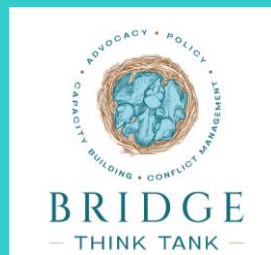


COMPREHENSIVE ANALYSIS OF RBI PENALTIES

May 2020 – August 2021



BRIDGE THINK TANK



IN PARTNERSHIP WITH



AK & PARTNERS

CONTENTS

LIST OF TABLES	1
LIST OF DIAGRAMS AND CHARTS	1
POWER OF RBI TO IMPOSE PENALTIES	3
INTRODUCTION	3
WHEN CAN THE PENALTY BE IMPOSED?.....	3
HOW MUCH PENALTY CAN BE IMPOSED?	4
BANKING REGULATION ACT, 1949.....	4
RESERVE BANK OF INDIA ACT, 1934	5
PAYMENT AND SETTLEMENT SYSTEMS ACT, 2007	6
DIRECTIONS BY RBI UNDER THE PSS ACT, 2007	8
POWER OF RBI TO COMPOUND OFFENCES.....	9
COMPOUNDING AUTHORITY AND ELIGIBILITY FOR COMPOUNDING	10
PROCEDURE FOR COMPOUNDING	10
COMPOUNDING AMOUNT.....	10
AMOUNT OF PENALTY ON DIFFERENT TYPES OF REGULATED ENTITIES.....	11
QUANTITATIVE REPRESENTATION OF REGULATED ENTITIES PENALIZED BY RBI.....	11
ZONAL REPRESENTATION OF ENTITIES PENALIZED BY RBI	12
TOP 5 REASONS FOR PENALTY ON REGULATED ENTITIES.....	12
OTHER MAJOR REASONS	13
KEY CONCLUSIONS	14
ABOUT US.....	15

LIST OF TABLES

Table 1 – Cases when RBI imposes penalties.....	4
Table 2 – Penalties under Banking Regulation Act, 1949.....	5
Table 3 – Penalties under Reserve Bank of India Act, 1934	6
Table 4 – Penalties under Payment and Settlement Systems Act, 2007	7

LIST OF DIAGRAMS AND CHARTS

Diagram 1 – Different Statutes	3
Diagram 2 – Directions by RBI under PSS Act, 2007	8
Diagram 3 – Cease and desist order.....	9
Chart 1 – Penalties imposed on Regulated Entities.....	11
Chart 2 – Penalties imposed on the type of regulated entities.....	11

Comprehensive Analysis of RBI Penalties



Chart 3 – Number of Entities by Zone.....	12
Chart 4 - Top 5 Reasons for Penalty on Regulated Entities.....	12

POWER OF RBI TO IMPOSE PENALTIES

INTRODUCTION

Reserve Bank of India ('RBI') as a regulator has been empowered to impose sanctions in the nature of penalties, fines, imprisonment sentence, cease and desist orders, etc. attributed to strengthening its functionality as a banking regulator. The following statutes have been enacted with the intention of making RBI an all-powerful and independent regulating body are as follows:

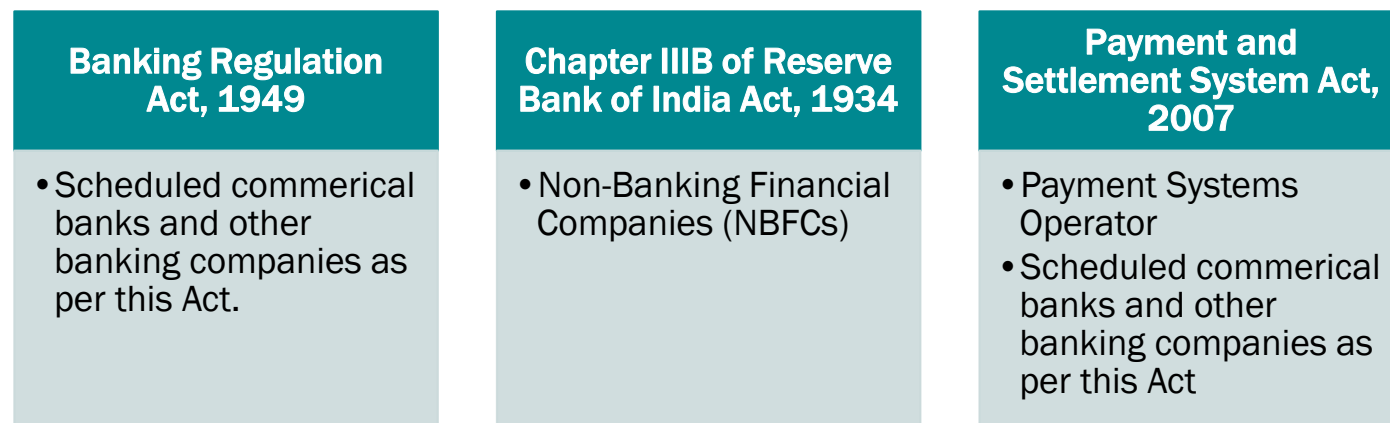


Diagram 1 - Relevant Statutes

WHEN CAN THE PENALTY BE IMPOSED?

The RBI can impose penalties in the following cases:

Banking Regulation Act	Reserve Bank of India Act, 1934	Payment and Settlement System Act, 2007
<ul style="list-style-type: none"> Wilfully makes false statement knowing it to be false or omits to make a material statement in return, balance-sheet or document Fails to produce a book, account or document or furnish any statement duty bound Deposit received in contravention of section 35 of the Act, every 	<ul style="list-style-type: none"> Wilfully makes false statement knowing it to be false or omits to make a material statement in any application, return, declaration, prospectus or advertisement fails to produce any book, account or other document or to furnish any statement he is duty bound to produce under this Act 	<ul style="list-style-type: none"> Contravenes the provisions of authorization granted under this Act Fails to comply with the terms and conditions subject to which the authorization has been issued Wilfully makes false statement knowing it to be false or omits to make a material statement in return, balance-sheet or document Fails to produce information or furnish any statement or any other documents called by RBI for accessing or failing to answer any

<p>director, officer of the company unless due diligence was exercised</p> <ul style="list-style-type: none"> • Default in complying with any requirement of this Act, order, rule or direction • Defaults in carrying out the scheme as mentioned under section 45(7) 	<ul style="list-style-type: none"> • Fails to follow the provisions for issue of demand bills and notice • Disclosures confidential credit information • Fails to follow the registration and net owned funds requirement. • Auditor fails to comply with the directions issued by the RBI • Fails to comply with the directions given by NCLT • Receives deposit in contravention of direction • Fails to comply with the direction of RBI issued under Chapter IIIB of the Act • Issues prospectus or advertisement in contravention of the provisions of this Act • Accepts deposits in contravention of section 45S of the Act • Contravenes any provision of this Act 	<p>question relating to the operation of a payment system which is required by an officer making inspection</p> <ul style="list-style-type: none"> • Discloses confidential information given by system participants • Fails to comply with the direction of RBI within the prescribed time period or 30 days from order, if no time is specified • Contravenes the requirement of this or direction issued under this Act
--	--	---

[Table 1 - Cases when RBI imposes penalties](#)

HOW MUCH PENALTY CAN BE IMPOSED?

The above-mentioned laws do not provide any specific criteria for computation of fines or penalties. However, minimum and maximum amount of penalty leviable for each offence is provided. A list of the offences along with the specific penalties is as follows:

BANKING REGULATION ACT, 1949	
Offence	Punishment
Wilfully makes false statement knowing it to be false or omits to make a material	3 (three) years or fine of INR 1,00,00,000 (Indian rupees one crore only) or both

statement in return, balance-sheet or document.	
Fails to produce a book, account or document or furnish any statement duty bound	Penalty not exceeding INR 20,00,000 (Indian rupees twenty lakh only) (each offence) INR 50,000 (Indian rupees fifty thousand only) for every day of continuous contravention
Deposit received in contravention of section 35 of the Act, every director, officer of the company unless due diligence was exercised.	Extend to twice the amount of the deposit so received
Default in complying with any requirement of this Act, order, rule or direction.	Extend to twice the amount of the deposit so received
Defaults in carrying out the scheme as mentioned under section 45(7).	Extend INR 1,00,00,000 (Indian rupees one crore only) or twice the amount involved contravened, INR 1, 00, 000 (Indian rupees one lakh only) for every day for continued contravention

[Table 2 – Penalties under Banking Regulation Act, 1949](#)

RESERVE BANK OF INDIA ACT, 1934

Offence	Punishment
Wilfully makes false statement knowing it to be false or omits to make a material statement in any application, return, declaration, prospectus or advertisement	Imprisonment extendable to 3 (three) years and fine.
fails to produce any book, account or other document or to furnish any statement he is duty bound to produce under this Act.	Fine extendable to INR 1,00,000 (Indian rupees one lakh only) in respect of each offence and further fine of INR 5000 (Indian rupees five thousand only) for every day of continued offence
Fails to follow the provisions for issue of demand bills and notice	Fine extendable to amount of bills of exchange or hundi or amount involved in respect of offence
Disclosures confidential credit information	Imprisonment extendable to 6 (six) months or with fine extendable to INR 1000 (Indian rupees one thousand only) or with both.
Fails to follow the registration and net owned funds requirement.	Imprisonment for be less than 1 (one) year extendable to 5 (five) years and with fine not be less than INR 1,00,000 (Indian rupees one lakh only) extendable to INR 25,00,000 (Indian rupees twenty-five lakh only).

Auditor fails to comply with the directions issued by the RBI	Fine extendable to INR 10,00,000 (Indian rupees ten lakh only)
Fails to comply with the directions given by NCLT	Imprisonment extendable to 3 (three) years and fine of not less than INR 5,000 (Indian rupees five thousand only) for every day of continued contravention
Receives deposit in contravention of direction	Fine not exceeding INR 10,00,000 (Indian rupees ten lakh only) or twice the amount of contravention, where the amount is quantifiable, whichever is more and INR 1,00,000 (Indian rupees one lakh only) for every day of continued contravention
Fails to comply with the direction of RBI issued under Chapter IIIB of the Act	Fine not exceeding INR 10,00,000 (Indian rupees ten lakh only) or twice the amount of contravention, where the amount is quantifiable, whichever is more and INR 1,00,000 (Indian rupees one lakh only) for every day of continued contravention
Issues prospectus or advertisement in contravention of the provisions of this Act.	Imprisonment extendable to 3 (three) years or fine of twice the amount of the deposit received.
Accepts deposits in contravention of section 45S of the Act.	Imprisonment extendable to 2 (two) years or fine which extendable to twice the amount of deposit received or INR 2,000 (Indian rupees two thousand only), whichever is more.
Contravenes any provision of this Act.	Fine extendable to INR 1,00,000 (Indian rupees one lakh only) and INR 10,000 (Indian rupees ten thousand only) for every day on continuous contravention.

Table 3 – Penalties under Reserve Bank of India Act, 1934

PAYMENT AND SETTLEMENT SYSTEMS ACT, 2007

Offence	Punishment	Special Punishing Powers of RBI
Contravenes the provisions of authorization granted under this act or fails to comply with the terms and conditions subject to which the authorization has been issued.	Imprisonment not be less than 1 (one) month extendable to 10 (ten) years or fine extendable to INR 1,00,00,000 (Indian rupees one crore only) or with both and INR 1,00,000 (Indian rupees one lakh only) for every day of continuous contravention.	

Wilfully makes false statement knowing it to be false or omits to make a material statement in return, balance-sheet or document.	Imprisonment extendable to 3 (three) years and fine not be less than INR 10,00,000 (Indian rupees ten lakh only) extendable to INR 50,00,000 (Indian rupees fifty lakh only).	Fine not exceeding INR 5,00,000 (Indian rupees five lakh only) or twice the amount of contravention when the amount is quantifiable, whichever is more, and INR 25,000 (Indian rupees twenty-five thousand only) for every day on continuous contravention
fails to produce information or furnish any statement or any other documents called by RBI for accessing or fails to answer any question relating to the operation of a payment system which is required by an officer making inspection.	Fine extendable to INR 10,00,000 (Indian rupees ten lakh only) for each offence and extend to INR 25,000 (Indian rupees twenty-five thousand only) for every day of continuous contravention	
Discloses confidential information given by system participants	Imprisonment extendable to 6 (six) months, or fine extendable to INR 5,00,000 (Indian rupees five lakh only) or an amount equal to twice the amount of the damages incurred, whichever is higher or with both.	
Fails to comply with the direction of RBI within the prescribed time period or 30-days from order, if no time is specified.	Imprisonment not be less than 1 (one) month extendable to 10 (ten) years or with fine extendable to INR 1,00,00,000 (Indian rupees one crore only) or with both and INR 1,00,000 (Indian rupees one lakh only) for every day of continuous contravention.	
Contravenes the requirement of this or direction issued under this Act	Fine extendable to INR 10,00,000 (Indian rupees ten lakh only) and INR 25,000 (Indian rupees twenty-five thousand only) for every day on continuous contravention.	Fine not exceeding INR 5,00,000 (Indian rupees five lakh only) or twice the amount of contravention when the amount is quantifiable, whichever is more, and INR 25,000 (Indian rupees twenty-five thousand only) for every day on continuous contravention.

[Table 4 – Penalties under Payment and Settlement Systems Act, 2007](#)

DIRECTIONS BY RBI UNDER THE PSS ACT, 2007

In addition to the power to impose penalty, RBI under the PSS Act also has the power to issue direction when—

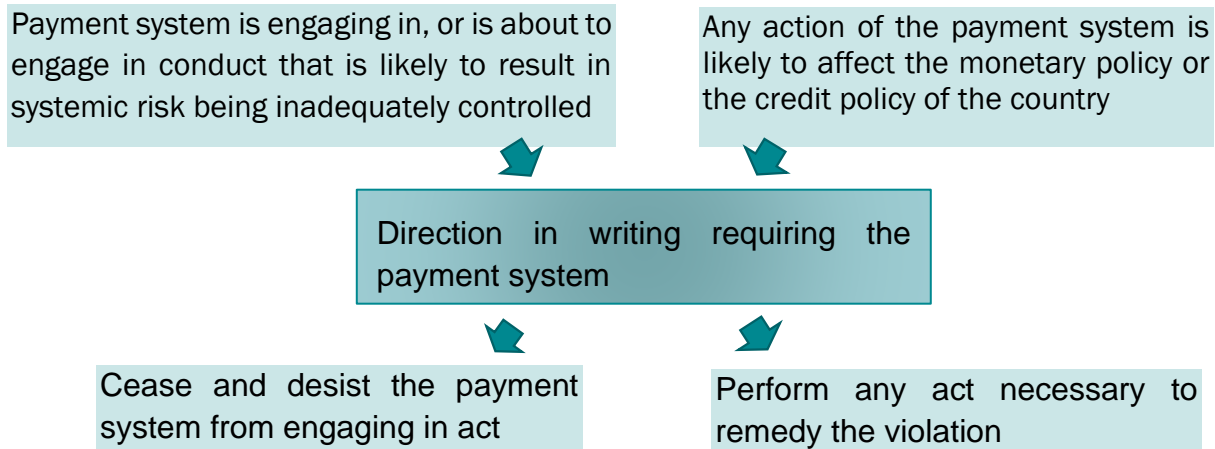


Diagram 2 – Directions by RBI under PSS Act, 2007

RBI imposes Cease and Desist Order

Recently, RBI barred Mastercard from onboarding new customers by issue of credit and debit card. However, the same shall not affect the existing customer.

This restriction was issued due to inability of Mastercard to follow the RBI direction on Storage of Payment System Data issued on April 6, 2018 which requires localization of the data collected from Indian Customers and required compliance by October 31, 2018.

The action of RBI is backed by its power under Section 17 of the Payment and Settlement System Act, 2007 enabling it to issue directions ceasing a payment system from engaging in any act likely to result, in systemic risk being inadequately controlled or affect the payment system and the monetary policy or the credit policy of the country.

Now, Mastercard is required to comply with the direction and submit a compliance report to RBI for consideration and consequential resumption of business subject to satisfaction of RBI.

RBI usually takes fiscal measures on banks and impose penalties under Section 47A of the Banking Regulation Act, 1949 or Section 58G of the Reserve Bank of India Act, 1934. In recent review undertaken by RBI, a substantial number of banks were penalized. However, in the present case a cease-and-desist order was issued prohibiting Mastercard from undergoing new business.

This difference in treatment between the payment system participant and a banking company when similar penalizing provisions are available for payment systems as well does not clearly express the intention of RBI. Further, RBI has not given any reasoning as to why no penalty was imposed and prohibition of new business was imposed.

[Diagram 3 – Cease and desist order](#)

POWER OF RBI TO COMPOUND OFFENCES

The Framework on imposing penalty issued on January 10, 2020 applicable on banks and authorized payment operators empowers RBI to compound certain offences not punishable with imprisonment or imprisonment and fine.

The offence or contraventions identified as compoundable are:

- a) Failure to comply with the terms and conditions of authorization issued by RBI;
- b) Failure to produce or furnish any statement, information, returns or other documents to RBI or answer any question relating to the operation of payment system;
- c) Disclosure of any information prohibited under Section 22 of PSS Act;
- d) Non-compliance of any provisions of the Act or Regulation made or given in respect of which no penalty has been specified in the Act;

- e) Violations of KYC or AML norms;
- f) Delay or non or incomplete or incorrect submission of various statutory or regulatory returns, statements, documents, etc.;
- g) Issues in maintenance of nodal or escrow accounts;
- h) Breach of limits in loading, fund transfer, etc. of PPIs;
- i) Inadequacies in storage of payment system data in India; and
- j) Any other contravention of directions specific or general in nature.

COMPOUNDING AUTHORITY AND ELIGIBILITY FOR COMPOUNDING

Chief General Manager or Officer-in-charge, Department of Payment and Settlement System ('DPSS'), Central Office will be the compounding authority for cases of compounding involving quantifiable contraventions, and ED-in-charge of DPSS will be the compounding authority for cases involving non-contravention.

PROCEDURE FOR COMPOUNDING

- a) An application shall be submitted along with the Memorandum and Article of Association the company along with latest audited balance sheet;
- b) Examination of the application by RBI;
- c) Calling for information by RBI in case of query;
- d) Opportunity of personal hearing shall be given; and
- e) Issue of compounding order within 6 (six) months of receipt of application.

COMPOUNDING AMOUNT

The Amount shall be same as the penalties imposed above or may be less than 25% (twenty five percent) less than calculated amount whichever is higher. The compounding amount shall not exceed 5 (five) lacs in case of non-quantifiable offence. In case of repeated offence, the amount shall be increased by 50% (fifty percent) of the calculated amount; and

The amount shall be paid within 30 (thirty) days of the order. The notice shall be published on the website of RBI for public reference.

AMOUNT OF PENALTY ON DIFFERENT TYPES OF REGULATED ENTITIES

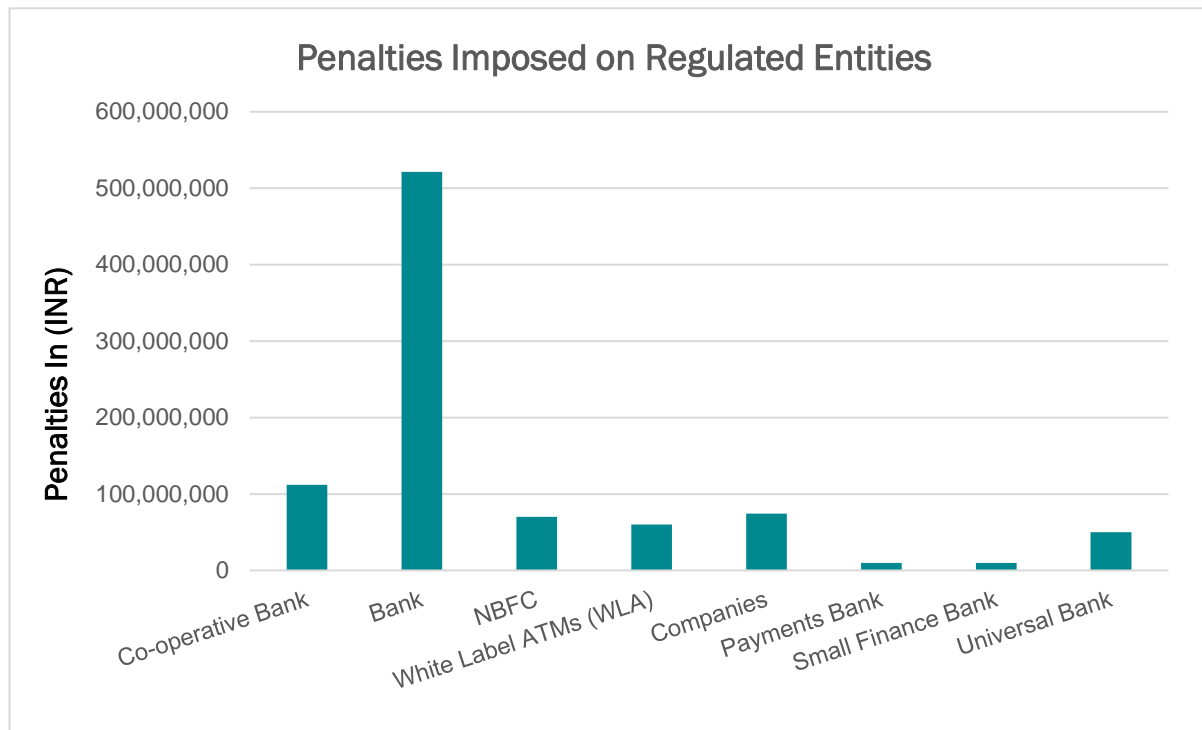


Chart 1 - Penalties imposed on Regulated Entities

QUANTITATIVE REPRESENTATION OF REGULATED ENTITIES PENALIZED BY RBI

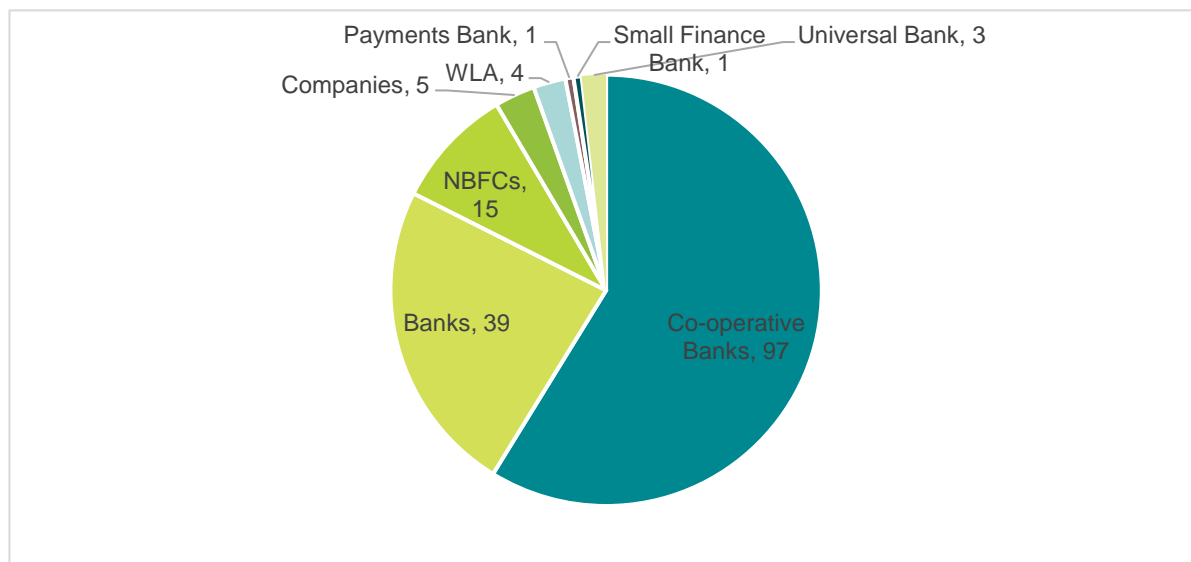


Chart 2 - Penalties imposed on the type of regulated entities

ZONAL REPRESENTATION OF ENTITIES PENALIZED BY RBI

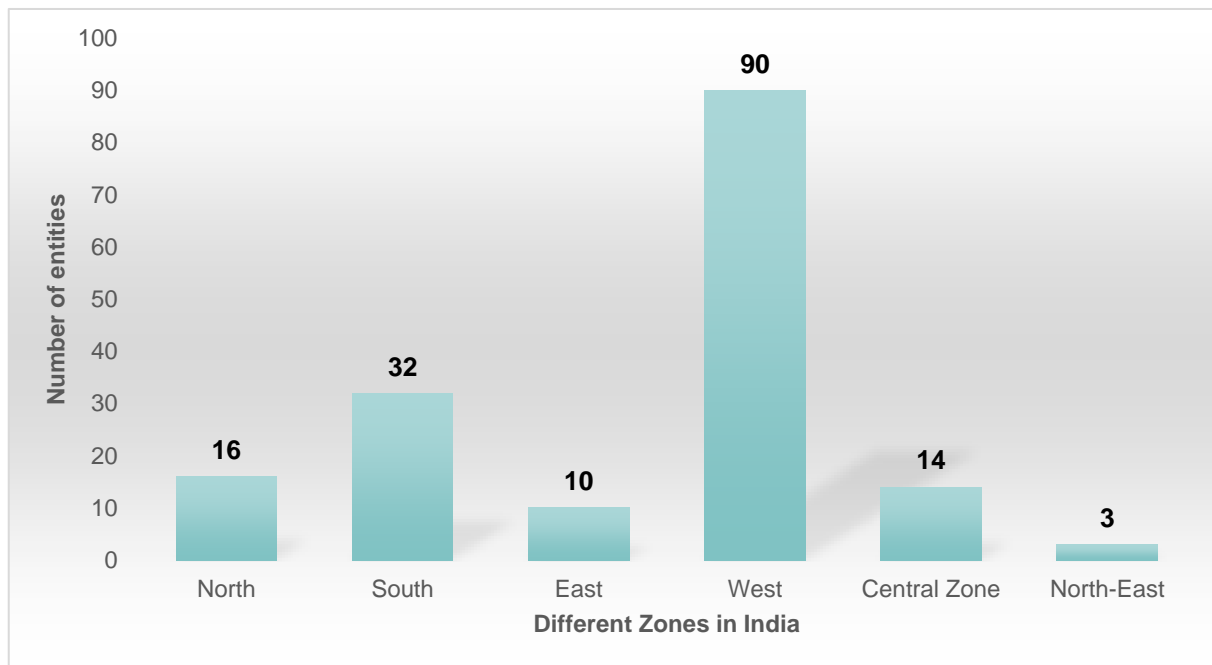


Chart 3 – Number of Entities by Zone

TOP 5 REASONS FOR PENALTY ON REGULATED ENTITIES

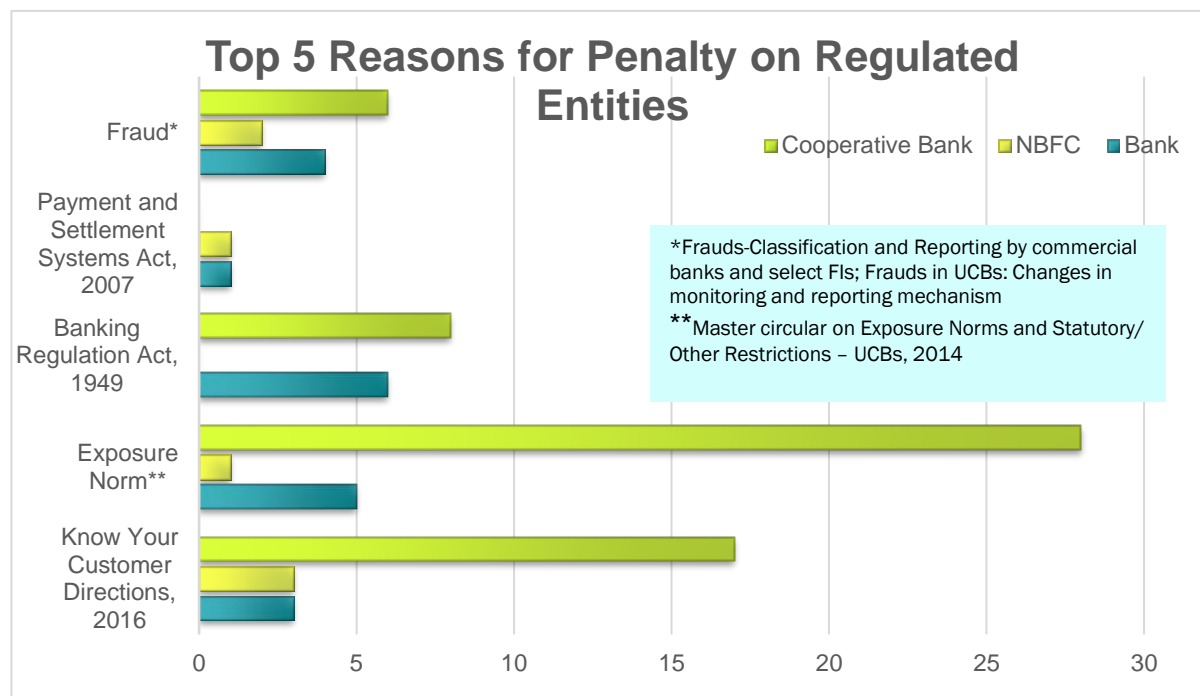


Chart 4 - Top 5 Reasons for Penalty Table 1 – Cases when RBI imposes penalties on Regulated Entities

OTHER MAJOR REASONS

Over a period, RBI has imposed penalties on various regulated entities for violation of direction, rules, regulations, guidelines applicable to them. Some of the major provisions violated by the regulated entities are as follows:

<p>Non-Banking Financial Company – Returns (Reserve Bank) Directions, 2016.</p> <p>Norms for Outsourcing of Financial Services by NBFCs and Fair Practices Code (FPC) for applicable NBFCs,2016</p> <p style="writing-mode: vertical-rl; transform: rotate(180deg);">NBFCs</p>	<p>Master Circular Prudential Norms on Income recognition and Asset classification and Provisioning Pertaining Advances,2015</p> <p>Supervisory Action Framework (SAF), 2014</p> <p>Master Circular on Board of Directors -UCBs,2015</p> <p>Circular on Loans and Advances to Directors, Relatives and Firms / Concerns in which they are interested, 2003</p> <p style="writing-mode: vertical-rl; transform: rotate(180deg);">Cooperative Bank</p>	<p>Cyber Security Framework in Banks,2016</p> <p>Depositor Education and Awareness Fund Scheme, 2014-Operational Guidelines.</p> <p>Master Circular on Prudential Norms on Income Recognition, Asset Classification and Provisioning Pertaining to Advances,2015</p> <p style="writing-mode: vertical-rl; transform: rotate(180deg);">Bank</p>
---	---	---

Reserve Bank of India (Interest Rate on Deposits) Directions, 2016;

Reserve Bank of India (Frauds - Classification and Reporting by commercial banks and select FIs) Directions 2016;

Master Circular on Lending to Non-Banking Financial Companies (NBFCs), 2015; and

Master Circular on Loans and Advances – Statutory and Other Restrictions, 2015

Universal Banks

Guidelines for Lending to NBFCs have been violated twice and once by the mentioned regulated entities, respectively

**Small Finance Banks/
Payment Banks**

White Label ATMs in India Guidelines, 2012

White Label ATM Operators

KEY CONCLUSIONS

- RBI has imposed monetary penalties on 39 banks ranging from INR 1,00,000 (Indian rupees one lakh) to INR 5,00,00,000 (Indian rupees five crores).
- The highest penalty was imposed on Axis Bank Limited of INR 5,00,00,000 (Indian rupees five crores).
- RBI has so far penalized 97 Co-operative banks making it the highly penalized regulated entity.
- The greatest number of monetary penalties were seen in the western zone/region of the country with the number of entities totalling upto 90.
- Further, a total of 33 instances of violation of exposure norms and statutory/ other restrictions – UCBs has been noticed

ABOUT US

ANUROOP OMKAR

Anuroop Omkar is the Honorary Director at Bridge Think Tank. He is the youngest globally and first Indian ever to be nominated as Distinguished Fellow to International Academy of Mediators. He is a consultant to World Bank on the MSME RAMP Project. He was a special invitee to the Working Group of Insolvency and Bankruptcy Board of India on personal insolvency. He is the member of Monitoring Committee of Investment Education and Protection Fund (IEPF) advocacy initiative. He is an empaneled mediator with United Nations and Associated Programs and World Bank. He was nominated as delegate by Ministry of Corporate Affairs, Government of India to the World Bank delegation in London, United Kingdom on Insolvency Pre-packs, Mediation and Online Dispute Resolution (ODR). He is on the editorial board of the GNLU Law Review and is a visiting faculty to Small Industries Development Bank of India (SIDBI), Indian Society of International Law (ISIL), National University of Juridical Sciences (NUJS) and National Law University, Assam. He is also an author of a best-selling book on mediation which is part of the recommended reading for the mandatory course on mediation by the Bar Council of India. He is an alumnus of Gujarat National Law University (GNLU). His areas of policy interest are banking and finance, MSME, Mediation, ODR Insolvency and Turnaround.

KRITIKA KRISHNAMURTHY

Kritika Krishnamurthy is the Honorary Director at Bridge Think Tank. She is a Fellow of United Nations 1325 Fellowship on Women in Conflict and an author of a best-selling book on mediation in India. She is winner of BW Business World 40 under 40 top legal professionals award and Future Legal Leaders 2020 award by India Business Law Journal (Vantage Asia). She is the recipient of academic scholarships from Dhirubhai Ambani Foundation and Government of Maharashtra. She has developed course curriculum and implemented it as Master Trainer to the only central government training on Commercial Mediation and Mediation in Insolvency and Turnaround. Her second book on Third-Party Funding in India is slated for release in the end of 2021. She is a visiting faculty to Reserve Bank of India (RBI), Institute of Chartered Accountants of India (ICAI), Institute of Company Secretaries of India (ICSI) and National Academy of Legal Studies and Research (NALSAR), Hyderabad. She is an alumna of Gujarat National Law University (GNLU). Her areas of policy research include women entrepreneurship, MSME Capacity building, fintech, biotechnology, third party funding of dispute resolution and intersection of policy with indigenous cultures and behavioural economics.

AASHRIT VARMA

Aashrit Varma is a Consultant at Bridge Think Tank. He regularly writes for BW Legal World and the Daily Guardian. He has undertaken policy and capacity building work in the field of banking, mediation, insolvency and dispute resolution. He is a trained mediator who regularly shadows experienced mediator in commercial mediations. He is an alumnus of Jindal Global Law School (JGLS). His research interests include mediation, data privacy and technology law.

NAVEENA PRADEEP

Naveena Pradeep is a Consultant at Bridge Think Tank. She has previously worked as Team Leader for Increasing Diversity by Increasing Access (IDIA) and is the founding member of the Pune Chapter. She is an alumna of ILS Law College, Pune and post graduate in Business Laws from National Law School of India University (NLSIU), Bangalore. She is interested in emerging technologies, cross-sectoral studies on tech and law related to dispute resolution, laws governing women and children, arbitration and human rights.

DISCLAIMER

The Report has been prepared for informational purposes only and nothing contained in this Report shall be construed as legal or any other form of advice from Bridge Think Tank. Although reasonable care has been taken to ensure that the information in this Report is true and accurate, such information is provided 'as is', without any warranty, express or implied as to the accuracy or completeness of any such information.

Bridge Think Tank shall not be liable for any losses incurred by any person from any use of this publication or its contents.

