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**STANDING COMMITTEE
ON FINANCE
(2006-2007)**

FOURTEENTH LOK SABHA

**MINISTRY OF FINANCE
(DEPARTMENT OF ECONOMIC AFFAIRS)**

**THE PAYMENT AND SETTLEMENT
SYSTEMS BILL, 2006**

FIFTY-SIXTH REPORT



**LOK SABHA SECRETARIAT
NEW DELHI**

May, 2007 / Vaisakha, 1929 (Saka)

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SYSTEMS BILL, 2006

Presented to Lok Sabha on 16.5.2007

Laid in Rajya Sabha on 16.5.2007



सत्यमेव जयते

LOK SABHA SECRETARIAT
NEW DELHI

May, 2007/Vaisakha, 1929 (Saka)

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COMPOSITION OF STANDING COMMITTEE ON
FINANCE (2006-2007)

Shri Ananth Kumar — *Chairman*

MEMBERS

Lok Sabha

2. Shri Jaswant Singh Bishnoi
3. Shri Gurudas Dasgupta
4. Shri Shyama Charan Gupta
5. Shri Vijoy Krishna
6. Shri A. Krishnaswamy
7. Dr. Rajesh Kumar Mishra
8. Shri Bhartruhari Mahtab
9. Shri Madhusudan Mistry
10. Shri Rupchand Pal
11. Shri Prakash Paranjpe
12. Shri P.S. Gadhavi
13. Shri R. Prabhu
14. Shri K.S. Rao
15. Shri Magunta Sreenivasulu Reddy
16. Shri Jyotiraditya Madhavrao Scindia
17. Shri Lakshman Seth
18. Shri A.R. Shaheen
19. Shri G.M. Siddeshwara
20. Shri M.A. Kharabela Swain
21. Shri Bhal Chand Yadav

Rajya Sabha

22. Shri Santosh Bagrodia
23. Shri Raashid Alvi
24. Shri M. Venkaiah Naidu
25. Shri Yashwant Sinha
26. Shri Mahendra Mohan
27. Shri Mangani Lal Mandal
28. Shri C. Ramachandraiah
29. Shri Vijay J. Darda
30. Shri S. Anbalagan
31. Vacant

SECRETARIAT

1. Dr. (Smt.) P.K. Sandhu — *Additional Secretary*
2. Shri P.K. Grover — *Joint Secretary*
3. Shri S.B. Arora — *Deputy Secretary*
4. Shri T.G. Chandrasekhar — *Deputy Secretary*

INTRODUCTION

1. I, the Chairman of the Standing Committee on Finance having been authorised by the Committee to submit the Report on their behalf, present this Fifty Sixth Report on the Payment and Settlement Systems Bill, 2006.

2. The Payment and Settlement Systems Bill, 2006 introduced in Lok Sabha on 25 July, 2006 was referred to the Committee on 28 August, 2006 for examination and report thereon, by the Hon'ble Speaker, Lok Sabha under Rule 331E of the Rules of Procedure and Conduct of Business in Lok Sabha.

3. The Committee obtained written information on various provisions contained in the aforesaid Bill from the Ministry of Finance (Department of Economic Affairs), who also briefed them at their sitting held on 29 September, 2006.

4. Written replies, views/memoranda were received from Ministry of Finance (Department of Economic Affairs), RBI, SBI, PNB, Bank of India, Canara Bank, Bank of Baroda, Oriental Bank of Commerce, ICICI Bank, IDBI Bank, HDFC Bank, HSBC Bank, Standard Chartered Bank, Citi Bank, Abhyudaya Cooperative Bank Ltd., Janata Sahakari Bank Ltd., Pune, the Saraswat Cooperative Bank Ltd., Indian Banks Association, Bank Employees Federation of India, All India Bank Officers Association, All India Bank Employee's Association, National Confederation of Bank Employees and United Forum of Reserve Bank Officers and Employees, the Clearing Corporation of India Ltd., Foreign Exchange Dealers Association of India (FEDAI), Fixed Income Money Markets and Derivatives Association (FIMMDA), National Stock Exchange of India Ltd., Shri M.G. Bhide, Director, CRISIL, Bombay Mercantile Cooperative Bank Ltd., Shri M.R. Ramesh (Former Managing Director, the Clearing Corporation of India Ltd.), and Juris Corporation.

5. The Committee at their sitting held on 26 October, 2006 took oral evidence of the representatives of: (i) All India Bank Officers' Association (ii) All India Bank Officers Confederation (iii) All India Bank Employees' Association (iv) Bank Employees Federation of India and (v) National Confederation of Bank Employees. The Committee at their sitting held on 7 November, 2006 took oral evidence of the representatives of Clearing Corporation of India Ltd. (CCIL),

Indian Banks' Association (IBA) and Fixed Income Money Markets and Derivatives Association (FIMMDA). On 29 December 2006, the Committee took oral evidence of United Forum of Reserve Bank Officers and Employees, ICICI Bank, IDBI Bank, HDFC Bank, State Bank of India (SBI), Punjab National Bank (PNB), Bank of India and Canara Bank. At their sitting held on 11 January, 2007, they took oral evidence of the representatives of Reserve Bank of India. Thereafter, the Committee at their sitting held on 1 February, 2007 took oral evidence of the representatives of the Ministry of Finance.

6. The Committee in their sitting held on 14 May, 2007 considered and adopted the draft report and authorized the Chairman to finalise the same and present it to both Houses of Parliament.

7. The Committee wish to express their thanks to the officers of the Ministry of Finance (Department of Economic Affairs), various organizations/associations, banks, RBI and individual experts for the cooperation extended in placing before them their considered views and perceptions on the Bill and for furnishing written notes and information that the Committee had desired in connection with the examination of the Bill.

8. For facility of reference observations/recommendations of the Committee have been printed in thick type in the body of the Report.

NEW DELHI;
15 May, 2007
25 Vaisakha, 1929 (Saka)

ANANTH KUMAR,
Chairman,
Standing Committee on Finance.

REPORT

Background

A payment system can broadly be understood to be a mechanism that facilitates transfer of value between a payer and a beneficiary by which the payer discharges the payment obligations to the beneficiary. Payment system enables two-way flow of payments in exchange of goods and services in the economy.

2. Payment and settlement systems in India have had a long and chequered history, starting from usage based modes of funds settlement – in the form of hundis and other instruments accepted by practice, to the role of banks which has become pronounced during the last fifty years or more.

3. World over, Payment systems have encountered many challenges and are constantly adapting to the rapidly changing payments landscape. More recently, the proliferation of electronic payment mechanisms, the increase in the number of players in the financial arena and the payment crises in quite a few countries and regions in the 1990s have focused attention on public policy issues related to the organisation and operation of payment systems.

4. As seen from the Background information furnished to the Committee, three main areas of public policy have guided payments system development and reform: protecting the rights of users of payment systems, enhancing efficiency and competition, and ensuring a safe, secure and sound payments system.

5. The Central Bank of any country is usually the driving force in the development of the national payment system. The Reserve Bank of India (RBI), as the, Central Bank of the country has been playing this developmental role and initiating many reforms aimed at improving the efficiency of payment and settlement systems of the country. Although these initiatives have technology as an integral component, the various other requirements are also being addressed as part of the process of reforms. The current predominant mode of funds settlement is through the clearing process – achieved by the functioning of 1054 clearing houses in the country, where settlement of net pay-ins and pay-outs is worked out for clearing of cheques which are issued under the precincts of the Negotiable Instruments

Act, 1881. The legal basis for the functioning of the clearing houses is the 'Uniform Regulations and Rules for Bankers' Clearing Houses' (BCH), derived under the Indian Contracts Act, 1872. All member banks of a clearing house enter into a contractual relationship with the manager of the clearing house and the conduct of clearing and settlement operations follow the provisions of this contract which is based on the URR.

Payment Systems – Current Status

6. There are diverse payment systems functioning in the country, ranging from the paper based systems where the instruments are physically exchanged and settlements worked out manually to the most sophisticated electronic fund transfer systems which are fully secured and settle transactions on a gross, real time basis. They cater to both low value retail payments and large value payments relating to the settlement of inter-bank money market, Government securities and forex transactions.

7. The retail payment systems, comprising both paper based as well as electronic systems, typically handle transactions which are low in value, but very large in number, relating to individuals, firms and corporates. The clearing houses clear and settle transactions relating to various types of paper based instruments like cheques, drafts, payment orders, interest / dividend warrants, etc. The clearing houses are voluntary bodies set up by the participating banks and post offices and they function in an autonomous manner. The Uniform Regulations and Rules for Bankers' Clearing Houses (URRBCH) issued by the Reserve Bank, and adopted by the Clearing Houses relate to the criteria for membership / sub-membership, withdrawal / removal / suspension from membership and the procedures for conducting of clearing as well as settlement of claims between members.

8. The various types of electronic clearing systems functioning in the retail payments area in the country include: Electronic Clearing System (ECS), both for Credit and Debit operations which functions from 64 places (15 managed by the Reserve Bank and the rest by the State Bank of India and other public sector banks; Electronic Funds Transfer (EFT) System operated by the Reserve Bank at 15 places; and the National Electronic Funds Transfer (NEFT) System – a variant of EFT – which is also operated by the Reserve Bank.

9. The large value payment systems functioning in the country are: the Inter-Bank Cheques Clearing Systems (the Inter-bank Clearing),

the High Value Cheques Clearing System (the High Value Clearing), the Government Securities Clearing System (the G-Sec Clearing), the Foreign Exchange Clearing System (the Forex Clearing) and the Real Time Gross Settlement (RTGS) System. While the G-Sec Clearing and the Forex Clearing of the large value payment systems are managed by the Clearing Corporation of India Limited (CCIL), the RTGS System is operated by the Reserve Bank.

10. On the existing arrangements relating to operation of clearing Houses a note furnished by, the Ministry of Finance, *inter-alia* reads as under:—

“At 59 of clearing houses, cheque processing is conducted using Magnetic Ink Character Recognition (MICR) Technology. Sorting and listing of cheques is done at the specially instituted cheque processing centres. Due to volume consideration, Mumbai has three cheque processing centres and New Delhi, Kolkata and Chennai have two cheque processing centres each. At the remaining 55 centres, there is only one cheque processing centre at each centre. Thus, there are 64 MICR cheque processing centres of which only 5 cheque processing centres are managed by RBI. At the non-MICR centres, sorting of cheques is done manually by individual banks and exchanged with each other at the Clearing House. The clearing houses are managed mostly by the State Bank of India or its Associates. The employees at the clearing house are the staff of the bank managing the clearing house. “

Regulation and supervision of Payment Systems:

11. The power to make regulations for clearing houses of banks and fund transfer through electronic means – which are adopted by the members of the clearing houses by way of contractual agreement(s) is vested in the Central Board of Directors of the Reserve Bank of India under Section 58 (2) (p) and Section 58 (2) (pp) respectively of the Reserve Bank of India Act, 1934.

12. The procedure of netting (arriving at the multilateral net settlement) is not legally recognised but has been adopted as a working procedure by the members of the clearing houses. The corporate entity, the Clearing Corporation of India Ltd. (CCIL), which, at present, operates the inter-bank Government Securities and Foreign Exchange Clearing Systems as well as the new National Payments Corporation of India, which will take over the operations of retail payment systems will be outside specific regulatory purview in the existing legal framework for payment system.

13. Mainly on account of these factors, it has been considered necessary to enact the Payment and Settlement Systems Bill, 2006 which will, *inter alia*, empower the Reserve Bank of India to act as the designated authority with the following powers and functions, namely:—

- (a) to regulate and oversee the various payment and settlement systems in the country including those operated by non-banks like CCIL, card companies, other payment system providers and the proposed umbrella organisation for retail payments;
- (b) lay down the procedure for authorisation of payment systems as well as revocation of authorisation;
- (c) to lay down operational and technical standards for various payment systems;
- (d) to call for information and furnish returns and documents from the service providers;
- (e) to issue directions and guidelines to system providers;
- (f) to audit and inspect the systems and premises of the system providers;
- (g) to lay down the duties of the system providers;
- (h) to levy fines and impose penalties for not providing information or documents or wrongfully disclosing information, etc.; and
- (i) to make regulations for carrying out the provisions of the proposed legislation.

14. The Bill, *inter alia*, seeks to provide for the following matters, namely:—

- (a) to designate the Reserve Bank of India as the designated authority for the regulation and supervision of payment systems in India for their smooth operations;
- (b) to give legal recognition to the netting procedure and settlement finality; and
- (c) to empower the Securities Appellate Tribunals to settle disputes between the Reserve Bank of India and the system providers.

15. The Payment and Settlement Systems Bill, 2006, was introduced in Lok Sabha on 25 July, 2006 and referred by the Hon'ble Speaker to

the Standing Committee on Finance on 28 August, 2006 for examination and report thereon.

16. Furnishing a detailed account of the factors that necessitated the move to consider enacting a specific legislation for regulation and supervision of payment system, the Ministry of Finance, in a written note informed as under:—

“**First**, there has been a phenomenal growth in the volume and value of payment transactions. Most of these payments—made either by cheque or electronic funds transfer are settled through a process called “multilateral netting”—where mutual claims and obligations between so many banks or financial institutions are made by a single payment or receipt. So far, there is no specific legislation on multilateral netting. Netting is in practice by contract or adoption of procedural guidelines by the participating institutions. As the financial markets are acquiring sophistication, need for such explicit laws are being felt. Even internationally, such developments are relatively new. It is only during the last 10 years that the other countries with developed financial markets have gone for specific netting legislation or recognized netting under their Payment system laws.

Legal recognition of netting is the pre-condition for recognizing settlement finality under the netting schemes. Settlement finality provision is useful during insolvency proceedings. If a participant in payment system, as envisaged under the Bill, turns insolvent, the net position worked out by the payment system provider would be deemed “final” and ‘irrevocable” even if the settlement were to take place after declaration of the time of insolvency. The liquidator would be bound to honour the obligation of the defaulting participant and cannot resort to cherry picking *i.e.* “pick and choose” of liability and assets.

Nearly Rs. 1 lakh crore of transactions move through netting systems each day. There is an urgent need for keeping our financial markets free from legal uncertainty.

The Reserve Bank of India Act empowers RBI to frame regulations on cheque clearing and/or electronic clearing. But “netting” and “settlement finality” are fundamental issues and cannot be made a part of sub-ordinate legislation. The regulations under Reserve Bank of India Act cannot limit the authority of the liquidator/ legal powers available with the liquidator under other laws.

Second, as per a self assessment made by the Reserve Bank on compliance to international standards on payment and settlement systems, India is compliant to 9 out of 10 Core Principles of Systemically Important Payment System. International best practices conform to the “Core Principles for Systemically Important Payment Systems” (CPSIPS) formulated by the Bank for International Settlements (BIS). The first principle of CPSIPS is that “the system should have a well-founded legal basis under all relevant jurisdictions”. India is partially compliant to this principle. Not having a statutory provision on “netting” and “settlement finality” is the only reason for India not being fully compliant. India’s standing in the global banking community would be enhanced if we can build this legal infrastructure.

Third, Clearing Corporation of India Limited (CCIL) has been set up by banks and financial institutions in India as a central counterparty and specialized clearing organization for inter-bank Government securities and foreign exchange transactions. RBI has been monitoring the working of CCIL because of the moral authority it wields and most of the participants *i.e.* banks are the regulated entities of Reserve Bank. The activities of CCIL have been growing and even the corporates are now being admitted as members for several money market instruments. Though RBI has been making annual assessment of the working of CCIL, it is not considered to be “inspection” or “oversight visit”. Formal authority to conduct inspection and audit and impose penalty for non-compliance to direction is necessary to ensure that the liberal regime does not lead to deviant behaviour on the part of CCIL. For authorisation, revocation of authorization, inspection or audit, specific legal provision would be necessary. It can not be done by Regulations under Section 58 (2) (p) of the Reserve Bank of India Act.

Fourth, several payment systems have started operations without specific authorization from Reserve Bank. Several money transfer companies which started operation on a small scale have now grown in size. There is no legal clarity as to whether we can regulate them. Similarly, the card companies (VISA and Mastercard) – incorporated outside India – operate through a complex mechanism so as to avoid regulatory control. Once Government defines that card transactions form a “payment system”, it would be easier to bring the card companies under regulatory framework of RBI. The existing method of regulating them through the banks that issue cards to customers or acquire transactions has limitations.”

Views/Memoranda submitted in respect of the Payment and Settlement Systems Bill, 2006

17. The avowed purpose of introducing the Payment and Settlement Systems Bill, 2006, as brought out in the preceding paragraphs, is to enable the Reserve Bank to authorize *inter-alia* the setting up of payment system, revoke authorization, lay down technical and operational standards, give directions to systems providers, collect information/data, audit/inspect payment systems, levy penalties for violations, and provide backing to the process of netting and settlement finality.

18. With a view to seek clarifications on various aspects of operation, as well as regulation and supervision of payment systems, and the proposals of the Bill, the Committee have, apart from taking evidence of the representatives of the Ministry of Finance and the Reserve Bank of India, sought memoranda and had personal hearings of a cross-section of experts in the related fields, as well as representatives of the managements of banks in the public, private and co-operative sectors, foreign banks, and the bank officers and employees unions.

19. Through the memoranda submitted and in the course of personal hearings, the individual experts as well as the representatives of the managements of various banks, have, in general, welcomed the proposals of the Bill, which would empower the Reserve Bank to have regulatory oversight over payment systems. However, the representatives of Bank officers and employees unions, particularly the United Forum of Reserve Bank Officers and Employees have been vehement in expressing opposition to proposal for enacting the Payment and Settlement Systems Bill, 2006. The opposition expressed by the United Forum of Reserve Bank Officers and Employees Union to the Bill has been mainly on account of the proposal to set up the National Payments Corporation of India, which, though not a part of the provisions, would, as indicated in the Statement of Objects and Reasons of the Bill, take 'over the operations of retail payment system' and function under the regulatory purview of the Reserve Bank of India.

20. The contentions as made in the memoranda submitted and in the course of personal hearings of the United Forum of Reserve Bank officers and employees association *inter-alia* centered on:

- (i) The existing legal provisions, particularly Section 58 (p) and 58 (pp) of the Reserve Bank of India Act, 1934, being adequate in empowering the Reserve Bank of India to regulate and oversee payment system operations;

- (ii) There being no discernible uniformity at the international level on the role of the Central Banks *vis-a-vis* payment system operations and oversight.
- (iii) The intended purpose of seeking to enact the Bill is mainly to legalise the formation of the National Payments Corporation (NPCI), which would operate the retail payment system in the Country.
- (iv) Likely loss of income generation of Reserve Bank and Public Sector Banks on account of transferring clearing house operations to the umbrella organisation for retail payment systems (NPCI).
- (v) Likely adverse effect on secrecy and confidentiality, which are of importance to payment system operations, on account of setting up the National Payment System Corporation *viz.*, NPCI.

21. By citing the recommendations of the Advisory Group of Payment and Settlement System set up by the Reserve Bank in 2000 which had *inter-alia* recommended amending Section 17 (b) (Business of the Reserve Bank) and Section 58 (regulation making power of the Central Board) of the RBI Act, 1934, the United Forum of Reserve Bank Officers and Employees contended before the Committee that the issue of suitably empowering RBI to regulate and supervise the payment systems could be addressed by carrying out appropriate amendments in the RBI Act and other associated Acts. Asked as to why the alternative of carrying out amendments in the RBI Act, 1934 as suggested by the Advisory Group was not considered in lieu of the separate enactment proposed for payment system regulation, the Ministry of Finance, in a written reply, submitted as under:

“Section 17 of the Reserve Bank of India Act, 1934 prescribes the business which the Reserve Bank may transact and Section 58 empowers the Central Board of the Reserve Bank to make regulations, with the previous sanction of the Central Government, to provide for all matters for which provision is necessary or convenient for the purpose of giving effect to the provisions of the RBI Act, 1934. Since Section 17 does not confer any regulatory/supervisory powers on the Reserve Bank, any amendments in Section 17 and the Regulations made under Section 58 would not empower the Reserve Bank to regulate and supervise the payment systems. Further, many countries have separate legislations for the regulation and supervision of payment systems. Amendment to Section 17 or Section 58 will not be appropriate for a comprehensive

law on payment and settlement system. It is in this context that a separate enactment covering all aspects of the regulation and supervision of the payments systems have been conceived. Even if regulations are framed under Section 58 of the RBI Act, it might not be appropriate for defining concepts such as “netting” and “finality of settlements”

22. The Ministry of Finance further added as under in this regard in a subsequent reply:—

“Further to our earlier reply it is stated that it would not be appropriate to put comprehensive provisions for empowering RBI as the regulator and supervisor of the payment and settlement systems as well as providing legal recognition for “netting” and “settlement finality” in the RBI Act 1934 by amending the provisions of that Act.

The enactment of a separate law on payment and settlement systems will show the importance that our country accords to the safe, secure and efficient functioning of the payment and settlement systems. The proper functioning of the payment and settlement systems is very important for ensuring financial and monetary stability. Moreover, in many countries there is a separate legislation dealing with these functions e.g. Australia, Canada, South Africa, Brazil etc. In Sweden there is a separate law dealing with “settlement finality”.

23. As for the contention, which relates to the absence of a discernible trend at the international level on the role expected of the Central Banks *vis-a-vis* retail payment systems, a representative of the United Forum of Reserve Bank Officers and Employees’ Association averred as under while tendering evidence:—

“At first, the Reserve Bank told us, the unions that internationally the Central Bank of the country is not associated with clearing operations. Later on, when we studied, we found that in many countries, including in the USA, the Central Bank is actively involved in extending service. Then, they have modified the statement saying that out of the Payment and Settlement Systems of 14 countries that they have surveyed out of 161 Central Banks, they have found that in majority of the countries, the Central Banks are not actually providing service.”

“We have also drawn your attention to the international guidelines of Bank for International Settlement. They have given certain broad

guidelines to countries about the payment and settlement system. They are saying clearly to keep the Central Bank at the centre of the payment and settlement system. What they are saying is this; 'The specific tasks directly carried out by the Central Bank in the payment system area vary from country to country.' So, there is no universal framework or universal procedure."

24. The Reserve Bank of India had, in the year, 2002, constituted a Committee under the Chairmanship of Dr. R.H. Patil, Chairman, Clearing Corporation of India to go into the entire gamut of the Payment Systems, and to examine various aspects relating to the legal basis for the systems as well as for regulation and oversight. The terms of reference of the Committee set up by the Reserve Bank were as follows:—

- (i) To examine the adequacy of legal basis for payment systems
- (ii) To suggest appropriate legislative changes for regulation of payment systems
- (iii) To suggest an administrative set-up within the Bank for administering regulation and supervision of payment systems.
- (iv) Any other related matter.

25. The Committee on Payment Systems (2002) headed by Dr. R.H. Patil had, *inter-alia*, considered and deliberated upon a model/ illustrative Payment and Settlement Systems Bill prepared by the Task Force on Legal issues of the National Payment Council (NPC) constituted by the Reserve Bank in 1999 to proffer advice on matters relating to payment systems. The R.H. Patil Committee also carried out a survey of the international position with regard to law on regulation and supervision of payment systems, finality of settlement of netting, in regard to which, it, *inter-alia* observed as follows:—

"Recognising the important role of payment and settlement systems in any economy and among other aspects, the impact in the form of systemic risks which these systems carry, most of the central banks the world over have a regulatory oversight over such systems. While some of the countries have explicit laws to provide the overall composite legal basis for such functions, other economies have laws for specific activities (such as clearing)."

26. The representatives of the Ministry of Finance and the Reserve Bank have, in their deposition as well as written submissions made to

the Committee emphasized on the fact that the proposals of the Payment and Settlement System Bill, 2006, were in consonance with the international practice for enabling the Central Banks to have regulatory oversight over payment systems. Illustrative examples of the position prevailing in the countries such as Canada, U.K., Australia, countries of Euro Area, Italy, Malaysia, Singapore and South Africa, were also cited by the Ministry in this regard.

National Payments Corporation of India

27. With reference to the umbrella organization proposed for retail payment systems *viz.* the National Payments Corporation of India *per se*, the concerns expressed by the Reserve Bank Officers and Employees' Unions, as brought out in brief in the preceding paragraphs include: (i) Pursuing the proposal to set up the corporation without proper publicity and consultation; (ii) loss of income/revenue generation of RBI/public sector banks on account of transferring retail payment/clearing house operations to the new corporation; (iii) likely adverse implications on secrecy and confidentiality; and (iv) the intention behind introducing the Bill being legalizing the setting up of the Corporation.

(i) Framework of the new institutional structure for Retail Payment System (NPCI)

28. The broad framework of the new national entity for retail payment systems, as depicted in the Vision Document (2005-08) on 'Payment Systems in India' brought out by the Reserve Bank *inter-alia* reveals as follows:—

- It would be a limited liability company, owned and operated by banks. Indian Banks Association, in consultation with a few leading banks, will evolve consensus on the ownership pattern. Since a few banks have already been running MICR Cheque Processing Centres (MICR CPCs) with substantial investment, they may be consulted for the purpose.
- The details regarding staffing, ownership of existing infrastructure etc., will be worked out.
- All retail clearing operations, both paper-based and electronic will be managed and operated by this entity.
- The new organization would provide a robust and technologically intensive centralized system offering ECS, EFT and NEFT services covering the entire country. It may also take initiatives on ATM-switching, multi-application smart card, e-commerce and m-commerce based payment systems.

29. As for the averment about lack of transparency and inadequate consultative process in pursuing the proposal of setting up the 'National Payments Corporation', the Ministry of Finance, in a written reply *inter-alia* stated:—

“For giving effect to this proposal, Indian Banks Association (IBA) constituted a Committee of senior bankers with representatives from public sector banks, banks in private sector, foreign banks and co-operative banks and finalized the structure of the new organization. It was decided by IBA that it would be a Section 25 company owned and operated by banks. No bank or bank group can have shareholding of more than 10 percent and shares would be held by as many banks as possible. It was also decided that RBI would have representation in the Board.

Thus it may be seen that due consultative process has been gone through while taking the decision on setting up of National Payments Corporation of India (NPCI). As regards consultation with the Unions and Associations, it is understood that the managements of individual banks have been discussing with them to address their concerns.”

30. On the related contention that setting up the NPCI was intended to privatize and outsource clearing activities, the Ministry, in a written reply stated:—

“The views expressed by many bank unions/associations regarding the NPCI are not well founded and not based on facts. The proposed setting up of NPCI will neither lead to outsourcing or privatization of clearing activities nor adversely affect the interests of the bank employees.”

(ii) Financial implications of the proposed institutional structure for retail payment systems

31. As per the Bank Employees' Unions, setting up the new institution for retail payment systems would significantly impact the income generation of the Reserve Bank and the Public Sector Banks presently operating and managing clearing houses. In this regard, a representative of the employees unions stated as under while tendering evidence:

“...coming to the question of financial loss, whatever investment RBI has made for MICR cheque clearance functions, which require sophisticated, imported machinery and which are very costly, they

have been able to get that money back from the system. In fact, as we have calculated, Rs. 300 crore is the earning from this system, and it is the Reserve Bank or the public sector banks which receive this money. On this, the Government of India is also getting some returns by way of income-tax or dividend. That way, through the functioning of the payment and settlement system, the national exchequer is being strengthened.

32. On the question of losing/foregoing the income generation from clearing systems, on account of transferring these functions to the new corporation, the Deputy Governor, RBI stated as under while deposing before the Committee:

“RBI has not been operating the clearing system to generate income. Income generation is only incidental. RBI started the cheque processing centres as a part of its initiative to build a sound cheque clearing system. Now there is a felt need for consolidating all clearing centres under an umbrella organization to bring efficiency and standardization of procedure and practices. Therefore, RBI would not hesitate to sacrifice some nominal income if the step taken brings improvements in the system. Besides, the profit to be generated by the new company would not be paid to the shareholders as dividend, but would be used for further development of payment system.

(iii) Implications on secrecy and confidentiality

33. Speaking *inter-alia* on the adverse implications on secrecy and confidentiality on account of setting up the new institutional structure for retail payments, a representative of the United Forum of RBI Officers and employees stated as under while deposing before the Committee:

“The Reserve Bank is having the figures of all the commercial banks at their finger tips because it is having all the data. The Reserve Bank knows the financial position of each and every participant of the clearing house. The RBI can take preemptive measure if any bank’s financial position is sharply deteriorating, which this company cannot because whatever be the mutual arrangement between this company and the RBI, and RBI cannot divulge all the details of the commercial banks to this company. It is because if such details go out, then it will be a very serious thing.”

34. Touching upon issues relating to maintenance of confidentiality of information vis-à-vis in the proposals of the Payment and Settlement Systems Bill, 2006, the Deputy Governor, Reserve bank of India stated as under:

In terms of clause 22 of the Bill the system provider (company) will not disclose the contents of any document/information provided by a system participant (participant bank). In terms of clause 26(4) any unauthorized disclosure of information is punishable by fine or imprisonment or both.

(iv) Shareholding pattern of NPCI

35. Issues relating to the shareholding pattern/structure of the new organization (NPCI) proposed to operate the retail payment systems as formulated in the report of the Working Group of the Indian Banks Association (IBA), which comprised of the representatives of public sector banks, Banks in private sector, foreign banks and co-operative houses as furnished to the Committee by the Ministry of Finance in a summarized form *inter-alia* reads as follows:

“NPCI will have dispersed ownership banks giving due share to public sector banks, private banks, cooperative banks and foreign banks. No share holder/group will have a share more than 10% of the total paid-up capital. The shareholders will be expected to maintain an arm’s length from the organization to promote the cause of competitive neutrality. The company will be set up under Section 25 of the Companies Act whereby no profit will be required to be distributed as dividend to the shareholders; instead the profits will be ploughed back into the company to improve the quality of services being provided and to develop new innovative payment products which will enhance customer convenience.”

36. In response to a related question, the Ministry of Finance, in a written reply *inter-alia* submitted as follows:

“No bank can hold more than 10% of the total shareholding of NPCI – the clearing company for retail payment systems. Also out of its total paid up capital of Rs. 100 crores already 5 public sector banks have pledged Rs. 10 crores each, thereby aggregating Rs. 50 crores. 2 private sector and 2 foreign banks have pledged Rs. 10 crores each, thereby totalling Rs. 40 crores. The rest would be dispersed among other banks. As it stands today, the shareholding of public sector banks exceeds that of private sector and foreign banks.

37. It was also added as under in reply by the Ministry:

“The NPCI (when it is set up) would be subject to the regulation and supervision of RBI under the proposed Act and the regulations framed thereunder. RBI would also have a nominee in the Board of Directors of the NPCI. Though majority shareholding of the NPCI has not been explicitly stated in the Articles of Association or Memorandum of Association, public sector banks would have significant representation on the Board of NPCI (based on their percentage share in the volume of payment transactions) and would therefore have substantial powers in the decision-making process.

The systemically important large value payment system RTGS will continue to be managed and operated by RBI and RBI would continue to provide settlement service through its regional offices for all clearings taking place at centres with RBI offices.”

38. Also asked whether it would not be appropriate to incorporate suitable clauses in the Memorandum of Association and Article of Association of the Company to the effect that public sector banks would be contributing the major share capital of the company; and that banks incorporated and owned by Indian concerns would have controlling stake in entities operating systemically important payment systems, the Ministry of Finance, in response, informed:

“... This concern would be addressed appropriately by RBI without explicitly stating it in the Memorandum of Association and Articles of Association of NPCI.....”

“...Control through regulation and supervision can be used as effective instrument to ensure that NPCI operates in public interest. It is primarily for this reason that NPCI is going to be registered under Section 25 of Companies Act whereby the profit would not be distributed to the shareholders but would be utilized for ploughing back into the business of NPCI. This will financially strengthen NPCI and enable it to introduce more efficient and customer friendly payment modes and increase the reach of the payment systems to smaller towns and rural areas. Besides, the proposed NPCI would operate only retail payment systems which are not systemically important.”

39. On the issue raised about the enactment of the Payment and Settlement Systems Bill, 2006, being proposed for legalizing the formation of the NPCI, the Ministry of Finance in reply, *inter alia* stated:

“The proposals of the Payment and Settlement Systems Bill are neither essential/imperative nor of significance for setting up the

company to operate all the retail payment systems. The initiatives on Payment and Settlement Systems Bill had been conceived way back in 2000 and the initiatives for setting up of company to operate the retail payment systems started in 2005. They are not dependent on each other. However, it would be appropriate if the Payment System Bill becomes an Act as early as possible so that the new clearing company could be set up under RBI's regulatory and supervisory framework right from the beginning."

40. In this regard, the Secretary, Financial Sector, Ministry of Finance too stated as follows before the Committee:

"Now, whether this Bill becomes an Act or not, institutions like CCIL or the National Payments Corporation will come into existence and they will start transactions. The only difficulty will be that the RBI will continue to be empowered in its capacity to be able to have oversight authority over these.

41. The Committee recognize the importance and the need for providing explicit legal basis for the payment and settlement systems in its entirety particularly when the payment and fund transfer processes are dominated by modern and technological modes. The avowed purpose on the part of the Government for introducing the Payment and Settlement Systems Bill, 2006 is to provide a specified and dedicated legal foundation for the regulation and supervision of the Payment and Settlement Systems; accord legal recognition to netting procedures, which would enable compliance with the 'core principles for systematically important payment systems' formulated by the Bank for International Settlements (BIS); confer formal authority on the Reserve Bank to regulate corporate entities such as the Clearing Corporation of India Ltd. (CCIL), and the proposed National Payments Corporation of India (NPCI); and bring newer forms of payment systems and service providers including card companies, money transfer businesses etc. under formal regulatory purview.

42. However, as discussed in the preceding paragraphs, the necessity of the proposed legislation has been questioned, particularly by the Reserve Bank's Officers and Employees' Associations. The reservations or objections expressed have been mainly on account of the proposed setting up of a separate national level entity *viz.*, National Payment Corporation of India, which is not a part of the provisions of the Bill, but, as indicated in the Statement of Objects and Reasons would be taking over the 'operation of retail payment systems' in the Country.

43. From the information and clarifications furnished by the Government, the Committee note that the National Payments Corporation is proposed to be set up under Section 25 of the Companies Act – whereby the profits earned would not be paid out, but ploughed back into the company for further development of payment systems. The contentions made in regard to the company proposed to be set up for managing and operating retail payment systems *inter alia* centre on, inadequate publicity and consultations in pursuing the proposal, and the likely implications on issues relating to confidentiality and security required of payment system operations. Upon considering the reservations of various sectors on this specific initiative – as highlighted in the narrative part of the Report – the Committee feel it essential on the part of the Government to hold wider and in-depth consultations on the entire gamut of issues relating to the proposed company *viz.*, the ‘business model’ envisaged; terms and conditionalities of licensing the proposed company; service conditions of employees currently engaged in clearing house operations etc. so as to evolve a consensus on the proposal.

44. In the course of their deliberations on the specific proposals of the Bill, the Committee felt that a number of provisions relating to the definitions of various terms, the authorization processes, dispute resolution mechanism etc. should be recast to serve the intended objectives better. Such of the provisions, and the recommendations and observations of the Committee are dealt with in the subsequent paragraphs of the report.

Clause 2–Definitions

45. Clause 2, which seeks to define certain expressions and terms used in the Bill, which include, ‘Bank’, ‘derivative’, electronic fund transfer, netting, etc.

Clause 2 (1) (a)–Definition of ‘bank’

46. Clause 2 (1) (a) which defines the term, ‘Bank’, reads as follows:

(a) “bank” means,—

- (i) a bank included in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934);
- (ii) a post office savings bank;
- (iii) a banking company as defined in clause (c) of section 5 of the Banking Regulation Act, 1949 (10 of 1949);

- (iv) a co-operative bank as defined in clause (cci) of section 5, as inserted by section 56, of the Banking Regulation Act, 1949 (10 of 1949); and
- (v) such other bank as the Central Government may, by notification, specify for the purposes of this Act.

47. The definition of 'bank' as proposed under Clause 2 (1) (a) of the Bill specifically mentions co-operative banks but does not expressly cover Public Sector Banks, State Bank and its Associates and Regional Rural Banks. Further, in terms of Clause 2 (1) (a) (v), the power to notify a 'bank' for the purposes of the proposed Act vest with the Central Government.

48. A need was expressed by Juris Corp, a law firm and FIMMDA for specifically defining 'Post Office Savings Bank' for the purposes of the Bill. In response to a query raised in this regard, the Ministry of Finance, in a written reply stated as under:

"Though the post office is not a banking company as defined under the Banking Regulation Act, 1949, for the purpose of certain Acts like the Bankers' Books Evidence Act, 1891, the post office savings bank is considered as a bank and is covered under the definition of bank. As per Section 2 (2) (c) of the Bankers' Books Evidence Act, "bank" and "banker" means any post-office savings bank or a money order office. Further, Section 3 of the Negotiable Instruments Act, 1881 defines the term "Banker" as "banker" include any person acting as a Banker and any post office saving bank. In the circumstances, it is felt there is no need to define the term "post office savings bank" in the Payment and Settlement Systems Bill, 2006."

49. On being questioned about a suggestion made for supplementing the definition of 'bank' by making a specific mention of public sector banks, State Bank and its associates, etc., the Ministry of Finance in a written reply submitted as under before the Committee:—

"The power to notify a bank in terms of Clause 2 (1) (a) (v) of the Bill is with the Central Government. Already, an amendment to Clause 2(1) (a) (v) has been suggested by RBI whereby it will be empowered to notify a "bank" and not the Central Government."

50. The Committee note that in terms of Clause 2 (1) (a) (v) of the Bill, the power to notify a bank for the purposes of the Payment and Settlement Systems is to be vested with the Central Government.

In regard to the need expressed for supplementing the definition of 'Bank' as proposed under Clause 2 (1) (a) by making a specific mention of Public sector banks and the State Bank and its associates, the Government have, *inter alia* proposed to vest the power to notify a bank for the purposes of the Bill with the Reserve Bank instead of the Central Government. The Committee are also of the view that the power to notify a bank for the purposes of the Payment and Settlement Systems should be vested with the Reserve Bank since it is the regulatory authority for the banking sector as well as payment system operations. The Committee, therefore, desire that as agreed to, Clause 2 (1) (a) (v) of the Bill be suitably modified to vest the power to notify a bank with the Reserve Bank instead of the Central Government.

Clause 2 (1) (b) - Definition of "derivative"

51. Clause 2 (1) (b) reads as under:

"derivative" means an instrument, to be settled at a future date, whose value is derived from change in interest rate, foreign exchange rate, credit rating or credit index, price of securities (also called "underlying"), or a combination of more than one of them and includes interest rate swaps, forward rate agreements, foreign currency swaps, foreign currency rupee swaps, foreign currency options, foreign currency rupee options or such other instruments as may be specified by the Reserve Bank from time to time;

52. The definition of the term 'derivative' proposed in the Bill is similar to the definition of the term as contained in Section 45 U(a) of the Reserve Bank of India Act, 1934 ("RBI Act"). A view point expressed by Juris Corp and FIMMDA in this regard was that it may be essential to define the term by drawing reference to the RBI Act so as to *inter alia* avoid any discord between the two definitions in future. Certain Banks, which include, the ICICI Bank and Union Bank of India felt it to be desirable to make the definition of the term 'derivative' into an inclusive one as appearing in Securities Contracts Regulations Act, 1956 so that the value of the instrument may be defined from "underlying" in addition to those specified in the definition as proposed in the Bill e.g. Weather, price of commodities etc.

53. In this regard, the Ministry of Finance in a written reply stated:

"...incorporating the definition of the term "derivative" as provided in the proposed Section 45U (a) of the Reserve Bank of India Act, 1934, may not be required as the scope of both the laws are entirely

different. Further, any subsequent amendments to Section 45 U (a) of the RBI Act, 1934 would reflect on the proposed Payment and Settlement Systems Act, which may lead to unintended consequences. Therefore, Government is not in favour of defining the term “derivative” in reference to the RBI Act, 1934. However, Government is in agreement with the suggestion to make the definition of the term “derivative into an inclusive one, such that the value of the instrument may be defined from “underlying” in addition to those specified in the definition. The definition in the RBI Act, 1934 may not be useful for this purpose as well for the reasons already stated.”

54. Clarifying as to how it was proposed to make the definition of the term ‘derivative’ into an ‘inclusive one’ the Ministry of Finance, subsequently informed that the words, ‘or any other underlying’ (in addition to interest rate, foreign exchange rate etc.) were proposed to be added in the definition, so as to enable the RBI to specify the same for the purposes of the Bill. The modified definition proposed, reads as under:—

“ ‘derivative’ means an instrument to be settled at a future date, whose value is derived from change in interest rate, foreign exchange rate, credit rating or credit index, price of securities (also called “underlying”) or any other underlying or a combination of more than one of them, and includes interest rate swaps, forward rate agreements, foreign currency swaps, foreign currency rupee swaps, foreign currency options, foreign currency rupee options or such other instruments, as may be specified by the Reserve Bank from time to time.”

55. The definition of the term ‘Derivative’ as proposed under Clause 2 (1) (b) is identical to the definition of the term as contained in Section 45 U of the Reserve Bank of India Act, 1934, which relates to the regulatory role of the Reserve Bank *vis-a-vis* institutions such as banks for dealing in derivative instruments. For the purposes of the Payment and Settlement Systems, however, the Committee note that the number and type of derivative instruments or structures could be wide and varied. In response to the suggestions as made before the Committee by representatives of the Banking Sector, the Government have proposed to make the definition of the term ‘Derivative’ into an inclusive one by suitably incorporating the words, ‘or any other underlying’ so as to enable the Reserve Bank to specify newer instruments whose value may be derived from ‘underlyings’ in addition to those specified in the definition as proposed *viz.*,

interest rate, foreign exchange rate, credit rating or credit index and price of securities. The Committee express agreement with the proposal of the Government to rephrase the definition of the term 'Derivative' into an 'inclusive one', which would enable in covering newer instruments that may emerge in the financial market.

Clause 2 (1) (c) - Definition of "Electronic Fund Transfer":-

56. Clause 2 (1) (c) defines 'Electronic Fund Transfer' as under:

"(c) electronic funds transfer" means any transfer of funds which is initiated through electronic means so as to instruct, authorise or order a bank to debit or credit an account with that bank, and includes point of sale transfers, automated teller machine transactions, direct deposits or withdrawals of funds, transfers initiated by telephone and card payment;

57. It has been pointed out in the memoranda furnished to the Committee by some of the banks as well as individual experts that the definition of 'Electronic Fund Transfer' as proposed under Clause 2 (1) (c) restricts itself to transfer of funds initiated through electronic means and does not explicitly cover electronic clearing system (ECS), Auto-debit instructions etc. wherein the "initiation" need not be through electronic means in all situations. Questioned whether it would not be desirable to modify the definition to include such transactions that are not initiated through electronic means but are processed/effected though electronic means, the Government have in a written response, stated as under:—

"In order to provide more clarity to the definition and to include even instances where the "initiation" is not through electronic means, the definition may be modified as under:

'electronic funds transfer' means any transfer of funds which is initiated *by a person* so as to instruct, authorize or order a bank to debit or credit an account with that *bank through electronic means* and includes point of sale transfers, automated teller machine transactions, direct deposits or withdrawals of funds, transfers initiated by telephone, *by internet* and card payments."

58. Yet another suggestion received in this regard has been that electronic modes through which customers instruct their banks to issue payments (Such as internet banking, ATM transactions, card payments etc.) as well as fund transfers between two accounts maintained with the same bank should be placed outside the gamut of the Bill as they do not construe payment systems by themselves.

59. Clarifying the intended purpose in this regard, the Ministry of Finance, in response, stated as follows:

“the new definition suggested covers such transactions also. Certain intra-bank payment systems having systemic repercussions would have to be regulated. Other intra-bank payment systems may be exempted by the Reserve Bank in exercise of its powers under Clause 4 (1) (d) of the proposed Act.”

60. The Committee note that the definition of the term ‘Electronic Funds Transfer’ as proposed under Clause 2 (1) (c), which *inter alia* reads, ‘any transfer of funds which is initiated through electronic means so as to instruct, authorize or order a bank’ does not explicitly cover transaction instances such as auto debit instructions etc. of customers of banks, which may not be initiated through electronic means but are processed or effected electronically. In response to the queries posed in this regard, the Government have proposed to suitably modify the definition of the term to *inter-alia* read: ‘...any transfer of funds which is initiated by a person so as to instruct, authorize or order a bank to debit or credit an account with that bank through electronic means’. The Government have also proposed to specifically cover funds transfer initiated by internet under the ambit of the definition. The Committee desire that the definition of the term, Electronic Funds Transfer as proposed under Clause 2 (1) (c) be modified accordingly so as to leave no scope for ambiguity.

Clause 2 (1) (d)—Definition of “netting”

61. Clause 2 (1)(d) reads as under:

(d) “netting” means the determination by the system provider of the amount of money or securities, due or payable or deliverable, as a result of setting off or adjusting, the claims and obligations among the system participants, including the claims and obligations arising out of the termination by the system provider, on the insolvency or liquidation of any system participant or such other circumstances as the system provider may specify in its rules or regulations, of the transactions admitted for settlement at a future date so that only a net claim be demanded or a net obligation be owed;

62. The Union Bank of India in their Memorandum submitted to the Committee opined that the definition of the term “netting” as proposed for the purpose of payment and settlement operations appeared to take within its scope *inter se* claims and obligations which are not pure fund transfer or security settlement obligations arising

out of permitted transactions for the settlement purposes as agreed between the participants or as per rules of system operator. It was, therefore, felt that the definition of 'netting' should be reworded to make it clear that the netting was limited only to mutual claims and obligations with respect to permitted transactions in the settlement process. For this purpose, it was felt that the expression "**mutual**" should be prefixed to the expression "**claims and obligations**" in the first part of the definition.

63. In response to a related question, the Ministry of Finance, in their written reply, while contending that the definition of the term, as proposed, was intended to cover "multilateral netting" also, sought to bring in clarity that netting would be with respect to only those payment obligations arising out of the transactions in the particular payment system by proposing to incorporate the words 'or bye-laws (by whatever name called) after the words, 'in its rules or regulations' in the proposed definition. Incorporation of these words in the definition has been proposed by the Ministry of Finance, as the Settlement/payment systems such as CCIL may, apart from rules and regulations, also have bye-laws, and may choose some other nomenclature for the same. The modified version of the definition, proposed reads as under:

"netting" means the determination by the system provider of the amount of money or securities, due or payable or deliverable, as a result of setting off or adjusting the payment obligations or delivery obligations among the system participants, including the claims and obligations arising out of the termination by the system provider, on the insolvency or liquidation of any system participant or such other circumstances as the system provider may specify in its rules or regulations or bye-laws (by whatever name called), of the transactions admitted for settlement at a future date so that only a net claim be demanded or a net obligation be owed."

64. **Apart from rules or regulations, payment systems, as in the case of Clearing Corporation of India (CCIL) may also have 'bye laws' and may also choose some other nomenclature for the same in future. With a view to clarify that the process of mutual offsetting of positions or obligations under the 'netting process' would only be in respect of transactions undertaken in a given payment system, the Government have proposed to add the words 'or bye laws (by whatever name called)' after the words 'in its rules or regulations' in the definition of the term 'Netting' as proposed under Clause 2 (1) (d). As the addition of the words, 'or bye laws (by whatever**

name called)' after the words 'in its rules or regulations', as proposed by the Government is intended to clarify that 'netting' would be confined to offsetting the positions or obligations of transactions undertaken in a given payment system, the Committee endorse the same for incorporation.

Clause 2 (1) (h) – Definition of 'Payment System'

65. Clause 2 (1) (h) defines 'Payment system' as under:

"payment system" means a system that enables payment to be effected between a payer and a beneficiary, and includes clearing, payment or settlement service or all of them, but does not include a stock exchange;

66. The term 'payment system' has been defined in the Bill to mean a system that enables payment to be effected between a payer and a beneficiary, and includes clearing, payment and settlement service or all of them, but does not include a stock exchange.

67. The Indian Banks' Association (IBA), in their memorandum opined that the definition of 'Payment System' as proposed in Clause 2 (1) (h) was worded in very general terms, which may include a simple system of payment of cheques issued by any customer of the bank. Mainly on account of the fact that Clause 4 (1) of the Bill provides that no person shall commence or operate a payment system except under the authorization of RBI and Clause 26 (1) provides for penalties for failing to comply with the terms and conditions of authorization the IBA has felt it to be necessary that the law should very clearly define a payment and settlement system. The following definition of payment system, has, therefore, been suggested by the IBA:

"Payment system means a formal arrangement between three or more participants with common rules and standardized arrangements specified by the RBI for the execution of orders initiated through electronic means or otherwise for transfer of funds between participants, a payer and a beneficiary, including payment, electronic funds transfer, clearing, settlement, netting and or any other system but does not include a stock exchange."

Explanation: For removal of doubts it is hereby clarified that any payment or settlement system for the users of credit cards, debit cards, smart cards or any other similar device shall be deemed to be a payment system for the purposes of this Act."

68. Asked about the Government's perception on the need expressed for defining the term 'Payment System' in clearer terms, as suggested by the IBA, the Ministry of Finance, in reply stated:

"...the intention of the Bill is to bring all payment systems in the country (other than stock exchanges) within the ambit of a regulatory and supervisory system. When the proposed Payment and Settlement Systems Bill comes into force no person will be entitled to operate a payment system without the authorization issued by RBI. As per the suggested definition, only those "formal arrangements" having "common rules and standardized arrangements specified by RBI" fall within the definition of "payment system" thereby exempting other systems run without any such specifications, which would not be in conformity with the object of the proposed Act. Further, under Clause 4 of the Bill, RBI has been empowered to exempt any person from provisions requiring acquisitions of authorizations. Therefore, the suggested amendment may not be required."

69. However, expressing agreement with the need for providing clarity in the definition of "payment system", the Ministry of Finance have proposed to rephrase the words, 'a beneficiary, and includes clearing, payment or settlement service' to read as, 'a beneficiary and involving clearing payment or settlement service'. The modified definition of payment system proposed is as under:

"payment system" means a system that enables payment to be effected between a payer and a beneficiary, and involving clearing, payment or settlement service or all of them, but does not include a stock exchange."

70. While the definition of Payment system as proposed in the Bill does not include a stock exchange, the definition of 'Settlement' as proposed under Clause 2 (1) (m) includes Settlement of securities. Asked, in this regard, to clarify the mechanism to be followed by stock exchanges that trade Government Securities and Derivatives, the Ministry, in response stated as under:

"All Government securities and their derivatives which are traded on the stock exchanges would be subject to the SEBI Act and related statutes. However, the payment instructions relating to such transactions would be under the purview of the proposed Act. Clause 34 of the proposed Act states that "nothing contained in this Act shall apply to any of the securities traded on stock exchanges or other exchanges except in so far as they relate to settlement of payment instructions".

71. On being questioned further whether the non-applicability of the proposed Act to stock exchanges – except in so far as they relate to settlement of payment instructions – would not lead to jurisdictional disputes between RBI as regulator of payment systems and SEBI, as regulator of stock exchanges, the Ministry of Finance, in reply stated:

“Any difference of opinion between RBI and SEBI if it arises, would be settled according to the established consultative mechanism. There is a High Level Consultative Committee (HLCC) of the financial system regulators which is composed of heads of RBI, SEBI, IRDA and PFRDA, which is headed by the Governor of RBI and which meets periodically to discuss issues of common interest. There is a Technical Advisory Committee at operating level for interaction between the various financial system regulators which meet frequently for this purpose.”

72. Further, a view point expressed in the memorandum furnished by HSBC Bank was that account to account transfers within the same bank as well as structured cash management solutions involving initiation of payments or cheque collection services and other akin services offered by various banks today, which do not involve settlement of payments by themselves should be clearly excluded from the definition of ‘payment system’. In response to a related query, the Ministry of Finance stated as follows:

“Intra bank account-to-account transactions would generally be exempted. However, instead of exempting in the Act itself, it would be appropriate to exempt by way of notification so that certain categories of intra-bank transactions such as large value transactions (beyond a certain threshold limit) may be kept within the framework of regulation.”

73. Though a need has been expressed by the Indian Banks’ Association (IBA) in particular for defining the term, ‘Payment System’ in a comprehensive manner, as per the Government’s perception, the definition of the term as proposed under Clause 2 (1) (h) was adequate to bring all payment systems in the country, excluding the stock exchanges, within the regulatory and supervisory ambit of the proposed Act. However, with a view to providing clarity in the definition, as contained in the Bill, the Government have proposed to rephrase the words ‘effected between a payer and a beneficiary, and includes clearing, payment or settlement service’ to read as ‘effected between a payer and a beneficiary, and involving clearing, payment or settlement service’. As the rephrasing of the

definition by substituting the word 'includes' with 'involving' would bring to light the processes of clearing, payment and settlement involved in Payment Systems in clear terms, the Committee express agreement to the same.

74. The Committee also observe that while 'stock exchanges' are proposed to be excluded from the ambit of the definition of 'payment system', 'settlement of securities' is covered under the definition of 'settlement' proposed under Clause 2 (1) (m) of the Bill. From the clarificatory information furnished by the Government, the Committee note that, while trading of securities and derivative instruments at the stock exchanges would be covered under the SEBI Act and related statutes, the payment leg of such transactions would be covered under the proposed payment and settlement systems Act. Specifically with reference to the issue of settlement of securities transactions at the stock exchanges, the Committee emphasise the need for ensuring that adequate care is taken for preventing the possibility of jurisdictional overlap between the Reserve Bank, as the regulator of the payment systems, and SEBI, as the regulator of stock exchanges.

75. From the information and clarifications furnished by the Government, the Committee further note that intra bank account transactions are not proposed to be excluded in entirety from the purview of the definition of Payment System or the regulatory mechanism proposed in the Bill. The Committee expect the Reserve Bank to notify in clear terms, the type or categories of intra bank transactions, which would fall within the framework of the proposed regulatory mechanism, so as to make this aspect unambiguous.

Clause 2 (1) (l) – Definition of "security"

76. Clause 2 (1) (l), which defines the term 'security' reads as follows:

"security" means Government securities as defined in the Public Debt Act, 1944 or such other securities as may be notified by the Central Government from time to time under that Act;

77. A need was expressed for rephrasing the term 'security' as 'securities' in the definition proposed and also defining the term by drawing reference to the Securities Contracts (Regulation) Act or in a broad based manner, so as to enable inclusion of other 'paper' such as corporate bonds etc., in future.

78. Responding to the suggestion, the Ministry of Finance, in a written reply stated as under:—

“The definition of “security” has been included to distinguish government securities from other types of securities. The suggestion to modify “security” to “securities” may be accepted, since the term “securities” has been used throughout in the Bill.”

79. In terms of Clause 2 (1) (l), the term, ‘security’ is to mean ‘Government securities as defined in the Public Debt Act, 1944 or such other securities as may be notified by the Central Government’. As the term ‘securities’ has been used throughout the Payment and Settlement Systems Bill, and there are varied forms of Government Securities, the Committee expect that, as agreed to by the Government, the term ‘security’ as appearing in Clause 2 (1) (l) will be modified so as to read as ‘securities’.

Clause 2 (1) (n) – Definition of “systemic risk’

80. Clause 2 (1) (n) defines ‘systemic risk’ as follows:

(n) “systemic risk” means the risk arising from—

- (i) the inability of a system participant to meet his payment obligations under the payment system as and when they become due; or
- (ii) any disruption in the system, which may cause other participants to fail to meet their obligations when due, ultimately likely to have an impact on the stability of the system;

81. The definition of ‘systemic risk’ as proposed, *inter alia* means the risk arising from (i) the inability of system participant to meet payment obligations and (ii) any disruption in the system.

82. The Union Bank of India expressed the opinion that the definition of ‘systemic risk’ as proposed was worded in ‘general terms’, which would become contentious if subjected to interpretation. Asked whether it may not be appropriate for the regulator, the RBI to decide on whether ‘systemic risk’ was involved or not by adding the words, ‘in the opinion of Reserve Bank of India’ at the end of the definition, the Ministry of Finance, in a written reply expressed agreement that the decision whether “systemic risk” was involved should be left to the RBI.

83. The Committee observe that the definition of 'systemic risk', as proposed under Clause 2 (1) (n) whereby such a risk is to mean to arise from the inability of system participants in meeting payment obligations, or any disruption in the system, 'which may have an impact on the stability of the system' has the possibility of becoming contentious if subjected to interpretation. To a suggestion made, the Government have agreed that the decision on whether a systemic risk was involved or not in a Payment System should be left to the Reserve Bank. The Committee recommend that this aspect be made clear in the definition of the term and clause 2 (1) (n) amended accordingly.

CHAPTER II

CLAUSE 3 – DESIGNATED AUTHORITY AND ITS COMMITTEE

84. Clause 3 of the Bill reads as under:

(1) The Reserve Bank shall be the designated authority for the regulation and supervision of payment systems under this Act.

(2) The Reserve Bank may, for the purposes of exercising the powers and performing the functions and discharging the duties conferred on it by or under this Act, by regulation, constitute a committee of the Central Board of the Reserve Bank.

(3) The Committee constituted under sub-section (2) shall consist of the following members, namely:—

- (a) Governor, Reserve Bank of India, who shall be the Chairman of the Board;
- (b) Deputy Governors, Reserve Bank of India, out of whom the Deputy Governor who is the in-charge of the Payment and Settlement Systems, shall be the Vice-Chairman of the Board;
- (c) Not exceeding three Directors from the Central Board of the Reserve Bank of India to be nominated by the Governor.

(4) The powers and functions of the Committee constituted under sub-section (2), the time and venue of its meetings, the procedure to be followed in such meetings (including the quorum at such meetings) and other matters incidental thereto shall be such as may be prescribed.

85. Clause 3 (1) of the Bill seeks to designate the Reserve bank as the authority for regulation and supervision of payment systems. Further, Clause 3(3) is intended to enable for constitution of a Committee for regulation and supervision of the payment systems.

86. The Reserve Bank of India had, on March 7, 2005 constituted a Board for regulation and supervision of Payment and Settlement Systems (BPSS) through a Regulation framed under Section 58 (2) (i) of the Reserve Bank of India Act 1934, whose composition, powers and functions are as follows:.

Composition: The Board consists of the Governor of RBI as Chairman, Deputy Governors out of whom the Deputy Governor

in charge of Payment Systems will be Vice-Chairman and two directors from the Central Board of RBI as members. The Executive Directors in-charge of Payment Systems and Financial Markets Committee are permanent invitees to the meetings of the Board. Persons with experience in the fields of payment and settlement systems can be invited as permanent invitees/ad hoc invitees.

Functions and Powers: The Board shall perform the following functions and exercise the following powers

- (a) Lay down the policies relating to regulation and supervision of the payment and settlement systems.
- (b) Lay down the standards for both existing and future payment and settlement systems.
- (c) The authorization of payment and settlement systems.
- (d) The determination of the criteria for membership of payment and settlement systems including continuation, termination and rejection of membership.
- (e) Overseeing the administration of rules and guidelines framed under any statutes for the purpose and directions issued from time to time.
- (f) Taking steps deemed necessary for effective regulation and supervision of payment and settlement systems.
- (g) Creating necessary administrative structures within the existing rules and regulations for ensuring effective regulation and supervision of the payment and settlement systems.

87. Earlier, in 1999, the Reserve Bank had, as a part of its efforts to usher in safe and sound payment system in the country, constituted a National Payments Council (NPC) to proffer advice to the Bank on matters relating to payment systems.

88. While Clause 3 (2) of the Bill deals with the constitution of the Committee for regulation and supervision of payment systems, the term 'Board' has been used in Clause 3 (3) (a) and (b) of the Bill, which relate to the Governor of Reserve Bank being the Chairman of the Board/Committee; and the composition of the Committee/Board. Questioned whether it was correct to use the term 'Board' in Clause 3 (3) (a) and 3 (3) (b), the Ministry of Finance, at first, informed that it was proposed to replace the word 'Board' with the word, 'Committee' in Clause 3 (3) (a) and 3 (3) (b).

89. Questioned about the role expected of the existing Board for Payment and Settlement System constituted in 2005, following the enactment of the proposed Bill, the Ministry of Finance in response, informed as follows:

“The Government is of the view that the Board for regulation and supervision of Payment and Settlement Systems (BPSS) already constituted by the BPSS Regulations under the Reserve Bank of India Act may be carried forward as a provision in the Payment and Settlement Systems Bill. The new Act should also recognise this “Board” and should continue till the Board is reconstituted in accordance with the new Act. Accordingly, it is suggested that the revised clause 3 of the Bill to be as under:

“Designated Authority and its Committee

- (1) The Reserve Bank shall be the designated authority for the regulation and supervision of payment systems under this Act.
- (2) The Reserve Bank may, for the purpose of exercising the powers and performing the functions and discharging the duties conferred on it by or under this Act, by regulation, constitute a committee of its Central Board to be known as the Board for Regulation and Supervision of Payment and Settlement Systems.
- (3) The Board constituted under sub-section (2) shall consist of the following members, namely:—
 - a. Governor, Reserve Bank of India, who shall be the Chairman of the Board
 - b. Deputy Governors, Reserve Bank of India, out of whom Deputy Governor who is the in-charge of the Payment and Settlement Systems, shall be the Vice-Chairman of the Board
 - c. Not exceeding three Directors from the Central Board of the Reserve Bank of India to be nominated by the Governor.
- (4) The powers and functions of the Board constituted under sub-section (2), the time and venue of its meetings, the procedure to be followed in such meetings (including the quorum at such meetings) and other matters incidental thereto shall be such as may be prescribed.
- (5) The Board for Regulation and Supervision of Payment and Settlement Systems constituted under Section 58(2)(i) of the Reserve Bank of India Act, 1934 shall, on the commencement of this Act,

be deemed to be the Board constituted under subsection(2) and continue accordingly until the Board is reconstituted in accordance with this Act, and shall further be governed by the said regulations in so far as these are not inconsistent with this Act or any regulations framed under this Act.

90. The Union Bank of India, in particular, emphasized on the aspect that besides its regulatory and supervisory role, the Reserve Bank, as monetary authority would also be required to continue to play its developmental role. Hence, it was suggested that the expression 'development' should be added before the words, 'regulation and supervision' in Clause 3(1) so that the role of RBI as the designated authority was made amply clear. In response, however, the Ministry of Finance opined that 'all central banks play a developmental role in their respective payment systems' and 'RBI does not need any legal backing to play this developmental role'.

91. A case was also made out that the Committee/Board for regulation of payment systems constituted in terms of the proposed Section 3 (3) should comprise of independent members / representatives of Banks *viz.*, Public sector banks, private sector banks and co-operative banks in addition to the representatives of RBI so that the views of the stakeholders were given due consideration. In this regard, the Ministry of Finance, in a written reply stated that 'since the Committee is to be constituted from the Central Board of the Reserve Bank, only the directors of the Central Board could be nominated as members'. It was also added in reply that the representatives of large banks and the Indian Banks Association (IBA) were represented on the National Payments Council, which acts as an advisory body to the Board.

92. The intended purpose of designating the Reserve Bank as the authority for regulation and supervision of Payment Systems and providing for the constitution of a Committee of the Central Board of Directors of the Reserve Bank to be known as the Board for regulation and supervision of payment systems, has not been brought out in clear and unambiguous terms in Clause 3 of the Bill. The ambiguity in the proposed provisions, the Committee note, has been mainly on account of the usage of different terms *viz.*, 'Committee' and 'Board' in sub sections (2) and (3) of Clause 3 which relate to the constitution and composition of the proposed Board for Regulation and Supervision of Payment Systems. The Government had, at first sought to overcome the inconsistencies by proposing to carry out appropriate changes in the provisions of Clause 3. However, when questioned about the role expected of the existing Board for

Regulation and Supervision of Payment Systems constituted in March, 2005, consequent to the enactment of the proposed legislation, it has *inter alia* been proposed by the Government to incorporate an additional sub clause [sub clause (5)] for according recognition to the existing regulatory board for payment systems under the proposed Act. In terms of the new sub clause proposed to be added to Clause 3, the existing Board for regulation and supervision of Payment and Settlement Systems 'would be deemed to be the Board constituted under sub section 2 and continue accordingly until the Board is reconstituted' in accordance with the proposed Act.

93. The Committee observe in this regard that, as a part of the efforts to usher in safe and sound payment systems in the Country, the Reserve Bank had, in 1999, constituted a National Payment Council to proffer advice on matters relating to payment systems, and the Board for Regulation and Supervision of Payment Systems in March, 2005. The setting up of the existing Board for payment system regulation being *inter alia* a measure aimed at creating a necessary administrative structure within the existing rules for ensuring effective regulation and supervision of the payment and settlement systems, the Committee are inclined to concur with the proposal for according recognition to it under the proposed Act and enabling for its continuance until its reconstitution following the commencement of the Act.

94. An issue brought before the Committee has been the need for the stakeholders in payment system operations *viz.*, Banks in the public, private and co-operative sectors as well as foreign banks to have their representatives co-opted as independent members on the Regulatory Board, so that they are able to ventilate their views on regulatory aspects of a payment systems. While it may not be feasible or appropriate to co-opt independent members on the Central Bank's Regulatory Board, as suggested by the representatives of some banks, the Committee are of the view that the Reserve Bank could consider broadbasing the composition of National Payment Council for this purpose *inter alia* by ensuring adequate and proper representation therein for the Banks etc. operating in different sectors.

CHAPTER III

CLAUSE 4 – AUTHORIZATION OF PAYMENT SYSTEMS

Clause 4 of the Bill reads as under:

95. Clause 4 (1) of the Bill reads as follows:-

(1) No person shall commence or operate a payment system except under and in accordance with an authorisation issued by the Reserve Bank under the provisions of this Act:

Provided that nothing contained in this section shall apply to—

- (a) the continued operation of an existing payment system on the commencement of this Act for a period not exceeding six months from such commencement, unless within such period, the operator of such payment system obtains an authorisation under this Act;
- (b) any person acting as the duly appointed agent of another person to whom the payment is due;
- (c) a company accepting payments either from its holding company or any of its subsidiary companies or from any other company which is also a subsidiary of the same holding company;
- (d) any other person whom the Reserve Bank may, after considering the interests of monetary policy or efficient operation of payment systems, the size of any payment system or for any other reason, by notification, exempt from the provisions of this section.

96. On the Payment System operators, who would be required to obtain authorization from the Reserve bank in terms of Clause 4 (1) for continued operation, a note furnished by the Ministry of Finance states as under:-

“Some of the payment system operators who would apply for authorization after enactment of the Bill as law will be Clearing Corporation of India (which operates the inter-bank Government securities and forex clearing system) and National Payments Corporation of India (when it is set up). Card payment companies could also apply to RBI for authorization as well as other persons or entities which wish to operate payment systems.”

97. As the Reserve Bank, by itself, would be operating payment systems, it was suggested that Clause 4 (1) of the Bill needed to be amended for exempting the Reserve Bank from obtaining authorization/permission for continued operation of payment systems. In this regard, the Ministry of Finance expressed agreement for modifying Clause 4 (1) so as to read as follows:

“(1)No person, other than the Reserve Bank, shall commence or operate a payment system except under and in accordance with an authorisation issued by the Reserve Bank under the provisions of this Act”.

98. With a view to avoid a situation where a payment system may have to be closed down if the authorization was not given within six months as stipulated under Clause 4 (1)(a), the IBA, in particular, suggested that the following words may be added at the end of Clause 4 (1) (a):

“or rejection of the request for authorization is conveyed to the payment system whichever is later”.

99. Expressing agreement to the suggestion, the Ministry of Finance, in reply proposed to modify Clause 4 (1) (a) of the Bill as under:

“the continued operation of an existing payment system on the commencement of this Act for a period not exceeding six months from such commencement, unless within such period, the operator of such payment system obtains an authorization under this Act or the application for authorization is refused by RBI.”

100. It was also added as follows by the Ministry in reply:—

“Further, sub-clause (1) may be renumbered as Clause 4 by omitting the number “(1)” as the Clause contains only one sub-clause.”

101. With specific reference to the provisions of Clause 4 (1) (b), the Ministry of Finance were asked to clarify the nature/type of entities who would be exempted from obtaining authorization for commencing or continue to operate payment systems. In response thereto, the Ministry of Finance *inter alia* informed:

“...The company to which the payment is due may appoint an agent to collect the cheques, electronic instructions, etc. and submit it for processing. Some of the service providers are facilitating this for collection of utility bill payments like electricity, telephone, etc.

on behalf of the service provider (electricity, telephone) – these collection agents are what are proposed to be covered under this Clause.”

102. Asked further whether money transfer businesses, card payment and settlement business, which may follow one to one agency contracts with respect to collection/remittance/fund transfer etc. would be exempted from ‘regulation’/obtaining authorisation in terms of Clause 4(b), the Ministry, in reply stated that it was not proposed to exempt such entities from the provisions of the proposed Act’.

103. In response to a suggestion for extending the scope of the exemption provisions for obtaining authorization under Clause 4 to specifically include intra-bank account to account transactions as well as cash handling of banks outsourced by companies, the Ministry of Finance informed:—

“While bringing the Act into effect, Reserve Bank would issue the Notification with the list of exemptions which would include intra-bank transactions as well with certain exceptions but it would be appropriate to include them when their volume/value increases substantially.”

104. It was also added as follows in reply:—

“Intra-bank account-to-account transaction would generally be exempted. However, instead of exempting in the Act itself, it would be appropriate to exempt by way of notification so that certain categories of intra-bank transactions such as large value transactions (beyond a certain threshold limit) may be kept within the framework of regulation.”

105. The Committee note that with a view to clarify that the Reserve Bank, which would be discharging the combined function of a regulator as well as service provider of payment and settlement systems would be exempt from the authorization process prescribed in the Bill, the Government have proposed to incorporate the words ‘other than the Reserve Bank’ after the words ‘No person...’ at the beginning of Clause 4 of the Bill. The modification proposed being of a clarificatory nature, the Committee express agreement to the same. The Committee also expect that, as agreed to, the incorrectly shown number (1) in Clause 4, which has only one sub-clause is omitted.

106. As regards acquisition of authorization, the Committee opine that proviso (a) of Clause 4 in terms of which, the existing payment systems/service providers are to obtain authorization from the Reserve Bank within six months of the commencement of the Act for their continued operation is not adequate in addressing situations where the applications for such authorization are refused or are not given by the Reserve Bank within the stipulated period. With the intention of taking care of such situations, the Government have proposed to incorporate the words, 'or the application for authorization is refused by the Reserve Bank' at the end of the proviso. Incorporation of the above words would make it clear that the authorization for continued operation of a payment system would be given or refused by the Reserve Bank within six months of the commencement of the proposed Act. The Committee, accordingly, desire that the modification, as agreed to, be carried out in proviso (a) of Clause 4 so as to take care of instances of refusal of authorization for operation of payment systems.

107. The Committee further note from the information and clarifications furnished by the Government that while service providers such as the ones facilitating in collection of utility Bill payments etc. and 'Cash Management Services' within group companies would be exempted from the authorization process in terms of provisos (b) and (c) of Clause 4, money transfer businesses, card payment and settlement services as well as cash management services across companies would not be outside the regulatory mechanism under the proposed Act. Taking into account the need expressed for clarity on the nature of payment related services that would be exempt from the authorization process or regulatory oversight in terms of the proposed Act, the Committee feel it to be essential on the part of the Reserve Bank to notify, in clear terms, the categories/types of payment transactions/services that would be exempt from the 'authorization process prescribed' or the 'regulatory framework proposed' following the commencement of the Act.

Clause 5: Application for authorization.

108. Clause 5 of the Bill which provides for submission of an application to Reserve Bank by any person desirous of commencing or carrying on a payment system operations reads as under:—

- (1) Any person desirous of commencing or carrying on a payment system may apply to the Reserve Bank for an authorisation under this Act.

- (2) An application under sub-section (1) shall be made in such form and in such manner and shall be accompanied by such fees as may be prescribed.

109. A view point expressed in regard to the provisions of clause 5, was that any service provider, before he being authorized by Reserve Bank of India, should be required to deposit adequate amount of security or financial guarantee to ensure flawless service. In response thereto, the Ministry of Finance stated as under:-

“The Reserve Bank while authorizing any payment system would be examining these issues. In case any service provider which would guarantee settlement e.g. CCIL, adequate risk mitigation measures would have to be put in place by the service provider.”

110. Further, for enabling transparency in process and ease of compliance, the HDFC Bank has *inter alia* suggested that both the eligibility norms for system providers as well as their scope of work, terms, duties, obligations etc. should be clearly spelt out. In this connection, as informed by the Ministry of Finance, the related norms would be detailed in the regulations / guidelines to be framed by RBI after the enactment of the Bill as law.

111. With reference to the provisions of Clause 5, which *inter alia* provide for submission of an application to the Reserve Bank by persons/entities desirous of commencing payment system operations, the Committee feel it is necessary to take cognizance of the views expressed in the memoranda submitted to them, which emphasize on ensuring deposit of adequate amount of security and providing financial guarantee by the prospective service providers; and spelling out the scope of work, terms and duties of the system providers in clear terms. The Committee expect the Reserve Bank to clearly address issues relating to eligibility norms, terms and conditions of work and duties etc. of prospective payment system service providers in line with international benchmarks and accepted practices in the related regulations to be framed following the commencement of the proposed Act.

Clause 7: Issue or refusal of authorisation.

112. Clause 7 which seeks to provide for issue or refusal of authorization for operating a payment system reads as under:-

“(1) The Reserve Bank may, if satisfied, after any inquiry under section 6 or otherwise, that the application is complete in all

respects and that it conforms to the provisions of this Act and the regulations issue an authorisation for operating the payment system under this Act having regard to the following considerations, namely:—

- (i) the need for the proposed payment system or the services proposed to be undertaken by it;
- (ii) the technical standards or the design of the proposed payment system;
- (iii) the terms and conditions of operation of the proposed payment system including any security procedure;
- (iv) the manner in which transfer of funds may be effected within the payment system;
- (v) the procedure for netting of payment instructions effecting the payment obligations under the payment system;
- (vi) the financial status, experience of management and integrity of the applicant;
- (vii) interests of consumers, including the terms and conditions governing their relationship with payment system providers;
- (viii) monetary and credit policies; and
- (ix) such other factors as may be considered relevant by the Reserve Bank.

(2) An authorisation issued under sub-section (1) shall be in such form as may be prescribed and shall—

- (a) state the date on which it takes effect;
- (b) state the conditions subject to which the authorisation shall be in force;
- (c) indicate the payment of fees, if any, to be paid for the authorisation to be in force;
- (d) if it considers necessary, require the applicant to furnish such security for the proper conduct of the payment system under the provisions of this Act;
- (e) continue to be in force till the authorisation is revoked.

(3) Where the Reserve Bank considers that the application for authorisation should be refused, it shall give the applicant a written notice to that effect stating the reasons for the refusal:

Provided that no such application shall be refused unless the applicant is given a reasonable opportunity of being heard.”

113. It has been expressed in the memoranda submitted to the Committee that for streamlining the approval process and for the benefit of the applicants, it would be preferable to prescribe timelines within which approval/refusal may be accorded to an application. Agreeing to the suggestion for prescribing a timeline for the approval/refusal of application for authorization, the Government has proposed to add, to this effect, a new sub-clause (4) after sub-clause (3) in Clause 7, which reads as under:

“Every application for authorization shall be processed by the Reserve Bank as expeditiously as possible and an endeavor shall be made to dispose of the application within six months from the date of filing of the application.”

114. The stipulations of Clause 7 do not prescribe any time limit for the Reserve Bank to issue or refuse authorization for operating a payment system. In response to the need expressed for prescribing a time-line within which the Reserve Bank may convey the grant of authorization or refusal of authorization for commencement of a payment system, the Government have proposed to incorporate a new sub-clause (4) to Clause 7 whereby a time-line of six months is prescribed as a general rule for the Reserve Bank to decide on the applications. As stipulating a time frame would be of benefit to the applicants and have the positive effect of streamlining the approval processes, the Committee desire that the proviso to this effect, as proposed be incorporated in the Bill.

Clause 8—Revocation of Authorisation

115. Clause 8 of the Bill which seeks to provide for revocation of authorisation given to a system provider under Section 7 reads as follows:

“(1) If a system provider,—

- (i) contravenes any provisions of this Act, or
- (ii) does not comply with the regulations, or
- (iii) fails to comply with the orders or directions issued by the designated authority, or
- (iv) operates the payment system contrary to the conditions subject to which the authorisation was issued, the Reserve

Bank may, by order, revoke the authorisation given to such system provider under this Act:

Provided that no order of revocation under sub-section (1) shall be made—

- (i) except after giving the system provider a reasonable opportunity of being heard; and
 - (ii) without prejudice to the direction of the Reserve Bank to the system provider that the operation of the payment system shall not be carried out till the order of revocation is issued.
- (2) Nothing contained in sub-section (1) shall apply to a case where the Reserve Bank considers it necessary to revoke the authorisation given to a payment system in the interest of the monetary policy of the country or for any other reasons to be specified by it in the order.
- (3) The order of revocation issued under sub-section (1) shall include necessary provisions to protect and safeguard the interests of persons affected by such order of revocation.
- (4) Where a system provider becomes insolvent and is wound up, he shall inform the fact of his being insolvent or being wound up to the Reserve Bank and thereupon the Reserve Bank shall take such steps as deemed necessary, revoke his authorisation to operate the payment system.”

116. Asked to explain the rationale of the provisions of Clause 8 (1) (ii) whereby the Reserve Bank would be empowered to revoke the authorisation on account of ‘non-compliance with regulations’, the Ministry of Finance, in reply stated:

“Given the sensitive nature of the service being provided, it is essential to safeguard the interests of all participants. The system has to be robust, efficient, dependable at all times and must deliver in all normal circumstances. Any lapse on the part of the system provider could create a situation where systemically important payment systems might be effected. Such effects have the potential to trigger a collapse of the systems and throw the entire cycle of movement of funds and economic activity out of gear. These would be listed in the Regulations to which the system provider has to comply. Adequate powers of revocation are required which would act as deterrents on service providers who might indulge in unauthorised activities.”

117. With specific reference to the provisions of Clause 8 (4) as per which, a system provider is to inform the fact of being insolvent or being wound up to the Reserve bank, it has been pointed out that the word 'he' appearing in the first line should be replaced by the word 'it' and the word 'his' appearing in the second line replaced by the word 'its', so as to enable clarity in the provisions.

118. Expressing agreement to the suggestion for making the provision clear, the Ministry of Finance have proposed to modify Clause 8 (4) to read as under:

“Where a system provider becomes insolvent or is wound up, such system provider shall inform the fact of his or it, as the case may be, being insolvent or wound up to the Reserve Bank and thereupon the Reserve Bank shall take such steps as deemed necessary to revoke the authorization issued to such payment system provider to operate the payment system.”

119. Yet another suggestion made in regard to the provisions of Clause 8 (4) has been that the Reserve Bank should be entitled to take *suo-moto* action on the likelihood of a system provider being insolvent or likely to be wound up instead of waiting to be informed of the same as proposed under Clause 8 (4). In this regard, the Ministry of Finance, have however, informed as under:

“The provisions of sub-clause (2) of Clause 8 are wide enough to cover situations where Reserve Bank can, *suo-moto*, revoke the authorisation even in case of insolvency/winding up of the system provider.”

120. The Committee observe that the proposal to bestow the power of revoking the authorization given to system providers would serve as a deterrent on the system providers from indulging in unauthorized activities. However, with specific reference to the provisions of sub-clause (4) of Clause 8, whereby a system provider is to *inter alia* inform the Reserve Bank of the fact of being wound up or being insolvent, the Committee note that the usage of the words 'he' and 'his' in the provision to refer to the system providers has the possibility of becoming ambiguous as evidenced from the view points expressed before them. For addressing the issue, the Government have proposed to suitably modify the proviso to Clause 8 by substituting the word 'he' with 'such system provider', to which the Committee express agreement, and desire that the same be incorporated in the Bill.

Clause 9—Appeal to the Central Government.

121. Clause 9 which provides for an appeal to the Central Government against an order of refusal/revocation of authorization by the Reserve Bank reads as under:

“(1) Any applicant for an authorisation whose application for the operation of the payment system is refused under sub-section (3) of section 7 or a system provider who is aggrieved by an order of revocation under section 8 may, within thirty days from the date on which the order is communicated to him, appeal to the Central Government.

(2) The decision of the Central Government on the appeal under sub-section (1) shall be final.”

122. With a view to prescribe a timeframe for the Central Government to decide on the appeal against an order of refusal or a revocation order issued by RBI under Section 8, the State Bank of India, in their Memorandum submitted to the Committee *inter alia* suggested incorporation of the words, ‘which will be disposed by the Central Government within a period of three months from the date of receipt of such appeal’ at the end of Clause 9 (1).

123. Expressing agreement to the suggestion for fixing a time-frame, the Ministry of Finance have submitted as under:

“It is suggested that a period of three months can be laid down for the Central Government to hear and dispose of the appeal against the decision of RBI to refuse authorization or revoke authorization as the case may be.”

124. The Government have expressed agreement to the need felt for fixing a time limit of three months for the Central Government to decide on an appeal that may be made by a system provider aggrieved by a revocation order issued by the Reserve Bank in terms of the provisions of Clause 8, or whose application for authorization is refused by the Bank in terms of the provisions of Clause 7 of the Bill. The Committee, accordingly, recommend that a provision to this effect, for fixing a timeframe of three months for the Central Government to decide on the appeals against the revocation or rejection order issued by the Reserve Bank be incorporated in Clause 9 of the Bill.

Clause 10—Power to determine standards

125. Clause 10 of the Bill which seeks to empower the Reserve Bank with the power to determine and prescribe standards in respect of *inter alia* format of payment instructions, timing to be maintained by payment systems, manner of transfer of funds within payment systems etc. reads as under:

- (1) The Reserve Bank may, from time to time, prescribe—
 - (a) the format of payment instructions and the size and shape of such instructions;
 - (b) the timings to be maintained by payment systems;
 - (c) the manner of transfer of funds within the payment system, either through paper, electronic means or in any other manner, between banks or between banks and other institutions;
 - (d) such other standards to be complied with the payment systems generally;
 - (e) the criteria for membership of payment systems including continuation, termination and rejection of membership;
 - (f) the conditions subject to which the system participants shall participate in such fund transfers and the rights and obligations of the system participants in such funds.

(2) Without prejudice to the provisions of sub-section (1), the Reserve Bank may, from time to time, issue such guidelines, as it may consider necessary for the proper and efficient management of the payment systems generally or with reference to any particular payment system.

126. Sub-clause (c) of Clause 10 (1) deals with the manner of transfer of funds within the payment systems, amongst the banks or other institutions. Since the expression “other institutions” has not been defined in the Bill, the Ministry of Finance were questioned whether it would not be appropriate to replace the term ‘other institutions, with ‘system participants’ in the provision. In response thereto, the Ministry of Finance proposed to rephrase sub-clause (c) of Clause 10 (1) to read as follows:

“the manner of transfer of funds within the payment system, either through paper, electronic means or in any other manner, between banks or between banks and **other System Participants.**”

127. The CII, in their memorandum have suggested that the matters listed under Clause 10 (1) in respect of which the Reserve Bank would be empowered to prescribe/determine standards should also cover basic security standards for participants in a payment system. Questioned in this regard, the Ministry of Finance stated as follows:

“Clause 7(1) (iii) mentions that the RBI will issue authorization to an applicant taking into consideration (among other things) the terms and conditions of operation of the proposed payment system including any security procedure. This provision should take care of basic security standards. Hence there is no need to carry out any modification as suggested.”

128. Yet another suggestion made by the CII, relates to prescribing penalties for system participants for not meeting the performance standards prescribed *viz.* standards relating to timings to be maintained in aspect of RTGS/EFT credits etc. In this regard, the Ministry of Finance in a written submission, stated as under:

“If the performance standards are prescribed by RBI in accordance with its powers under the Bill (for example Clause 10), every such non-compliance would be a contravention attracting the provisions of Clause 26 (5) of the Bill.”

129. The proposals of Clause 10 of the Bill seek to empower the Reserve Bank to determine and prescribe standards for payment systems, which *inter alia* relate to the format of payment instructions, timings to be maintained etc. With specific reference to Clause 10 (1) (c) on the ‘manner of transfer of funds within the payment system’ in respect of which the Reserve Bank would be prescribing standards, the Committee observe that in response to the questioning on the appropriateness of the usage of the term, ‘other institutions’ in the proviso, which has not been defined in the Bill, the Government have proposed to substitute the phrase ‘between banks and other institutions’ to read as ‘between banks and other system participants’. As the substitution of the word ‘other institutions’ with ‘system participants’ in the proviso would provide clarity by removing the likely ambiguity, the Committee endorse the same for being carried out.

130. The Committee also feel it to be essential here to emphasize on the importance, which the performance standards, inclusive of the security procedures to be maintained by the payment systems, acquire in the current day context, where new types of payment services and arrangements, involving extensive application of

technology are being witnessed. The Committee trust that the performance standards to be evolved and formulated by the Reserve Bank for adherence by the payment systems participants would be based on international benchmarks and adaptable to local requirements.

Clause 11—Notice of change in the payment system

131. Clause 11 of the Bill which *inter alia* provides that the system providers shall not cause any change effecting the structure or operation of the payment system without the approval of the Reserve Bank reads as under:

“(1) No system provider shall cause any change in the system which would affect the structure or the operation of the payment system without—

- (a) giving notice of not less than thirty days to the system participants; and
- (b) the approval of the Reserve Bank.

(2) Where the Reserve Bank has any objection, to the proposed change for any reason, it shall communicate such objection to the systems provider within two weeks of receipt of the intimation of the proposed changes from the system provider.

(3) The system provider shall, within a period of two weeks of the receipt of the objections from the Reserve Bank forward his comments to the Reserve Bank and the proposed changes may be effected only after the receipt of approval from the Reserve Bank.”

132. In terms of the provisions of Clause 11, no system provider shall ‘cause any change in the system’ without giving notice of not less than 30 days to the system participants. As the changes proposed by a system provider could, *inter alia*, require further upgrades/changes at the participant end, it has been suggested in the memoranda submitted to the Committee that the stipulated period be mandated as 60 days so as to give sufficient notice to the participants to manage the respective internal upgrades/developments to support the changes etc. The Ministry of Finance have, in this regard, in a written reply, submitted as under:

“Normally a 30 day period is sufficient for system participants to carry out the changes at their end. However in terms of Clause 11(1) (b) it is suggested that the RBI while approving the request

of the system provider for making changes in the system, if it is convinced that more time is needed, may stipulate a time period exceeding 30 days for system participants to carry out changes at their end.”

133. For this purpose, the Ministry have proposed to add the following as a proviso to sub-clause (1) of Clause 11 of the Bill:

“Provided that in the interest of monetary policy of the country or in public interest, Reserve Bank may permit the system provider to make any changes in system without complying with requirement specified in item (a) of sub-clause (1) of Clause 11.”

134. Asked further whether it would not be essential to make it clear in the provision that the thirty days notice period to be given to the participants by the system provider for carrying out changes would commence following the Reserve Bank’s approval in terms of Clause 11 (1) (b) the Government agreed to the suggestion. Accordingly, it has been proposed to rephrase Clause 11 (1) (b) to read as ‘after the approval of Reserve Bank’.

135. The Citibank, in their memorandum, opined that such of the major changes having significant impact to the payment system process, which would attract the provisions of Clause 11 (1), should be defined to the extent possible. In response to related queries, the Ministry of Finance informed that these issues will be elaborated upon in the guidelines framed for the purpose and the directions to be issued by the Reserve Bank to system providers from time to time.

136. The Committee observe that the proposals of Clause 11 are *inter alia* intended to provide that the system providers can effect changes involving the structure or operation of the payment system only with the approval of the Reserve Bank and by giving notice of not less than 30 days to the system participants. The proposed provisions are, however, not adequate to address situations where a time period of more than 30 days may be required by the system providers *inter alia* for carrying out the changes and enabling the participants *viz.*, banks etc. to carry out concomitant upgrades etc., as may be required. Secondly, the Committee also observe that the provisions, as proposed do not clearly stipulate that the 30 days notice period would commence following the Reserve Bank’s approval for the changes proposed. The Government have, for addressing the inconsistencies in the provisions, as pointed out by the Committee, proposed to add a proviso to Clause 11, whereby the Reserve Bank

could be empowered to waive the stipulated notice period of 30 days in the interest of 'monetary policy of the country or in public interest'. The Government have also proposed to modify sub-clause (b) of Clause 11 to clearly specify that the notice period for carrying out the changes would commence following the Reserve Bank's approval of the related proposal. The Committee desire that the modifications in the provisions, as agreed to, which would *inter alia* take care of situations where a period in excess of 30 days may be required for the system providers/participants for carrying out changes in the structure/operation of payment systems be incorporated.

137. The Committee also expect that as submitted before them, the Reserve Bank would elaborate/specify the nature and type of major changes in Payment Systems that would attract the stipulation of obtaining prior approval in terms of the provisions of Clause 11.

Clause 17: Power to issue directions

138. Clause 17 which seeks to provide for issuance of written directions by the Reserve Bank reads as under:

"Where the Reserve Bank is of the opinion that—

- (a) a payment system or a system participant is engaging in, or is about to engage in, any act, omission or course of conduct that results, or is likely to result, in systemic risk being inadequately controlled; or
- (b) any action under clause (a) is likely to affect the payment system, monetary or the credit policy of the country, the Reserve Bank may issue directions in writing to such payment system requiring it, within such time as the Reserve Bank may specify—
 - (i) to cease and desist from engaging in the act, omission or course of conduct or to ensure the system participants to cease and desist from the act, omission or course of conduct; or
 - (ii) to perform such acts as may be necessary, in the opinion of the Reserve Bank, to remedy the situation."

139. With reference to the proposals of Clause 17 (b), which seek to empower the RBI to issue 'cease and desist direction' to a system provider or participant for engaging in acts of omission which may

affect the payment system, the ICICI bank, in their memorandum, felt it to be desirable to change the expression, 'payment system, monetary or the credit policy' to 'payment system and the monetary and credit policy'.

140. The ICICI bank also emphasized on ensuring that a reasoned cease and desist order is given by the RBI to the system provider/participant and a redressal mechanism put in place to assist a system participant/provider aggrieved by a cease and desist order. In this regard, the Ministry of Finance informed as under in a written reply:

"The cease and desist order may have to be issued if the action is likely to affect the payment system or monetary policy or credit policy. The intention is to cover actions which are likely to affect monetary policy or credit policy. In a given case, a particular action may affect the monetary policy without affecting the credit policy or *vice versa*. Therefore, in order to make the intention more clear, the provision may be modified as under:

(b) 'any action under clause (a) is likely to affect the payment system or the monetary policy or the credit policy of the country'."

141. The Committee observe that the phrasing of sub-clause (b) of the Clause 17 which *inter alia* reads 'affect the payment system, monetary or the credit policy' does not bring out in clear terms the intended purpose of enabling the Reserve Bank to issue 'cease and desist' directions or initiating such action as may be necessary for restraining a payment system or system participants from indulging in acts detrimental to the payment system or the monetary policy or the credit policy. Consequently, the Government have proposed to rephrase the said sub-clause to read as '... is likely to affect the payment system or the monetary policy or the credit policy of the country'. The Committee, express agreement with the proposed rephrasing of the proviso, which would make the intended purpose of the provisions clear. However, they also desire that the procedure to be followed by the Reserve Bank in issuing 'cease and desist' directions is well laid out and issues concerning the follow up action to be taken thereon, inclusive of the redressal mechanism that may be available to the entities affected by such 'directions', are adequately addressed in the regulations to be framed following the commencement of the Act.

Clause 23: Settlement and netting

142. Clause 23 of the bill, which provides for gross and netting procedure; procedure for distribution of losses; and finality and

irrevocable nature of settlement reads as under:

- (1) The payment obligations and settlement instructions among the system participants shall be determined in accordance with the gross or netting procedure, as the case may be, approved by the Reserve Bank while issuing authorisation to a payment system.
- (2) Where the rules providing for the operation of a payment system indicates a procedure for the distribution of losses between the system participants and the payment system, such procedure shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force.
- (3) A settlement effected under such procedure shall be final and irrevocable.
- (4) Where a system participant is declared by a court of competent jurisdiction as insolvent or is dissolved or wound up, then notwithstanding anything contained in the Companies Act, 1956 (1 of 1956) or the Banking Regulation Act, 1949 (10 of 1949) or any other law for the time being in force, the order of dissolution or adjudication or winding up, as the case may be, shall not affect any settlement that has become final and irrevocable.

Explanation.—For the removal of doubts, it is hereby declared that the settlement, whether gross or net, referred to in this section is final and irrevocable as soon as the money, securities, foreign exchange or derivatives or other transactions payable as a result of such settlement is determined, whether or not such money, securities or foreign exchange or derivatives or other transactions is actually paid.

143. In terms of Clause 23 (1), payment obligations and settlement instructions among the system participants are to be determined in accordance with the 'gross or netting procedure'. The CII, in their Memorandum pointed out to the Committee that the concept, 'gross settlement' has not been defined under the Chapter on definitions or in the proviso to the section. In this regard, the Ministry of Finance, in a written reply, stated as follows:

"The definition of "gross settlement" can be given if so desired. But this is a well understood term in the banking industry."

144. The provisions of Clause 23 (4) *inter alia* stipulate that the order of dissolution or winding up etc., 'shall not affect any settlement that has become final and irrevocable'.

145. Dr. R.H. Patil, Chairman, Clearing Corporation of India in his memorandum, and also in the course of personal hearing pointed out to the Committee that unless specific protection was given to the collaterals collected from the members from insolvency and liquidation laws, it would be difficult to enforce collaterals in the event of insolvency or liquidation of a market participant towards fulfillment of settlement obligations. Therefore, incorporation of a proviso to Clause 23(4) has been suggested on the following lines:

“Provided further that such order of dissolution or adjudication or winding up as the case may be, shall also not affect the right of system provider to appropriate the collaterals contributed by the system participant towards its settlement or other obligations in accordance with the Rules or Regulations of such System Provider.”

146. Agreeing to the suggestion that collaterals should be excluded from being the subject of any stay or attachment the government has proposed to modify clause 23 (4) by adding the following after the words ‘final and irrevocable’ in clause 23 (4):

“and the right of the system provider to appropriate any collaterals contributed by the system participant towards its settlement or other obligations in accordance with the rules and regulations of such system provider.”

147. The modified/revised proviso [clause 23 (4)] proposed reads as follows:

“Where a system participant is declared by a court of competent jurisdiction as insolvent or is dissolved or wound up, then notwithstanding anything contained in the Companies Act, 1956 or the Banking Regulation Act, 1949 or any other law for the time being in force, the order of dissolution or adjudication or winding up, as the case may be, shall not affect any settlement that has become final and irrevocable and the right of the system provider to appropriate any collaterals contributed by the system participant towards its settlement or other obligations in accordance with the rules and regulations of such system provider.”

Explanation.—For the removal of doubts, it is hereby declared that the settlement, whether gross or net, referred to in this section is final irrevocable as soon as the money, securities, foreign exchange or derivatives or other transactions payable as a result of such settlements is determined, whether or not such money, securities or foreign exchange or derivatives or other transactions is actually paid.

148. The Committee observe that though sub-clauses (3) and (4) of Clause 23 provide for ‘finality and irrevocability of settlement’ on account of legal or operational reasons etc., the provisions, as pointed out by the Chairman, Clearing Corporation of India do not provide specific protection to the collaterals collected from the participant members by the settlement agencies/system providers from insolvency and liquidation laws. The Committee understand that collateralization, particularly in the case of gross settlement systems acquires importance for providing guaranteed settlements. By way of responding to the suggestion for giving specific protection for collaterals, the Government have proposed to substitute proviso (4) of Clause 23 to *inter alia* specify in clear terms that any stay, attachment etc. would not come in the way of the system providers to ‘appropriate any collaterals contributed by the system participant towards its settlement or other obligations’. The Committee recommend that the modification proposed to the provision for excluding collaterals from being subject to any stay or litigation etc. be necessarily incorporated.

149. With specific reference to the provisions of sub clause (1) of Clause 23 as per which determination of payment obligations and settlement instructions among the system participants ‘would be in accordance with the gross or netting procedure’, the Committee note that the Government have opined that it may not be essential to specifically define the term ‘gross settlement’. Considering the need for clarity on certain provisions of the Bill, the Committee are of the opinion that it may be necessary on part of the Reserve Bank to re-assess, whether or not, the term ‘gross settlement’ needs to be separately defined so as to leave no scope for any ambiguity.

Clause 24: Settlement of disputes

150. Clause 24 of the bill which prescribes the dispute settlement mechanism in a payment system reads as under:

“(1) The system provider shall make provision in its rules or regulations for creation of panel consisting of not less than three system participants other than the system participants who are parties to the dispute to decide the disputes between system participants in respect of any matter connected with the operation of the payment system.

(2) Where any dispute in respect of any matter connected with the operation of the payment system arises between two or more

system participants, the system provider shall refer the dispute to the panel referred to in sub-section (1).

(3) Where any dispute arises between any system participant and the system provider or between system providers or where any of the system participants is not satisfied with the decision of the panel referred to in sub-section (1), the dispute shall be referred to the Reserve Bank.

(4) The dispute referred to the Reserve Bank for adjudication under sub-section (3) shall be disposed of by an officer of the Reserve Bank generally or specially authorised in this behalf and the decision of the Reserve Bank shall be final and binding.

(5) Where a dispute arises between the Reserve Bank, while acting in its capacity as system provider or as system participant, and another system participant, the matter shall be referred to a Securities Appellate Tribunal established under section 15K of the Securities and Exchange Board of India Act, 1992 (15 of 1992) for settlement of the dispute and the decision of the said Tribunal shall be final and binding.”

151. Issues brought to light in regard to the provisions relating to settlement of disputes in a payment system *viz.*, Clause 24 (1) to (5) (Settlement of Disputes) *inter-alia* include:

- (i) The panel to be set up in each case [in terms of Clause 24 (1)] should consist of participants from various sectors to ensure fair and unbiased dispute resolution. For example, if a dispute relates to a private bank and a co-operative bank, the panel may consist of a PSU bank, a private bank and a co-operative bank.
- (ii) Alternatively, a mechanism as contained in the Arbitration and Conciliation Act, 1996 may be considered wherein each of the parties select one arbitrator and thereafter the arbitrators so selected choose a third/neutral arbitrator.
- (iii) It would be advisable to stipulate timelines for decisions taken by RBI/Panel appointed.

152. In response to the related queries posed, the Government have, in a written reply submitted that the ‘details of the composition of the dispute resolution panel as well as the question of timelines for decisions by RBI/panel would be brought out in the regulations/guidelines to be framed under the proposed Act’.

153. Asked whether it would not be appropriate that disputes between system participants and system providers involving points of law should go to the appropriate legal authorities, the Ministry of Finance have in reply, stated as under:

“In the interests of smooth functioning of the payment systems it is important that there should be speedy resolution of disputes by persons who are conversant with the subject which is technical in nature. Such disputes are proposed to be referred to RBI who will be empowered to regulate and supervise the payment and settlement systems.”

154. The Committee observe that the dispute resolution mechanism as proposed under the provisions of Clause 24 *inter alia* provides for constitution of a panel of ‘not less than three system participants’ to decide on disputes among system participants, with the Reserve Bank functioning as the Appellate Authority. The framework for settlement of disputes among system participants, between system participants and system providers etc., as proposed under Clause 24 is expected to enable in speedy resolution of the points of dispute, which are generally expected to be of technical nature. The Committee, however, desire that as assured in the submissions made before them by the Government, issues relating to fairness and objectivity in the constitution of the ‘dispute resolution panel’ and stipulating time-lines for the decisions to be taken by the panel/RBI are comprehensively addressed in the regulations/guidelines to be framed under the proposed Act.

Clause 25 : Dishonour of electronic funds Transfer for insufficiency, etc., of funds in the account.

155. Clause 25 of the Bill, which *inter alia* provides for penalty for non-execution of electronic funds transfer reads as follows:

“(1) Where an electronic funds transfer initiated by a person cannot be executed because of the account of money standing to the credit of that account is insufficient to honour the transfer instruction or that it exceeds the amount arranged to be paid from that account by an agreement made with a bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the electronic funds transfer, or with both:

Provided that nothing contained in this section shall apply unless—

- (a) the electronic funds transfer was initiated for payment of any amount of money to another person for the discharge, in whole or in part, of any debt or other liability;
- (b) the electronic funds transfer was initiated in accordance with the relevant procedural guidelines issued by the system provider;
- (c) the payee makes a demand for the payment of the said amount of money by giving a notice in writing to the person initiating the electronic funds transfer within thirty days of the receipt of information by him from the bank concerned regarding the dishonour of the electronic funds transfer; and
- (d) the person initiating the electronic funds transfer fails to make the payment of the said money to the payee within fifteen days of the receipt of the said notice.

Explanation.—For the purpose of this section, “debt or liability” means a legally enforceable debt or other liability, as the case may be.

(2) The provisions of Chapter XVII of the Negotiable Instruments Act, 1881 (26 of 1881) shall apply to the dishonour of electronic funds transfer to the extent the circumstances admit.”

156. In this regard, a number of Banks have in their memoranda submitted to the Committee sought to highlight the aspect of ‘electronic funds transfer’ having certain unresolved technology and security issues. For instance, the HSBC Bank pointed out that it was not very clear as to how the intended beneficiary would be made aware that the electronic funds transfer has failed at the paying bank due to insufficiency of funds. Questioned whether the existing framework of electronic funds transfer enables the beneficiary or the beneficiary bank, to be aware of a failed electronic fund transfer on account of insufficient funds in the payer’s account for enabling the beneficiary (payee) to give a notice to the person initiating the transfer, the Ministry of Finance, in a written reply, stated as under:

“The rules and regulations of the system provider should provide for the information flow within the payment system between system participants and between system provider and system participants. It is felt that the same may not be incorporated in the Bill.”

157. Questioned further whether it would not be necessary to rephrase the words 'debt or liability' in the explanation to section 25 (1), to read as 'debt or other liability' so as to correspond to Section 138 of the Negotiable Instruments Act, the Ministry of Finance expressed agreement. In this regard, the Ministry have also stated: "Further, in item (a) of sub-clause (1) of Clause 25 the words 'any debt or liability' may be modified as 'any other debt or other liability', so as to bring in clarity in the provision".

158. Asked to clarify/elaborate on the provisions of Clause 25 (2), whereby the provisions of Chapter XVII of the Negotiable Instruments Act, 1881 would apply to dishonour of electronic funds transfer to the extent the circumstances admit, the Ministry have in response stated as follows:

"The provisions of Chapter XVII of the Negotiable Instruments Act 1881 has been made applicable to the extent circumstances admit. For example, in terms of the provisions of Section 142 (a) of the NI Act, "no court shall take cognizance of any offence punishable under Section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque." In case of the offence under Clause 25 of the Bill, the concept of "payee" and "holder in due course" does not exist and the person committing the offence would be the person who initiates the electronic fund transfer. Similarly, the provisions of Section 146 providing for presumption of the act of dishonour of the bank's slip or memo having thereon the official mark denoting that the cheque has been dishonoured, may not be applicable as it is, to the offence under Clause 25 of the Bill."

159. Clause 28(1) of the Bill *inter-alia* provides that no court should take cognizance of an offence punishable under the proposed Act, 'except upon a complaint in writing made by an officer of the Reserve Bank'. Questioned whether the provisions of clause 28 (1) would be in consonance with the proposals of Clause 25, which seek to treat dishonour of electronic fund instructions at par with dishonour of cheques, the Ministry of Finance informed as under in reply:—

"It is felt that in all offences, barring the offence under Clause 25, cognizance should only be taken on a complaint from an authorized officer of RBI, as is the case in RBI Act, 1934 and Banking Regulation Act, 1949.

160. While the Committee consider it to be a desirable proposition to treat dishonour of electronic funds transfer instructions at par

with dishonour of cheques on account of insufficiency of funds, they can not also, help taking note of the contentions made and the concerns expressed by some banks, which mainly relate to the prevailing practice of 'information flow' and 'technology related aspects' of electronic funds transfer. The contentions made on the provisions of Clause 25, *inter alia*, centre on the adequacy of the existing information flow system between the "payee's" and the "beneficiary's" banks to know of a failed electronic funds transfer etc. The Committee, therefore, feel it to be essential on the part of the Reserve Bank to comprehensively address issues relating to the adequacy of the existing practice and procedure of flow of information and other technology related aspects of electronic funds transfer, so as to leave no scope for any question marks, before giving effect to the proposal for treating dishonour of electronic fund transfer instructions at par with dishonour of cheques.

161. The Committee also note that the words and expressions relating to 'debt' and 'liability' in proviso (a) of sub clause (1) of Clause 25 and the Explanation under Section 25 (1) are not in consonance with the provisions of Chapter XVII of the Negotiable Instruments Act, 1881, which, as per sub clause (2) of Clause 25 would 'apply to dishonour of electronic funds transfer to the extent the circumstances admit'. The Committee desire that, as agreed to, necessary modifications to this effect are carried out in the Bill.

162. The Committee further note from the submissions of the Government that Clause 28 (1) of the Bill stipulates that no court shall take cognizance of an offence punishable under the proposed Act, 'except upon a complaint in writing made by an officer of the Reserve Bank'. The Committee note that this stipulation is not proposed to be made applicable to the provisions of Clause 25 relating to dishonour of electronic funds transfer. The Committee, accordingly, recommend that the aspect of non-applicability of the stipulations of Clause 28 (1) to instances of dishonour of electronic funds transfer be made adequately clear in the provisions.

Clause 30: Power of Reserve Bank to impose fines

163. Clause 30 of the Bill reads as under:

- (1) Notwithstanding anything contained in section 26, if a contravention or default of the nature referred to in sub-section (2) or sub-section (6) of section 26, as the case may be, the Reserve Bank may impose on the person contravening or committing default a penalty not exceeding

five lakh rupees or twice the amount involved in such contravention or default where such amount is quantifiable, whichever is more, and where such contravention or default is a continuing one, a further penalty which may extend to twenty-five thousand rupees for every day after the first during which the contravention or default continues.

- (2) For the purpose of imposing penalty under sub-section (1), the Reserve Bank shall serve a notice on the defaulter requiring him to show cause why the amount specified in the notice should not be imposed as a penalty and a reasonable opportunity of being heard shall also be given to such defaulter.
- (3) Any penalty imposed by the Reserve Bank under this section shall be payable within a period of thirty days from the date on which notice issued by the Reserve Bank demanding payment of the sum is served on the defaulter and, in the event of failure of the person to pay the sum within such period, may be recovered on a direction made by the principal civil court having jurisdiction in the area where the registered office of the defaulter company or the official business of the person is situated.
- (4) The Reserve Bank may recover the amount of penalty by debiting the current account, if any, of the defaulter or by liquidating the securities held to the credit of the defaulter or in accordance with the provisions of this Act:

Provided that no such direction shall be made, except on an application made by an officer of the Reserve Bank authorised by it in this behalf.

- (5) The court which makes a direction under sub-section (3) shall issue a certificate specifying the sum payable by the defaulter and every such certificate shall be enforceable in the same manner as it were a decree made by the court in a civil suit.
- (6) Where any complaint has been filed against any person in any court in respect of the contravention or default of the nature referred to in sub-section (2), or, as the case may be, sub-section (4) of section 26, then no proceeding for the imposition of any penalty on the person shall be taken under this section.

164. Sub-clause (3) of Clause 30 provides for payment of penalty imposed by the Reserve Bank within thirty days from date of notice demanding payment and on the failure of which the same shall be recovered on a direction made by the principal Civil Court having jurisdiction; and Sub-clause (4) of Clause 30 provides for recovery of the amount of penalty by the Reserve Bank by debiting the current account of the defaulter or by liquidating the securities held to its credit.

165. Further, the proviso after Clause 30 (4) provides as under:

“Provided that no such direction shall be made, except on an application made by an officer of the Reserve Bank authorized by it in this behalf.”

166. Asked whether it was not necessary to incorporate the aforementioned proviso, which *inter alia* provides that ‘no such direction shall be made, except on an application’, after sub-clause (3) of Clause 30 instead of sub-clause (4) of Clause 30 as provided for in the Bill, the Ministry of Finance expressed agreement.

167. The Committee observe that while sub-clause (3) of Clause 30 *inter alia* provides for direction to be made by the Principal Civil Court in the event of failure of the defaulter to pay the penalty amount, sub-clause (4) of Clause 30 provides for recovery of the amount of penalty by debiting the current account of the defaulter or by liquidating the securities held by the defaulter.

168. The Committee pointed out that the proviso as shown below Clause 30 (4) relates to the condition for issue of direction by the Principal Civil court and as such should have been shown below Clause 30 (3) to which the Ministry agreed.

169. The Committee, therefore, expect that the proviso relating to the Direction that could be made by the Principal Civil Court which is incorrectly shown under Clause 30 (4) is appropriately shown under Clause 30 (3).

Clause 38: Power of Reserve Bank to make regulations.

170. Clause 38 of the Bill reads as under:—

- (1) The Reserve Bank may, with the previous sanction of the Central Government, by notification, make regulations for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing provision, such regulations may provide for all or any of the following matters, namely:—

- (a) the powers and functions of the Committee constituted under sub-section (2), the time and venue of its meetings and the procedure to be followed by it at its meetings (including the quorum at such meetings, under sub-section (4) of section 3;
- (b) the form and manner in which an application for authorisation for commencing or carrying on a payment system shall be made and the fees which shall accompany such application under sub-section (2) of section 5;
- (c) the form in which an authorisation to operate a payment system under this Act shall be issued under sub-section (2) of section 7;
- (d) the format of payment instructions and other matters relating to determination of standards to be complied with by the payment systems under sub-section (1) of section 10;
- (e) the intervals, at which and the form and manner in which the information or returns required by the Reserve Bank shall be furnished under section 12;
- (f) such other matters as are required to be, or may be, prescribed.

(2) Any regulation made under this section shall have effect from such earlier or later date (not earlier than the date of commencement of this Act) as may be specified in the regulation.

(3) Every regulation shall, as soon as may be after it is made by the Reserve Bank, be forwarded to the Central Government and that Central Government shall cause a copy of the same to be laid before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the regulation, or both Houses agree that the regulation should not be made, the regulation shall, thereafter, have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that regulation.

171. A view-point expressed by some experts has been that as in the case of SEBI, RBI should be authorized to make regulations for carrying out the provisions of the Bill, without the prior sanction of the Central Government. Informing that this matter was under active consideration, the Ministry of Finance also stated that the revised Clause 38 (1) may be as under:

“The Reserve Bank may, by notification in the Official Gazette make regulations not inconsistent with this Act to provide for all or any of the matters for which provision is necessary or convenient to carry out the purposes of this Act”.

172. The Committee note that by way of acting on the need expressed for enabling the Reserve Bank to exercise the regulation making power without the prior sanction of the Central Government for the purposes of the proposed Act, as is the case with SEBI under the SEBI Act, the Government have proposed to revise the provisions of Clause 38 (1) to this effect. The Committee recommend that the revision of the provisions of Clause 38 (1), as proposed, for empowering the Reserve Bank with the power to make regulations without the prior sanction of the Central Government be incorporated in the Bill.

NEW DELHI;
15 May, 2007
25 Vaisakha, 1929 (Saka)

ANANTH KUMAR,
Chairman,
Standing Committee on Finance.

NOTE OF DISSENT

Shri Rupchand Pal, MP

The Payment and Settlement Systems Bill, 2006 was referred to Standing Committee on Finance for its scrutiny and recommendations.

In the course of deliberations a lot of objections regarding the objectives of the Bill were raised by different witnesses.

The Committee has admitted that the necessity of the proposed legislation has been questioned particularly by the Reserve Bank's Officers and Employees' Association. Many of the questions raised did not have satisfactory replies and clarifications either.

In the Draft Report in the background paragraph 5, it has been correctly observed that "the Central Bank of any country is usually the driving force in the development of national payment system. The Reserve Bank of India (RBI) as the Central Bank of the country has been playing this developmental role and initiating many reforms aimed at improving the efficiency in payment and settlement systems of the country".

It has been mentioned that to provide legal framework to the existing system, it required to set up a new entity called the National Payments Corporation of India which would be taking over the operations of retail payment system. This job so long was done by the Reserve Bank of India itself. While the large value payment systems, the Real Time Gross Settlement System (RTGSS) will continue to be operated by RBI while the inter Bank Govt. Securities & Foreign Exchange Clearing System is operated by Clearing Corporation of India Ltd. (CCIL),. But the apprehension is that in not so distant future the whole payment and settlement system would be done by private entities (companies) only.

It is said that RBI by this piece of legislation will have a legal framework even after the newer systems involving high technology payment systems come into operation. The RBI will have exclusive jurisdiction as a regulator which it has been doing and doing successfully so long and the Payment & Settlement Systems Bill 2006 states that the proposed measure will remove the "conflict of interest" as it exists to-day between RBI as Regulator, supervisor and also service

provider on the other hand. The Bill intends to do away with that *i.e.* the conflict of interest in RBI as regulator and supervisor and also at the same time service provider. And lastly, the argument that this measure will largely help complying with the international standard and BIS is not at all a strong one.

I do not subscribe to the views expressed in the recommendations in the Draft Report.

My Note of Dissent is based on the following:—

First, the RBI has been doing the function relating to payment settlement very efficiently and successfully. Secondly, most of the countries including USA, Germany, China, Brazil etc. the Central Banks have been functioning both as regulator and supervisor as also service provider. There is no case for conflict of interest. Moreover, several documents of BIS do not indicate any universal practice in the matter. Rather they emphasize that the system should be country-specific and the involvement of the Central Bank of the country as service provider along with its role as regulator and supervisor is to be judged on the basis of need of the concerned country.

I believe that India needs continuation of the RBI in the current role it has been successfully playing both as regulator, supervisor and also service provider.

As regards changes required to provide legal framework, I believe an appropriate amendment of section 58 (P) of RBI Act, 1935 could serve the purpose in order to strengthen the RBI's regulatory authority and there is no need for separate enactment as is being proposed in the Bill.

The RBI has been functioning very efficiently with a state of the art technology. With RTGS, ECS, EFT, MICR and growing geographical coverage of cheque clearance system of our country, RBI has achieved best international standard as rightly claimed by the Governor of RBI also.

On the other hand, the proposed new private entity have neither the expertise nor experience such as RBI does possess as the key service provider and also manager of clearing houses.

So, it is absolutely not in the interest of national economy to disrupt the existing process and the ongoing processes of improvement of the payment system by the RBI.

I think the Board of Payment & Settlement System under the chairmanship of Governor of RBI is a proven competent authority in

the matter and can act as umbrella organization which the new private entity cannot do. The ongoing innovation process of payment and settlement system have been carried forward efficiently under this Board of Payment & Settlement. I think the BPS should be allowed to continue the process of further improvement of cheque clearance system and the creation of a private new entity meanwhile will only weaken the whole process of improvement.

Hence my dissent. I reiterate my view that instead of going for a new Act and setting up of new private entity for payment and settlement system, the best course would be to amend section 58(P) of RBI Act, 1934 and/or any other section of RBI Act, 1934 appropriately to strengthen the regulatory authority of RBI and remove the legal weaknesses in the matter.

My Note of Dissent may kindly be incorporated in the Report itself.

Sd/-
(Shri Rupchand Pal, MP)

MINUTES OF THE SIXTH SITTING OF STANDING
COMMITTEE ON FINANCE

The Committee sat on Thursday, 29th September, 2006 from
1100 to 1230 hrs.

PRESENT

Maj. Gen (Retd.) B.C. Kanduri—*Chairman*

MEMBERS

Lok Sabha

2. Shri Vijoy Krishna
3. Shri Madhusudan Mistry
4. Shri Prakash Paranjpe
5. Shri P.S. Gadhavi
6. Shri K.S. Rao
7. Shri A.R. Shaheen
8. Shri M.A. Kharabela Swain
9. Shri Bhal Chand Yadav

Rajya Sabha

10. Shri Santosh Bagrodia
11. Shri Yashwant Sinha
12. Shri Mangani Lal Mandal
13. Shri C. Ramachandraiah

SECRETARIAT

1. Shri S.B. Arora — *Deputy Secretary*
2. Shri T.G. Chandrasekhar — *Under Secretary*

WITNESSES

**Ministry of Finance (Department of Economic Affairs—Banking
Division)**

1. Shri Ashok Jha, Secretary
2. Shri Vinod Rai, Spl. Secretary (FS)
3. Shri Amitabh Verma, Joint Secretary (BOA) Banking Division

2. At the outset, the Chairman welcomed the representatives of the Ministry of Finance (Department of Economic Affairs—Banking Division) to the sitting of the Committee and invited their attention to Direction 55 of the Directions by the Speaker, Lok Sabha.

3. The Committee then took oral evidence of the representatives in connection with the examination of the Payment and Settlement Systems Bill, 2006. The Chairman then asked the representatives to furnish written notes on certain points raised by Members in respect of which replies were not readily available with them.

4. The evidence was concluded.

5. A verbatim record of the proceedings has been kept.

The witnesses then withdrew.

The Committee then adjourned.

MINUTES OF THE EIGHTH SITTING OF STANDING
COMMITTEE ON FINANCE

The Committee sat on Thursday, 26th October, 2006 from 1030 to 1135 hrs. and 1150 to 1250 hrs.

PRESENT

Maj. Gen (Retd.) B.C. Khanduri—*Chairman*

MEMBERS

Lok Sabha

2. Shri Jaswant Singh Bishnoi
3. Shri Vijoy Krishna
4. Shri A. Krishnaswamy
5. Shri Bhartruhari Mahtab
6. Shri Rupchand Pal
7. Shri A.R. Shaheen
8. Shri G.M. Siddeshwara
9. Shri M.A. Kharabela Swain

Rajya Sabha

10. Shri M. Venkaiah Naidu
11. Shri Mahendra Mohan
12. Shri Chittabrata Majumdar
13. Shri Mangani Lal Mandal
14. Shri C. Ramachandraiah

SECRETARIAT

1. Dr. (Smt.) P.K. Sandhu — *Additional Secretary*
2. Shri A. Mukhopadhyay — *Joint Secretary*
3. Shri T.G. Chandrasekhar — *Under Secretary*

Part I
(1030 to 1135 hrs.)

- | | | | | | | |
|----|----|----|----|----|----|----|
| 2. | ** | ** | ** | ** | ** | ** |
| 3. | ** | ** | ** | ** | ** | ** |

4. The evidence was concluded.

The witnesses then withdrew.

Part II
(1150 to 1250 hrs.)

WITNESSES

1. All India Bank Officers' Association

- (i) Shri Alok Khare, President
- (ii) Shri N.S. Virk, Vice President
- (iii) Shri S. Nagarajan, Deputy General Secretary

2. All India Bank Officers' Confederation

- (i) Shri Amar Pal, General Secretary
- (ii) Shri Chandraprasad, Deputy General Secretary

3. All India Bank Employee's Association

- (i) Shri C.H. Venkatachalam, General Secretary
- (ii) Shri Ramanand, Joint Secretary
- (iii) Shri C.M. Puri, General Council Member

4. Bank Employees Federation of India

- (i) Shri S. Bardhan, General Secretary
- (ii) Shri M.L. Malkotia, Joint Secretary

5. National Confederation of Bank Employees

- (i) Shri V.K. Gupta, Vice President
- (ii) Shri Profullo Kumar Patnaik, General Secretary

2. At the outset, the Chairman welcomed the representatives of the (i) All India Bank Officers' Association, (ii) All India Bank Officers' Confederation, (iii) All India Bank Employees' Association, (iv) Bank Employees Federation of India, and (v) National Confederation of Bank Employees to the sitting of the Committee and invited their attention to Direction 55 of the Directions by the Speaker, Lok Sabha.

3. The Committee then took oral evidence of the representatives in connection with the examination of the Payment and Settlement Systems Bill, 2006. The Members raised queries which were replied to by the representatives.

4. The evidence was concluded.

5. A verbatim record of proceedings has been kept.

The witnesses then withdrew.

The Committee then adjourned.

MINUTES OF THE TENTH SITTING OF STANDING
COMMITTEE ON FINANCE

The Committee sat on Tuesday, the 7th November, 2006 from
1030 to 1130 hrs. and 1215 to 1315 hrs.

PRESENT

Maj. Gen (Retd.) B.C. Khanduri—*Chairman*

MEMBERS

Lok Sabha

2. Shri Jaswant Singh Bishnoi
3. Shri Bhartruhari Mahtab
4. Shri Rupchand Pal
5. Shri Prakash Paranjpe
6. Shri Jyotiraditya Madhavrao Scindia
7. Shri Bhal Chand Yadav

Rajya Sabha

8. Shri Mahendra Mohan
9. Shri Chittabrata Majumdar
10. Shri C. Ramachandraiah
11. Shri Rashid Alvi

SECRETARIAT

1. Dr. (Smt.) P.K. Sandhu — *Additional Secretary*
2. Shri S.B. Arora — *Deputy Secretary*
3. Shri T.G. Chandrasekhar — *Under Secretary*

Part I
(1030 to 1130 hrs.)

2. ** ** ** ** ** **
3. ** ** ** ** ** **

4. The evidence was concluded.

5. A verbatim record of the proceedings has been kept.

The witnesses then withdrew.

Part II
(1215 to 1315 hrs.)

WITNESSES

Clearing Corporation of India Limited (CCIL)

Dr. R.H. Patil, Chairman

Indian Banks' Association (IBA)

Shri M.R. Umarji, Chief Advisor—Legal

Fixed Income Money Markets and Derivatives Association (FIMMDA)

Shri C.E.S. Azariah, Chief Executive Officer

6. At the outset, the Chairman welcomed the representatives of— (i) Clearing Corporation of India Limited; (ii) Indian Banks' Association and (iii) Fixed Income Money Markets and Derivatives Association to the sitting of the Committee and invited their attention to Direction 55 of the Directions by the Speaker, Lok Sabha.

7. The Committee then took oral evidence of the representatives in connection with the examination of the Payment and Settlement Systems Bill, 2006. The Members raised question which were replied to by the representatives.

8. The evidence was concluded.

9. A verbatim record of proceedings has been kept.

The witnesses then withdrew.

The Committee then adjourned.

MINUTES OF THE FIFTEENTH SITTING OF STANDING
COMMITTEE ON FINANCE

The Committee sat on Friday, 29th December, 2006 from 1030 to 1140, 1200 to 1310 hrs. and 1400 to 1540 hrs.

PRESENT

Maj. Gen. (Retd.) B.C. Khanduri—*Chairman*

MEMBERS

Lok Sabha

2. Shri Jaswant Singh Bishnoi
3. Shri Gurudas Dasgupta
4. Shri Vijoy Krishan
5. Dr. Rajesh Kumar Mishra
6. Shri Bhartruhari Mahtab
7. Shri Rupchand Pal
8. Shri Prakash Paranjpe
9. Shri P.S. Gadhavi
10. Shri K.S. Rao
11. Shri A.R. Shaheen
12. Shri M.A. Kharabela Swain

Rajya Sabha

13. Shri Santosh Bagrodia
14. Shri Raashid Alvi
15. Shri Chittabrata Majumdar
16. Shri S.P.M. Syed Khan

SECRETARIAT

1. Dr. A. Mukhopadhyay — *Joint Secretary*
2. Shri S.B. Arora — *Deputy Secretary*
3. Shri T.G. Chandrasekhar — *Under Secretary*

2.	**	**	**	**	**	**
3.	**	**	**	**	**	**
4.	**	**	**	**	**	**

Part-I
(at 1040 hours)

WITNESSES

United Forum of Reserve Bank Officers & Employees

1. Shri Samir Ghosh, Convener.
2. Shri S.V. Mahadik, General Secretary, AIRBWF.
3. Shri S.C. Sharma, Secretary, RBIOA.
4. Shri C.M. Paulsil, Secretary, AIRBOA.
5. Shri K.K. Sharma, Secretary, AIR&EA

5. At the outset, the Chairman welcomed the representatives of United Forum of Reserve Bank Officers & Employees and invited their attention to the provisions contained in Direction 55 of the Directions by the Speaker.

6. The Committee took oral evidence of the representatives of the United Forum of Reserve Bank Officers & Employees on the Payment and Settlement Systems Bill, 2006. Thereafter, the Members asked clarificatory questions which were replied to by the representatives. The Chairman, then, directed the representatives that the information with regard to queries of the Members which was not readily available with them might be furnished to the Committee within a week's time.

Part-II
(1200-1310 hours)

WITNESSES

ICICI Bank

1. Shri K.V. Kamath, Managing Director & CEO
2. Smt. Kalpana Morparia, Joint Managing Director
3. Smt. Madhbi Puri Butch, Chief Corporate Brand Officer

IDBI Bank

1. Shri V.P. Shetty, CMD

HDFC Bank

1. Mr. Bhavesh Zaveri, Group Head—Wholesale Operations
2. Mr. Rajender Sehgal, Executive Vice-President & Head, Corporate Banking

7. The Committee took oral evidence of the representatives of the ICICI Bank, IDBI Bank and HDFC Bank on the Payment and Settlement Systems Bill, 2006. Thereafter, the Members asked clarificatory questions which were replied to by the representatives. The Chairman, then, directed the representatives that the information with regard to queries of the Members which was not readily available with them might be furnished to the Committee within a week's time

8. A verbatim record of proceedings has been kept.

The witnesses then withdrew.

Part-III (1400-1540 hours)

State Bank of India

1. Shri O.P. Bhatt, Chairman
2. Shri A.D. Chaudhuri, CGM (Banking Operations)

Punjab National Bank

1. Shri S.C. Gupta, Chairman & Managing Director
2. Shri U.S. Bhargava, General Manager
3. Shri A. Balasubramanian, General Manager

Bank of India

1. Shri M. Balachandran, CMD
2. Shri H.S. Bhatia, GM

Canara Bank

1. Shri M.B.N. Rao, Chairman & Managing Director
2. Shri B.S. Hegde, General Manager,
3. Shri T.Y. Prabhu, General Manager

9. The Committee took oral evidence of the representatives of the State Bank of India, Punjab National Bank, Bank of India and Canara Bank on the Payment and Settlement Systems Bill, 2006. Thereafter, the Members asked clarificatory questions which were replied to by the representatives. The Chairman, then, directed the representatives that the information with regard to queries of the Members which was not readily available with them might be furnished to the Committee within a week's time.

10. A verbatim record of proceedings has been kept.

The witnesses then withdrew.

The Committee then adjourned.

MINUTES OF THE SIXTEENTH SITTING OF STANDING
COMMITTEE ON FINANCE

The Committee sat on Wednesday, 11th January, 2007 from 1100 to
1240 hrs.

PRESENT

Maj. Gen. (Retd.) B.C. Khanduri—*Chairman*

MEMBERS

Lok Sabha

2. Shri Jaswant Singh Bishnoi
3. Shri Gurudas Dasgupta
4. Shri Vijoy Krishna
5. Shri A. Krishnaswamy
6. Shri Bhartruhari Mahtab
7. Shri Prakash Paranjpe
8. Shri P.S. Gadhavi
9. Shri K.S. Rao
10. Shri A.R. Shaheen
11. Shri M.A. Kharabela Swain

Rajya Sabha

12. Shri Raashid Alvi
13. Shri Mahendra Mohan
14. Shri S.P.M. Syed Khan
15. Shri Mangani Lal Mandal
16. Shri Vijay J. Darda

SECRETARIAT

1. Dr. (Smt.) P.K. Sandhu — *Additional Secretary*
2. Shri A. Mukhopadhyay — *Joint Secretary*
3. Shri S.B. Arora — *Deputy Secretary*
4. Shri T.G. Chandrasekhar — *Under Secretary*

WITNESSES

Reserve Bank of India

1. Shri V. Leeladhar, Deputy Governor
2. Shri A.P. Hota, CGM
3. Shri K.D. Zacharias, Legal Adviser
4. Shri Arun Pasricha, DGM

2. At the outset, the Chairman welcomed the representatives of the Reserve Bank of India to the sitting of the Committee and invited their attention to Direction 55 of the Directions by the Speaker, Lok Sabha.

3. The Committee then took oral evidence of the representatives in connection with the examination of the Payment and Settlement Systems Bill, 2006. The Members asked clarificatory questions which were replied to by the representatives. The Chairman, then, directed the representatives that the information with regard to queries of the Members which was not readily available with them might be furnished to the Committee later on.

4. The evidence was concluded.
5. A verbatim record of the proceedings has been kept.

The witnesses then withdrew.

The Committee then adjourned.

MINUTES OF THE SEVENTEENTH SITTING OF
STANDING COMMITTEE ON FINANCE

The Committee sat on Thursday, the 1st February 2007 from 1100 to 1240 hrs.

PRESENT

Shri Bhartruhari Mahtab—*Acting Chairman*

MEMBERS

Lok Sabha

2. Shri Jaswant Singh Bishnoi
3. Shri Gurudas Dasgupta
4. Shri Shyama Charan Gupta
5. Shri Vijoy Krishna
6. Dr. Rajesh Kumar Mishra
7. Shri Rupchand Pal
8. Shri P.S. Gadhavi
9. Shri K.S. Rao
10. Shri A.R. Shaheen
11. Shri M.A. Kharabela Swain

Rajya Sabha

12. Shri Raashid Alvi
13. Shri Yashwant Sinha
14. Shri S.P.M. Syed Khan
15. Shri Mangani Lal Mandal
16. Shri C. Ramachandraiah

SECRETARIAT

1. Shri A. Mukhopadhyay — *Joint Secretary*
2. Shri T.G. Chandrasekhar — *Under Secretary*

WITNESSES

Ministry of Finance

1. Shri Vinod Rai, Spl. Secretary (FS)
2. Shri Amitabh Verma, Joint Secretary (BOA) Banking Division

2. In the absence of the Chairman, the Committee chose Shri Bhartruhari Mahtab to chair the sitting under Rule 258 (3) of the Rules of Procedure.

3. The Committee took oral evidence of the representatives of Ministry of Finance (Department of Economic Affairs) in connection with the examination of the Payment and Settlement Systems Bill, 2006. The Members asked clarificatory questions which were replied to by the representatives. The acting Chairman, then, directed the representatives that the information with regard to queries of the Members which was not readily available with them might be furnished to the Committee later on.

4. The evidence was concluded.

5. A verbatim record of the proceedings has been kept.

The witnesses then withdrew.

The Committee then adjourned.

MINUTES OF THE TWENTY-THIRD SITTING OF THE
STANDING COMMITTEE ON FINANCE

The Committee sat on Monday, 14 May, 2007 from 1600 to
1700 hrs.

PRESENT

Ananth Kumar—*Chairman*

MEMBERS

Lok Sabha

1. Shri Gurudas Dasgupta
2. Shri Shyama Charan Gupta
3. Shri A. Krishnaswamy
4. Shri Bhartruhari Mahtab
5. Shri Madhusudan Mistry
6. Shri Rupchand Pal
7. Shri P.S. Gadhavi
8. Shri K.S. Rao
9. Shri Jyotiraditya Madhavrao Scindia
10. Shri M.A. Kharabela Swain

Rajya Sabha

11. Shri C. Ramachandraiah

SECRETARIAT

1. Shri P.K. Grover — *Joint Secretary*
2. Shri S.B. Arora — *Deputy Secretary*
3. Shri T.G. Chandrasekhar — *Deputy Secretary*

2. At the outset, the Chairman welcomed the Members to the sitting of the Committee and requested them to give their suggestions on the recommendations contained in the Draft Report on Payment and Settlement Systems Bill, 2006.

3. The Committee then took up for consideration the draft report on the Payment and Settlement Systems Bill, 2006. The Committee, after deliberation, adopted the same without any modification.

4. As some Members did not agree to the recommendations contained in the report, they desired to submit their notes of dissent. The Chairman permitted them to submit their notes of dissent by 15 May, 2007.

5. The Committee, thereafter, authorized the Chairman to finalise the Report and also to make consequential verbal changes arising out of factual verification and present the same to the Parliament.

The Committee then adjourned.

APPENDIX

25 July 2006

AS INTRODUCED IN LOK SABHA

Bill No. 50 of 2006

THE PAYMENT AND SETTLEMENT SYSTEMS BILL, 2006

ARRANGEMENT OF CLAUSES

CHAPTER I

PRELIMINARY

CLAUSES

1. Short title, extent and commencement.
2. Definitions.

CHAPTER II

DESIGNATED AUTHORITY AND ITS COMMITTEE

3. Designated authority and its Committee.

CHAPTER III

AUTHORISATION OF PAYMENT SYSTEMS

4. Payment system not to operate without authorisation.
5. Application for authorisation.
6. Inquiry by the Reserve Bank.
7. Issue or refusal of authorisation.
8. Revocation of authorisation.
9. Appeal to the Central Government.

CLAUSES

CHAPTER IV

REGULATION AND SUPERVISION BY THE RESERVE BANK

10. Power to determine standards.
11. Notice of change in the payment system.
12. Power to call for returns, documents or other information.
13. Access to information.
14. Power to enter and inspect.
15. Information, etc., to be confidential.
16. Power to carry out audit and inspection.
17. Power to issue directions.
18. Power of Reserve Bank to give directions generally.
19. Directions of Reserve Bank to be complied with.

CHAPTER V

RIGHTS AND DUTIES OF A SYSTEM PROVIDER

20. System provider to act in accordance with the Act, regulations, etc.
21. Duties of system provider.
22. Duty to keep documents in the payment system confidential.
23. Settlement and netting.

CHAPTER VI

SETTLEMENT OF DISPUTES

24. Settlement of disputes.
25. Dishonour of Electronic funds Transfer for insufficiency, etc., of funds in the account.

CHAPTER VII

OFFENCES AND PENALTIES

26. Penalties.
27. Offences by companies.
28. Cognizance of offences.
29. Application of fine.
30. Power of Reserve Bank to impose fines.
31. Power to compound offences.

CHAPTER VIII

MISCELLANEOUS

32. Act to have overriding effect.
33. Mode of recovery of penalty.
34. Non-applicability to Stock and other Exchanges.
35. Certain persons deemed to be public servants.
36. Protection of action taken in good faith.
37. Power to remove difficulties.
38. Power to Reserve Bank to make regulations.

AS INTRODUCED IN LOK SABHA

Bill No. 50. of 2006

THE PAYMENT AND SETTLEMENT SYSTEMS BILL, 2006

A

BILL

to provide for the regulation and supervision of payment systems in India and to designate the Reserve Bank of India as the authority for that purpose and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Fifty-seventh Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

Short title,
extent and
commence-
ment

1. (1) This Act may be called the Payment and Settlement Systems Act, 2006.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act, and any reference to the commencement in any such provision of this Act shall be construed as a reference to the commencement of that provision.

Definitions

2. (1) In this Act, unless the context otherwise requires,—

(a) “bank” means,—

(i) a bank included in the Second Schedule to the Reserve Bank of India Act, 2 of 1934 1934;

(ii) a post office savings bank;

10 of 1949 (iii) a banking company as defined in clause (c) of section 5, of the Banking Regulation Act, 1949;

10 of 1949 (iv) a co-operative bank as defined in clause (cci) of section 5, as inserted by section 56, of the Banking Regulation Act, 1949; and

(v) such other bank as the Central Government may, by notification, specify for the purposes of this Act.

(b) "derivative" means as instrument, to be settled as a future date, whose value is derived from change in interest rate, foreign exchange rate, credit rating or credit index, price of securities (also called "underlying"), or a combination of more than one of them and includes interest rate swaps, forward rate agreements, foreign currency swaps, foreign currency rupee swaps, foreign currency options, foreign currency rupee options or such other instruments as may be specified by the Reserve bank from time to time;

(c) "electronic funds transfer" means any transfer of funds which is initiated through electronic means so as to instruct, authorise or order a bank to debit or credit an account with that bank, and includes point of sale transfer, automated teller machine transactions, direct deposits or withdrawals of funds, transfers initiated by telephone and card payment;

(d) "netting" means the determination by the system provider of the amount of money or securities, due or payable or deliverable, as a result of setting off or adjusting, the claims and obligations among the system participants, including the claims and obligations arising out of the termination by the system provider, on the insolvency or liquidation of any system participant or such other circumstances as the system provider may specify in its rules or

regulations, of the transactions admitted for settlement at a future date so that only a net claim be demanded or a net obligation be owed;

(e) “notification” means a notification published in the Official Gazette;

(f) “payment instruction” means any instrument, authorisation or order in any form, including electronic means, to effect a payment,—

(i) by a person to a system participant;
or

(ii) by a system participant to another system participant;

(g) “payment obligation” means an indebtedness that is owned by one system participant to another system participant as a result of clearing or settlement of one or more payment instructions relating to funds, securities or foreign exchange or derivatives or other transactions;

(h) “payment system” means a system that enables payment to be effected between a payer and a beneficiary, and includes clearing, payment or settlement service or all of them, but does not include a stock exchange;

(i) “prescribed” means prescribed by regulations made under this Act;

(j) “regulation” means a regulation made under this act;

(k) “Reserve Bank” means the Reserve Bank of India, constituted under the Reserve Bank of India Act, 1934;

2 of 1934.

(l) “security” means Government securities as defined in the Public Debt Act, 1944 or such other securities as may be notified by the Central Government from time to time under that Act;

18 of 1944.

(m) "settlement" means settlement of payment instructions and includes the settlement of securities, foreign exchange or derivatives or other transactions which involve payment obligations;

(n) "systemic risk" means the risk arising from—

(i) the inability of a system participant to meet his payment obligations under the payment system as and when they become due; or

(ii) any disruption in the system,

which may cause other participants to fail to meet their obligations when due, ultimately likely to have an impact on the stability of the system;

(o) "system participant" means a bank or any other person participating in a payment system and includes the system provider;

(p) "system provider" means a person who operates an authorised payment system.

2 of 1934.
10 of 1949.

(2) Words and expressions used, but not defined in this Act and defined in the Reserve Bank of India Act, 1934 or the Banking Regulation Act, 1949, shall have the meanings respectively assigned to them in those Acts.

CHAPTER II

DESIGNATED AUTHORITY AND ITS COMMITTEE

3. (1) The Reserve Bank shall be the designated authority for the regulation and supervision of payment systems under this Act.

Designated
authority
and its
Committee.

(2) The Reserve Bank may, for the purposes of exercising the powers and performing the functions and discharging the duties conferred

on it by or under this Act, by regulation, constitute a committee of the Central Board of the Reserve Bank.

(3) The Committee constituted under sub-section (2) shall consist of the following members, namely:—

(a) Governor, Reserve Bank of India, who shall be the Chairman of the Board;

(b) Deputy Governors, Reserve Bank of India, out of whom the Deputy Governor who is the in charge of the Payment and Settlement Systems, shall be the Vice-Chairman of the Board.

(c) Not exceeding three Directors from the Central Board of the Reserve Bank of India to be nominated by the Governor.

(4) The powers and functions of the Committee constituted under sub-section (2), the time and venue of its meetings, the procedure to be followed in such meetings (including the quorum at such meetings) and other matters incidental thereto shall be such as may be prescribed.

CHAPTER III

AUTHORISATION OF PAYMENT SYSTEMS

Payment system not to operate without authorisation.

4. (1) No person shall commence or operate a payment system except under and in accordance with an authorisation issued by the Reserve Bank under the provisions of this Act:

Provided that nothing contained in this section shall apply to—

(a) the continued operation of an existing payment system on the commencement of this Act for a period not exceeding six months from such commencement, unless within such period, the operator of such payment system obtains an authorisation under this Act;

(b) any person acting as the duly appointed agent of another person to whom the payment is due;

(c) a company accepting payments either from its holding company or any of its subsidiary companies or from any other company which is also a subsidiary of the same holding company;

(d) any other person whom the Reserve Bank may, after considering the interests of monetary policy or efficient operation of payment systems, the size of any payment system or for any other reason, by notification, exempt from the provisions of this section.

5. (1) Any person desirous of commencing or carrying on a payment system may apply to the Reserve Bank for an authorisation under this Act.

Application for authorisation.

(2) An application under sub-section (1) shall be made in such form and in such manner and shall be accompanied by such fees as may be prescribed.

6. After the receipt of an application under section 5, and before an authorisation is issued under this Act, the Reserve Bank may make such inquiries as it may consider necessary for the purpose of satisfying itself about the genuineness of the particulars furnished by the applicant, his capacity to operate the payment system, the credentials of the participants or for any other reason and when such an inquiry is conducted by any person authorised by it in this behalf, it may require a report from such person in respect of the inquiry.

Inquiry by the Reserve Bank.

7. (1) The Reserve Bank may, if satisfied, after any inquiry under section 6 or otherwise, that the application is complete in all respects and that it conforms to the provisions of this Act and the regulations issue an authorisation

Issue or refusal of authorisation.

for operating the payment system under this Act having regard to the following considerations, namely:—

(i) the need for the proposed payment system or the services proposed to be undertaken by it;

(ii) the technical standards or the design of the proposed payment system;

(iii) the terms and conditions of operation of the proposed payment system including any security procedure;

(iv) the manner in which transfer of funds may be effected within the payment system;

(v) the procedure for netting of payment instructions effecting the payment obligations under the payment system;

(vi) the financial status, experience of management and integrity of the applicant;

(vii) interests of consumers, including the terms and conditions governing their relationship with payment system providers;

(viii) monetary and credit policies; and

(ix) such other factors as may be considered relevant by the Reserve Bank.

(2) An authorisation issued under sub-section (1) shall be in such form as may be prescribed and shall—

(a) state the date on which it takes effect;

(b) state the conditions subject to which the authorisation shall be in force;

(c) indicate the payment of fees, if any, to be paid for the authorisation to be in force;

(d) if it considers necessary, require the applicant to furnish such security for the proper conduct of the payment system under the provisions of this Act;

(e) continue to be in force till the authorisation is revoked.

(3) Where the Reserve Bank considers that the application for authorisation should be refused, it shall give the applicant a written notice to that effect stating the reasons for the refusal;

Provided that no such application shall be refused unless the applicant is given a reasonable opportunity of being heard.

8. (1) If a system provider,—

Revocation
of authori-
sation.

(i) contravenes any provisions of this Act, or

(ii) does not comply with the regulations, or

(iii) fails to comply with the orders or directions issued by the designated authority, or

(iv) operates the payment system contrary to the conditions subject to which the authorisation was issued,

the Reserve Bank may, by order, revoke the authorisation given to such system provider under this Act:

Provided that no order of revocation under sub-section (1) shall be made—

(i) except after giving the system provider a reasonable opportunity of being heard; and

(ii) without prejudice to the direction of the Reserve Bank to the system provider that the operation of the payment system shall not be carried out till the order of revocation is issued.

(2) Nothing contained in sub-section (1) shall apply to a case where the Reserve Bank considers it necessary to revoke the authorisation given to a payment system in the interest of the monetary policy of the country or for any other reasons to be specified by it in the order.

(3) The order of revocation issued under sub-section (1) shall include necessary provisions to protect and safeguard the interests of persons affected by such order of revocation.

(4) Where a system provider becomes insolvent and is wound up, he shall inform the fact of his being insolvent or being wound up to the Reserve Bank and thereupon the Reserve Bank shall take such steps as deemed necessary, revoke his authorisation to operate the payment system.

Appeal to
the Central
Government.

9. (1) Any application for an authorisation whose application for the operation of the payment system is refused under sub-section (3) of section 7 or a system provider who is aggrieved by an order of revocation under section 8 may, within thirty days from the date on which the order is communicated to him, appeal to the Central Government.

(2) The decision of the Central Government on the appeal under sub-section (1) shall be final

CHAPTER IV

REGULATION AND SUPERVISION BY THE RESERVE BANK

Power to
determine
standards.

10. (1) The Reserve Bank may, from time to time, prescribe—

(a) the format of payment instructions and the size and shape of such instructions;

(b) the timings to be maintained by payment systems;

(c) the manner of transfer of funds within the payment system, either through paper, electronic means or in any other manner, between banks or between banks and other institutions;

(d) such other standards to be complied with the payment systems generally;

(e) the criteria for membership of payment systems including continuation, termination and rejection of membership;

(f) the conditions subject to which the system participants shall participate in such fund transfers and the rights and obligations of the system participants in such funds.

(2) Without prejudice to the provisions of sub-section (1), the Reserve Bank may, from time to time, issue such guidelines, as it may consider necessary for the proper and efficient management of the payment systems generally or with reference to any particular payment system.

11. (1) No system provider shall cause any change in the system which would affect the structure or the operation of the payment system without—

Notice of change in the payment system.

(a) giving notice of not less than thirty days to the system participants; and

(b) the approval of the Reserve Bank.

(2) Where the Reserve Bank has any objection, to the proposed change for any reason, it shall communicate such objection to the systems provider within two weeks of receipt of the intimation of the proposed changes from the system provider.

(3) The system provider shall, within a period of two weeks of the receipt of the objections from the Reserve Bank forward his

comments to the Reserve Bank and the proposed changes may be effected only after the receipt of approval from the Reserve Bank.

Power to call for returns, documents or other information.

12. The Reserve Bank may call for from any system provider such returns of documents as it may require or other information in regard to the operation of his payment system at such intervals, in such form and in such manner, as the Reserve Bank may require from time to time or as may be prescribed and such order shall be complied with.

Access to information.

13. The Reserve Bank shall have right to access any information relating to the operation of any payment system and system provider and all the system participants shall provide access to such information to the Reserve Bank.

Power to enter and inspect.

14. Any officer of the Reserve Bank duly authorised by it in writing in this behalf, may for ensuing compliance with the provisions of this Act or any regulations, enter any premises where a payment system is being operated and may inspect any equipment, including any computer system or other documents situated at such premises and call upon any employee of such system provider or participant thereof or any other person working in such premises to furnish such information or documents as may be required by such officer.

Information, etc., to be confidential.

15. (1) Subject to the provisions of sub-section (2), any document or information obtained by the Reserve Bank under sections 12 to 14 (both inclusive) shall be kept confidential.

(2) Notwithstanding anything contained in sub-section (1), the Reserve Bank may disclose any document or information obtained by it under sections 12 to 14 (both inclusive) to any person to whom the disclosure of such document or information is considered necessary for protecting the integrity,

effectiveness or security of the payment system, or in the interest of banking of monetary policy or the operation of the payment systems generally or in the public interest.

16. The Reserve Bank may, for the purpose of carrying out its functions under this Act, conduct or get conducted audits and inspections of a payment system or participants thereof and it shall be the duty of the system provider and the system participants to assist the Reserve Bank to carry out such audit or inspection, as the case may be.

Power to carry out and it and inspection.

17. Where the Reserve Bank is of the opinion that,—

Power to issue directions.

(a) a payment system or a system participant is engaging in, or is about to engage in, any act, omission or course of conduct that results, or is likely to result, in systemic risk being inadequately controlled; or

(b) any action under clause (a) is likely to affect the payment system, monetary or the credit policy of the country,

the Reserve Bank may issue directions in writing to such payment system requiring it, within such time as the Reserve Bank may specify—

(i) to cease and desist from engaging in the act, omission or course of conduct or to ensure the system participants to cease and desist from the act, omission or course of conduct; or

(ii) to perform such acts as may be necessary, in the opinion of the Reserve Bank, to remedy the situation.

18. Without prejudice to the provisions of the foregoing, the Reserve Bank may, if it is satisfied that for the purpose of enabling it to regulate the payment systems or in the interest of management or operation of any of the

Power of Reserve Bank to give directions generally.

payment systems or in public interest, it is necessary so to do, lay down policies relating to the regulation of payment systems including electronic, non-electronic, domestic and international payment systems affecting domestic transactions and give such directions in writing as it may consider necessary to system providers or the system participants or any other person either generally or to any such agency and in particular, pertaining to the conduct of business relating to payment systems.

Directions of Reserve Bank to be complied with.

19. Every person to whom a direction has been issued by the Reserve Bank under this Act shall comply with such direction without any delay and a report of compliance shall be furnished to the Reserve Bank within the time allowed by it.

CHAPTER V

RIGHTS AND DUTIES OF A SYSTEM PROVIDER

System provider to act in accordance with the Act, regulations, etc.

20. Every system provider shall operate the payment system in accordance with the provisions of this Act, the regulations, the contract governing the relationship among the system participants, the rules and regulations which deal with the operation of the payment system and the conditions subject to which the authorisation is issued, and the directions given by the Reserve Bank from time to time.

Duties of a system provider.

21. (1) Every system provider shall disclose to the existing or potential system participants, the terms and conditions including the charges and the limitations of liability under the payment system, supply them with copies of the rules and regulations governing the operation of the payment system, netting arrangements and other relevant documents.

(2) It shall be the duty of every system provider to maintain the standards determined under this Act.

22. (1) A system provider shall not disclose to any other person the existence or contents of any document or part thereof or other information given to him by a system participant, except where such disclosure is required under the provisions of this Act or the disclosure is made with the express or implied consent of the system participant concerned or where such disclosure is in obedience to the orders passed by a court of competent jurisdiction or a statutory authority in exercise of the powers conferred by a statute.

Duty to keep documents in the payment system confidential.

18 of 1991

(2) The provisions of the Banks' Book Evidence Act 1891 shall apply in relation to the information or documents or other books in whatever form maintained by the system provider.

23. (1) The payment obligations and settlement instructions among the system participants shall be determined in accordance with the gross or netting procedure, as the case may be, approved by the Reserve Bank while issuing authorisation to a payment system.

Settlement and netting.

(2) Where the rules providing for the operation of a payment system indicates a procedure for the distribution of losses between the system participants and the payment system, such procedure shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force.

(3) A settlement effected under such procedure shall be final and irrevocable.

(4) Where a system participant is declared by a court of competent jurisdiction as insolvent or is dissolved or wound up, then notwithstanding anything contained in the

Companies Act, 1956 or the Banking Regulation Act, 1949 or any other law for the time being in force, the order of dissolution or adjudication or winding up, as the case may be, shall not affect any settlement that has become final and irrevocable.

1 of 1956

10 of 1949

Explanation.—For the removal of doubts, it is hereby declared that the settlement, whether gross or net, referred to in this section is final and irrevocable as soon as the money, securities, foreign exchange or derivatives or other transactions payable as a result of such settlement is determined, where or not such money, securities or foreign exchange or derivatives or other transactions is actually paid.

CHAPTER VI

SETTLEMENT OF DISPUTES

Settlement
of
disputes.

24. (1) The system provider shall make provision in its rules or regulations for creation of panel consisting of not less than three system participants other than the system participants who are parties to the dispute to decide the disputes between system participants in respect of any matter connected with the operation of the payment system.

(2) Where any dispute in respect of any matter connected with the operation of the payment system arises between two or more system participants, the system provider shall refer the dispute to the panel referred to in sub-section (1).

(3) Where any dispute arises between any system participant and the system provider or between system providers or where any of the system participants is not satisfied with the decision of the panel referred to in sub-section (1), the dispute shall be referred to the Reserve Bank.

(4) The dispute referred to the Reserve Bank for adjudication under sub-section (3) shall be disposed of by an officer of the Reserve Bank generally or specially authorised in this behalf and the decision of the Reserve Bank shall be final and binding.

15 of 1992 (5) Where a dispute arises between the Reserve Bank, while acting in its capacity as system provider or as system participant, and another system participant, the matter shall be referred to a Securities Appellate tribunal established under section 15K of the Securities and Exchange Board of India Act, 1992 for settlement of the dispute and the decision of the said Tribunal shall be final and binding.

25. (1) Where an electronic funds transfer initiated by a person cannot be executed because of the account of money standing to the credit of that account is insufficient to honour the transfer instruction or that it exceeds the amount arranged to be paid from that account by an agreement made with a bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the electronic funds transfer, or with both;

Dishonour of electronic funds Transfer for insufficiency, etc., of funds in the account.

Provided that nothing contained in this section shall apply unless—

(a) the electronic funds transfer was initiated for payment of any amount of money to another person for the discharge, in whole or in part, of any debt on other liability;

(b) the electronic funds transfer was initiated in accordance with the relevant procedural guidelines issued by the system provider;

(c) the payee makes a demand for the payment of the said amount of money by giving a notice in writing to the person initiating the electronic funds transfer within thirty days of the receipt of information by him from the bank concerned regarding the dishonour of the electronic funds transfer; and

(d) the person initiating the electronic funds transfer fails to make the payment of the said money to the payee within fifteen days of the receipt of the said notice.

Explanation.—For the purpose of this section, “debt or liability” means a legally enforceable debt or other liability, as the case may be.

(2) The provisions of the Chapter XVII of the Negotiable Instruments Act, 1881 shall apply to the dishonour of electronic funds transfer to the extent the circumstances admit 26 of 1881.

CHAPTER VII

OFFENCES AND PENALTIES

Penalties. 26. (1) Where a person contravenes the provisions of section 4 or fails to comply with the terms and conditions subject to which the authorisation has been issued under section 7, he shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to ten years or with fine which may extend to one crore rupees or with both and with a further fine which may extend to one lakh rupees for every day, after the first during which the contravention or failure to comply continues.

(2) Whoever in any application for authorisation or in any return or other document or any information required to be furnished by or under, or for the purpose of, any provision of this Act, wilfully makes a

statement which is false in any material particular, knowing it to be false or wilfully omits to make a material statement, shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine which shall not be less than ten lakh rupees and which may extend to fifty lakh rupees.

(3) If any person fails to produce any statement, information, returns or other documents, or to furnish any statement, information, returns or other documents, which under section 12 or under section 13, it is his duty to furnish or to answer any question relating to the operation of a payment system which is required by an officer making inspection under section 14, he shall be punishable with fine which may extend to ten lakh rupees in respect of each offence and if he persists in such refusal, to a further fine which may extend to twenty-five thousand rupees for every day for which the offence continues.

(4) If any person discloses any information, the disclosure of which is prohibited under section 22, he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five lakh rupees or an amount equal to twice the amount of the damages incurred by the act of such disclosure, whichever is higher or with both.

(5) Where a direction issued under this Act is not complied with within the period stipulated by the Reserve Bank or where no such period is stipulated, within a reasonable time or where the penalty imposed by the Reserve Bank under section 30 is not paid within a period of thirty days from the date of the order, the system provider or the system participant which has failed to comply with the direction or to pay the penalty shall be

punishable with imprisonment for a term which shall not be less than one month but which may extend to ten years, or with fine which may extend to one crore rupees or with both and where the failure to comply with the direction continues, with further fine which may extend to one lakh rupees for every day, after the first during which the contravention continues.

(6) If any provision of this Act is contravened, or if any default is made in complying with any other requirement of this Act, or of any regulation, order or direction made or given or condition imposed thereunder and in respect of which no penalty has been specified, then, the person guilty of such contravention or default, as the case may be, shall be punishable with fine which may extend to ten lakh rupees and where a contravention or default is a continuing one, with a further fine which may extend to twenty-five thousand rupees for every day, after the first during which the contravention or default continues.

Offences
by
companies.

27. (1) Where a person committing a contravention of any of the provisions of this Act or any regulation, direction or order made thereunder is a company, every person who, at the time of the contravention, was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.

(2) Notwithstanding anything contained in sub-section (1), where a contravention of any

of the provisions of this Act or of any regulation, direction or order made thereunder has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.

28. (1) No court shall take cognizance of an offence punishable under this Act except upon a complaint in writing made by an officer of the Reserve Bank generally or specially authorised by it in writing in this behalf, and no court, lower than that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any such offence.

Cognizance of offences.

2 of 1974

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, a Magistrate may dispense with the personal attendance of the officer of the Reserve Bank filing the complaint, but the Magistrate may, in his discretion, at any stage of the proceedings, direct the personal attendance of the complainant.

29. A court imposing any fine under this Act may direct that the whole or any part thereof shall be applied in, or towards payment of, the costs of the proceedings.

Application of fine.

Power of Reserve Bank of India to impose fines.

30. (1) Notwithstanding anything contained in section 26, if a contravention of default of the nature referred to in sub-section (2) or sub-section (6) of section 26, as the case may be, the Reserve Bank may impose on the person contravening or committing default a penalty not exceeding five lakh rupees or twice the amount involved in such contravention or default where such amount is quantifiable, whichever is more, and where such contravention of default is a continuing one, a further penalty which may extend to twenty-five thousand rupees for every day after the first during which the contravention or default continues.

(2) For the purpose of imposing penalty under sub-section (1), the Reserve Bank shall serve a notice on the defaulter requiring him to show cause why the amount specified in the notice should not be imposed as a penalty and a reasonable opportunity of being heard shall also be given to such defaulter.

(3) Any penalty imposed by the Reserve Bank under this section shall be payable within a period of thirty days from the date on which notice issued by the Reserve Bank demanding payment of the sum is served on the defaulter and, in the event of failure of the person to pay the sum within such period, may be recovered on a direction made by the principal civil court having jurisdiction in the area where the registered office of the defaulter company or the official business of the person is situated.

(4) The Reserve Bank may recover the amount of penalty by debiting the current account, if any, of the defaulter or by liquidating the securities held to the credit of the defaulter or in accordance with the provisions of this Act:

Provided that no such direction shall be made, except on an application made by an

officer of the Reserve Bank authorised by it in this behalf.

(5) The court which makes a direction under sub-section (3) shall issue a certificate specifying the sum payable by the defaulter and every such certificate shall be enforceable in the same manner as it were a decree made by the court in a civil suit.

(6) Where any complaint has been filed against any person in any court in respect of the contravention or default of the nature referred to in sub-section (2), or, as the case may be, sub-section (4) of section 26, then no proceeding for the imposition or any penalty on the person shall be taken under this section.

2 of 1974

31. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence punishable under this Act for any contravention, not being an offence punishable with imprisonment only, or with imprisonment and also with fine, may on receipt of an application from the person committing such contravention either before or after the institution of any proceeding, be compounded by an officer of the Reserve Bank duly authorised by it in this behalf.

Power to compound offences.

(2) Where a contravention has been compounded under sub-section (1), no proceeding or further proceeding, as the case may be, shall be initiated or continued, as the case may be, against the person committing such contravention under that section, in respect of the contravention so compounded.

CHAPTER VIII

MISCELLANEOUS

32. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

Act to have overriding effect.

Mode of
recovery of
penalty.

33. (1) The penalty imposed on the defaulter by the Reserve Bank under section 30 may be recovered by issuing a notice to any person from whom any amount is due to the defaulter, by requiring such person to deduct from the amount payable by him to the defaulter, the amount payable to the Reserve Bank by way of penalty and pay to the Reserve Bank.

(2) Save as otherwise provided in this section, every person to whom a notice is issued under this sub-section shall be bound to comply with such notice, and, in particular, where such notice is issued to a post office, bank or an insure, it shall not be necessary for any passbook, deposit receipt, policy or any other document to be produced for the purpose of any entry, endorsement or the like being made before payment is made notwithstanding that any rule, practice or requirement to the contrary.

(3) Any claim respecting any property in relation to which a notice under this sub-section has been issued arising after the date of the notice shall be void as against any demand contained in the notice.

(4) Where a person to whom the notice under this sub-section is sent objects to it by a statement on oath that the sum demanded or any part thereof is not due to the defaulter or that he does not hold any money for or on account of the defaulter, then, nothing contained in this sub-section shall be deemed to require such person to pay any such sum or part thereof, as the case may be, but if it is discovered that such statement was false in any material particular, such person shall be personally liable to the Reserve Bank to the extent of his own liability to the defaulter on the date of the notice, or to the extent of the penalty imposed on the defaulter by the Reserve Bank, whichever is less.

(5) The Reserve Bank may at any time or from time to time, amend or revoke any notice issued under this section or extend the time for making the payment in pursuance of such notice.

(6) The Reserve Bank shall grant a receipt for any amount paid to it in compliance with a notice issued under this section and the person so paying shall be fully discharged from his liability to the defaulter to the extent of the amount so paid.

(7) Any person discharging any liability to the defaulter after the receipt of a notice under this section shall be personally liable to the Reserve Bank to the extent of his own liability to the defaulter so discharged or to the extent of the penalty imposed on the defaulter by the Reserve Bank, whichever is less.

(8) If the person to whom the notice under this section is sent fails to make payment in pursuance thereof to the Reserve Bank, he shall be deemed to be the defaulter in respect of the amount specified in the notice and further proceedings may be taken against him for the realisation of the amount as if it were an arrear due from him in the manner provided in this section.

Explanation.—For the purposes of this section, “defaulter” means any person or system provider or system participant on whom the Reserve Bank has imposed a penalty under section 30.

34. Nothing contained in this Act shall apply to any of the securities traded on Stock Exchanges or other Exchanges except in so far as they relate to settlement of payment instructions.

Non-applicability to Stock and other Exchanges.

35. (1) Ever officer of the Reserve Bank who has been entrusted with any power under this Act, shall be deemed to be a public servant

Certain persons deemed to be public servants.

within the meaning of section 21 of the Indian Penal Code.

Protection of action taken in good faith.

36. No suit or other legal proceedings shall lie against the Central Government, the Reserve Bank, or any officer thereof for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of this Act, any regulations, order or direction made or given thereunder.

Power to remove difficulties.

37. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provision as appears to it to be necessary or expedient for removing the difficulty:

Provided that no order shall be made under this section after the expiry of a period of two years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

Power of Reserve Bank to make regulations.

38. (1) The Reserve Bank may, with the previous sanction of the Central Government, by notification, make regulations for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing provision, such regulations may provide for all or any of the following matters, namely:—

(a) the powers and functions of the Committee constituted under sub-section (2), the time and venue of its meetings and the procedure to be followed by it at its meetings (including the quorum at such meetings), under sub-section (4) of section 3;

(b) the form and manner in which an application for authorisation for commencing or carrying on a payment

system shall be made and the fees which shall accompany such application under sub-section (2) of section 5;

(c) the form in which an authorisation to operate a payment system under this Act shall be issued under sub-section (2) of section 7;

(d) the format of payment instructions and other matters relating to determination of standards to be complied with by the payment systems under sub-section (1) of section 10;

(e) the intervals, at which and the form and manner in which the information or returns required by the Reserve Bank shall be furnished under section 12;

(f) such other matters as are required to be, or may be, prescribed.

(2) Any regulation made under this section shall have effect from such earlier or later date (nor earlier than the date of commencement of this Act) as may be specified in the regulation.

(3) Every regulation shall, as soon as may be after it is made by the Reserve Bank, be forwarded to the Central Government and that Central Government shall cause a copy of the same to be laid before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the regulation, or both Houses agree that the regulation should not be made, the regulation shall, thereafter, have effect only in such modified form or be of no effect, as the case may be; so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that regulation.

STATEMENT OF OBJECTS AND REASONS

The payment and settlement systems serve as a backbone of financial system of a country. In India, a host of payment systems are in operation ranging from manual paper-based clearing to the Real Time Gross Settlement (RTGS) System for facilitating non-cash mode of payments. The various retail payment systems in operation include the manual paper based clearing, MICR Clearing, Electronic Funds Transfer Systems (including the Electronic Clearing Services), Card Based Payment Systems, Government Securities Clearing, Forex Clearing, etc. The paper-based cheque processing is operated and managed by the Reserve Bank of India at the four metro centres, whereas at twelve other centres it is operated by public sector banks and managed by Reserve Bank of India, while at the remaining centres it is operated as well as managed by certain public sector banks. Clearing houses are not legal entities but voluntary bodies of banks who have come together for the expressed purpose of clearing payment instruments and instructions. The rules and regulations for the functioning of clearing houses are contractual in nature. Among the large-value payment systems, the Real Time Gross Settlement System is operated by the Reserve Bank of India while the inter-bank Government Securities and Foreign Exchange Clearing Systems are at present operated by Clearing Corporation of India Ltd. (CCIL). A new National Payments Corporation of India would be taking over the operations of retail payment systems. Both these corporate entities will be outside the specific regulatory purview. The operations of Card Based systems is not under the regulatory purview of the Reserve Bank of India, however, the Bank is indirectly regulating it through the card issuing banks.

2. The Central Board of directors of the Reserve Bank of India under section 58(2)(p) of the Reserve Bank of India Act, 1934 is empowered to make regulations of clearing houses for banks and under 58(2)(pp) of the said Act, to make regulations of fund transfer through electronic means. These regulations are adopted by the members of the clearing houses by way of contractual agreement.

3. The procedure of netting (arriving at the multilateral net settlement) is not legally recognised but has been adopted as a working procedure adopted by the members of the clearing houses.

4. In view of the above, it is considered necessary to enact a specific legislation which will, *inter alia*, empower the Reserve Bank of India

to act as the designated authority with the following powers and functions, namely:—

(a) to regulate and oversee the various payment and settlement systems in the country including those operated by non-banks like CCIL, card companies, other payment system providers and the proposed umbrella organisation for retail payments;

(b) lay down the procedure for authorisation of payment systems as well as revocation of authorisation;

(c) to lay down operational and technical standards for various payment systems;

(d) to call for information and furnish returns and documents from the service providers;

(e) to issue directions and guidelines to system providers;

(f) to audit and inspect the systems and premises of the system providers;

(g) to lay down the duties of the system providers;

(h) to levy fines and impose penalties for not providing information or documents or wrongfully disclosing information, etc.; and

(i) to make regulations for carrying out the provisions of the proposed legislation.

5. The Bill, *inter alia*, seeks to provide for the following matters, namely:—

(a) to designate the Reserve Bank of India as the designated authority for the regulation and supervision of payment systems in India for their smooth operations;

(b) to give legal recognition to the netting procedure and settlement finality; and

(c) to empower the Securities Appellate Tribunals to settle disputes between the Reserve Bank of India and the system providers.

6. The bill seeks to achieve the above objects.

P. CHIDAMBARAM.

NEW DELHI;
The 22nd May, 2006.

Notes on Clauses

Clause 1.—This clause provides for the name of the Act, its application and the commencement thereof.

Clause 2.—This clause seeks to define certain expressions used in the Bill. The definitions of the terms “derivative”, “electronic fund transfer”, “netting”, “payment instruction”, “payment obligation”, “payment system” and “settlement” are some of them. A “payment system” means a system which enables payment to be effected between a payer and a beneficiary, and includes a clearing, payment or settlement service or all of them, but does not include a stock exchange.

Clause 3.—This clause seeks to designate the Reserve Bank as the authority for the regulation and supervision of payment systems and also provides the constitution of a Committee of the Central Board of Directors of the Reserve Bank of India for such regulation and supervision.

Clause 4.—This clause seeks to provide that any person before commencing or operating a payment system shall obtain authorisation from the Reserve bank in accordance with the provisions of the proposed legislation.

Clause 5.—This clause seeks to require submission of an application to Reserve Bank by persons desirous or commencing or carrying on a payment system. The form of application, the manner of making such application and the fee which shall accompany such application shall be laid down by the Reserve Bank by regulations.

Clause 6.—This clause seeks to provide for an inquiry by the Reserve Bank before issue of authorisation, *inter alia*, regarding the genuineness of the particulars furnished by the applicant, his capacity to operate the payment system and the credentials of the participants.

Clause 7.—This clause seeks to provide for issue or refusal of authorisation by the Reserve Bank for operating a payment system.

Sub-clause (1) provides that the Reserve Bank may issue an authorisation after an inquiry and after satisfying itself about (i) the need for the proposed payment system, (ii) its technical standards or design, (iii) its financial status, (iv) its experience of management and

integrity of the applicant, (v) interests of consumers, (vi) monetary and credit policies and (vii) such other factors as may be considered by the Reserve Bank to be relevant for the purpose.

Sub-clause (2) provides laying down, by regulations, the form of authorisation and also required that the authorisation should state the date on which it will take effect, the conditions subject to which the authorisation will be in force, the fees to be paid, security to be furnished, etc.

Sub-clause (3) seeks to provide that in case of refusal for authorisation, the Reserve Bank should give the applicant a written notice stating the reasons for such refusal and also provide the applicant a reasonable opportunity of being heard.

Clause 8.—This clause seeks to provide for revocation of authorisations given by the Reserve Bank to any system provider under the proposed section 7.

Sub-clauses (1) and (2) enumerates the circumstances under which an authorisation may be revoked by the Reserve Bank, after providing the concerned system provider a reasonable opportunity of being heard. These circumstances, include, contravention of any provision of the proposed legislation, non-compliance with the regulations, failure to comply with the orders or directions of the Reserve Bank of operation of a payment system contrary to the conditions imposed while giving such authorisation. Further, the Reserve Bank has been provided with the power to revoke authorisation to a payment system in interest of monetary policy.

Sub-clause (3) provides that the order of revocation shall include provisions for protection and safeguard of the interest of persons affected by such order.

Sub-clause (4) seeks to provide for revocation of authorisation by the Reserve Bank in case of insolvency of the system provider.

Clause 9.—This clause seeks to provide for an appeal to the Central Government against an order of refusal or revocation of a authorisation by the Reserve Bank and for finality of the order passed by the Central Government.

Clause 10.—This clause seeks to empower the Reserve Bank with the power to determine and prescribe standards, *inter alia*, in respect of format of payment instructions, timings to be maintained by payment

systems, manner of transfer of funds, the criteria of membership of payment systems and their rights and obligations. It also empowers the Reserve Bank to issue guidelines for effective management of payment systems.

Clause 11.—This clause seeks to provide that the system providers shall not cause any change effecting the structure and operation of the payment system without giving notice to the system participants and without the approval of the Reserve Bank.

Clause 12.—This clause seeks to empower the Reserve Bank with the power to call for returns, documents or other information from any system provider regarding the operations of the payment systems.

Clause 13.—This clause seeks to empower the Reserve Bank to access any information relating to any payment system with the system provider and the system participants.

Clause 14.—This clause seeks to provide the officers of the Reserve Bank duly authorised by the Bank the power to enter and inspect any premises where a payment system is operated and any equipment including any computer system or other documents and also require any employee of the system provider working at such premises to furnish information.

Clause 15.—This clause seeks to impose a duty on the Reserve Bank to keep any document or information obtained by it by way of returns or inspection confidential, excepting in cases where the disclosure of such document or information is considered necessary for protecting the integrity, effectiveness or security of the payment system, in the interest of banking or monetary policy or operation of payment systems, or in public interest.

Clause 16.—This clause seeks to provide the Reserve Bank with the power to conduct or get conducted audits and inspections of a payment system or system participants.

Clause 17.—This clause seeks to provide for issuance of written directions by the Reserve Bank to a system provider or system participant to cease and desist from any act, omission or course of conduct that would result in systemic risks or affects the payment system, monetary or credit policy of the country or to perform such acts, as may be necessary, for remedying the situation.

Clause 18.—This clause seeks to empower the Reserve Bank to issue general directions laying down policies for regulation of payment

systems, or in the interest of management or operation of any of the payment systems or in the public interest.

Clause 19.—This clause imposes a duty on every person to whom a direction is issued in writing by the Reserve Bank to comply with such directions without delay and furnish such compliance report to the Reserve Bank.

Clause 20.—This clause seeks to impose a duty on every system provider to act in accordance with the provisions of the proposed legislation, regulations, contract governing the relationship among the system participants, rules and regulations which deal with the operation of the payment system and conditions subject to which the authorisation is issued, and the directions given by the Reserve Bank.

Clause 21.—This clause deals with the duties of system providers.

Sub-clause (1) seeks to impose a duty on every system provider to disclose to the system participants, the terms and conditions including the charges and limitation of liabilities under the payment systems and the rules and regulations governing it and to maintain the determined standards.

Sub-clause (2) imposes a duty on the system provider to maintain the standards as determined under the provisions of the proposed legislation.

Clause 22.—This clause deals with the duty of the system providers to keep documents and information provided by the system participants confidential and the applicability of the Bankers' Books Evidence Act, 1891 to such information, documents and other books maintained by the system providers.

Sub-clause (1) imposes a duty on every system provider to keep the documents/and information given to him by the system participant confidential, except where it is required to be disclosed under law.

Sub-clause (2) provides that the Bankers' Books Evidence Act, 1891 shall apply to the information or documents or other books maintained by the system providers.

Clause 23.—This clause provides for gross and netting procedure and for settlement in a payment system, the procedure for distribution of losses among system participants and the finality and irrevocable nature of settlement.

Sub-clause (1) seeks to provide for determination of settlement of payment obligations (both gross and netting) in a payment.

Sub-clause (2) seeks to provide that the procedure for the distribution of losses between the system participants and the payment system, as provided by the rules for operation of a payment system, shall have effect notwithstanding anything to the contrary contained in any other law.

Sub-clauses (3) and (4) provides for the finality and irrevocability of the settlement, notwithstanding of the provisions of the Companies Act, 1956 or the Banking Regulation Act, 1949 or any other law for the time being in force.

Clause 24.—This clause seeks to provide for settlement of disputes in a payment system.

Sub-clauses (1) and (2) seek to provide for settlement of disputes between system participants, by way of a reference by the system provider, through a panel consisting of not less than three system participants who are not parties to the dispute.

Sub-clauses (3) and (4) seeks to provide for settlement of disputes between system providers and system participants or between system providers or where the system participants are not satisfied with the decision of the panel constituted under *sub-clause (1)*, by authorised officers of Reserve Bank.

Sub-clause (4) provides that where Reserve Bank is a party to the dispute as a system provider or participant, such disputes shall be referred to a Securities Appellate Tribunal established under section 15K of the Securities and Exchange Board of India Act, 1992 for settlement of disputes.

Clause 25.—This clause provides for the penalty on a person for non-execution of electronic funds transfer, initiated by that person, due to insufficiency of funds etc. and the conditions under which the provisions of the *clause* shall be attracted and also the applicability of Chapter XVII of the Negotiable Instruments Act, 1881 for dishonour of electronic funds transfer to the extent the circumstances admit.

Clause 26.—This clause contains provisions relating to offences and penalties.

Sub-clause (1) provides that a person contravening the provisions of clause 4 or the conditions subject to which an authorisation has

been issued under clause 7, shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to ten years or with fine which may extend to one crore rupees or with both and with further fine which may extend to one lakh rupees for every day, after the first during which the contravention or failure to comply continues.

Sub-clause (2) provides that in case of offences of wilful submission of false statement or wilful omission to submit material statement, in any application for authorisation or return or other document, the punishment shall be imprisonment for a term which may extend to three years and fine of not less than ten lakh rupees, which may extend to fifty lakh rupees.

Sub-clause (3) provides that whoever fails to produce or furnish any statement, information, return or document under Clauses 12, 13 or 14, he shall be punishable with fine which may extend to ten lakh rupees in respect of each offence and if the offence persists for a further fine which may extend to twenty five thousand rupees for every day for which the offence continues.

Sub-clause (4) provides that whoever discloses information which is prohibited under clause 22, he shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to five lakh rupees or an amount equal to twice the amount of damages incurred by the act, whichever is higher or with both.

Sub-clause (5) provides that when the directions issued by the Reserve Bank is not complied with within the stipulated time or a reasonable time, as the case may be, or penalty imposed under clause 30 is not paid with thirty days from the date of the order, the same shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to ten years, or with fine which may extend to one crore rupees or with both and where the failure to comply with the direction continues, with further fine which may extend to one lakh rupees for every day, after the first during which the contravention continues.

Sub-clause (6) provides a punishment of fine which may extend to ten lakh rupees and where a contravention or default is a continuing one, with further fine which may extend to twenty five thousand rupees for every day, after the first during which the contravention or default continues, for contravention of the provisions of the proposed legislation, or default in complying with any requirement under the proposed legislation or contravention of any regulation, direction or

order made or given or condition imposed under the proposed legislation.

Clause 27.—This clause deals with the provisions relating to offences by companies.

Sub-clause (1) provides that where a person committing a contravention of any of the provisions of the proposed legislation or any regulation, direction or order made thereunder is a company, every person who, at the time of the contravention, was in charge of and was responsible to the company for the conduct of business of the company, as well as the company, shall be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

Sub-clause (2) provides that where any offence under the proposed legislation is committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

Clause 28.—This clause contains provisions relating to cognizance of offences. It provides that no Court shall take cognizance of an offence punishable under the proposed legislation except upon a complaint in writing made by an officer of the Reserve Bank generally or specially authorised by it in writing in this behalf and the jurisdiction to try offences have been conferred on courts not lower than that of a Metropolitan or a Judicial Magistrate of the first class. It also provides with the power to the Court to dispense with the personal attendance of the complainant in the proceedings.

Clause 29.—This clause deals with application of fine towards payment of the costs of the proceedings.

Clause 30.—This clause confers the power on the Reserve Bank to impose fines.

Sub-clause (1) provides for imposition of penalty by the Reserve Bank for contravention of sub-clause (2) or sub-clause (6) of clause 26. The Reserve Bank may impose a penalty which may extend to five lakh rupees or twice the amount is involved in the contravention if the same is quantifiable.

Sub-clause (2) seeks to provide for serving of notice on the defaulter specifying the amount of the proposed fine and providing a reasonable opportunity of hearing to him.

Sub-clause (3) provides for payment of penalty imposed by the Reserve Bank within thirty days from date of notice demanding payment and on the failure of which the same shall be recovered on a direction made by the principal Civil Court having jurisdiction.

Sub-clause (4) provides for recovery of the amount of penalty by the Reserve Bank by debiting the current account of the defaulter or by liquidating the securities held to its credit.

Sub-clause (5) provides for issue of certificate by a Court issuing direction under sub-clause (3) specifying the sum payable by the defaulter and the enforceability of such certificate as a decree of a Court.

Sub-clause (6) provides that no proceeding for imposition of fine shall be taken on a person against whom a complaint has been filed before a Court for contravention of sub-clause (2) of sub-clause (4) of clause 26.

Clause 31.-This clause seeks to empower the Reserve Bank to compound offences.

Sub-clause (1) provides that the officer authorised by the Reserve Bank may compound any offences under the proposed legislation, except those which are punishable with imprisonment and also fine, on an application from the offender.

Sub-clause (2) provides that no proceeding can be initiated or continued, in respect of a contravention compounded under sub-clause (1).

Clause 32.-This clause provides that the provisions of the proposed legislation shall have effect notwithstanding of anything inconsistent therewith in any other law for the time being in force.

Clause 33.-This clause provides for the mode of recovery of penalty imposed by the Reserve Bank under clause 30 from a person from whom money is due to the defaulter after issue of notice. It also imposes a duty on such person to whom notice is issued to comply with such notice. Further, it provides for full discharge of such person from his liability to the defaulter to the extent of the amount paid. This clause also provides that the person discharging any liability to the defaulter after receipt of notice shall be personally liable to the Reserve Bank to the extent of his liability towards the defaulter or to the extent of the fine imposed on the defaulter. If a person fails to

make payment on receipt of notice, then he shall be deemed to be the defaulter in respect of the amount specified in the notice and the same shall be recovered from him in the manner provided under the proposed legislation.

Clause 34.-This clause provides that the provisions of the proposed legislation will not be applicable in case of securities traded on stock exchanges or other exchanges, except in so far as they relate to settlement of payment instructions.

Clause 35.-This clause provides that officers of the Reserve Bank entrusted with any power under the proposed legislation shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

Clause 36.-This clause seeks to protect the action taken in good faith by the Central Government, the Reserve Bank or any officer thereof, under the proposed legislation. It provides that no suit or legal proceeding for damage caused or likely to be caused, shall lie against the specified persons, for anything done in good faith under the proposed legislation.

Clause 37.-This clause empowers the Central Government issue order published in the Official Gazette making such provisions not inconsistent with the provisions of the proposed legislation for removing difficulties in giving effect to its provisions. Such orders could be issued within two years from the date of commencement of the proposed legislation. It also provides for laying of such orders before each House of Parliament.

Clause 38.-This clause confers power on the Reserve Bank to make regulations, with the previous sanction of Central Government for the purpose of giving effect to the provisions of the proposed legislation. The regulation may, *inter alia*, provide for (i) constitution of committee under sub-clause (2) of clause 3, (ii) determination of standards to be complied with by payment systems, (iii) regulation of funds transfers and (iv) form and manner in which application for authorisation to operate a payment system under the proposed legislation shall be made. The regulations which may be made by the Reserve Bank shall be published in the Official Gazette and be laid before each House of Parliament.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (1) of clause 38 of the Bill empowers the Reserve Bank of India to make, with the previous sanction of the Central Government and by notification in the Official Gazette, regulations for carrying out the provisions of the proposed legislation.

2. Sub-clause (2) of the said clause enumerates the matters in respect of which such regulations may be made. The matters in respect of which such regulations may be made, *inter alia*, relate to the powers and functions of the Committee constituted under sub-section (2) of clause 3, the time and venue of its meetings and the procedure to be followed by it as its meetings (including the quorum at such meetings) under Sub-clause (4) of clause 3; the form and manner in which an application for authorisation to operate a payment system under the proposed legislation shall be made under clause 5 and the fees that shall accompany such application; the form and manner in which an application for commencing or carrying on an authorization shall be made and the fee which such application shall accompany under Sub-clause (2) of clause 5; the form in which an authorisation to operate a payment system under the proposed legislation shall be issued under sub-clause (2) of clause 7; the determination of standards to be complied with by the payment systems under of section 10; the intervals, form and manner in which the information or returns required by the Reserve Bank shall be furnished under clause 12.

3. The regulations made under the aforesaid clause 38 shall have effect from an earlier date or a latter date but not earlier than the date on commencement of the proposed legislation. The regulations are also required to be laid before both the Houses of Parliament.

4. The matters in respect of which the regulations may be made are matters of procedure or details and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

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to provide for the regulation and supervision of payment systems in India and to designate the Reserve Bank of India as the authority for that purpose and for matters connected therewith or incidental thereto.

(Shri P. Chidambaram, Minister of Finance)