

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed Edition :

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume 2 Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

IJLRA

EDITORIAL TEAM

EDITORS



Megha Middha

Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar

Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain



Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr. Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-I, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

LEGAL REQUIREMENTS FOR THE CROSS-BORDER TRANSACTION BUSINESS IN INDIA

AUTHORED BY - TANVI SHREE & PROF.DR. AQUEEDA KHAN.

LLM (CB&IL)

Amity University Noida

ABSTRACT

This research paper delves into the legal requirements governing cross-border transactions in India, focusing on the regulatory framework, compliance obligations, and challenges faced by businesses. It examines key laws such as the Foreign Exchange Management Act, 1999 (FEMA), the Companies Act, 2013, and the Income Tax Act, 1961, elucidating their implications on businesses engaged in cross-border activities. Additionally, the paper explores the Foreign Direct Investment (FDI) policy, Securities and Exchange Board of India (SEBI) regulations, and the recent Payment Aggregators of Cross-Border Transactions (PA-CB) Regulation introduced by the Reserve Bank of India (RBI). It highlights the significance of regulatory compliance, exchange control regulations, taxation issues, sector-specific regulations, and intellectual property protection in the context of cross-border transactions. Furthermore, the paper discusses the evolving landscape of cross-border payments, analyzing the role of fintech innovations, faster payment rails, distributed ledger technology (DLT), and the potential of India's Unified Payments Interface (UPI) in revolutionizing cross-border transactions. It emphasizes the importance of collaborative efforts among stakeholders, including regulators, financial institutions, technology providers, and fintech firms, in driving the adoption of efficient, affordable, and seamless cross-border payment solutions. Overall, this paper provides insights into the legal, regulatory, and technological aspects shaping the future of cross-border transactions in India and offers recommendations for navigating the complexities and challenges inherent in this dynamic landscape.

INTRODUCTION

The rapid globalization of economies has led to a surge in cross-border transactions, wherein businesses engage in trade, investment, and other commercial activities across national boundaries. India, with its burgeoning economy and increasing integration into the global market, has witnessed a significant rise in cross-border transactions in recent years. However, engaging in such transactions requires adherence to a plethora of legal requirements to ensure compliance with domestic and international laws, protect the interests of stakeholders, and mitigate risks associated with cross-border business activities. This research paper aims to explore the legal framework governing cross-border transactions in India, focusing on the regulatory requirements, compliance obligations, and challenges faced by businesses operating in this sphere. It examines the key laws, regulations, and policies applicable to cross-border transactions, analyze their implications on businesses, and provides recommendations for effectively navigating the regulatory landscape. Cross-border transactions in India are governed by a comprehensive legal framework that encompasses various laws, regulations, and policies at both domestic and international levels.¹

FOREIGN EXCHANGE MANAGEMENT ACT, 1999 (FEMA)

The Foreign Exchange Management Act, 1999 (FEMA), represents a fundamental pillar of India's regulatory framework governing foreign exchange transactions. Born out of the need to replace the outdated Foreign Exchange Regulation Act (FERA) and to align with the evolving global economic landscape, FEMA is designed to provide a comprehensive regulatory framework for managing foreign exchange transactions in India.²

Encompassing a wide array of transactions, FEMA governs various aspects of cross-border activities, including investments, remittances, and acquisitions. Its primary objective is to regulate and monitor foreign exchange transactions to ensure the stability of India's economic environment while facilitating international trade and investment.

FEMA serves as a bulwark against unauthorized transactions and capital flight, thereby safeguarding the country's economic stability and sovereignty. By implementing stringent compliance requirements, including reporting obligations and regulatory approvals, FEMA seeks

¹ pwc “The evolving landscape of cross-border payments”, <https://www.pwc.in/assets/pdfs/consulting/financial-services/fintech/point-of-view/pov-downloads/the-evolving-landscape-of-cross-border-payments.pdf> accessed March 28, 2024

² Sinha A, “Cross-Border Payments for Indian Businesses - Impact of RBI's New Guidelines” (Lexology, November 29, 2023) <https://www.lexology.com/library/detail.aspx?g=d59655a4-4822-4696-bead-3d18586eef38> accessed March 29, 2024.

to maintain transparency and accountability in cross-border transactions. This not only protects the interests of stakeholders but also instills confidence in the integrity of India's financial system. One of the key features of FEMA is its focus on capital account convertibility, which allows for greater flexibility in cross-border transactions while ensuring the stability of the country's external sector. Through FEMA, the Reserve Bank of India (RBI) exercises regulatory control over foreign exchange transactions, thereby ensuring consistency and coherence in the implementation of foreign exchange policies.³

COMPANIES ACT, 2013

The Companies Act, 2013, serves as the cornerstone of India's corporate governance framework, regulating the formation, management, and operation of companies in the country. In the context of cross-border transactions, the Companies Act plays a pivotal role in governing mergers, acquisitions, and amalgamations involving Indian companies and foreign entities. Under the Companies Act, companies engaged in cross-border transactions are required to adhere to stringent provisions related to corporate governance, disclosure requirements, and protection of shareholder rights. By mandating transparency and accountability standards, the Companies Act aims to foster investor confidence and promote fair and ethical business practices in cross-border transactions.⁴

One of the significant provisions of the Companies Act, 2013, is the requirement for companies to obtain approval from shareholders and regulatory authorities for certain types of cross-border transactions, such as mergers and acquisitions. This ensures that shareholders are adequately informed and have the opportunity to participate in the decision-making process, thereby safeguarding their interests.

Furthermore, the Companies Act imposes strict disclosure requirements on companies engaged in cross-border transactions, ensuring that relevant information is made available to stakeholders in a timely and transparent manner. This enhances the overall transparency and integrity of cross-border transactions, thereby bolstering investor confidence and trust in India's corporate governance framework.

INCOME TAX ACT, 1961

The Income Tax Act, 1961, forms the bedrock of India's taxation regime, governing the taxation of income earned by individuals and entities within the country's jurisdiction. In the context of

³ "HSBC Business Go" <<https://www.businessgo.hsbc.com/en/article/crossborder-payments-all-you-need-to-know>> accessed March 29, 2024.

⁴ "Cross-Border Payment Aggregators: Regulations and Business Use Cases" (PwC) <<https://www.pwc.in/industries/financial-services/fintech/payments/cross-border-payment-aggregators-regulations-and-business-use-cases.html>> accessed March 29, 2024.

cross-border transactions, the Income Tax Act plays a crucial role in determining the tax implications of such transactions, including withholding tax on payments to non-residents and transfer pricing regulations. Cross-border transactions often give rise to complex tax issues, necessitating careful consideration of the provisions of the Income Tax Act to ensure compliance and mitigate tax liabilities. For instance, businesses engaged in cross-border transactions are required to adhere to transfer pricing regulations to ensure that transactions between associated enterprises are conducted at arm's length prices, thereby preventing tax evasion and avoidance.⁵ Moreover, India's tax treaties with foreign countries play a significant role in mitigating the risk of double taxation and providing clarity on the tax treatment of cross-border transactions. By aligning with international tax norms and standards, India's tax treaties aim to facilitate cross-border trade and investment while preventing tax evasion and double taxation.

FOREIGN DIRECT INVESTMENT (FDI) POLICY

India's Foreign Direct Investment (FDI) policy outlines the framework for foreign investment in various sectors of the economy, aiming to promote economic growth and development. The FDI policy specifies the sectors where foreign investment is permitted, the entry routes for foreign investors, and the conditions governing such investments.

In the context of cross-border transactions, the FDI policy serves as a guiding beacon for businesses seeking to engage in foreign investment in India. It provides clarity and certainty regarding the regulatory framework for foreign investment, thereby facilitating cross-border transactions and fostering investor confidence.

Businesses seeking to engage in cross-border transactions involving FDI are required to comply with the provisions of the FDI policy, including obtaining necessary approvals from regulatory authorities and adhering to sector-specific regulations. This ensures alignment with India's economic objectives and priorities while promoting transparency and accountability in cross-border transactions.

Furthermore, the FDI policy aims to create a conducive environment for foreign investment by liberalizing entry routes, simplifying approval processes, and relaxing sectoral caps in certain sectors. This not only encourages foreign investors to participate in India's growth story but also stimulates economic activity and creates employment opportunities.

SECURITIES AND EXCHANGE BOARD OF INDIA (SEBI) REGULATIONS

As India's apex regulatory body for the securities market, the Securities and Exchange Board of

⁵ Tripathy S, "Cross-Border Payments for MSMEs: Will It Empower India's Exports? | Mint" (mint, November 16, 2023) <<https://www.livemint.com/money/personal-finance/crossborder-payments-for-msmes-will-it-empower-indias-exports-11699510209610.html>> accessed March 29, 2024.

India (SEBI) plays a crucial role in overseeing cross-border transactions involving securities. SEBI regulations encompass the issuance, listing, and trading of securities by Indian and foreign entities, ensuring transparency, fairness, and investor protection in the securities market. In the realm of cross-border transactions, SEBI regulations impose stringent disclosure requirements on companies involved in securities transactions, thereby enhancing transparency and accountability. This ensures that investors have access to relevant information to make informed investment decisions, thereby safeguarding their interests.⁶

Additionally, SEBI regulates takeovers and acquisitions to ensure the integrity and stability of the securities market. By implementing strict regulatory frameworks for takeovers and acquisitions, SEBI aims to prevent market manipulation, insider trading, and other fraudulent practices, thereby maintaining investor confidence and trust in the securities market.

ENHANCING CROSS-BORDER TRANSACTIONS: UNDERSTANDING RBI'S NEW GUIDELINES ON PAYMENT AGGREGATORS

In a move aimed at streamlining cross-border transactions, the Reserve Bank of India (RBI) has introduced a new regulatory framework for Payment Aggregators of Cross-Border Transactions (PA-CB Regulation) through Notification No. RBI/2023-24/80 CO. DPSS.POLC.No.S-786/02-14-008/2023-24 dated 31 October 2023. These regulations encompass all entities involved in processing and settling cross-border payment transactions for the import and export of goods and services.

Prior to the implementation of this regulation, various circulars governed payment aggregators, allowing Online Payment Gateway Service Providers (OPGSP) to enter standing arrangements with Authorised Dealer (AD) Banks for repatriation of export and import-related remittances, subject to specified conditions.

With the introduction of the PA-CB Regulation, all entities facilitating cross-border payment transactions, whether for import or export, now fall under the direct regulatory purview of the RBI. This regulation aims to address existing challenges in cross-border payments, promote transparency, and curb illegal transactions.

Understanding the Need for PA-CB Regulations:

The PA-CB Regulations address several critical issues prevalent in the cross-border payment landscape. Firstly, they consolidate multiple modes of cross-border payments under a unified regulatory framework. Previously, businesses had limited options for payment settlement in

⁶“Indian Cross-Border Investment Riding High in Booming Debt Finance Market” (White & Case LLP International Law Firm, Global Law Practice, November 21, 2023) <<https://www.whitecase.com/insight-our-thinking/investing-india-cross-border-investment>> accessed March 29, 2024.

import-export e-commerce transactions, resorting to correspondent banks, Money Transfer Service Scheme (MTSS), Rupee Drawing Arrangement (RDA), and postal channels. By bringing all entities under the PA-CB umbrella, the regulation aims to streamline payment processes and enhance efficiency.⁷

The regulations aim to combat illegal cross-border transactions by mandating compulsory registration with the Financial Intelligence Unit-India (FIU-IND). This requirement is particularly crucial in light of recent instances, such as the Mahadev betting app scam, where illegal cross-border payments were facilitated through various channels. By subjecting entities to FIU-IND registration, the RBI seeks to strengthen compliance measures and prevent money laundering activities.

Additionally, the PA-CB Regulations mandate due diligence of PA-CB entities directly by the RBI, enhancing regulatory oversight and monitoring of cross-border transactions. Previously, fintech entities facilitating cross-border transactions were subject to due diligence by AD Banks, with subsequent transactions reported to these banks. With direct scrutiny from the RBI, the regulations aim to bolster transparency and accountability in cross-border payments.⁸

Impact on Indian Businesses:

The introduction of PA-CB Regulations has significant implications for Indian businesses engaged in cross-border transactions. While these regulations empower non-bank entities to facilitate transactions directly between entities without engaging with AD Banks, they also entail stringent compliance requirements akin to domestic payment aggregators.

Compliance Requirements for Non-Bank Entities:

Under the PA-CB Regulation, non-bank entities providing PA-CB services must adhere to several compliance requirements:⁹

1. Registration with FIU-IND: Entities must register with FIU-IND as a prerequisite for providing PA-CB services.
2. Authorization from RBI: Entities must apply to the RBI for authorization by a specified deadline. While awaiting authorization, entities are permitted to continue their services, subject to compliance with specified guidelines.

⁷ Sarupria RS, "Crossing Borders, Crossing Compliance: The Indian PA-CB Revolution" (IRCCL, January 11, 2024) <<https://www.irccl.in/post/crossing-borders-crossing-compliance-the-indian-pa-cb-revolution#:~:text=Import%2Donly%20PA%2DCBs%20must,per%20transaction%20to%20mitigate%20risks.>> accessed March 29, 2024.

⁸ *Ibid*

⁹ "Regulation for Payment Aggregator Operations for Cross Border Transactions - Azb" (azb, November 1, 2023) <<https://www.azbpartners.com/bank/regulation-for-payment-aggregator-operations-for-cross-border-transactions/>> accessed March 29, 2024.

3. **Compliance with RBI Guidelines:** Entities must comply with guidelines issued by the RBI for the processing and settlement of export-related receipts facilitated by online payment gateways.
4. **Approval from RBI:** Entities must seek approval from the Department of Payment and Settlement Systems (DPSS), RBI, and Central Office (CO) within the prescribed timeframe. Any changes in activity category must be informed to DPSS, RBI, and CO in advance.
5. **Net Worth Criteria:** Non-bank entities must meet minimum net worth requirements, with existing entities required to meet a minimum net worth threshold at the time of application and a higher threshold by a specified deadline. New entities must meet minimum net worth requirements at the time of application and achieve a higher threshold within a stipulated timeframe.

Compliance Obligations for Import and Export Transactions:

The PA-CB Regulation imposes specific compliance obligations for import and export transactions:

1. **Import Transactions:** Import-only PA-CBs must maintain an Import Collection Account (ICA) with an AD Category-1 scheduled commercial bank. Payments must be received in an escrow account and transferred to the ICA for crediting to the foreign merchant. Payment instruments provided by authorized payment systems in India may be used for import payments, excluding small Prepaid Payment Instruments (PPIs).
2. **Export Transactions:** Export-only PA-CBs must maintain an Export Collection Account (ECA) denominated in Indian Rupees and/or foreign currency with an AD Category-1 scheduled commercial bank. Export proceeds are credited to the ECA and transferred to the account of the Indian merchant. Non-INR currency settlement is permitted only for directly onboarded merchants. Customer Due Diligence and Buyer Due Diligence must be conducted for merchants and buyers, respectively, for transactions exceeding a specified threshold.

CHALLENGES AND COMPLIANCE OBLIGATIONS

Cross-border transactions in India present businesses with a multitude of challenges and compliance obligations despite the presence of a robust legal framework. Firstly, regulatory compliance stands out as a significant hurdle for businesses operating across borders. The intricate web of laws, regulations, and policies governing cross-border transactions in India,

coupled with varying requirements across multiple jurisdictions, creates complexity and ambiguity for businesses. Navigating through this regulatory landscape requires meticulous attention to detail and a thorough understanding of the legal requirements applicable to each transaction.

Exchange control regulations, governed primarily by the Foreign Exchange Management Act (FEMA), add another layer of complexity to cross-border transactions. FEMA imposes stringent controls on transactions involving foreign exchange, including restrictions on remittances, repatriation of funds, and foreign investment limits. These regulations aim to safeguard India's economic stability by preventing unauthorized transactions and capital flight. However, businesses must carefully navigate FEMA regulations while structuring cross-border transactions to ensure compliance and avoid potential violations and penalties.

Taxation issues represent another significant challenge for businesses engaged in cross-border transactions. Cross-border transactions often give rise to complex tax implications, including transfer pricing disputes, withholding tax obligations, and interpretations of tax treaties with foreign countries. The intricacies of India's tax regime, coupled with evolving international tax standards, necessitate a thorough assessment of the tax implications of cross-border transactions. Businesses must adopt tax-efficient structuring strategies to minimize tax liabilities and risks while ensuring compliance with the provisions of the Income Tax Act, 1961, and other relevant tax laws.¹⁰

Compliance with sector-specific regulations adds another layer of complexity for businesses operating in certain sectors, such as banking, telecommunications, and pharmaceuticals. These sectors are subject to sector-specific regulations governing cross-border transactions, which may impose additional compliance requirements and regulatory approvals. Sectoral regulators play a crucial role in overseeing compliance with these regulations and ensuring legal compliance within their respective sectors. Businesses operating in these sectors must navigate through sector-specific regulations while structuring cross-border transactions to obtain necessary approvals and ensure compliance with regulatory requirements.¹¹

Intellectual property protection poses yet another challenge for businesses engaged in cross-border transactions involving intellectual property rights. Intellectual property laws and regulations vary significantly across jurisdictions, creating complexities and uncertainties for

¹⁰ "Cross Border Payments in India [6 Current Challenges] - NTT DATA Payment Service" (NTT Data Payment Services India, February 12, 2024) <<https://www.nttdatipay.com/blog/cross-border-payment/>> accessed March 29, 2024.

¹¹ "Cross Border Payments in India [6 Current Challenges] - NTT DATA Payment Service" (NTT Data Payment Services India, February 12, 2024) <<https://www.nttdatipay.com/blog/cross-border-payment/>> accessed March 29, 2024.

businesses seeking to protect their intellectual property assets. Businesses must carefully consider intellectual property laws and regulations in different jurisdictions while structuring cross-border transactions to safeguard their intellectual property assets. Failure to adequately protect intellectual property rights may expose businesses to infringement claims and disputes, potentially jeopardizing the success of cross-border transactions.

Despite the existence of a robust legal framework, businesses engaging in cross-border transactions in India face various challenges and compliance obligations, including

1. **Regulatory Compliance** Businesses must navigate through a complex regulatory landscape comprising multiple laws, regulations, and policies governing cross-border transactions. Ensuring compliance with diverse regulatory requirements poses a significant challenge for businesses, particularly those operating in multiple jurisdictions.
2. **Exchange Control Regulations** FEMA imposes strict controls on cross-border transactions involving foreign exchange, including restrictions on remittances, repatriation of funds, and foreign investment limits. Businesses must comply with FEMA regulations while structuring cross-border transactions to avoid violations and penalties.
3. **Taxation Issues** Cross-border transactions may give rise to complex tax issues, including transfer pricing disputes, withholding tax obligations, and tax treaty interpretations. Businesses must carefully assess the tax implications of cross-border transactions and adopt tax-efficient structuring strategies to minimize tax liabilities and risks.
4. **Compliance with Sector-Specific Regulations** Certain sectors, such as banking, telecommunications, and pharmaceuticals, are subject to sector-specific regulations governing cross-border transactions. Businesses operating in these sectors must comply with additional regulatory requirements prescribed by sectoral regulators to ensure legal compliance and regulatory approvals.
5. **Intellectual Property Protection** Cross-border transactions involving intellectual property rights require careful consideration of intellectual property laws and regulations in different jurisdictions. Businesses must protect their intellectual property assets and ensure compliance with intellectual property laws to prevent infringement claims and disputes.

Businesses engaging in cross-border transactions in India face a myriad of challenges and compliance obligations, ranging from regulatory compliance and exchange control regulations to taxation issues, sector-specific regulations, and intellectual property protection. Navigating

through these challenges requires careful planning, thorough due diligence, and a deep understanding of the legal and regulatory landscape governing cross-border transactions. Despite the complexities and uncertainties, businesses can mitigate risks and ensure compliance by seeking expert advice, conducting thorough risk assessments, and adopting proactive compliance strategies. By addressing these challenges effectively, businesses can harness the opportunities presented by cross-border transactions to drive growth and success in the global marketplace.

THE EVOLVING LANDSCAPE OF CROSS-BORDER PAYMENTS

In today's increasingly globalized world, the ability to move money across borders efficiently has become a cornerstone of international trade, remittances, and economic integration. However, traditional cross-border payment systems have long been plagued by challenges like slow transaction times, high costs, lack of transparency, and complex compliance requirements. This landscape is now undergoing a transformative shift, driven by rapid technological advancements, changing consumer demands, and proactive regulatory initiatives aimed at enhancing the speed, cost-efficiency, and transparency of cross-border payments.

The Surging Demand for Cross-Border Payments

The demand for seamless cross-border payment solutions is surging at an unprecedented rate. According to the document, a staggering 81% of all cross-border transactions involve remittances sent by individuals to support friends and families abroad. This segment alone witnessed a remarkable 61% year-over-year increase in transaction volumes over the past year. India, being the largest recipient of inward remittances globally at \$83 billion in 2020, exemplifies the growing significance of cross-border payments in today's interconnected world.¹²

The Traditional Landscape and Its Limitations

Traditionally, cross-border payments have been facilitated through a range of legacy channels, each with its own set of limitations and challenges. SWIFT/correspondent banking networks, while widely adopted, often involve transaction times ranging from 1 to 5 days and high fees that can reach up to 20% of the transaction amount for smaller remittances. Likewise, schemes like Money Transfer Service Scheme (MTSS), Rupee Drawing Arrangement (RDA), and postal channels offer limited services, strict transaction limits, and longer processing times.

THE FINTECH DISRUPTION

Recognizing the inefficiencies and pain points in the traditional cross-border payments landscape, fintech companies have emerged as disruptors, leveraging cutting-edge technologies to introduce

¹² Moritsch S, "The Challenges of Cross-Border International Trade" (KPMG, April 13, 2022) <<https://kpmg.com/xx/en/home/insights/2022/04/the-challenges-of-cross-border-international-trade.html>> accessed March 29, 2024.

faster, more affordable, and user-friendly solutions. These fintech innovators have captured the white space left unaddressed by legacy models, offering enhanced customer experiences, extensive global reach, flexible payment options, lower fees, and significantly reduced transaction times.

Fintech firms typically operate through two primary models 1) cross-border payment rails that bypass traditional bank networks entirely, and 2) technology solutions that allow clients to connect more easily to legacy bank rails. The former model involves maintaining a network of local currency accounts across multiple countries, facilitating cross-border transactions as a series of domestic transfers. This approach, coupled with optimized currency exchange management, enables fintechs to offer transfer fees ranging from just 0.25% to 3% of the transaction amount – a significant improvement over traditional channels.¹³

The Future Faster Payment Rails and Distributed Ledger Technology

As the demand for real-time, low-cost cross-border payments continues to grow, the industry is turning its attention towards two promising technologies faster payment rails and distributed ledger technology (DLT) like blockchain.

Several countries have already implemented or are actively exploring the linking of their domestic faster payment systems to facilitate near real-time, low-cost cross-border transactions. The successful collaboration between Singapore's PayNow and Thailand's PromptPay systems is a prime example, enabling instant cross-border retail payments using just mobile numbers as proxy identifiers. Similarly, the upcoming P27 Nordic Payments platform aims to support multi-currency transactions across Sweden, Denmark, and Finland, further streamlining cross-border payments within the region.

DLT solutions like Ripple are also gaining traction in the cross-border payments space, particularly for smaller business transactions. These systems leverage bidirectional messaging and settlement on a distributed ledger to validate and transfer funds almost instantly, reducing the complexities and inefficiencies associated with traditional correspondent banking models.

The Potential of UPI and Its Challenges

While these developments are promising, existing cross-border payment systems still face limitations in terms of geographic reach, currency support, and transaction limits – often rendering them unsuitable for larger business payments or remittances.

This is where India's Unified Payments Interface (UPI) could play a pivotal role in revolutionizing

¹³ Bhakta P, "Fintech Is Making Global Payments Its Business" (The Economic Times, March 27, 2024) <<https://m.economictimes.com/tech/startups/fintech-is-making-global-payments-its-business/articleshow/108797449.cms#:~:text=The%20industry%20estimates%20fintechs%20currently,a%20share%20of%20this%20market.>> accessed March 29, 2024.

cross-border payments. UPI's core advantages, such as 24x7 availability, instant settlements, simplified proxy-based payments using mobile numbers, and the potential for reduced costs, make it an attractive solution for cross-border remittances.

However, UPI also faces several challenges in its global adoption. Current transaction limits, capped at ₹1-2 lakhs for most use cases, restrict its appeal for larger value or business-to-business (B2B) payments – a segment that constitutes a significant portion of cross-border transactions. Additionally, the National Payments Corporation of India (NPCI) would need to forge multiple individual partnerships with other countries' payment systems to expand UPI's reach, a process that could be time-consuming and complex.¹⁴

Addressing these challenges through measures like revising transaction limits for cross-border payments, establishing easier integration frameworks, and implementing robust dispute resolution policies could unlock UPI's true cross-border potential.

The document highlights two key implementation opportunities for UPI in the cross-border payments space 1) NPCI partnering with other countries' faster payment systems, similar to the PayNow-PromptPay collaboration, and 2) establishing a UPI-based multi-country remittance network facilitated by NPCI International.

THE ROLE OF FINTECHS AND COLLABORATIVE EFFORTS

Fintech companies will undoubtedly play a crucial role in driving the adoption of UPI for cross-border payments. Several US-based firms have already introduced UPI-enabled inward remittance services to India, allowing customers to transfer funds using just the recipient's UPI ID instead of traditional bank account details. This not only simplifies the process but also leverages UPI's strengths in instant settlements and proxy-based payments.

With their robust digital capabilities, streamlined processes, and innovative solutions, fintechs are well-positioned to enhance the affordability, accessibility, and reach of UPI-based cross-border payments while delivering superior customer experiences.

However, realizing the full potential of UPI and other emerging technologies in the cross-border payments space will require collaborative efforts from all stakeholders, including regulators, financial institutions, and technology providers. Standardization of compliance requirements, interoperable messaging formats, and shared infrastructure could greatly facilitate the seamless integration and scaling of these solutions.

Regulatory bodies, like the Reserve Bank of India (RBI), have already taken steps in this direction

¹⁴ Nayyar PRC & T, "Revolutionising Cross-Border Payments: The New Rules for Fintech's in India - ET Edge Insights" (ET Edge Insights, March 1, 2024) <<https://etinsights.et-edge.com/revolutionising-cross-border-payments-the-new-rules-for-fintechs-in-india/>> accessed March 29, 2024.

by introducing initiatives like the Regulatory Sandbox for Cross-Border Payments, which aims to foster innovation and promote the development of secure and efficient cross-border payment solutions.

The cross-border payments ecosystem is undergoing a profound transformation, driven by the convergence of technological innovations, evolving consumer needs, and proactive regulatory initiatives. While challenges remain, the emergence of faster payment rails, distributed ledger technology solutions, and innovative platforms like UPI present promising opportunities to revolutionize cross-border transactions.

By fostering collaborative efforts between stakeholders, embracing cutting-edge technologies, prioritizing customer experience, and promoting standardization and interoperability, the industry can achieve its ultimate goal of providing truly efficient, affordable, and seamless cross-border payment services on a global scale.

As the world continues to become more interconnected, the ability to move money across borders swiftly and cost-effectively will become increasingly crucial for facilitating international trade, remittances, and economic integration. The evolving landscape of cross-border payments holds the key to unlocking this potential, paving the way for a more financially inclusive and globally connected future.

CONCLUSION

The research paper has shed light on the multifaceted legal requirements governing cross-border transactions in India and the evolving landscape of cross-border payments. The analysis has underscored the significance of regulatory compliance, exchange control regulations, taxation issues, sector-specific regulations, and intellectual property protection in ensuring transparency, accountability, and legality in cross-border transactions.

The regulatory framework, encompassing laws such as the Foreign Exchange Management Act, 1999 (FEMA), the Companies Act, 2013, and the Income Tax Act, 1961, lays down the foundation for managing foreign exchange transactions, corporate governance, and taxation aspects of cross-border activities. Compliance with these laws is essential for businesses to mitigate risks, safeguard stakeholders' interests, and foster investor confidence in India's business environment.

Moreover, the recent introduction of the Payment Aggregators of Cross-Border Transactions (PA-CB) Regulation by the Reserve Bank of India (RBI) reflects a proactive approach towards streamlining cross-border payments, enhancing transparency, and curbing illegal transactions. The PA-CB Regulation aims to address existing challenges, consolidate payment processes, and promote compliance with regulatory requirements, thereby instilling confidence in the integrity

of cross-border transactions.

Furthermore, the paper has explored the transformative impact of fintech innovations, faster payment rails, and distributed ledger technology (DLT) on cross-border payments. Technologies like India's Unified Payments Interface (UPI) hold immense potential in revolutionizing cross-border transactions by offering real-time settlements, lower costs, and enhanced accessibility. However, realizing this potential requires collaborative efforts from stakeholders to overcome challenges such as transaction limits, interoperability issues, and regulatory hurdles.

The research paper underscores the importance of navigating the complex legal, regulatory, and technological landscape of cross-border transactions in India. By adhering to legal requirements, embracing fintech innovations, and fostering collaborative partnerships, businesses can harness the opportunities presented by cross-border transactions to drive economic growth, foster global connectivity, and promote financial inclusion in the digital age.

