments For Electronic Payment Transactions Involving Intermediaries ("2009 EPT Directions") were issued by the RBI under section 18 of the P&SS Act to protect the interests of the customers and to ensure that the payments made by them are duly accounted for by the intermediaries receiving such payments and remitted to the accounts of the merchants without any delay. Moreover, the RBI recently issued the Guidelines on Regulation of Payment Aggregators and Payment Gateways dated March 17, 2020 ("PAPG Guidelines") under section 18 read with section 10(2) of the P&SS Act.

RBI Guidelines on Fintech

- **Payment Banks**: A payments bank functions as a bank but operates on a smaller scale and cannot advance loans or issue credit cards. Further, such banks are registered as public limited companies under the Companies Act, 2013, and licensed under **section 22 of the Banking Regulation Act, 1949**, with specific licensing conditions restricting its activities mainly to the acceptance of demand deposits and provision of payments and remittance services.
- **NBFC Regulation**: An entity which carries on FinTech business may have to be registered with the RBI as an NBFC if it falls within the prescribed criteria. In terms of **section 45-IA of the RBI Act,** no NBFC can commence or carry on the business of a non-banking financial institution without (a) obtaining a certificate of registration from the RBI and without having a net owned fund of Rs. 25,00,000 and not exceeding Rs. 100,00,00,000. However, in terms of the powers given to the RBI, to obviate dual regulation. Some categories of NBFCs will regulate by other regulators.


Contactless payments
To keep payments secure, these platforms use tools called cryptograms to check that the data they receive actually originated from the customer's mobile device. That ensures stolen data can't be fraudulently resent from another device
Skyrocketing traffic
That last factor, data storage, is a bigger security issue than it might seem. Either the fintech companies need to manage more servers themselves which require physical, as well as digital, protection or they need to rely on a cloud storage provider, such as Amazon Web Services.
01
04
Deep fakes
Fintech leaders are worried about deep fakes for three reasons:
-Impersonations during onboarding
-Fraudulent transfer and payments
-False directives
02
6 Data Security Issues Fintech Firms Are Facing
05
Integration limitations
The trouble is, cutting-edge financial technologies rarely integrate well with banks' legacy systems. Costly, custom built APIs are usually required to ensure the systems can communicate.
03
06
Insecure APIs
Fintech companies have adopted a practice called "AI fuzzing" In a nutshell, this process uses machine learning to identify potential exploits in an app's codebase ideally, before hackers can find them.
Next-level phishing
Phishing emails compromise fintech companies. One is password resets: Hackers trick users into revealing their login credentials. Another is account fees. Often, these emails encourage the user to share his or her credit card numbers over the phone

Key Challenges in Fintech Regulation

Data Privacy

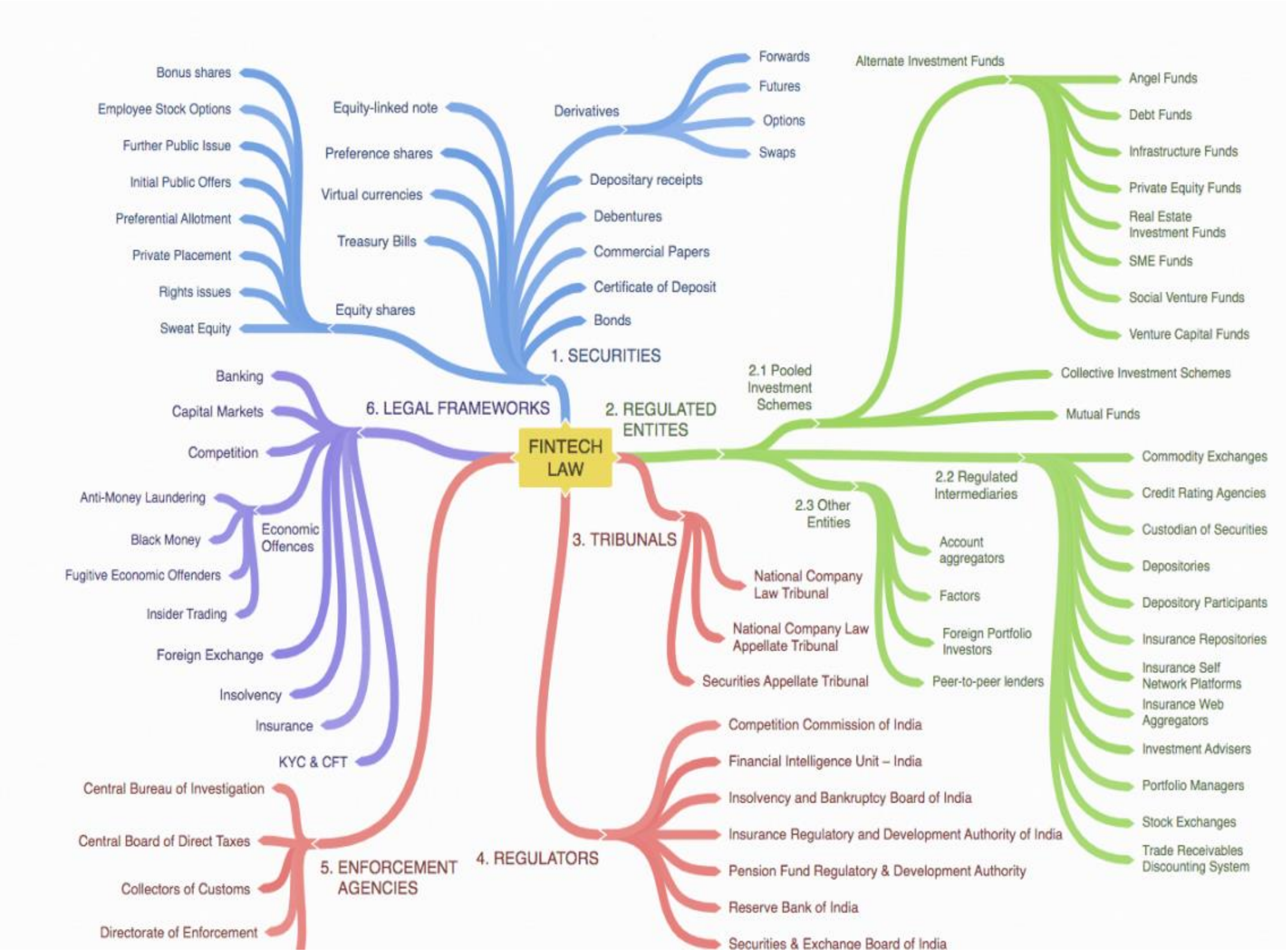
- Rise of misuse of consumer data
- Consent based access to cosumer data

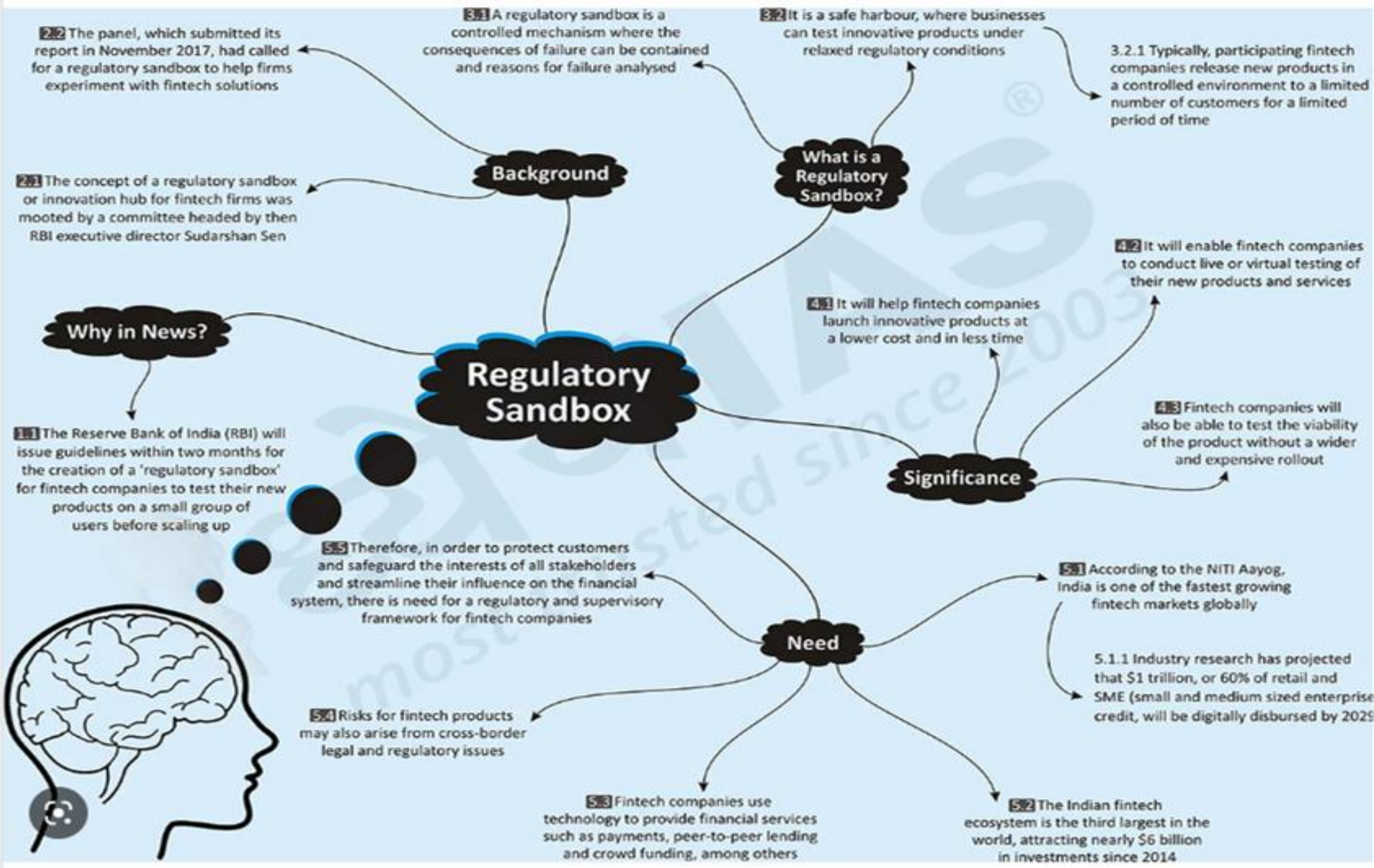
Data Security

- Cybercriminals perpetrating financial crimes
- Cybersecurity is the key to safeguarding consumer trust

Open Data

- Data is crucial for insight generation
- Restrictive policies could hamper free flow of data

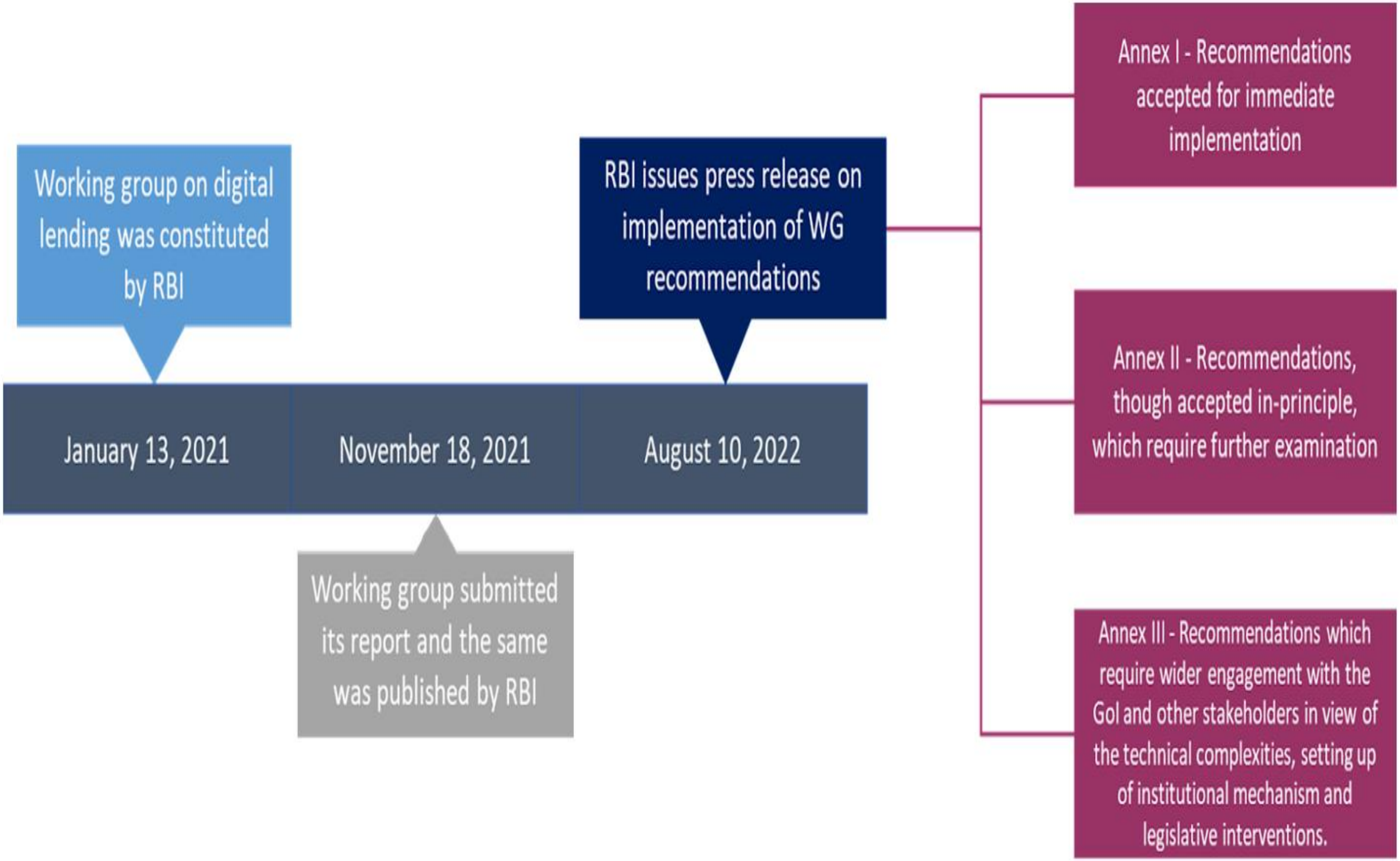

FINTECH LAW
1. SECURITIES
Equity shares
Bonus shares
Employee Stock Options
Further Public Issue
Initial Public Offers
Preferential Allotment
Private Placement
Rights issues
Sweat Equity
Equity-linked note
Preference shares
Virtual currencies
Treasury Bills
Derivatives
Forwards
Futures
Options
Swaps
Depositary receipts
Debentures
Commercial Papers
Certificate of Deposit
Bonds
2. REGULATED ENTITES
2.1 Pooled Investment Schemes
Alternate Investment Funds
Angel Funds
Debt Funds
Infrastructure Funds
Private Equity Funds
Real Estate Investment Funds
SME Funds
Social Venture Funds
Venture Capital Funds
Collective Investment Schemes
Mutual Funds
2.2 Regulated Intermediaries
Commodity Exchanges
Credit Rating Agencies
Custodian of Securities
Depositories
Depository Participants
Insurance Repositories
Insurance Self Network Platforms
Insurance Web Aggregators
Investment Advisers
Portfolio Managers
Stock Exchanges
Trade Receivables Discounting System
2.3 Other Entities
Account aggregators
Factors
Foreign Portfolio Investors
Peer-to-peer lenders
3. TRIBUNALS
National Company Law Tribunal
National Company Law Appellate Tribunal
Securities Appellate Tribunal
4. REGULATORS
Competition Commission of India
Financial Intelligence Unit – India
Insolvency and Bankruptcy Board of India
Insurance Regulatory and Development Authority of India
Pension Fund Regulatory & Development Authority
Reserve Bank of India
Securities & Exchange Board of India
5. ENFORCEMENT AGENCIES
Central Bureau of Investigation
Central Board of Direct Taxes
Collectors of Customs
Directorate of Enforcement
6. LEGAL FRAMEWORKS
Banking
Capital Markets
Competition
Economic Offences
Anti-Money Laundering
Black Money
Fugitive Economic Offenders
Insider Trading
Foreign Exchange
Insolvency
Insurance
KYC & CFT


Regulatory Sandbox
Why in News?
1.1 The Reserve Bank of India (RBI) will issue guidelines within two months for the creation of a 'regulatory sandbox' for fintech companies to test their new products on a small group of users before scaling up
Background
2.1 The concept of a regulatory sandbox or innovation hub for fintech firms was mooted by a committee headed by then RBI executive director Sudarshan Sen
2.2 The panel, which submitted its report in November 2017, had called for a regulatory sandbox to help firms experiment with fintech solutions
What is a Regulatory Sandbox?
3.1 A regulatory sandbox is a controlled mechanism where the consequences of failure can be contained and reasons for failure analysed
3.2 It is a safe harbour, where businesses can test innovative products under relaxed regulatory conditions
3.2.1 Typically, participating fintech companies release new products in a controlled environment to a limited number of customers for a limited period of time
Significance
4.1 It will help fintech companies launch innovative products at a lower cost and in less time
4.2 It will enable fintech companies to conduct live or virtual testing of their new products and services
4.3 Fintech companies will also be able to test the viability of the product without a wider and expensive rollout
Need
5.1 According to the NITI Aayog, India is one of the fastest growing fintech markets globally
5.1.1 Industry research has projected that $1 trillion, or 60% of retail and SME (small and medium sized enterprise credit, will be digitally disbursed by 202
5.2 The Indian fintech ecosystem is the third largest in the world, attracting nearly $6 billion in investments since 2014
5.3 Fintech companies use technology to provide financial services such as payments, peer-to-peer lending and crowd funding, among others
5.4 Risks for fintech products may also arise from cross-border legal and regulatory issues
5.5 Therefore, in order to protect customers and safeguard the interests of all stakeholders and streamline their influence on the financial system, there is need for a regulatory and supervisory framework for fintech companies

Regulations governing Lending FinTech's in India

No.	Segment	Regulatory Compliance	FDI Compliance
1.	Digital Lenders	**Respective Master directions & circulars governing NBFC licensing and service in India**	100% FDI allowed
2.	Peer to Peer Lenders (P2P)	**Master Directions - Non-Banking Financial Company – Peer to Peer Lending Platform (Reserve Bank) Directions, 2017**	100% FDI allowed
3.	Account Aggregator	**Reserve Bank (NBFC - Account Aggregator) Direction, 2016**	

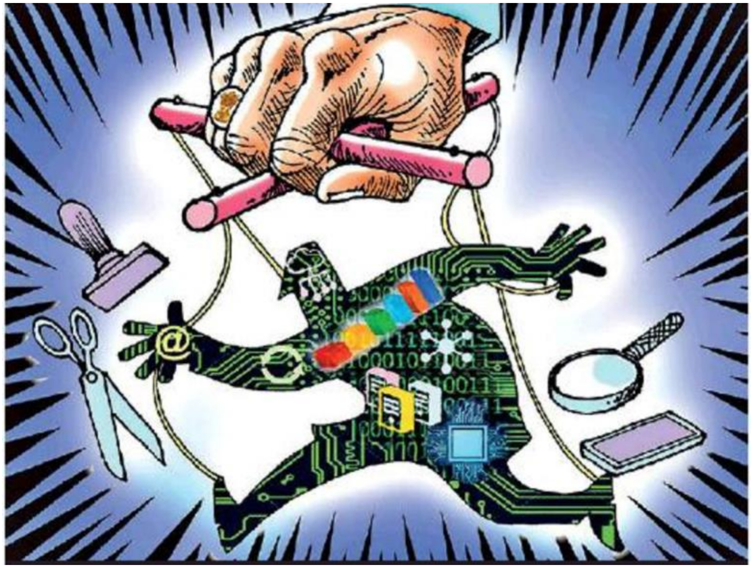
Regulating Authority - Reserve Bank of India



Working group on digital lending was constituted by RBI
RBI issues press release on implementation of WG recommendations
January 13, 2021
November 18, 2021
August 10, 2022
Working group submitted its report and the same was published by RBI
Annex I - Recommendations accepted for immediate implementation
Annex II - Recommendations, though accepted in-principle, which require further examination
Annex III - Recommendations which require wider engagement with the GoI and other stakeholders in view of the technical complexities, setting up of institutional mechanism and legislative interventions.

RBI guidelines on the Data Localization Policy

- Reserve Bank of India (RBI) issued a circular dated April 6, 2018, stating that all authorized Payment System Operators (PSOs) in India to ensure that the data related to payment systems such as customer data, payment sensitive data, payment credentials, and transaction data should be mandatorily stored within India itself under the Payment and
- All payment firms, including American Express, Master Card/Visa, PayPal, Google Pay, WhatsApp Pay, Paytm, and Phone Pe, should adhere to the RBI's data localization rule. Subsequently, RBI insisted system providers for unfettered access to all data on complete end-to-end transaction details/information collected/carried/processed as part of the message/payment instruction by submitting Audit Report (SAR) conducted by CERT-IN. Settlement Systems Act, 2007.

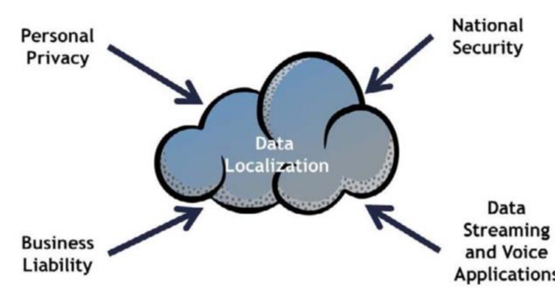


Indian Laws and Policies Enabling Data Localisation

Category of Data	Policy/ Law	No Restriction of Cross Border Flow	Cross Border Flow Permitted as Long as Copy Maintained in India	No Cross Border Flow Permitted
Critical Data	Personal Data Protection Bill, 2018			
Personal Data				
Personal Data Not Collected in India				
Public IoT Data	e-Commerce Policy			
E-Commerce Data				
Payment Systems Data	RBI Circular			
e-Pharmacy Data*	e-Pharmacy Regulations			
Subscriber and User Data	Unified Access License for Telecom			
Subscribers' Databases (Broadcasting Sector)	FDI Policy			
Companies' Account Related Data	Companies (Accounts) Rules, 2014			
Insurance Policy Holder Data	IRDAI Regulations			
Government Data	Guidelines on Contractual Terms Related to Cloud Services			

Latest position on data localization

- RBI reiterated its stand on data privacy by issuing a circular stating that from April 1, 2021, all Payment system operators to submit a compliance certificate duly signed by their CEOs or Managing Directors on a half-yearly basis adhering to the RBI's regulations on securing payments data.
- This again triggered an active interest in RBI's continuous intervention on securing and continuously monitoring the data to avoid any future risks to the country. With the advancements in the digital economy, financial data security is a must for the country's economic growth and development.



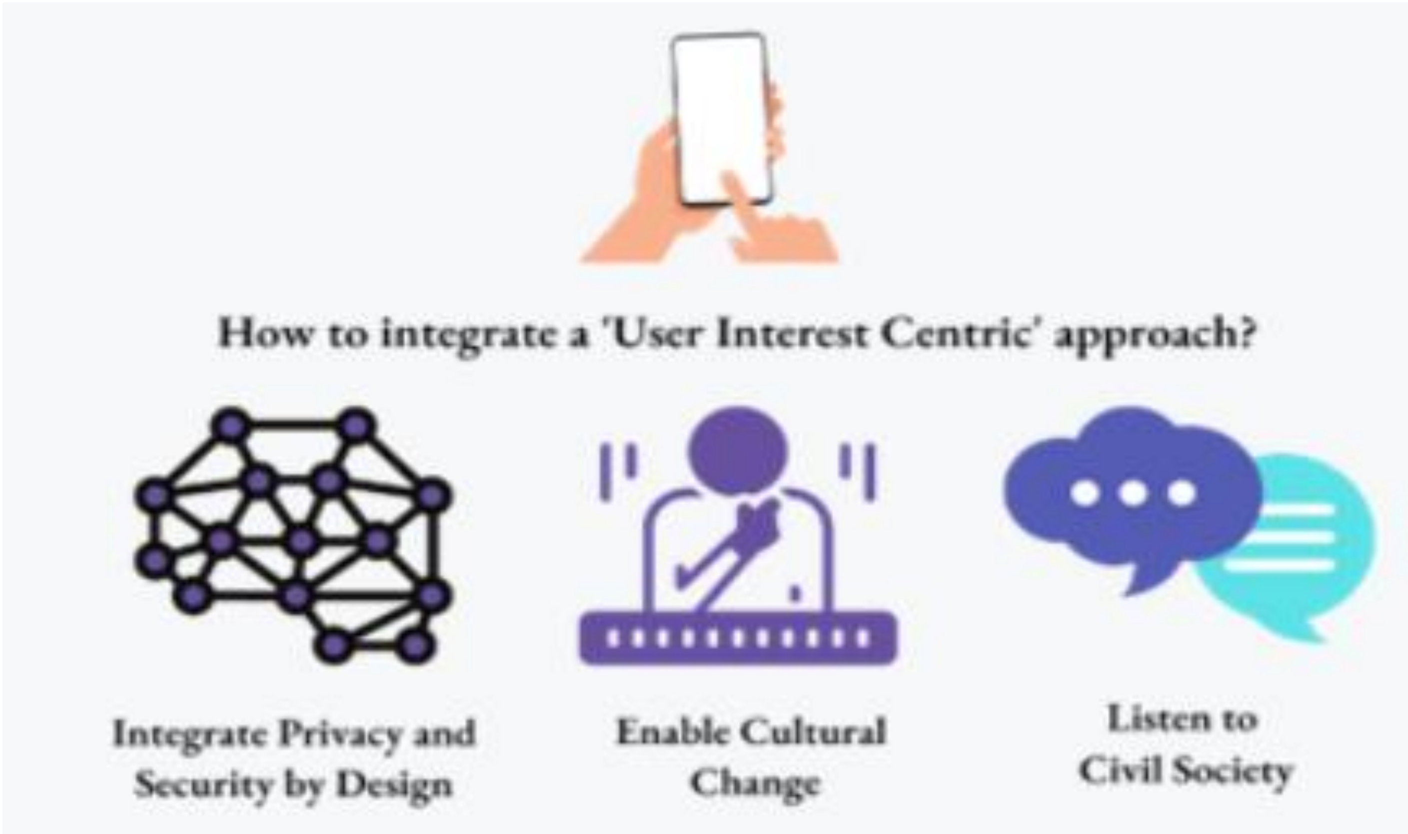
Fintech at present Compliance Centric Approach

- Heavy penalties
- Increased regulatory attention
- Intention to engage with the government

Development of Indian cybersecurity framework

Development of the data privacy framework in India

Cybersecurity requirements under Indian law

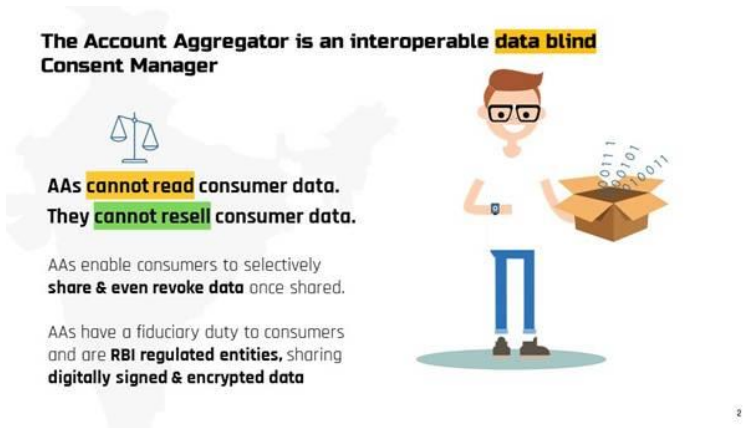

How to integrate a 'User Interest Centric' approach?
Integrate Privacy and Security by Design
Enable Cultural Change
Listen to Civil Society

Future of Data Sharing:

The consented data sharing under AA allows any third party app to securely receive users data which in turn gives rise to a range of new use cases. Imagine a Uber driver being able to get a loan through their rider app by sharing their bank account statement as opposed to walking to a bank. The possibilities are endless.

Can an AA see or store data?

- Data transmitted through the AA is encrypted.
- AAs are not allowed to store, process and sell the customer's data. No financial information accessed by the AA from an FIP should reside with the AA.
- It should not use the services of a third-party service provider for undertaking the business of account aggregation.
- User authentication credentials of customers relating to accounts with various FIPs shall not be accessed by the AA,

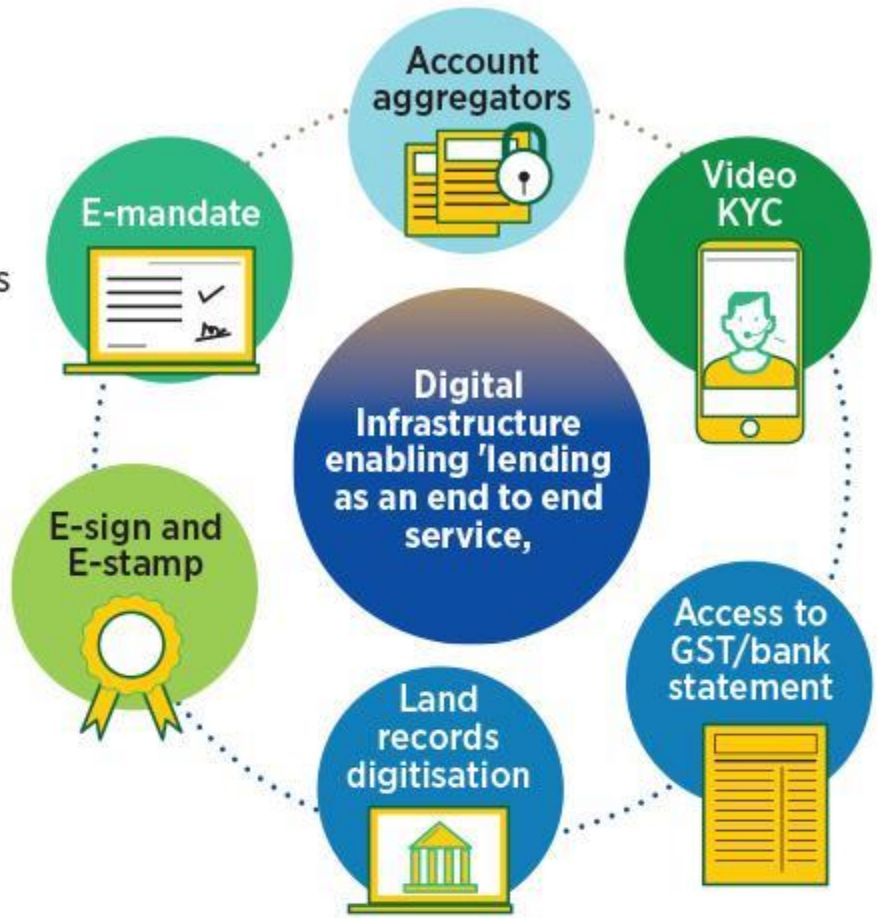


Key drivers for innovation in financial inclusion

Account aggregator to manage consent for financial data sharing

NPCI introduced **E-mandate services** to reduce processing tme, make recurring payments more efficient

E-sign and E-stamp has enabled digitised loan agreement



Video-based KYC verification process and document verification through live video call

Access to GST/bank statement/ ITR data for both individuals and MSMEs

SOURCE KPMG

Leveraging **dgitised land records** for land record authentication and scale of finance

The government should invest money and frame policy to register the micro enterprises that remain outside the formal system. If an Aadhaar framework can be created, with crores of numbers being issued, why can't we have a similar unique number for these businesses?

Subhash Chandra Garg
Former Economic Affairs Secretary and Finance Secretary, GoI

The way MSMEs have taken to invoice discounting shows how eager they are to embrace digitalisation when they find they can benefit from it. People from the smallest towns have taken to the TReDS platform despite the solution being available only in the English language

Rajeev Kumar
Senior Vice President, Market Development, South Asia, Mastercard

Fintech companies should ensure they are ring fencing defaults on their platform, because if don't and a default happens, the market's confidence in their entire model will be shaken

Sundeep Mohindru
CEO, M1Xchange

Macro platforms like OCEN (Open Credit Enablement Network), which has standardised APIs enabling data transfer from borrower to lender, should be created. OCEN can be developed into a parallel of UPI for credit

Nitish Asthana
President and COO, Pine Labs

Indians have excellent trading instinct; we have been successful traders for over 2,000 years. Even so, localisation, providing local language options on the relevant portals, will increase the pace of MSME digitalisation

Kalpana Balasubramanian
CEO and Chief Thinker, Grant Thornton dGTL

Micro enterprises prefer not to get registered for fear that if they do they will be charged commercial rates of property tax and power instead of residential. The solution lies in ruling that establishments with turnover below a certain threshold will not be charged commercial rates

Anil Bhardwaj
Secretary General, Federation of Indian Micro and Small & Medium Enterprises (FISME)

NEW REGULATIONS SHAPING FINTECH

April 21

RBI updates Master Direction on co-branded, credit and debit cards

Impact:

Limited role of co-branding partners to marketing and distribution

Barred co-branding partners from storing transaction data

June 20

RBI says credit lines cannot be loaded into prepaid cards, wallets

Impact:

Players like Slice, Uni, LazyPay, PostPe stop loading credit lines

Uni, LazyPay pause new customer on-boarding

Slice replaces credit lines with loans

August 10

- RBI's digital lending norms eliminate third party or pass through accounts in flow of lending
- Loans cannot be loaded into prepaid cards, wallets
- Norms to be adhered to by November 30

Impact:

- Slice, Uni, LazyPay's PPI-led lending models invalid

- Other fintechs that pooled funds working on re-wiring processes

moneycontrol


Integrity
Inclusion
Internationalisation
Goals for Payments Vision 2025
Instituionalisation
Innovation

De-coding The New Digital Lending Regulations

- RBI Working Group on '*digital lending including lending through online platforms and mobile apps*' led by one of its executive directors, Mr. Jayant Kumar Dash ("**Working Group**") which had submitted a set of recommendations to the RBI on November 21, 2021 ("**WG Report**").
- The WG Report included a host of recommendations to the RBI and the central government *vis-à-vis* the required changes to the digital lending ecosystem.

RBI August 10, 2022 ("**Press Release**")

(a) recommendations from the WG Report which are up for immediate implementation;

(b) recommendations from the WG Report which have been accepted *in-principle* but require further examination; and

(c) recommendations that require wider engagement with the central government and other stakeholders in view of the technical complexities, setting up of institutional mechanism and legislative interventions.

These directions are issued under

- sections 21, 35A and 56 of the Banking Regulation Act, 1949,
- sections 45JA, 45L and 45M of the Reserve Bank of India Act, 1934,
- sections 30A and 32 of the National Housing Bank Act, 1987,
- section 6 of the Factoring Regulation Act, 2011 and section 11 of the Credit Information Companies (Regulation) Act, 2005

These guidelines are applicable to digital lending extended by:

1.1. All Commercial Banks,

1.2. Primary (Urban) Co-operative Banks, State Co-operative Banks, District Central Co-operative Banks; and

1.3. Non-Banking Financial Companies (including Housing Finance Companies)

2. Definitions

2.1. Annual Percentage Rate (APR): APR is the effective annualised rate charged to the borrower of a digital loan. APR shall be based on an all-inclusive cost and margin including cost of funds, credit cost and operating cost, processing fee, verification charges, maintenance charges, etc., and exclude contingent charges like penal charges, late payment charges, etc.

2.2. Cooling off/look-up period: A cooling off/ look-up period is the time window as determined by the Board of the RE which shall be given to borrowers for exiting digital loans, in case a borrower decides not to continue with the loan.

2.3. Digital Lending: A remote and automated lending process, largely by use of seamless digital technologies for customer acquisition, credit assessment, loan approval, disbursement, recovery, and associated customer service.

2.4. Digital Lending Apps/Platforms (DLAs): Mobile and web-based applications with user interface that facilitate digital lending services. DLAs will include apps of the Regulated Entities (REs) as well as those operated by Lending Service Providers (LSPs) engaged by REs for extending any credit facilitation services in conformity with extant outsourcing guidelines issued by the Reserve Bank.

A. Customer Protection and Conduct requirements

3. Loan Disbursal, Servicing and Repayment

REs shall ensure that all loan servicing, repayment, etc., shall be executed by the borrower directly in the RE's bank account without any pass-through account/ pool account of any third party.

The disbursements shall always be made into the bank account of the borrower except for disbursals covered exclusively under statutory or regulatory mandate (of RBI or of any other regulator), flow of money between REs for co-lending transactions and disbursals for specific end use, provided the loan is disbursed directly into the bank account of the end-beneficiary.

REs shall ensure that in no case, disbursal is made to a third-party account, including the accounts of LSPs and their DLAs, except as provided for in these guidelines.

4. Collection of fees, charges, etc.

4.1. Payment of Fees/Charges: REs shall ensure that any fees, charges, *etc.*, payable to LSPs are paid directly by them (REs) and are not charged by LSP to the borrower directly.

4.2. Penal Interest/ Charges: The penal interest/charges levied, if any, on the borrowers shall be based on the outstanding amount of the loan. Further, rate of such penal charges shall be disclosed upfront on an annualized basis to the borrower in the Key Fact Statement (KFS).

5. Disclosures to borrowers

5.1. Annual Percentage Rate (APR) - APR as all-inclusive cost of digital loans for the borrower shall be disclosed upfront by REs and shall also be a part of the Key Fact Statement.

5.2. Key Fact Statement

5.2.1. REs shall provide a Key Fact Statement (KFS) to the borrower before the execution of the contract in a standardized format for all digital lending products. The format of KFS is provided in Annex-II.

5.2.2. The KFS shall, apart from other necessary information, contain the details of APR, the recovery mechanism, details of grievance redressal officer designated specifically to deal with digital lending/ FinTech related matter and the cooling-off/ look-up period.

5.2.3. Any fees, charges, etc., which are not mentioned in the KFS cannot be charged by the REs to the borrower at any stage during the term of the loan.

5.3. Digitally signed documents – REs shall ensure that digitally signed documents[3] (on the letter head of the RE) viz., KFS, summary of loan product, sanction letter, terms and conditions, account statements, privacy policies of the LSPs/DLAs with respect to borrowers data, etc. shall automatically flow to the borrowers on their registered and verified email/ SMS upon execution of the loan contract/ transactions.

5.4. List of LSPs – REs shall prominently publish the list of their DLAs, LSPs engaged by them and DLAs of such LSPs with the details of the activities for which they have been engaged, on their website.

5. Disclosures to borrowers

5.5. Product information – REs shall ensure that their DLAs or DLAs of their LSPs at on-boarding/sign-up stage, prominently display information relating to the product features, loan limit and cost, *etc.*, so as to make the borrowers aware of these aspects.

5.6. Details of recovery agent – REs shall communicate to the borrower, at the time of sanctioning of the loan and also at the time of passing on the recovery responsibilities to an LSP or change in the LSP responsible for recovery, the details of the LSP acting as recovery agent who is authorised to approach the borrower for recovery.

5.7. Link to website - REs shall ensure that DLAs of REs and LSPs have links to REs' website where further/ detailed information about the loan products, the lender, the LSP, particulars of customer care, link to Sachet Portal, privacy policies, *etc.* can be accessed by the borrowers. It shall be ensured that all such details are available at a prominent single place on the website for ease of accessibility.

6. Grievance Redressal

6.1. Nodal grievance redressal officer - REs shall ensure that they and the LSPs engaged by them shall have a suitable nodal grievance redressal officer to deal with FinTech/ digital lending related complaints/ issues raised by the borrowers. Such grievance redressal officer shall also deal with complaints against their respective DLAs. Contact details of grievance redressal officers shall be prominently displayed on the websites of the RE, its LSPs and on DLAs and also in the KFS provided to the borrower. Further, the facility of lodging complaint shall also be made available on the DLA and on the website as stated above. It is reiterated that responsibility of grievance redressal shall continue to remain with the RE.

6.2. If any complaint lodged by the borrower against RE or the LSP engaged by the RE is not resolved by the RE within the stipulated period (currently 30 days), he/she can lodge a complaint over the Complaint Management System (CMS)[4] portal under the Reserve Bank-Integrated Ombudsman Scheme (RB-IOS)[5]. For entities currently not covered under RB-IOS, complaint may be lodged as per the grievance redressal mechanism prescribed by the Reserve Bank.

7. Assessing the borrower's creditworthiness

7.1. REs shall capture the economic profile of the borrowers covering (age, occupation, income, *etc.)*, before extending any loan over their own DLAs and/or through LSPs engaged by them, with a view to assessing the borrower's creditworthiness in an auditable way.

7.2. REs shall ensure that there is no automatic increase in credit limit unless explicit consent of borrower is taken on record for each such increase.

8. Cooling off/look-up period – A borrower shall be given an explicit option to exit digital loan by paying the principal and the proportionate APR without any penalty during this period. The cooling off period shall be determined by the Board of the RE. The period so determined shall not be less than three days for loans having tenor of seven days or more and one day for loans having tenor of less than seven days. For borrowers continuing with the loan even after look-up period, pre-payment shall continue to be allowed as per extant RBI guidelines[6].

9. Due diligence and other requirements with respect to LSPs

9.1. REs must conduct enhanced due diligence before entering into a partnership with a LSP for digital lending, taking into account its technical abilities, data privacy policies and storage systems, fairness in conduct with borrowers and ability to comply with regulations and statutes.

9.2. REs shall carry out periodic review of the conduct of the LSPs engaged by them.

9.3. REs shall impart necessary guidance to LSPs acting as recovery agents to discharge their duties responsibly and ensure that they comply with the extant instructions[7] in this regard.

B. Technology and Data Requirement

10. Collection, usage and sharing of data with third parties

10.1. REs shall ensure that any collection of data by their DLAs and DLAs of their LSPs is need-based and with prior and explicit consent of the borrower having audit trail. In any case, REs shall also ensure that DLAs desist from accessing mobile phone resources like file and media, contact list, call logs, telephony functions, *etc.* A one-time access can be taken for camera, microphone, location or any other facility necessary for the purpose of on-boarding/ KYC requirements only, with the explicit consent of the borrower.

10.2. The borrower shall be provided with an option to give or deny consent for use of specific data, restrict disclosure to third parties, data retention, revoke consent already granted to collect personal data and if required, make the app delete/ forget the data.

10.3. The purpose of obtaining borrowers' consent needs to be disclosed at each stage of interface with the borrowers.

10.4. Explicit consent of the borrower shall be taken before sharing personal information with any third party, except for cases where such sharing is required as per statutory or regulatory requirement.

11. Storage of data

11.1. REs shall ensure that LSPs/DLAs engaged by them do not store personal information of borrowers except some basic minimal data (*viz.,* name, address, contact details of the customer, *etc.*) that may be required to carry out their operations. Responsibility regarding data privacy and security of the customer's personal information will be that of the RE.

11.2. REs shall ensure that clear policy guidelines regarding the storage of customer data including the type of data that can be stored, the length of time for which data can be stored, restrictions on the use of data, data destruction protocol, standards for handling security breach, *etc.*, are put in place and also disclosed by DLAs of the REs and of the LSP engaged by the RE prominently on their website and the apps at all times.

11.3. REs shall ensure that no biometric data is stored/ collected in the systems associated with the DLA of REs/ their LSPs, unless allowed under extant statutory guidelines.

11.4. REs shall ensure that all data is stored only in servers located within India, while ensuring compliance with statutory obligations/ regulatory instructions.

12. Comprehensive privacy policy

12.1. REs shall ensure that their DLAs and LSPs engaged by them have a comprehensive privacy policy compliant with applicable laws, associated regulations and RBI guidelines. For access and collection of personal information of borrowers, DLAs of REs/LSPs should make the comprehensive privacy policy available publicly.

12.2. Details of third parties (where applicable) allowed to collect personal information through the DLA shall also be disclosed in the privacy policy.

13. Technology standards – REs shall ensure that they and the LSPs engaged by them comply with various technology standards/ requirements on cybersecurity stipulated by RBI and other agencies, or as may be specified from time to time, for undertaking digital lending.

C. Regulatory Framework

14. Reporting to Credit Information Companies (CICs)

14.1. As per the provisions of the Credit Information Companies (CIC) (Regulation) Act, 2005; CIC Rules, 2006; CIC Regulations, 2006 and related guidelines issued by RBI from time to time, REs shall ensure that any lending done through their DLAs and/or DLAs of LSPs is reported to CICs irrespective of its nature/ tenor.

14.2. Extension of structured digital lending products by REs and/or LSPs engaged by REs over a merchant platform involving short term, unsecured/ secured credits or deferred payments, need to be reported to CICs by the REs. REs shall ensure that LSPs, if any, associated with such deferred payment credit products shall abide by the extant outsourcing guidelines issued by the Reserve Bank and be guided by these guidelines.

15. Loss sharing arrangement in case of default:

- As regards the industry practice of offering financial products involving contractual agreements such as First Loss Default Guarantee (FLDG) in which a third party guarantees to compensate up to a certain percentage of default in a loan portfolio of the RE, it is advised that REs shall adhere to the provisions of the Master Direction – Reserve Bank of India (Securitisation of Standard Assets) Directions, 2021 dated September 24, 2021, especially, synthetic securitisation contained in Para (6)(c).
- synthetic securitisation" means a structure where credit risk of an underlying pool of exposures is transferred, in whole or in part, through the use of credit derivatives or credit guarantees that serve to hedge the credit risk of the portfolio which remains on the balance sheet of the lender.

Case Law on Digital Lending

The Digital Fifth

Digital Lending Guidelines: Highlights

No 3rd Party Collections

- Disbursals/repayments from borrower to RE
- No pass- through/ pool account of the LSP or any third party

Fintech Cannot Collect Fee

- RE will pay LSP fees or charges in credit intermediation process

Key Fact Statement

KFS

- Key Fact Statement given to borrower, which also includes All-inclusive cost of digital loans in the form of APR

Cooling Off / Look up Period

- Providing cooling-off period wherein borrowers can exit digital loans by paying principal + proportionate APR without any penalty

Consent Driven Credit Increase

- No automatic increase in credit limit without explicit consent of borrower

Grievance Redressal

- REs to ensure suitable nodal grievance redressal officers are engaged

4. While FinTech and non-FinTech players are building SuperApps to engage customers across wider product suite, regulatory challenges will need to be addressed

chiratae VENTURES | EY Building a better working world

Payment apps seeking to be SuperApps in India

In-app features		Paytm	Large internet company with a payments business	Large global retailer with a payments business	
Funding methods	Bank account using UPI	•	•	•	•
	Stored value wallet	•		•	
	Debit, credit card	•	•	•	•
Payment features	Send money	•	•	•	•
	Request money	•	•	•	•
	QR code payments	•	•	•	•
Bill payments	Recharge prepaid mobile phone plan	•	•	•	•
	Pay utility bills	•	•	•	•
	Pay credit card bills, insurance premiums and loan EMIs	•	•		
E-commerce, travel	Purchase groceries/merchandise	•		•	•
	Make flight, train, bus or hotel bookings	•	•	•	•
	Book Uber/Ola car rides		•		
Financial services	Buy gold	•	•	•	
	Instant loan	•	•	•	•
	Invest in mutual funds	•	•		
	Buy insurance	•	•	•	•
Others	1Mini programs	•	•		•
	Chat with contacts		•		
	Check account balance	•	•	•	

Source: S&P global, EY analysis Data compiled July 17, 2021

Illustrative and non-exhaustive

Existing players are attempting to experiment by focusing solely on financial services in order to boost client acquisition and retention rates.

Super-app leaders	Core service	Experimenting with focus on financial services
Paytm First UPI based app with 1 billion transactions Large internet company with a payments business Large global retailer with a payments business	Payments/ Wallets	Lending Banking Insurance Investing (MF/Gold)

Other players are now also trying to encash on the financial services FinTech wave and aiming for SuperApp

OLAMONEY
OLAMONEY POSTPAID

SWIGGY Financial Services(NBFC)*

Other players are now expanding their FinTech business to scale and profitability

India's SuperApp revolution holds a huge potential for future as the country is moving into its next phase of internet consumption and digital economy

However, Super-apps are likely to face regulatory challenges like digital lending norms and data protection laws, as well as operational burdens due to high customer acquisition cost

* Based on news reports of BNPL model being under

These guidelines are applicable to digital lending extended by:

2.5. Lending Service Provider (LSP): An agent of a Regulated Entity who carries out one or more of lender's functions or part thereof in customer acquisition, underwriting support, pricing support, servicing, monitoring, recovery of specific loan or loan portfolio on behalf of REs in conformity with extant outsourcing guidelines issued by the Reserve Bank.

2.6. Regulated Entities (REs): The entities to whom this circular is applicable as stated at Para 1 of these guidelines.

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ETHICS
RESPECT
INTEGRITY
HONESTY

Questions????


key
secret
procedure
text
technology
enter data
network
business
online
guideline
restricted
identity
attack
confidential
code
protect
personal
customer
access
account
system
regulation
service
violation
idea
digital
stealing
legal
computer
user
anonymity
safety
login
protection
information
safe
privacy
trust
word
web
private
agreement
control
cyber
communication
conceptual
conditions
law
term
policy
security
hack
message
encryption
website
forbidden
secrecy
violate
secure
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concept
contract
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password
sign
crime
company
internet


DATA
INFORMATION
BACKUP
AI
LOADING
RESOURCE
WORKLOAD
PUBLIC