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Shri Shaktikanta Das
Governor
Reserve Bank of India
Central Office Building
18th Floor, Shahid Bhagat Singh Road
Mumbai – 400001

April 11, 2019

Subject: Request for declaration that Agent Business Correspondents (ABCs)/Bank Mitras are entrepreneurs, and not employees of banks or Corporate Business Correspondents CBCs)

Reg: EPFO Order dated November 27, 2018 (Order) declaring Agent Business Correspondents (ABCs)/Bank Mitras as employees of CBC, with bank as the principal employer

Dear Shri Das,

Pursuant to the Order passed by the Regional Provident Fund Commissioner, Bangalore, that Bank Mitras engaged by Corporate Business Correspondents (CBC) in connection with Financial Inclusion work associated with the Pragathi Krishna Gramin Bank (Bank), an RRB of Canara Bank, are employees of CBCs. The Order also states that the Bank is the principal employer.

The above Order was the outcome of a complaint filed against the Bank with the EPFO Bellary by a local BC Agents Association. The Bank denied any liability in this matter and redirected the EPFO to CBC. The EPFO did not take cognizance of detailed plea that ABCs are neither employees of CBC nor those of the Bank.

The Order sets a dangerous precedent as it can lead to more CBCs being brought under the EPFO's fold for their ABCs. This has grave financial implications for the banks, and put the entire Business Correspondent model under existential threat.

We understand this matter was discussed in the past, and it was assumed to be concluded that the ABC, as the last-mile delivery agent, is a local entrepreneur and not the employee of either the Bank or of the CBC, the intermediary.

The agreements between a bank and CBC/BC have been evolving, but the underlying spirit has been as defined under the RBI guidelines ever since the inception of the Business Correspondent model including further reinforced in the Pradhan Mantri Jan Dhan Yojana (PMJDY) notification.

REQUESTS

We request you to kindly:

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1. Issue clarification that the Business Correspondent (BCs) delivering banking services (by whatever name called viz. Agent Business Correspondent/ Bank Mitra / CSP/ BCA/ FBC/ Sub-agent), is an entrepreneur and is not the employee of any CBC or Bank, thus giving a formal closure to the matter.
2. Although IBA had defined a new format of agreement between a bank and a CBC, many banks have not updated the same and have continued with older agreements. These agreements have ambiguous and conflicting definitions of the roles of the CBC and the ABC and contain provisions with excessive administrative control of the ABC by the bank, with more focus on the process and work details rather than on the outcome. Accordingly IBA may be asked to re-educate banks on relevant labour laws, as statutory organizations like the EPFO, and adjudicators like tribunals and courts will infer an employer-employee relationship when conditions like working hours, working days in a week, right of the bank to direct the work, the right to engage and disengage an ABC etc. are stipulated in the bank's agreement with the CBC. A Supreme court judgement (Hussainbhai, Calicut Vs. Alath Factory Thozhilali Union, Kozhicode and Others (summary attached) on the principal employer makes the Bank responsible as the principal employer if the EPFO concludes that the ABC as an employee of the CBC.
3. The RBI guidelines and the PMJDY document on the BC model suggest the status of the last-mile banking services delivery person at a specified location (Sub Service Area (SSA), and non-SSA) as a local entrepreneur who has been engaged/empanelled by the Corporate BC, who in turn has been engaged by the Bank, or has been directly engaged by the Bank, to extend banking services in unserved/underserved areas. A clarification on these lines be issued by RBO to the EPFO.
4. RBI may ask EPFO/MoL for arranging a reputed retired judge (subject matter expert) and a senior professor from a law college as specialists to educate all the stakeholders on employee, agent, and intermediary in relation to BC operations based on the IBA agreement, the PMJDY document and RBI guidelines, and perhaps produce a white paper on the same.

We would personally like to meet you to explain the gravity of the above and request for an appointment at your earliest convenience.

Yours Sincerely,

Dr Anand Shrivastav
Chairman

Enclosures: as stated above

Case Law on the Principal Employer

The Supreme Court decision in the case *Hussainbhai, Calicut vs Alath Factory Thozhilali Union, Kozhikode and Others*, reported in 1978 AIR 1410, 1978 SCR (3)1073, where the Court has held that (emphasis added):

*“Where a worker or a group of workers labours to produce goods or services and these goods or services are for **the business of another, that other is, in fact the employer**. He has economic control over the workers' subsistence, skill, and continued employment. If he, for any reason, chokes off, the worker is, virtually, laid off. The presence of **intermediate contractors with whom alone the workers have immediate or direct relationship ex contractu is of no consequence** when, on lifting the veil or looking at the conspectus of factors governing employment, we discern the naked truth, though draped in different paper arrangement, that the real employer is the Management, not the immediate contractor.”*

It is submitted that in the view of the above legal precedent, banks shall be treated as the real employer and the intermediate contract arrangement with the CBC may be of no significance.