Regulation For ELoans
written by Kulin Dave | June 7, 2019
FinTech is the new applications, processes, products, or business models in the financial services industry, composed of one or more complementary financial services and provided as an end-to-end process via the Internet. Platforms like Bankbazaar, Kissht and AEON began providing its service by keeping inventory of options – like personal loans, house loans, loans for vehicle, smartphones loans etc. – that consumers would be quick to buy and apply for finance. These companies are application-based end-to-end financial service providers. The article gives an overview of regulation for Eloans
LAWS GUIDING THE APPLICATIONS - Regulation For ELoans
There are three different models in this app-based online lending. The first is venture-based ones like Capital Float and Early Salary. The second is peer-to-peer lenders (P2P) like Faircent, i-Lend and Vote4Cash. The third model is the digital DSA (direct sales agents) followed by the likes of IndiaLends and BankBazaar. While venture-funded lenders need little explanation, the P2P lending model is a more interesting one.
In order to establish what laws govern such medium it is imperative to identify the functional character of such bodies involved in providing loans and financial services via mobile based applications.
Section 45 I of the Reserve bank of India Act, 1934 has defined 'non-banking financial companies' in clause (f) as –
"non-banking financial company" means—
(i) a financial institution which is a company;
(ii) a non-banking institution which is a company and which has as its principal business the receiving of deposits, under any scheme or arrangement or in any other manner, or lending in any manner;
(iii) such other non-banking institution or class of such institu¬tions, as the Bank may, with the previous approval of the Central Government and by notification in the Official Gazette, specify.
"Non-banking financial company - Peer to Peer Lending Platform" (NBFC-P2P) means a non-banking institution which carries on the business on a Peer to Peer Lending Platform. Peer to Peer Lending Platform means an intermediary providing the services of loan facilitation via online medium or otherwise, to the participants as per the RBI directions . Therefore, it is safe to say that these non-banking companies viz. Bankbazaar, AEON, Kissht providing financial services are peer to peer lending platforms.
In India, there are many online P2P lending platforms. Some of these are

involved
in the business targeted at micro finance activities with the stated primary goal being social impact and providing easier access of credit to small entrepreneurs.
They provide web-based platform to bring the lenders and the borrowers together. In P2P models, the platform - such as Faircent, i-Lend and SMEBank.in
- charges about 1 per cent from the lender and 2-4 per cent from the borrower as a 'fee'. The platform does value addition for the lender by carrying out due
diligence on the borrower and provides its risk assessment. And, it assists borrowers by putting them in touch with the lenders.
One of
the main advantages of P2P lending for borrowers has been lower rates than those offered by money lenders/unorganized sector and the advantages for lenders are higher returns than what conventional investment opportunities offer. Interest rates and the methodology for calculating those rates vary among P2P lending platforms. They range from a flat interest rate fixed by the
platform to dynamic interest rates as agreed upon by the borrowers and the lenders to cost plus model (operational costs plus margin for platform and returns for lender).
The RBI
has laid down certain directions with regard to P2P lending provide a framework
for the registration and operation of NBFC-P2Ps in India. It states that Companies that are undertaking
the business of Peer to Peer Lending Platform, as defined at paragraph 4(1)(v)
of these directions, as on the date of effect of these directions, shall apply
for registration as an NBFC-P2P to the Bank within 3 months from that date. Such companies, which have applied to the Bank for registration as an NBFC - P2P, shall be permitted to continue the business of a Peer to Peer Lending Platform till their application for issuance of CoR is rejected, subject to such conditions, including winding down of business, as the Reserve Bank may impose.
RBI REGULATIONS FOR NBFC - Regulation For ELoans
P2P Lending activities
Seeing
the pivotal role P2P lending were likely to be playing in the near future, RBI
came out with a set of regulations that will govern this sector. Only entities
that are registered under the Companies Act can get a P2P registration from RBI
•Companies
registered as NBFC-P2P shall have a net owned fund of at least Rs. 2 cr unless
a higher amount is specified by RBI
•NBFC

shall only act as an intermediary/facilitator between borrower and lender and cannot mobilize deposits or give loans on its own

• They cannot provide credit enhancement or credit guarantee schemes

• They cannot facilitate or permit any secured lending linked to its platform; i.e. only clean loans will be permitted

THE AADHAR ACT 2016

The companies have laid down certain procedures for KYC validation which mandate the linking of the applicant's Aadhaar number. Aadhaar-driven eKYC has enabled the new ecosystem to validate a potential borrower in a matter of seconds rather than days. Aadhaar Act also plays an important role in Regulation For ELoans as Aadhar driven eSign has allowed a path to a completely paperless process for many applicants. The Act does not prevent the use of Aadhaar to establish the identity of an individual for any purpose, by the State, any corporate body or person, pursuant to any law. The provisio in the Section however states, that the use of Aadhaar shall be subject to the procedure and obligations under Section 8 of the Act.

It is obligated upon these companies (in capacity of requesting entities) that the consent of the Applicant is taken before collecting information as to his identity and ensure that the identity information of an individual is only used for submission to the Central Identities Data Repository for authentication. The applicant is also entitled to the knowledge of the nature of information that maybe shared by the Company upon authentication or the uses to which the information may be put by the company.

In September 2018, the Supreme Court read down certain provisions of the Aadhaar Act, 2016 that impacted the use of Aadhaar authentication by private parties under a contract. This affected the growth of technological financial industries which relied on the authentic identification number for their services. However, soon these companies came up with KYC compliances for the consumers with regard to the identity and address of consumers. Post this development, the Government amended the Prevention of Money Laundering Act, 2002 to allow holders of Aadhaar to voluntarily disclose their Aadhar to private entities for verification. This has brought some relief to Fintech companies.

CONCLUSION

A big advantage of taking a loan from NBFCs is that they can vary their rate of interest, which banks can't due to RBI norms. When banks offer new loans with floating interest rates, they are linked to the Marginal Cost of Lending Rate (MCLR), which mentions the intervals at which the interest rate automatically changes. However, since NBFCs are linked to the prime lending rate (PLR), which is outside the ambit of the RBI, they can offer varying rates.

With the advent of Fintech companies, there has been a rise in Regulation For ELoans with eKYC and online banking, which enables applicants to upload all required loan application documents online, the disbursal time of loans too has been reduced. This helps expedite the way people do business or buy new homes.

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