Inter-Ministerial Committee for Finalisation of Amendments of the PSS Act, 2007

RECOMMENDATIONS

TO

CONSOLIDATE AND AMEND THE LAW RELATING TO PAYMENTS

REPORT

August, 2018

Constituted by

MINISTRY OF FINANCE, GOVERNMENT OF INDIA
Dear Finance Minister,

The Committee to finalise a new Bill to consolidate and amend the law relating to payments is pleased to present its report. The Bill seeks to foster competition, consumer protection, systemic stability and resilience in payment sector and establish an independent Payments Regulatory Board (PRB) to regulate the same.

A copy of the draft *Payment and Settlement System Bill, 2018* is enclosed with this report.
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The Payment and Settlement Systems Bill, 2018
Acknowledgement

The Committee was constituted on October 3, 2017 to re-examine the draft Payment and Settlement System Bill submitted by the Inter Departmental Group constituted by the Department of Economic Affairs (DEA) on March 15, 2017 and to finalise the draft Bill.

The Committee acknowledges the efforts of the members and recognises the collaborative work undertaken by the team at the Unique Identification Authority of India (UIDAI), Reserve Bank of India (RBI), Ministry of Electronics and Information Technology (MeitY), Department of Financial Services (DFS), Department of Legal Affairs (DoLA) and the DEA in reviewing the multiple drafts. Special mention must be made of the legal review of the Bill, in addition to the subject matter input, provided by Ajay Bhushan Pandey's team at UIDAI. The Committee benefited greatly from Dr. Shashank Saxena, DEA for highlight the evolution of the PSS Act, 2007.

The Committee was ably supported by the research work of the Macro Finance Policy team at National Institute of Public Finance and Policy (NIPFP) comprising Aditya Rajput, Ashish Aggarwal, Jai Vipra, Nelson Chaudhuri, Shivangi Tyagi and Sumant Prashant. I appreciate and acknowledge their contribution to this report.

August 2018
New Delhi Subhash Chandra Garg
Yours sincerely

Subhash Chandra Garg
Secretary, Department of Economic Affairs

Ajay Prakash Sawhney
Secretary, Department of Electronics and Information Technology

Ajay Bhushan Pandey
CEO, Unique Identification Authority of India

S. Ganesh Kumar
Executive Director, Reserve Bank of India

Madnesh Kumar Mishra
Joint Secretary, Department of Financial Services

Preshant Goyal
Joint Secretary, Department of Economic Affairs

Dr. Rajiv Mani
Joint Secretary & Legal Adviser, Department of Legal Affairs
Executive Summary

1. The Payment and Settlement Act, 2007 was the first dedicated law to regulate and supervise the payment systems in India. It provided for powers to the Reserve Bank of India to constitute a Board to regulate the payments sector and it provided legal basis for basic features of a payment system framework i.e. netting and settlement finality.

2. Growth in FinTech has enabled non-banks to play a significant role in payments. This combined with the Government's agenda to promote growth of digital payments resulted in a comprehensive review of the vision for the payments sector with an objective to promote access and competition in the payments industry.

3. A Committee on Digital Payments constituted by the government in 2016 made a detailed case of independent regulation of payments and its separation from the function of central banking, management of monetary policy and operation of payment systems.

4. As a first legislative step to implement the above recommendations, in 2017, the government amended the PSS Act to provide for a Payments Regulatory Board (PRB) to regulate payments and commenced work on a detailed review of the PSS Act.

5. Thereafter a Committee comprising group of officers from the Government and the Reserve Bank reviewed the suggestions of the Committee on Digital Payments in the context of the PSS Act and drafted a new Bill to replace the existing Act.

6. This Committee reviewed the above Bill and undertook detailed consultations with its members. This resulted in an updated draft. See: Deliberations of the Inter-Ministerial Committee on page 15.

7. The updated Bill seeks to foster competition, consumer protection, systemic stability and resilience in payment sector and establish an independent PRB to regulate the payment sector, including non-banks as significant players in the payments ecosystem, and to consolidate and amend the law relating to payments.

8. The Bill provides for:

   - the PRB to be an independent payments regulator.
   - further changes to the composition of the PRB beyond the composition provided in the Finance Act, 2017 (Annex 3.14).
• the RBI to have significant representation on the PRB and envisages a formal mechanism for co-ordination so that the regulation of payments, in so far as it may be relevant in the context of financial stability, monetary policy and credit policy is achieved harmoniously.

9. All the Committee members unanimously agreed on all the clauses of the proposed Payment and Settlement System Bill, 2018 expect for the following:

a) RBI: The RBI suggested that the PRB should be with the RBI and the Chairperson of the PRB should be from the RBI and should have a casting vote. Accordingly to the RBI, this would provide the RBI with the necessary powers, in the context of its monetary policy function, to issue directions to the payment system provider(s).

b) DFS: The DFS suggested that the Bill should explicitly provide for public/government ownership of at-least fifty-one percent equity ownership in the National Payments Corporation of India (NPCI) and for the Central Government to have powers to appoint two nominee directors on the Board of payment system providers where the ownership of public sector banks was in majority or where a payment system provider was operating a payment system of national importance and the Central Government felt it was in public interest to appoint nominee directors. Accordingly to the DFS, this would ensure that NPCI is not owned by banks and facilitate a level playing field as NPCI was operating key payment infrastructure and was also competing in the sector as a service provider.

10. The Committee's analysis of suggestions from the RBI:
a) The Committee noted that the qualification of the Chairperson in the Bill provided for the Chairperson to have experience in the central banking function. To further address RBI's concerns, the Committee incorporated section 10 in the Bill to provide RBI with the powers to make a reference to the PRB to consider any matter, which in the opinion of the RBI was important in the context of the monetary policy. Under section 9, PRB shall make a reference to RBI when it proposes to make any regulation against a designated payment system and the RBI can give its opinion in this regard. If PRB disagrees with the opinion of RBI, and RBI does not agree with the reasons given by the PRB, the RBI can also make a reference to the Central Government.

b) The RBI has highlighted that there are many jurisdictions where the Central Bank is regulator of the payment systems. The Committee does not disagree with this. However, jurisdictions like the United Kingdom and Australia demonstrate the fact that there are multiple regulators having concurrent jurisdictions over payment systems.

c) The fact that in some jurisdictions there are regulators and supervisors which are different from the Central Banks is a proof that regulation and supervision of payment system is not a natural corollary of a Central Bank's currency management system. The PRB has been given sufficient powers in the proposed Bill to ensure that the public's ability to transmit money smoothly and securely through payment and settlement systems is ensured. These are significantly more than the existing Payment and Settlement System Act, 2007 (PSSA, 2007).

11. The Committee's analysis of suggestions from the DFS:

a) Additional requirements for infrastructure systems have been provided in the Bill to enable the regulator to restrict the ownership level of banks or non-banks, individually or collectively as a category. Further, changes were introduced in the Bill to provide the regulator with power to specify the requirements around independent directors and consumer representatives on the board of a payment infrastructure institution.
b) The Committee decided that it may not be advisable for government to get into the ownership and management of payment systems and infrastructure systems, if the concerns can be addressed without that. Therefore, the Committee did not consider it necessary for the law to mandate government ownership or directors in payment infrastructure institutions.

c) The Committee is of the view that suggestions pertaining to NPCI should be considered separately at an appropriate forum.

12. The Committee recommends the proposed Payment and Settlement System Bill, 2018 to consolidate and amend the law relating to the payment sector. The Bill is being submitted along with this report. The Committee recommends that the Government may place the Bill before the Union Cabinet for its consideration. See: Recommendations on page 23.

13. The Bill has 100 sections as against 38 sections in the existing Act. A table of content of the proposed Bill is given below.
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1 Background

1.1 The PSSA, 2007\(^1\) was enacted to regulate and supervise the payment systems in India. It came into force with effect from 12th August 2008. This Act authorised the RBI to constitute a Committee from its Central Board known as the Board for Regulation and Supervision of Payment and Settlement Systems (BPSS), to exercise its powers and perform its functions and discharge its duties under this statute. The Act also provided the legal basis for netting and settlement finality.

1.2 This Act has enabled initiation of effective steps towards financial inclusion and expansion of payments market in India. Since it was enacted, a few amendments have been made in the Act in 2015, mainly to strengthen provisions around consumer protection and finality of determination of payment obligations and settlement instructions.

1.3 While much has been achieved in the payments space in India, after the enactment of the PSSA, 2007, much still remains to be done. In 2013, the Nachiket Mor Committee Report observed that despite significant progress in bank-led payment systems, there remained a vast gap in the availability of basic payment services for small business, and low-income households. In the same year, Report of the Working Group on Payments, Financial Sector Legislative Reforms Commission (FSLRC), noted that the payments industry globally has transformed rapidly in recent decades, providing promise for a similar transformational change in India. There are compelling reasons to argue that the perspectives governing the future of this industry need to be markedly different from those which guided it in the past, as the growth dynamic of this industry has changed. It recommended major reforms to the PSSA, 2007 to enable competition and innovation in the payments market and strengthen provisions around consumer protection.

1.4 Globally, non-cash transaction volumes grew to reach 433.1 billion in 2015, the highest growth of the past decade. This growth has been fuelled by emerging

\(^1\)PSS Act 2007.
markets in Asia and Central Europe, Middle East, and Africa.\textsuperscript{2} The growth in non-cash transactions is taking place in an enabling regulatory environment that is helping transform processes and bring new solutions in the payments market.

1.5 With the objective of laying foundation of a digital future, the Union Cabinet, Government of India (GOI), in February 2016, outlined its vision to promote digital payments. The Ministry of Finance (MoF) outlined the steps to be taken over the short, medium and long term.\textsuperscript{3} The medium term steps were decided to be implemented within two years.

1.6 A Committee on Digital Payments was constituted under the Chairmanship of Shri Ratan P. Watal, Former Finance Secretary and Principal Advisor, NITI Ayog on August 23, 2016 to review medium term measures necessary to promote the digital payment system in the Country. The Committee submitted Medium term recommendations to strengthen digital payments ecosystem, requiring legislative changes. The Committee specifically recommended the following\textsuperscript{4}:

- Establishment of the PRB within the overall structure of RBI with majority of non-RBI members nominated by the Central Government (Annex 3.14).\textsuperscript{5}
- Replacing the existing \textit{PSS Act} with a new law.

1.7 The report provided recommendations on the provisions to be considered in the new Bill.

1.8 The Committee has noted that, traditionally, the field of payments has been

\textsuperscript{2}See, World Payments Report 2017, Capgemini, BNP Paribas, \url{https://www.worldpaymentsreport.com/}

\textsuperscript{3}Department of Economic Affairs, Ministry of Finance, Government of India 2016.

\textsuperscript{4}See, Annexure 3.14.

\textsuperscript{5}To make the regulation of payments independent from the functioning of the Central Bank, the Watal Committee weighted two options. The rst option was to create a new payments regulator and the second option was to make the current \textit{Board of Regulation and Supervision of Payment and Settlement Systems (BPSS)} within RBI more independent by adding more independent members in the BPSS. After elaborate deliberations, the Watal Committee took the view that the second option is more feasible.
bank driven. However, technology has led to payments emerging as a
distinct industry: one that is increasingly dominated by FinTech companies.

Payment is a business of transferring money. In contrast, banking is the
business of intermediating between depositors and borrowers, and lending to
serve the needs of both.

1.9 The Committee in its report has made a detailed case of independent
regulation of payments and its separation from the function of central
banking, management of monetary policy and operation of payment systems.

1.10 It observed that central banks are ideally placed to be macro-prudential
regulators, and deal with matters of systemic importance. The objective of
central banks is to promote financial stability in any manner whereas
regulation of payments largely relates to regulating the market conduct of the
operators. The consumer interest may, therefore, be best achieved by a
creating a regulatory regime that is ownership neutral towards the operators
and provides for a risk based framework which enables competition without
endangering financial stability.

1.11 On February 1, 2017, the Finance Minister in his Budget speech announced: 6

1. Creation of a PRB in the RBI by replacing the BPSS and


1.12 In March 2017, the DEA, MoF, under Joint Secretary, Currency and
Coin Division, formed a Group of Officers with representatives of RBI,
MeitY, DFS and the DoLA to suggest improvements to the PSSA, 2007. 7
The Securities and Exchange Board of India (SEBI) participated in the
discussions of the Group from its second meeting.

1.13 The Group took into consideration the recommendations of Committee
on Digital Payments. Feedback received from all the Group members was

6 See, Annexure 3.14. The Payments Regulatory Board provided in Finance Act, 2017 has
not been notified.
7 See, Annexure 3.14.
In its summary, the report had noted:

Banks, the incumbents, today face increasing competition from new FinTech Payment Service Providers (PSPs). Banks earn revenues (i) by using low cost Current Account, Savings Account (CASA) deposits of consumers for onward lending at higher rates; (ii) when consumers undertake payments transactions, and (iii) from the oat when payments transactions move slowly. This business model is now increasingly under pressure, more so for those banks who are not geared to compete and innovate. FinTech companies that require to connect to banking systems to serve their customers tend to face restrictive practices. This anti-competitive setting is not conducive for innovation and consumer interest. Moreover, India stands to lose out on benefits from global innovation as international technology based PSPs do not find it attractive to grow in India and Indian banks are not challenged to become truly globally competitive.

Payments now need to be regulated independently. The approach of RBI has already been to regulate non-banks in payments lightly. This has enabled them to emerge as significant players in a relatively short time frame. This growth now needs to be nurtured so that banks face competitive pressure to innovate and non-banks enjoy an equal opportunity to compete. Globally, this has been recognised and structural changes have been put in place to ensure that the consumers benefit the most from this technology led payments revolution. This is true for many progressive economies including countries in European Union (including UK), Australia and South Africa. The common theme across these jurisdictions is to promote increased participation of non-banks in payments, and promote access and competition in the payments industry.
considered. This group recommended that the PSSA, 2007 should be replaced by a new Bill and submitted a draft Bill to this effect.

1.14 In November 2017, the DEA, MoF, formed this Inter-Ministerial Committee headed by Secretary (Economic Affairs) with representatives of RBI, MeitY, DFS and the DoLA to review the draft Bill suggest by the Group constituted in March.\(^8\)

\(^8\)The order constituting this Committee is annexed to the report on page 60.
2 Deliberations of the Inter-Ministerial Committee

2.1 This Committee reviewed the Bill proposed by the Inter Departmental Group. Each of the representatives of the Inter-Ministerial Committee submitted detailed feedback on the provisions of the Bill. The feedback was deliberated at the meetings of the Committee and this exercise was repeated multiple times.

2.2 As part of the Committee's work process, detailed rationale was provided to each of the member wherever the comments were found acceptable or not acceptable.

2.3 The issue of making regulation of payments independent of the central banking function was extensively discussed and debated by the Committee on Digital Payments. It was again discussed in detail in this Committee in the context of the proposed changes in the payments legislation. This Committee also debated on the desirable form and manner of such independence.

2.4 UK and Australia, two of the large modern financial systems have created their own models of independent payments regulatory design. Europe is implementing Payment System Directive 2 (PSD2) which promotes payments regulation in a ownership neutral manner. It also provides a framework for non-banks to access the payment systems operated by banks based on consumer consent, effectively creating a potential for FinTech to drive customer solutions.

2.5 India needs to develop its own model to achieve its objective of a modern and future ready regulatory framework for payments. An increase in competition is generally desirable but it requires a matching regulatory design to provide effective regulation, enforcement and consumer protection. The role of the RBI in financial stability and providing the settlement function for key payment systems cannot be over emphasised.
2.6 RBI manages the nation's monetary policy - determines the size and rate of growth of the money supply. It issues and manages the currency, targets the optimal level of inflation and provides banking to the Government. It also regulates banks and payment systems and operates the key payment systems. It runs the inter bank settlement system. This has been the case traditionally all over the world.

2.7 Due to the rapid developments in technology, payments are getting tightly integrated into existing and new business models giving rise to development of new payment solutions. This has fuelled the emergence of digital payments and the increase in scope for FinTech companies to enable and provide payment solutions.

2.8 It is increasingly evident that it is no longer necessary to be a bank to provide payment solutions. The NPCI which operates inter entity payment systems like the Immediate Payment Service (IMPS) is not a bank. At a consumer level, non-banks such as digital wallet-based payments and payments integrated with chats and social media have led the innovation in payment system like digital wallet based payments and social payments integrated with chat and social media. Globally, the emergence of technology led payment solutions is being seen as a catalyst to modernise the payment ecosystem.

2.9 The regulatory design needs to evolve to keep pace with the emerging scenario. A more inclusive regulatory design is likely to further promote competition and as a result help improve access, safety and convenience related to payments and help reduce transaction costs. It may also lead to more innovation in the payment solutions. It is important to distinguish the role of the Central Bank as an infrastructure institution providing settlement function from its role as a regulator of the payment sector. It is this role of the regulator which needs to evolve from being largely bank centric.
Debate

2.10 All the Committee members, except the RBI, agreed on the need for an independent PRB.

2.11 The feedback from MeitY and UIDAI was fully addressed during the course of the deliberations. The last sets of comments from other members of the Committee were discussed on 18th June, 2018 and suitably dealt with.¹

Views of the RBI

2.12 The RBI suggested that:
   1. the regulation and supervision over the payment systems be retained with the RBI in the proposed Bill, and

   2. the chairperson of the PRB should be from the RBI and he should have a casting vote.

Committee’s analysis of RBI’s suggestions

2.13 The suggestions made by the RBI were based on the consideration that only central banks could effectively regulate the payment systems. The Committee noted the concerns of the RBI. The proposed Bill was modified to provide experience in the central banking function as a qualification of the chairperson. To further address RBI’s concerns, the Committee made changes to the Bill to provide RBI with the powers to make a reference to the PRB to consider any matter, which in the opinion of the RBI was important in the context of the monetary policy.

2.14 However, RBI’s assertion that there could be an intrinsic problem in regulation of payments if they are not within the ambit of the Central Bank and might result in regulatory arbitrage appears to be without evidence. This has been discussed in detail in the analysis of the RBI’s submissions.

¹ See, Annexure 3.14.
2.15 There are many jurisdictions where the Central Bank is the regulator of the payment systems. The Committee does not disagree with that fact. However, it is not necessary that in order to exercise its currency management function, the Central Bank must be the regulator of the payments sector. In the UK, no regulator has monopoly over the payment systems with different regulators having concurrent jurisdiction over different aspects of the payment system ecosystem. Similarly, in Australia, the payment systems are regulated by a separate board within the Reserve Bank of Australia. This board is functionally and operationally independent from the central board of the Reserve Bank of Australia. The fact that in some jurisdictions there are regulators and supervisors which are different from the Central Banks is a proof that regulation and supervision of payment system is not a natural corollary of a Central Bank's currency management system.

2.16 The PRB has been given sufficient powers in the Bill to ensure that the public's ability to transmit money smoothly and securely through payment and settlement systems is ensured. These are more comprehensive than those in the existing PSSA, 2007. The treatment of the role of the RBI has been detailed out in the Role of RBI section of the Recommendations on page 31.

2.17 All other specific suggestions from RBI on the provisions of the Bill have been addressed and there are no further comments from the RBI on the other clauses of the Bill.

Views of the DFS

2.18 The DFS suggested that:

1. *Ownership structure of NPCI*: The Bill should explicitly provide for public/ government ownership of at least fifty-one percent equity in the NPCI.
Accordingly to the DFS, this would ensure that NPCI is not owned by banks and facilitate a level playing field as NPCI was operating key payment infrastructure and was also competing in the sector as a service provider.

2. **Government nominee directors:** The Bill should provide for the Central Government to have the powers to appoint two nominee directors on the Board of any Company which operates a payment system, if (i) at least fifty-one percent of its ownership is held by the public sector banks, or (ii) if the Central government is of the opinion that a company operates a payment system of national importance and such appointment is in public interest.

2.19 In its letter dated 22.06.18, the DFS, reiterated the *Medium term recommendations to strengthen digital payments ecosystem* of Committee on Digital Payments regarding the need for ownership of the NPCI to be demutualised from payment system participants and that key infrastructure institutions should have majority public interest directors. The DFS has in its support stated that a meeting of the Committee of Secretaries (CoS) has recommended that the ownership and management of the NPCI be examined.²

**Committee’s analysis DFS’s suggestions**

2.20 The submissions of the DFS were aimed at removing the inherent conflict of interest resulting from the ownership of infrastructure institutions being held by a single entity or a group of entities representing a particular section of the market operators. A specific case was made in the context of the NPCI where the ownership was held by banks while non-banks were also expected to be important participants in the payment sector. It pointed out that the public sector banks owned 58.5% equity and as per the Committee on Digital Payments ten banks held 74.7% equity.

2.21 The Committee has made several modifications in the Bill to address the concerns highlighted by the DFS.

²The DFS referred to the meeting of CoS held on 21.06.18.
1. Chapter 12 (Additional requirements for infrastructure systems) was introduced in the Bill. This seeks to address these concerns by providing additional requirements for infrastructure systems. Under section 71, the payment infrastructure systems are deemed to be designated payment systems and the additional oversight applicable on the designated payment systems (section 66-70) applies to such systems. In addition, in case of infrastructure systems, the regulator can restrict the ownership level of banks or non-banks, individually or collectively as a category. The regulator has also been provided power to specify the requirements around independent directors and consumer representatives on the board of an infrastructure institution. Section 72 (Ownership and governance structure) of the Bill provides:

   a) An infrastructure institution shall ensure that its ownership and governance structures give precedence to the interests of consumers over the profit-making motive, if any, of the infrastructure institution.

   b) The Regulator may specify, (a) the maximum ownership interest that can be held by a class or classes of persons in an infrastructure institution; (b) the manner of calculating the ownership interests of different classes of persons in an infrastructure institution; (c) the requirement to have independent members on the governing body of an infrastructure institution; and (d) the requirement to have a representative or class of representatives of consumers availing of the services provided by the infrastructure institution, on the governing body of an infrastructure institution.

2. Section 73 (Additional requirements for bye-laws) provides that the bye-laws of an infrastructure system must promote the objective that the PRB is required to pursue as contained in Chapter 4 (Objectives of the Payments Regulatory Board). Therefore, if an infrastructure institution is acting otherwise, it shall invite regulatory action.

2.22 It is relevant to note that, Section 67 (Power to appoint observer in public interest) provides the regulator with the power to appoint an observer on the board of a designated payment system in pursuance of its objections under Section 8(4) (Systemic stability and resilience objective).

\footnote{See, Annexure 3.14}
2.23 The Committee decided that it may not be advisable for government to get into the business of actually operating the payment systems or the payment system infrastructure, if the concerns can be addressed without that. The Bill provides adequate obligations on the regulator to ensure appropriate ownership and governance requirements for infrastructure institutions. Therefore, the Committee did not consider it necessary for the law to mandate government ownership or directors in infrastructure institutions.

Consensus

2.24 All the Committee members, including the RBI and the DFS, agreed on clauses of the proposed Payment and Settlement System Bill, 2018 other than those relating to:

1. Composition of the PRB (*Difference of view: RBI*) and

2. Providing for majority public/ government ownership and Central Government nominees on entities such as NPCI (*Difference of view: DFS*).
3 Recommendations

Bill to consolidate and amend the law related to the payment sector

3.1 The Committee recommends a Bill to consolidate and amend the law related to the payment sector. The proposed Payment and Settlement System Bill, 2018 is being submitted along with this report.

3.2 The Bill provides for the PRB to be an independent payments regulator. It provides for the RBI to have significant representation on the PRB and envisages a formal mechanism for co-ordination between the RBI and the PRB so that the regulation of payments, in so far as it may be relevant in the context of financial stability, monetary policy and credit policy is achieved harmoniously.

3.3 The objectives provided in the proposed Bill and the provisions highlighted in this report are substantially new and are not present in the existing PSSA, 2007.

3.4 The Bill explicitly recognises risk based regulatory framework. This is achieved by recognition of designated payment systems, infrastructure payment systems and settlement institution explicitly and providing for proportionate regulatory framework.¹

An independent Payments Regulatory Board

3.5 In the Finance Act of 2017, the government amended the PSSA, 2007 to provide for a PRB. This Committee reviewed and discussed the composition

¹ See, Annexure 3.14.
and design of the PRB at length. It recommends a revised composition as provided below:

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<th>Position</th>
<th>Finance Act 2017</th>
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<td>Chairperson</td>
<td>- Governor of RBI, ex-officio</td>
<td>- Person appointed by the Government in consultation with the RBI.</td>
</tr>
<tr>
<td>RBI representatives</td>
<td>- 1 Deputy Governor of RBI in-charge of the Payment and Settlement Systems, ex officio</td>
<td>- 1 Deputy Chairman, nominated by the Central Board of RBI, not below the rank of Executive Director, ex-officio;</td>
</tr>
<tr>
<td></td>
<td>- 1 Officer of the RBI, to be nominated by the Central Board of RBI, ex officio.</td>
<td>- 2 whole-time members, appointed by the Central Board of RBI.</td>
</tr>
<tr>
<td>Persons to be nominated by the Central Government</td>
<td>- 3 persons to be nominated by the Central Government</td>
<td>- 1 officer, nominated by the Central Government, not below the rank of Joint Secretary, ex-officio;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- 2 whole-time members.</td>
</tr>
<tr>
<td>Total</td>
<td>6</td>
<td>7</td>
</tr>
</tbody>
</table>

3.6 The proposed constitution has been recommended to provide a slightly broad based composition and provision for whole-time chairperson and four whole-time members. In the composition provided in the Finance Act, there were three positions with RBI and three with the Central Government. All the members were nominated or independent. In that design, there were no whole-time members on the PRB. The revised design proposed by this Committee seeks to addresses this gap.
Objectives for the PRB

3.7 The Bill lays down the following objectives for the PRB:

1. *Consumer protection*: (i) Protect the interest of consumers, (ii) ensure safety and soundness of the payment systems, and (iii) create trust and confidence in the payment systems.


3. *Competition and innovation*: to enable, in the interest of consumers, (i) system participants to access payment systems based on objective, ownership neutral and proportionate standards, (ii) interoperability among system participants and among payment systems, (iii) payments systems and payment services to be developed and operated in a manner that promotes their ease of use, and (iv) improvements in the quality, efficiency and economy of payment systems and payment services.

3.8 Competitive markets reduce the risks of market failures. The above objectives are directed towards addressing situations where the competitive outcome of markets is not satisfactory for the society. The market failures in the payments industry may generally relate to systemic risk, network externalities, collective action problem and information asymmetry. These require interventions in the form of objectives as outlined above. For instance, open access, interoperability and innovation are recognised as a means to reduce entry barriers and enable competition in the payments ecosystem. In addition to the objectives, the Bill provides for a robust regulation making process.²

²A regulator needs to be obligated to follow a robust regulation making process. This should begin with the regulator clearly articulating the problem it is attempting to solve. Thereafter, the industry and the consumers should be able to transparently participate in the regulation making process and the regulator should be obligated to respond to the feedback. Absence of regulatory objectives in the law and lack of a robust regulation making process can lead to undesirable decisions. For example, a regulator following such a process to weigh the option of mandating interoperability vis a vis enabling interoperability shall be better placed to frame desirable regulations.
3.9 The objectives themselves are closely inter-related. These need to be balanced inter se when regulations are being formulated. For example, competition and innovation on one side and systemic stability and resilience and consumer protection objectives on the other side may at times individually pull against each other. The Bill seeks to provide a suitable framework to empower and guide the PRB towards fulfillment of the above objectives while balancing each one of them.

**Role of RBI**

3.10 The proposed Bill recognises the role of RBI as an infrastructure institution in relation to its function of providing settlement system and payment system. The Bill provides for a co-ordination mechanism between the PRB and the RBI. It provides for the PRB to make reference to the RBI in relation to making regulations for designated payment systems. It also provides the RBI with the powers to make a reference to the PRB to consider any matter, which in the opinion of the RBI is important in the context of the monetary policy.

**Other key provisions**

3.11 One of the core function of payment systems is to ensure public's ability to transmit money. This ability depends on many factors including, for example:

1. Deployment of consumer funds (how liquid and safe they are, can they be co-mingled with any other business).

2. Capital structure of the system provider (debt on its balance-sheet).

3. Robustness of payment systems, especially large and core payment systems.

3.12 The Bill provides PRB with sufficient powers to ensure public's ability to transmit money smoothly and securely through payment and settlement systems. These include:
1. Authorisation criteria to be risk based for different classes of payment systems. The Bill does differentiate between entities as banks and non-banks. It is ownership neutral. It recognises designated payment systems including infrastructure systems as requiring additional oversight and provides for such oversight.

2. Access and interoperability criteria for payment systems to be objective, ownership neutral and proportionate while safeguarding against risks such as settlement risk, operational risk and business risk, to protect the financial and operational stability of payment systems.

3. A mechanism for innovation through regulatory sandbox ³

4. A mechanism for the industry to suggest changes in regulations or seek formal clarifications through rule making petition.⁴

5. An obligation to follow a consultative process to regulation making by:
   a) publishing draft regulations with sufficient information on the problem being addressed by the regulation and the manner in which such problem is sought to be addressed, and
   b) considering public feedback in finalising its regulations and provide an analysis of its treatment of such feedback.

6. Obligation on the market participants to disclose information reasonably required by a consumer to make an informed transactional decision.

7. Principles of consumer protection to evaluate the level of protection required for a consumer and an obligation on the PRB to ensure that regulations are reasonably commensurate with the anticipated aggregate benefits for the consumers.

8. Flexibility in regulation making on protection of consumers' funds and

³ Authorised entities may apply for individual guidance and potentially limited period exemptions from regulations to bring genuine innovative products such as new payment services to market more quickly, while ensuring adequate customer protections. The PRB may frame regulations on the manner and conditions for considering such applications.

⁴ A person may apply for regulation making where no regulations exist or where an amendment to existing regulation is sought. The PRB shall have the discretion not to grant the petition.
taking into account possible anti-competitive effects of such regulations.

9. An independent grievance mechanism for complaints against market participants and an appeal mechanism before the SAT\(^5\) against orders passed under this Act.

10. Powers to investigate, appoint observer, conduct search and seizure and initiate remedy in the form of private warning, public statement, declaring an entity as not t and proper and disgorgement orders.

11. Stringent fines and penalties for violation of law and regulations and for non-compliance with enforcement actions.

12. An annual performance based reporting mechanism.

13. Powers to provide regulations to enable access to personal information for the limited purpose of prevention, investigation, and detection of fraud for safeguarding payment systems.

3.13 As per the proposed Bill, the PRB would only issue two types of instruments, regulations and orders (Directions would also be in the form of orders), thereby reducing unnecessary multiplicity of instruments. The proposed Bill has 100 sections as against 38 sections in the existing Act.

**Next steps**

3.14 The Committee recommends that the Government may place the proposed Bill before the Union Cabinet for its consideration.

\(^5\)As the redress related framework in the financial sector is maturing, the specification of the exact redress mechanism has been left for the PRB to determine through regulations.
Annexure A: Finance Act, 2017

functions as the Presiding Officer or Judicial or Technical Member:

Provided that he shall not be removed from office under clauses (d) and (e), unless he has been given a reasonable opportunity of being heard in the matter;)

(b) in section 14T,—

(i) in sub-section (1),—

(A) in clause (b), for the words “under this Act,” the words “under this Act; or” shall be substituted;

(II) in sub-section (3), after the words “adjudicating officer”, the words “or the Insurance Regulatory and Development Authority or the Pension Fund Regulatory and Development Authority;” shall be inserted;

(III) in sub-section (5), after the words “the Board”, the words “or the Insurance Regulatory and Development Authority or the Pension Fund Regulatory and Development Authority” shall be inserted;

(IV) in sub-section (7), the following sub-sections shall be inserted, namely—

(1) Where Benches are constituted, the Presiding Officer of the Securities Appellate Tribunal may, from time to time make provisions as to the distribution of the business of the Securities Appellate Tribunal amongst the Benches and also provide for the matters which may be dealt with, by each Bench:

(5) On the application of any of the parties and after notice to the parties, and after hearing such of them as he may direct to be heard, or on his own motion without such notice, the Presiding Officer of the Securities Appellate Tribunal may transfer any case pending before one Bench, for disposal, to any other Bench.

(6) If a Bench of the Securities Appellate Tribunal consisting of two members differ in opinion on any point, they shall state the points on which they differ, and make reference to the Presiding Officer of the Securities Appellate Tribunal who shall either hear the point or points himself or refer the case for hearing only on such point or points by one or more of the other members of the Securities Appellate Tribunal and such point or points shall be decided according to the opinion of the majority of the members of the Securities Appellate Tribunal who have heard the case, including those who first heard it;

PART VIII

Amendment to the Finance Act, 2005

146. In the Finance Act, 2005, the Seventh Schedule shall be amended in the manner specified in Annexure A.

PART IX

Amendments to the Payment and Settlement Systems Act, 2007

147. The provisions of this Part shall come into force on such date as the Central Government may, by notification, appoint, and different dates may be appointed for different provisions of this 40 Part.

148. In the Payment and Settlement Systems Act, 2007 (hereafter in this Part referred to as the principal Act), for Chapter III, the following Chapter shall be substituted, namely:—

CHAPTER II

Designated authority

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

(2) The Reserve Bank shall exercise the powers, perform the functions and discharge the duties conferred on it under this Act through a Board to be known as the “Payments Regulatory Board”.

(3) The Board shall consist of the following members, namely—
(a) the Governor of the Reserve Bank—Chairperson; ex officio;
(b) the Deputy Governor of the Reserve Bank who is in-charge of the Payment and Settlement Systems—Member; ex officio;
(c) one officer of the Reserve Bank to be nominated by the Central Board of the Reserve Bank—Member; ex officio; and
(d) three persons to be nominated by the Central Government—Members.

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

149. In section 38 of the principal Act, in sub-section (2), in clause (a), for the words, brackets Amendment and figure “Committee constituted under sub-section (2)”, the words, brackets and figure “Board of section 38 referred to in sub-section (2)” shall be substituted.

PART X

AMENDMENTS TO THE

FINANCE

ACT, 2016

150. In the Finance Act, 2016,—

(i) in section 50, for the words, figures and letters “with effect from the 1st day of April, 2017”, the words, figures and letters “and shall be deemed to have been substituted with effect from the 1st day of April, 2013” shall be substituted;

(ii) in section 197, clause (c) shall be omitted and shall be deemed to have been omitted with effect from the 1st day of June, 2016.

Declaration under the Provisional Collection of Taxes Act, 1931

It is hereby declared that it is expedient in the public interest that the provisions of clauses 109(a), 110, 118 and 146 of this Bill shall have immediate effect under the Provisional Collection of Taxes Act, 16 of 1931. 1931.
more relevant with more consumers being on-boarded onto digital payments platforms across the country.

To address these drawbacks in the current law, the Committee recommends that the Payment and Settlement Systems Act, 2007 be replaced by an updated legislation - Payment and Settlement Systems Act, 2017.

- The Government should:

  **P.1** Make regulation of payments independent from the function of central banking

  a) The law must ensure that payments regulation is independent of central banking.

  b) The Committee recommends that the payments function should be independent of the central banking function of the RBI. This can be achieved by making the BPSS more independent by introducing members from outside RBI. For clarity, this new independent board is referred to as PRB in the recommendations.

  c) If there is any conflict between the payments policies or regulations of the PRB and the micro-prudential or central banking policies or regulations of the Central Board of RBI, the latter's decision will prevail.

  **P.2** Update the current Payment and Settlement Act, 2007 to include explicit mandate for principles enumerated below:

  - Competition and innovation

    a) The primary objectives of the PRB must include promotion of competition and innovation in the payments market.

    b) Every regulation made by the PRB must be preceded by a competition impact assessment.

    c) Every regulation made by the PRB must be preceded by a cost benefit analysis such that:
Final comments were received from DoLA on 08.05.18. The DFS gave its final comments on 16.05.18 and provided additional points to supplement the same vide their letter dated 22.06.18. The RBI submitted its final comments on 22.05.18 and provided another letter dated 14.06.18 to supplement its suggestions.

Analysis of comments from the Reserve Bank of India

1. Constitution of PRB is at variance with the Finance Act, 2017: As noted in the Recommendations section of the report, the proposed constitution has been recommended to provide a slightly broad based composition, whole-time chairperson and whole-time members. In the composition provided in the Finance Act, there were three positions with RBI and three with the Government. The RBI positions included the chairperson. This meant that the chairperson would not be whole-time. In addition, all the other members were nominated or independent. Therefore, there was no whole-time member on the PRB. The revised design proposed by this Committee seeks to addresses this. It continues to provide three positions to the RBI including the position of Deputy Chairman. Further, it is proposed that the Government shall appoint the whole time chairperson in consultation with the RBI.

2. Almost all jurisdictions regulate payment systems under Central Banks. Regulation under a separate entity will create a segmentation which is not desirable and can also provide an opportunity for regulatory arbitrage which is best avoided: The RBI letter has given the example of credit cards and debit cards as essentially banking products which would be subject to regulation under the PRB in the proposed Bill. Credit cards are payment instrument in form and unsecured consumption loans in substance. There is no fundamental reason for them to be only issued by Banks. Any agency which is permitted to
provide credit could potentially provide credit cards. It is not evident as to why a credit product loaded on a card to allow digital transactions cannot be effectively regulated by a payments regulator which is not a Central Bank. Same is the case with debit cards. This cards simply enable transactions based on an account which holds the funds. Instead of a card, it could be a mobile device and instead of a bank account, the account could be a digital wallet account offered by a non-bank.

3. *RBI’s role in maintaining efficiency and safety of payment systems is important. This (proposed model) may have a cascading effect in the transmission of monetary policy as well* - which is an explicit objective of the central bank - since payment and settlement systems have an indirect role on money supply as well: The PRB design and the provisions of the Bill are expected to only increase public’s confidence in payment systems. Issue of banknotes and management of currency is a function of the Reserve Bank. The proposed Bill does not deal with issuance or withdrawal of currency. It is not necessary that in order to exercise its currency management function, RBI must be the regulator of the payments sector. Public’s ability to transmit money depends on many factors including, for example: Deployment of consumer funds (how liquid and safe they are, can they be co-mingled with any other business); Capital structure of the system provider (debt on its balance-sheet); and robustness of payment systems, especially large and core payment systems. RBI’s role as an operator of core payment system and settlement system is fully recognised as an infrastructure institution in the proposed Bill. RBI shall continue to be able to stipulate requirements to be fulfilled by participants in payments systems operated by it.

4. *RBI’s letter dated 14.06.18 highlighting regulatory approaches in some countries*: This letter contends that, in the highlighted countries, payment is regulated by the central banks and this strengthens the case for payment systems to be regulated by the RBI. We have carefully reviewed the study provided by the RBI. Some of the country examples highlighted are discussed below:

- The RBI’s study states that the Bank of England supervises the payment systems. On 1 April 2015, the UK became the first country in the world to have separate regulator of payment systems.
The Payment System Regulator (PSR) regulates the payment systems in the UK under the *Financial Services (Banking Reforms) Act*, 2013. The Financial Conduct Authority (FCA) is responsible for the regulation of non-bank payment service providers under the *Payment Services Regulations, 2009* and *Electronic Money Regulations 2011*. The PSR is a subsidiary of the FCA and is the independent economic regulator for the payment systems industry in the UK. There are no reports pointing to any concerns about the design of their regulatory structure, especially in the context of regulatory arbitrage. The UK PSR regulates:

a) the eight payment systems that have been designated by the Treasury (Bacs, CHAPS, FPS, LINK, Cheque and Credit, Northern Ireland Cheque Clearing, Mastercard and Visa)

b) the participants in those payment systems (such as banks, building societies, merchant acquirers and other payment service providers (PSPs))

c) the companies that provide the infrastructure for payment systems the connections that make the systems work

d) designated alternative switching schemes under the Payment Accounts Regulations 2015 (PARs) this currently includes the Current Account Switch Service (CASS)

e) PSR is also the lead competent authority for the Interchange Fee Regulation (IFR) in the UK. The IFR mainly imposes requirements on payment card schemes, and issuing and acquiring PSPs.

The Bank of England’s role is of an operator of payment system and a settlement agent for other payment systems. It operate the Clearing House Automated Payment System (CHAPS) and the real-time gross settlement (RTGS) service, and the infrastructure that holds accounts for these payment system. In its role as a regulator, the Bank

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6 See: Part 5, Regulation of Payment Systems (Section 39-110).
7 Under the Payment Services Regulations, 2009, the Authority means the Financial Services Authority. See section 2(1) in Interpretation.
8 See, https://www.bankofengland.co.uk/payment-and-settlement.
of England's wholly owned company, The Prudential Regulation Authority (PRA) is responsible for this prudential regulation and supervision of around 1,500 banks, building societies, credit unions, insurers and major investment firms. In the UK model, the regulation of important payment systems and non-bank payment systems is not with the Bank of England.

Today regulation of payment is one of the many functions in the RBI. A new regulator which has a significant RBI role to benefit from the related synergies but whose design allows it to regulate payments in an ownership neutral manner is expected to help deliver regulations suitable to the emerging scenario. UK's regulatory structure is an example on these lines.

- In case of Australia, the RBI notes that their Payments System Board (PSB) operates with their Central Bank and is chaired by the Central Bank Governor who has the casting vote. The PSB in Australia is an eight member body and five of these members are appointed by the Government. Therefore, the PSB in Australia is predominantly composed of non-Central Bank members. It seems that this point has been missed in the RBI's study. Further, there is no reported evidence that Australia is doing a rethink of its model in favour of shifting to a Central Bank run payments regulation.

- The RBI has mentioned Germany as an example of supervision by central bank. However, in Germany, authorisation of banks, financial services providers, and payment and e-money institutions is granted by BaFin, the Federal Financial Supervisory Authority. At present, BaFin supervises around 1,740 banks and 674 financial services institutions in Germany. In Germany, the task of banking supervision is shared by the Bundesbank (Germany's central bank) and BaFin. While the Bundesbank has oversight over the payment systems, it recognises the concerns around the conflict of interest in its role as an operator and supervisor.

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The RBI's letter states that Bank of Japan has an important function of providing settlement assets and settlement services and enhancing the safety and efficiency of payment and settlement systems. However, the RBI's letter does not mention that the Central Bank of Japan i.e. Bank of Japan (BOJ) is not the regulator of banking and payment systems in Japan. The regulator is the Japanese Financial Services Agency.\textsuperscript{12} The BOJ is a juridical person established under the Bank of Japan Act and it is not a government agent. Its objectives are to contribute to maintaining the stability of the financial system by:

a) Issuing banknotes and carrying out currency and monetary control.

b) Ensuring the smooth settlement of funds among banks and other financial institutions.

The supervision of banks is considered to be the role and responsibility of the government. The BOJ is not a government agent and does not have the regulatory power to supervise banks. However, as the lender of last resort, the BOJ can provide liquidity to banks in the case of their insolvency, to achieve its objectives. In playing the role as the lender of last resort, the BOJ may enter into agreements with banks, under which the BOJ is authorised to audit the banks.

Japan has been in a process of reforming its payment sector. The *Strategies for Reforming Japanese Payment Systems - Final Report* presented to the Japanese Minister for Financial Services by the chairman of the Financial System Council, says:

The directions to be pursued, on page 5 -

In Japan, banks have been the main provider of payment services, which have been relatively closed and remote from non-bank players and business development overseas. However, recent innovation in this field is mainly led by non-bank players including Fintech enterprises. Considering this changing situation, banks are required to continue

making efforts to innovate their banking operations through, for example, strategic adoption of cutting-edge IT so as not to be left behind by global trends of innovation.

Also, in following those directions, a shift from the conventional closed structure of payment systems mainly dominated by banks is important also in Japan, which would help promote innovation of payment services through competition in which various players, not limited to banks, participate. At the same time, it is important, especially for banks, to formulate business structures and business models focusing on open innovation (i.e. innovation through partnership with third parties) and not adhering to in-house resources.

The two letters from the RBI dated 22.05.18 and 14.06.18 are provided below.
Letter of the RBI dated 22.05.18

To: The Director, (C&C)  
Government of India,  
Ministry of Finance,  
Department of Economic Affairs,  
Currency and Coinage Division,  
North Block, New Delhi – 110 001.

Dear Sir,

Request for comments on revised Draft Bill for amendments of PSS Act, 2007

Please refer to your letter F.No.-1/0/2016-Cy.II dated May 14, 2018, outlining the changes made in the draft of the proposed Payment and Settlement Systems Bill.

2. In addition to the initial observations which were communicated earlier vide our letter DPSS. CO. OD. No. 2322/06.08.008/2017-18 dated February 22, 2018, we have the following additional observations to make:

i. We appreciate that some of our comments have been taken into consideration in the revised draft bill.

ii. As announced in the Finance Act, 2017, we had indicated that the RBI should continue to be the regulator of the payment systems and the Governor, RBI should be the Chairman of the PRB with a second/casting vote for the Governor. In the latest version of the Bill, the PRB has been created independent of the RBI and the Governor as member of the Board which is at variance with the Finance Act, 2017.

iii. It is reiterated again that in almost all countries of the world, payment systems regulation is under the jurisdiction of Central Banks due to stability considerations. You will agree that commonalities in oversight between banks, accounts of customers and settlement service providers. Regulation over banks also has an organic linkage with payment and settlement systems which may not be achieved if the regulation of payment systems is with an entity other than the central bank. A case in point is credit cards, which is actually a credit instrument given by a bank to its customers, but is a payment instrument. Regulations issued in respect of credit cards thus integrate credit related requirements as well as those of importance to
digital payment systems. This same holds good for debit cards as well since this is an effective mechanism for withdrawal of money from accounts of customers, like the way cheques perform. Since cheques have been kept out of the purview of the proposed bill, this also poses itself as a candidate for exemption. Similar to the case of electronic debt for transactions such as ATM for loan repayments, these are all banking transactions pertaining to credit extended by the bank and to have the regulated under a separate entity will create a segmentation which is not desirable and can also provide an opportunity for regulatory arbitrage, which is best avoided.

4. It may be mentioned that so far as the model in Australia is concerned, they have a Payments System Board (PSB) which decides the Central Bank’s payments systems policy. However, the PSB operates within the Central Bank and is chaired by the Central Bank Governor and the Governor has a casting vote. In fact, we are not aware of any country where the model proposed in the bill is followed. While we do require experimentation and innovation in payment and settlement systems, from a governance perspective, an established, well working structure should be continued. Additionally, this may have a cascading effect in the transmission of monetary policy as well — which is an explicit objective the central bank — since payment and settlement systems have an indirect role on money supply as well.

3. In view of the above, as the efficacy of the proposed model of PSB has not been established elsewhere in the world, there appears to be no strong rationale for implementing an uprooted model.

4. Payment systems are significant contributors to the effectiveness and stability of the financial system, especially in consumer transactions and the functioning of business. Efficient and safe use of money as a medium of exchange is an important function of the currency and foundation of public confidence in it. This makes RBI’s role in maintaining efficiency and safety of payment systems very important.

5. Given the above and the fact that the Payment and Settlement Systems Act, 2007 is one of the most recent legislations which has aided the country well, we strongly feel that the optimal approach would be to provide for these changes rather than drafting an entirely new legislation.

Yours faithfully,

[Signature]

[Name]
Executive Director
Letter of the RBI dated 14.05.18

Observations on the draft Payment and Settlement Systems Bill

Please refer to the discussions held and Executive Director, Shri S. Ganesh Kumar had with you on May 25, 2016 in respect of the draft Payment and Settlement Systems Bill 2018.

2. We have since conducted a detailed study on the model of regulation and supervision of payment systems as prevalent in various jurisdictions. It is observed that these tasks are under the jurisdiction of the central banks. Given the important role that banks play in this area, leaving supervision of the payment system with the supervisor of the banking system provides synergy. I am enclosing a document which outlines the approaches followed by some major countries. In view of the international experience, you may please consider retaining the regulation and supervision over the payment systems with the Reserve Bank of India in the new Payment & Settlement Systems Bill. Besides, the Payment Systems Regulatory Board should be chaired by the Governor, Reserve Bank and he should have a casting vote. This would ensure smooth operation of the framework.

With regards

Yours sincerely

(B.P. Kanungo)

Shri Subhash C. Gang
Secretary
Department of Economic Affairs
Ministry of Finance
Government of India
New Delhi-110 001

Ends: As above
<table>
<thead>
<tr>
<th>Country</th>
<th>Central Bank</th>
<th>Role in Payment System Regulation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australia</td>
<td>Reserve Bank of Australia</td>
<td>In terms of the Reserve Bank Act, there are two Boards; the Reserve Bank Board and the Payments System Board. The Payments System Board is responsible for the Reserve Bank’s payments system policy, including policy in relation to clearing and settlement (C&amp;S) facilities. It is chaired by the Governor of the Bank and has up to seven other members. However, if a conflict were to arise, the view of the Reserve Bank Board would prevail to the extent that there was any inconsistency in policy. If there are disagreements between the Boards on questions of jurisdiction or inconsistency of policy, they are to be resolved by the Governor, who chairs both Boards.</td>
</tr>
<tr>
<td>Bangladesh</td>
<td>Bangladesh Bank</td>
<td>Regulation and supervision of the payment system is one of the major functional areas of the Bangladesh Bank.</td>
</tr>
<tr>
<td>Belgium</td>
<td>National Bank of Belgium</td>
<td>One of the statutory tasks assigned to the National Bank is to promote efficient and sound clearing and payment systems, as the regulator.</td>
</tr>
<tr>
<td>Brazil</td>
<td>Central Bank of Brazil (BCB)</td>
<td>BCB has the role of the regulator, which is shared with the Brazilian Securities Commission (CVM) according to their respective areas of competence. BCB is responsible for authorizing and overseeing banks and clearing and settlement systems, including those that settle securities, foreign exchange and derivatives transactions.</td>
</tr>
<tr>
<td>China</td>
<td>The People’s Bank of China</td>
<td>One of the major functions of the PBC is to make payment and settlement rules in collaboration with relevant departments and ensuring normal operation of the payment and settlement systems.</td>
</tr>
<tr>
<td>France</td>
<td>Bank of France</td>
<td>The Banque de France ensures that the payment systems used in connection with its participation in the European System of Central Banks function correctly and securely, consistent with the smooth functioning of payment systems as set out in Article 108, paragraph 2, of the Treaty establishing the European Community. Banque de France has a broad remit with respect to the oversight of financial market infrastructures (payment systems, clearing systems and financial instrument settlement systems) and cashless means of payment. The Banque de France’s oversight mission, which has been entrusted to it by French law and within the framework of the Treaty on the Functioning of the European Union, consists in: - ensuring the security of cashless means of payment and the relevance of the standards applicable in this area; - ensuring the smooth operation and security of payment systems.</td>
</tr>
<tr>
<td>Country</td>
<td>Institution</td>
<td>Description</td>
</tr>
<tr>
<td>--------------</td>
<td>--------------------------------------------------</td>
<td>-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Germany</td>
<td>Deutsche Bundesbank</td>
<td>Payments are one of the key tasks of the European System of Central Banks (ESCB) and by extension also of the Deutsche Bundesbank. The Bundesbank ensures the smooth functioning of domestic and foreign payments. For this purpose, it provides settlement and clearing services. Moreover, the Bundesbank, as part of the ESCB, is involved in creating a common standard for European payments; it also participates in monitoring payments. In addition, it makes an important contribution to maintaining and strengthening the stability of the financial system.</td>
</tr>
<tr>
<td>Hong Kong SAR</td>
<td>Hong Kong Monetary Authority</td>
<td>The HKMA acts as the regulator and supervisor for retail and FMIs. The policy objectives of the HKMA in overseeing the FMIs in Hong Kong are to promote the general safety and efficiency of the FMIs, to limit systemic risk and to foster transparency. The HKMA plays a key role in developing a safe and efficient financial infrastructure in Hong Kong, which is essential to the stability and integrity of the monetary and financial systems.</td>
</tr>
<tr>
<td>Indonesia</td>
<td>Bank of Indonesia (BI)</td>
<td>BI is the institution responsible for regulating and safeguarding the smooth and efficient operation of the National Payment System. In its capacity as monetary authority, the central bank also has powers to establish and implement policies for the NPS. BI also has authority to issue approvals and licences and conduct the oversight of the NPS. Because of the systemically important nature of the NPS, the central bank introduced a system for interbank settlement using the BI-Real-Time Gross Settlement (BI-RTGS) infrastructure. Another function of BI in the NPS, for example, is the operation of the interbank clearing system for specific payment instruments.</td>
</tr>
<tr>
<td>Japan</td>
<td>Bank of Japan</td>
<td>The Bank of Japan has the important function of providing settlement assets and settlement services and enhancing the safety and efficiency of payment and settlement systems.</td>
</tr>
<tr>
<td>Malaysia</td>
<td>Bank Negara Malaysia (Central Bank of Malaysia)</td>
<td>As an overseer, Bank Negara Malaysia formulates regulatory framework and conducts oversight on both large value and retail payment systems. The oversight activities are focused on containing systemic risks and reducing the overall risks in the payment systems in ensuring the reliability of the major payment and settlement systems. Bank Negara Malaysia also facilitates improvements in payment services and market developments through fostering payment innovations and ensuring public confidence in the retail payment systems and the use of payment instruments.</td>
</tr>
<tr>
<td>Country</td>
<td>Institution</td>
<td>Description</td>
</tr>
<tr>
<td>---------------</td>
<td>-------------</td>
<td>---------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Mexico</td>
<td>Bank of Mexico</td>
<td>The Bank of Mexico Law establishes the Bank's aims to promote the proper functioning of payment systems and promote the healthy development of the country's financial system, which implies that the Bank of Mexico must ensure that the Financial Market Infrastructures (MFI) function properly.</td>
</tr>
<tr>
<td>New Zealand</td>
<td>Reserve Bank of New Zealand</td>
<td>The Reserve Bank of New Zealand has both an oversight and operational role in the payment system in New Zealand.</td>
</tr>
<tr>
<td>Singapore</td>
<td>Monetary Authority of Singapore</td>
<td>MAS' role in the oversight of payment and settlement systems is to promote the safety and efficiency of these infrastructures. In this regard, MAS is empowered under the Payment System (Oversight) Act 2006 to supervise payment system operators such as the Singapore Automated Clearing House (&quot;SACH&quot;) and payment system participants.</td>
</tr>
<tr>
<td>South Africa</td>
<td>South African Reserve Bank</td>
<td>The National Payment System Act designates the Reserve Bank for regulation and supervision of payment, clearing and settlement systems.</td>
</tr>
<tr>
<td>Sweden</td>
<td>Riksbank</td>
<td>The Riksbank has the Riksdag's mandate to promote a safe and efficient payment mechanism. This means that the Riksbank shall act to promote stability in the Swedish financial system as a whole. In addition, the Riksbank provides an electronic payment system, RIK, which handles large value payments between banks and other actors in a safe and efficient way.</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>Bank of England</td>
<td>The Bank of England acts as a settlement agent to enable financial institutions to make payments to each other. The Bank also operates CHAPS, the UK's high value payment system. The Bank supervises the payment systems.</td>
</tr>
</tbody>
</table>
| United States | Board of Governors of the Federal Reserve System | The Federal Reserve performs several key functions to maintain the integrity of the payment system, which include: providing services to depository institutions and the U.S. federal government, regulating certain aspects of the payment system and supervising certain financial market utilities, providing intraday liquidity to payment system participants, and analyzing the system to help identify and implement improvements.
Analysis of comments from the Department of Financial Services

1. A concern highlighted by the DFS was that substantial ownership of NPCI was held by banks and this might be conflicted in its role in the digital payment ecosystem: Chapter 12 (Additional requirements for infrastructure systems) in the Bill seeks to address these concerns by providing additional requirements for infrastructure systems. Under section 71, the infrastructure systems are deemed to be designated payment systems and the additional oversight applicable on the designated payment systems (section 66-70) applies to infrastructure systems. In case of infrastructure systems, the regulator can restrict the ownership level of banks or non-banks, individually or collectively as a category. It may not be advisable for government to get into the ownership and management of the payment systems or the payment system infrastructure, if the concerns can be addressed without that. Similarly, It has been provided in the Bill that the regulator shall have the power to specify the requirements around independent directors and consumer representatives on the board of an infrastructure institution. Therefore, the need to mandate government directors is not considered necessary. Section 72 (Ownership and governance structure) of the Bill provides:

   a) An infrastructure institution shall ensure that its ownership and governance structures give precedence to the interests of consumers over the profit-making motive, if any, of the infrastructure institution.

   b) The Regulator may specify, (a) the maximum ownership interest that can be held by a class or classes of persons in an infrastructure institution; (b) the manner of calculating the ownership interests of different classes of persons in an infrastructure institution; (c) the requirement to have independent members on the governing body of an infrastructure institution; and (d) the requirement to have a representative or class of representatives of consumers availing of the services provided by the infrastructure institution, on the governing body of an infrastructure institution.

Section 73 (Additional requirements for bye-laws) provides that the bye-laws of an infrastructure system must promote the objective that the
PRB is required to pursue as contained in Chapter 4 (*Objectives of the Payments Regulatory Board*). Therefore, if an infrastructure institution is acting otherwise, it shall invite regulatory action.

2. *Technology neutrality, infrastructure neutrality and pricing policy should be part of positive obligations on the PRB: Section 72.* (1) of the Bill provides that - An infrastructure institution shall ensure that its ownership and governance structures give precedence to the interests of consumers over the pro t-making motive, if any, of the infrastructure institution. This is to address the suggestion on the pricing front as an infrastructure institution may be in a monopoly position that would require a legal obligation on them to keep their pro t motive (pricing) in check. The suggestion of DFS regarding technology neutrality has now been explicitly recognised in Section 8(5) dealing with competition and innovation objective. It is now proposed to provide in the Bill that: system participants to access payment systems based on objective, ownership neutral, technological neutral and proportionate standards; Further, Section 27(2) (Open access and Interoperability) has been modified to provide that: Such common standards and any other criteria shall be objective, ownership neutral, technology neutral and proportionate and shall not inhibit access more than necessary to safeguard against specific risks such as data security risk, settlement risk, operational risk and business risk and to protect the financial and operational stability of the payment system.

3. *Provisions on imposition of fines/ penalties in case of failure to comply with regulations regarding consumer protection should be clearly provided:* This has been provided as all regulations are covered in the enforcement actions and all failures to comply with enforcement actions have been covered in the offences part.

The two letters from the DFS dated 16.05.18 and 22.06.18 are provided below.
Letter from DFS dated 16.05.18

No. 6/1/2014-BO.II
Government of India
Ministry of Finance
Department of Financial Services
Jeevan Deep Building, New Delhi
Date: 16th May, 2018

OFFICE MEMORANDUM

Subject: Draft Payment and Settlement Systems Bill, 2018 (PSS Bill)

This is with reference to the Department of Economic Affairs (DEA) OM No. 1/0/2016-Cy.II dated 19.04.2018, enclosing a copy of the Draft PSS Bill being finalized by DEA.

2. The Draft PSS Bill has again been examined in the Department of Financial Services (DFS). The following comments may be noted:

a) It is stated that, with regard to earlier versions of the Draft PSS Bill, detailed comments and suggestions of DFS, along with their rationale, had been conveyed to DEA vide OMs of even number dated 12.06.2017, 31.08.2017, 27.11.2017, and 23.02.2018 with the approval of Secretary (FS).

b) The OM dated 23.02.2018 included a note highlighting 5 key suggestions for suitable incorporation in the PSS Bill. From an examination of the revised Bill, it appears that most of the suggestions made by DFS have not been incorporated in the Bill by DEA. The details are enclosed at ANNEX.

c) In view of the above, DFS reiterates its earlier comments, with the request that the same may be considered and suitably incorporated in the Draft Bill.

(Raghav Bhatt)
Deputy Director - BO.II
011-23746715

Shri Subhash Chandra Garg
Secretary
Department of Economic Affairs
Ministry of Finance, North Block, New Delhi

(Enclosed: As above)
ANNEX

1) Points No. 1 and 2 communicated vide OM dated 23.02.2016, regarding the ownership structure of NPCI and Government nominee directors (on the boards of companies operating payment systems of national importance), have been altogether ignored, and do not find mention or incorporation in the revised Bill.

2) Point No. 3 was regarding the positive obligations of PRB. The earlier Clause 4 of the Bill (which now appears as Clause 8), has in fact been further diluted by reducing the number of objectives of the PRB which have been spelt out explicitly. The objectives pertaining to "open access and interoperability" and "consumer service" have been deleted as separate heads, while the others have been merged into new objectives termed as "systemic stability and resilience" and "competition and innovation", inter-operability finds mention as a sub-set of "competition and innovation", where the term ownership neutrality is also used. Regarding technology neutrality, infrastructure neutrality and pricing, the suggestions of DFS do not seem to have been incorporated. The suggestion that the language needs to be made less vague and more prescriptive (actively providing guidance) has also not been factored in.

3) Point No. 4 regarding definitions appears to have been considered. The definition of "payment service intermediary", on which DFS had some reservations, has been deleted altogether, while "system participant" has been defined in a more elaborative manner. However, new definitions of "infrastructure system", "infrastructure institution" and "settlement system" have been included, which attempts to demarcate the function and role of each player in the overall system at different stages, such as actual payment, settlement between participants, holding of funds, etc. This appears to be an improvement over the initial Bill, and by virtue of the same DFS also requests to withdraw the proposals regarding both mortgage systems and infrastructure systems, which included settlement system as also to seek authorization from PRB before doing any business, appears to address the concerns pointed out by DFS earlier.

4) Point No. 5 was regarding 'Relevancy Redressal', and DFS had suggested that the consequences of unsuccessful resolution of complaints or non-disclosure of information had not been spelled out in the Bill. It now appears that a Clause has been added (Clause 56(4)) which adds a third level of consumer redress beyond the earlier 2-tier structure of entity level and the PRB-specification level. None, additionally, any person aggrieved by the order of the PRB-appointed mechanism, can also prefer an appeal before the Securities Appellate Tribunal (SAT). However, DFS's suggestions regarding imposition of fines/penalties and revocation of authorization do not seem to have been accepted.
Letter from DFS dated 22.06.18

Office Memorandum

Subject: Draft Payment and Settlement Systems Bill, 2018 (PSS Bill)

This is with reference to the Department of Economic Affairs (DEA) OM No. 1/6/2016-Cy.II dated 10.04.2018, enclosing a copy of the Draft PSS Bill being finalized by DEA.

2. The Draft PSS Bill has again been examined in the Department of Financial Services (DFS). The following comments may be noted:

a) It is stated that, with regard to earlier versions of the Draft PSS Bill, detailed comments and suggestions of DFS, along with their rationale, had been conveyed to DEA vide OMs of even number dated 12.05.2017, 31.06.2017, 27.11.2017, and 23.02.2018 with the approval of Secretary (FS).

b) The OM dated 23.02.2018 included a note highlighting 6 key suggestions for suitable incorporation in the PSS Bill. From an examination of the revised Bill, it appears that most of the suggestions made by DFS have not been incorporated in the Bill by DEA. The details are enclosed at ANNEX.

c) In view of the above, DFS reiterates its earlier comments, with the request that the same may be considered and suitably incorporated in the Draft Bill.

(Signature)
Deputy Director - BO.II
011-23748715

Shri Subhas Chandra Garg
Secretary
Department of Economic Affairs
Ministry of Finance, North Block, New Delhi

(Enclosed: As above)
NOTE ON THE KEY SUGGESTIONS

1. Ownership Structure of NPCI
   - NPCI is a company registered as a not-for-profit company under Section 8 of the Companies Act, 2013 (earlier Section 25 of the Companies Act, 1956). Public financial institutions have a substantial involvement in NPCI. PSBs have contributed 50.0% of the equity of NPCI.
   - NPCI is a clearing house owned by banks and at the same time it also develops and runs digital financial products.
   - NPCI was initially promoted by 10 Banks comprising of 6 Public Sector Banks, 2 Private Banks and 2 Foreign Banks. After the broad base exercise completed in financial year 2015-2016, the total number of shareholders has gone to 50 Banks comprising of 19 Public Sector Banks, 17 Private Banks, 9 Foreign Banks, 10 Cooperative Banks, and 7 Regional Rural Banks.
   - Despite some broad base, non-participants in payment systems have no incentive to contribute equity to the company.
   - As such, the conflict inherent in the present ownership structure can be addressed by the Government holding at least 61% of the paid-up equity share capital of NPCI. Hence it is proposed that this should be included in the draft PSS Bill.
   - The meeting of the Committee of Secretaries (CoS) chaired by the Cabinet Secretary, held on 21.4.2017, attended by, inter alia, the RBI Deputy Governor, NPCI and MDs of major banks, Secretaries in charge of DEA, DFS and MoRV, recommended that the ownership and management of NPCI be examined.
   - The Watal Committee has, in the context of infrastructure neutrality, specifically evaluated the role played by NPCI as a provider of crucial payment system and infrastructure. The committee noted that around 74.7% of NPCI’s shareholding is held by 10 banks and, further, this ownership structure might be challenged by its pivotal role in the digital payment ecosystem.
   - The Watal committee felt it desirable that the ownership of NPCI be diversified from payment system participants.
   - As also suggested by the Committee, it may be considered that at least 51% of the paid-up equity share capital be held by the public.
   - Besides the observations of the Watal Committee, the issue flagged by the CoS regarding NPCI being owned by banks while also running digital financial products is also pertinent.

2. Government nominees directors
   - A major suggestion seemed Government nominees directors on the boards of companies operating payment systems of national importance. The following clauses may be inserted below Clause 71 (2) of the revised Bill of DEA:
(d) In case a company or corporation operates a payment system, which either
exists on commencement of this Act or for which an authorisation is issued by the
Reserve Bank under the provisions of this Act, the Central Government may
appoint two nominee Directors on the Board of such company or corporation, if—

(i) not less than fifty-one per cent of the equity of such company or corporation is
held by public sector banks and

(ii) the Central Government is of the opinion that such company or corporation
operates payment systems of national importance and such appointment is in
public interest.  

- This suggestion draws chiefly from the need to have Government representation on
the Board of institutions such as NPCI.
- The argument is premised on the fact that NPCI is operating several payment
systems of national importance for carrying out public policy, in which the Central
Government is also a major stakeholder. These include the Aadhaar Payment Bridge
(APB), Aadhaar Enabled Payment System (AEPS), BHIM Aadhaar Pay platform,
BHIM Payment Service Provider (PSP) platform, and RuPay debit card under
PMJDY, in all of which the Central Government has played a major role in promotion
and support. Public financial institutions have substantial involvement in NPCI, both
by virtue of PSBs having contributed 56.6% of the equity and an amount of PSBs
constituting a very large part of the banking sector.
- As such, the Central Government is a principal stakeholder and its representation in
NPCI's governance is a necessity.
- The Working Committee on Digital Payments also recommended that an important
payment organisation like NPCI should have majority "public interest directors", to
represent the interests of consumers in payments markets. In view of the above,
Central Government representation on NPCI's Board (or the Board of any such
payment system operator, which holds a public sector bank as the majority owner)
should be considered to ensure better alignment with public policy and public interest.
Analysis of comments from the Department of Legal Affairs

1. Drafting suggestions regarding preamble: Accepted.

2. Spot exchanges are not explicitly covered in the definitions and in the authorisation related provisions there is no mention about requirement of authorisation for payments made through spot exchanges: The definitions do not require the spot exchanges to be explicitly covered. The point about requirement of authorisation of payments made through spot exchange or the need to explicitly cover spot exchanges in the interpretation clause has been considered but has not been found to be necessary. Section 92 (Non-applicability to stock and other exchanges) provides that: Nothing contained in this Act shall apply to any of the securities traded on stock exchanges or other exchanges, authorised by or under any law for the time being in force, except in so far as they relate to settlement of payment instructions. Accordingly any exchange which is not authorised under any law and seeks to operate a payment system shall require authorisation under the proposed Bill.

3. The rights and duties of the system provider as proposed in the Bill appear to be an encroachment upon the provisions of Consumer Protection Act: It is now explicitly provided that the consumers shall continue to have the right to seek redress under the Consumer Protection Act. Section 58 (Applicability of the Consumer Protection Act, 1986.) has been introduced: Notwithstanding anything contained in this Act, no consumer shall be barred from lodging a complaint for redress under the Consumer Protection Act, 1986 (68 of 15 1986).

4. Data sharing provision with other agencies should be provided: Section 41 (Power to call for or share information) provides that the PRB can call for or furnish to any such agencies, as may be specified by the Payments Regulatory Board, such information as may be considered necessary by it for the efficient discharge of its functions.

The letter from DoLA dated 08.05.18 is provided below.
Dy No. 3025994.5/2018
Ministry of Law & Justice
Department of Legal Affairs

Reference matter is an OM dated 19.4.2018 from Ministry of Finance, Department of Economic Affairs (DEA) seeking our comments regarding the proposed draft ‘The Payment and Settlement Bill, 2018’. It is noticed from the OM that the reference made is pursuant to the Record of Discussion (RoD) of the Inter-Ministerial Committee Meeting held on 11.1.2018. However, the reference was not made along by linking up all the relevant file/folders containing the RoD and views of all the concerned stake holders including DEA.

2. It appears that the proposed Bill is to replace the existing Payment and Settlement Systems Act, 2007 and to regulate payment systems in India. However, the same is not reflected in the preamble. Therefore, it may be advisable to reformulate the same. A perusal of the interpretation clause under Clause 2 (i) of the Bill that contains various terms for better understanding and interpretation of the proposed law do not explicitly cover ‘spot exchanges’. Therefore, it may be advisable to make an explicit definition covering spot exchanges that are involved in payment system if DEA desires to cover the same.

3. With regard to establishment and composition of Payments Regulatory Board (Board) under Chapter-3 it is to state that the proposed Board will be confronting apart from administrative functions, legal issues inter-alia concerning jurisdiction, reasonableness in facilitating payment and resolution of conflicting views amongst the payment service providers inter-alia and the Central Government. Hence, in order to equip the Board with the ability to have in house, competent legal advice an officer not below the rank of Joint Secretary and Legal Adviser, of the Indian Legal Service (ILS) may also be considered as member law.

4. Authorization of payment system is elaborated under Chapter-5 of the Bill. However, there is no whisper about requirement of authorization for payments made through spot exchange’. Therefore, it is for the DEA to examine the matter from the angle of policy and precedent and to take a decision regarding inclusion of such payments by spot exchange centres. With regard to the proposals contained in Clause 4.2 of the proposed Bill relating to disgorgement order it is to state that reasonable opportunity needs to be afforded before taking any action under the said clause. Therefore, to avoid any challenge at later point of time, it may be advisable to incorporate a suitable provision to afford an opportunity.

5. So far as consumer protection, rights and duties of a system provider as proposed under Chapter-8 of the proposed Bill is concerned, it appears to be an encroachment upon the provisions of Consumer Protection Act, 1986, especially with reference to mechanism relating to redressal of complaints in relation to payment services. It is pertinent to mention that under Consumer Protection Act a person who consumes services on payment is entitled to resolve his dispute by raising a complaint before the Consumer Redressal Forum. Therefore, it may be advisable to reformulate these provisions to make it in consonance with the provision of Consumer Protection Act.

6. A perusal of the provisions of the proposed Bill reveals that there is no specific provision enabling sharing of data with other financial regulators like FIDMC. Therefore, it may be advisable to incorporate a suitable provision in the Bill to facilitate data sharing.
7. It is also relevant to mention that we have already furnished our views during inter-ministerial meetings and we have not further comments/views to offer. It is for the DEA to examine the matter from the angle of policy and precedent and ensure that the proposed Bill is as per the policy and fulfill their requirement. However, it is advisable to forward the proposal in the form of a Cabinet Note containing the views of all the concerned stakeholders, to enable us to examine the matter from legal and constitutional angle.

May kindly see,

(Dr. R. J. J. Kasthuri)  
Dy. Legal Adviser  
8.05.2018
Analysis of comments from MEITY and UIDAI

All the suggestions provided were discussed and addressed. There no further comments.
Annexure D: Designated Payment Systems and Infrastructure Systems

Designated Payment System

Section 63 of the Bill provides that:

1. The Payments Regulatory Board may, by a reasoned order in writing, designate a payment system, authorised under section 20(1), as a designated payment system if it is satisfied that-

   a) a disruption in the operations of the payment system could trigger, cause or transmit further disruption to the system participant or systemic disruption to the financial system of India; or

   b) a disruption in the operation of the payment system could affect public confidence in payment systems of India; or

   c) it is otherwise in the interest of the public to do so.

2. The Payments Regulatory Board shall specify the criteria to evaluate if the conditions mentioned in sub-section (1) are satisfied by a payment system based on the following features:

   a) the market share controlled;

   b) degree of interconnectedness and interdependencies with other payment systems;

   c) number and type of system participants;

   d) volume, value and type of transactions that the payment system processes or is likely to process in the future; and
e) the available alternatives to using the payment system at a short notice.

The Bill (*Chapter 11, Section 66-70*) provides the regulator with additional powers on the designated payment systems with respect to:

1. authorisation, supervision, consumer protection and rights and duties of system provider,

2. power to appoint observer in public interest,

3. power to specify the basic features of bye-laws and approval of the bye-laws, (iii) issue direction to vary agreements relating to designated payment systems, and

4. power to take specific regulatory actions in case of insolvency or likely insolvency of a designated payment system.

**Infrastructure systems**

As per section 2(1)(p) of the Bill, infrastructure system means a -

1. payment system to effect payment between other payment systems;

2. designated trade repository;

3. central counterparty;

4. settlement system; and

5. any other system notified by the Central Government.

The Bill (*Chapter 12*) provides the regulator with additional powers on the infrastructure systems.

All the additional powers applicable to a designated payment systems apply to infrastructure systems.
In addition, section 72 provides:

1. An infrastructure institution shall ensure that its ownership and governance structures give precedence to the interests of consumers over the profit-making motive, if any, of the infrastructure institution.

2. The Regulator may specify,

   a) the maximum ownership interest that can be held by a class or classes of persons in an infrastructure institution;

   b) the manner of calculating the ownership interests of different classes of persons in an infrastructure institution;

   c) the requirement to have independent members on the governing body of an infrastructure institution; and

   d) the requirement to have a representative or class of representatives of consumers availing of the services provided by the infrastructure institution, on the governing body of an infrastructure institution.

Further, section 73 provides that the bye-laws of an infrastructure system must promote the objective that the Payments Regulatory Board is required to pursue as contained in Chapter 4.

The requirements in section 72 do not apply to the RBI as an infrastructure institution.\(^\text{13}\)

\(^{13}\)Infrastructure institution means any person, which operates an authorised infrastructure system;
Annexure E: Government order establishing the committee.

F.NO. 01/06/2016-Cy II (Vol. II)
Government of India
Ministry of Finance
Department of Economic Affairs
(C & C Division)

North Block, New Delhi
Dated: 10/03/2017

MEETING NOTICE

Subject: Meeting of Group of Officers to review the Payment and Settlement Systems Act, 2007: reg.

1. A Committee under the Chairmanship of Shri P R Watal, Principal Adviser, NITI Aayog, and the former Finance Secretary was constituted to suggest the medium term measures to strengthen the Digital Payments Eco-System. The committee also examined the existing regulatory and legal structure and made a number of recommendations.

2. The Finance Minister in his Budget speech has announced that "The committee on Digital Payment constituted by Department of Economic Affairs has recommended structural reform in the payment eco system, including amendment to the Payment and Settlement Systems Act 2007. Government will undertake a comprehensive review of this Act and bring about appropriate amendment."

3. Accordingly a Group of Officers has been constituted to review the Payment and Settlement Systems Act, 2007 for suggesting the appropriate amendments. This Group of Officers has been constituted with the Joint Secretaries (or equivalent) from DFS, DeLA, DEA, Meity and RBI. JS (I & C) DEA will function as a Convener of the group.

4. The undersigned is further directed to say that it has been decided to hold a meeting, as per details below:

   Date: 21st March, 2017
   Time: 03:30 P.M.
   Venue: Room No. 131-A, North Block, New Delhi

5. You are requested to kindly nominate a suitable official of the rank of Joint Secretary or equivalent who is well conversant with the matter for the above meeting. Agenda of the meeting will be sent separately.

(Achillesh Kuffar Mishra)
Director (EI)
Tel: 23095236
Email: achillesh.k.mishra@nic.in
The Governor
 Reserve Bank of India, Mumbai

Secretary, Department of Financial Services
 New Delhi

Secretary, Department of Legal Affairs
Rajiv Bhavan, New Delhi

Secretary, Ministry of Electronics and Information Technology
Chintan Vaishnav, CEO Complex,
Lodhi Road, New Delhi 110001

Copy to:

1. Department of Economic Affairs
Economic Affairs Block, North Block, New Delhi
North Block, New Delhi

2. Pr to 05 (O) : for information
References


The Payment and Settlement Systems Bill, 2018

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The Payment and Settlement Systems Bill, 2018

A BILL

As it enacted by Parliament in the Year of the Republic of India as follows:—
An Act to foster competition, consumer protection, systemic stability and resilience in payment sector and establish a Payments Regulatory Board to regulate the payment sector and matters connected therewith and to consolidate and amend the law relating to payments.
PART I
PRELIMINARY AND DEFINITIONS

CHAPTER 1
PRELIMINARY

1. (1) This Act may be called the Payment and Settlement Systems Act, 2018.

(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 of any such provision of this Act shall be construed as a reference to the commencement of that provision.

CHAPTER 2
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, 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;
   (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);
   (v) a corresponding new bank as constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970 (5 of 1970) or under section 3 of the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1980 (40 of 1980);
   (vi) a payments bank licensed under section 22 of the Banking Regulation Act, 1949;
   (vii) such other bank as the Reserve Bank may notify from time to time for the purposes of this Act;

(b) "bye-laws" mean any rules, arrangements, regulations, bye-laws or other similar statements, by whatever name called, and whether or not specified by the system provider, that govern the activities and conduct of -

   (i) the payment system or infrastructure system; and
   (ii) system participants or any other persons in relation to the payment system on infrastructure system.

(c) "Central Board" means the Central Board of Directors of the Reserve Bank of India constituted under section 8 of the Reserve Bank of India Act, 1934 (2 of the 1934);

(d) "central counter party" means a system provider who by way of novation interposes between system participants in the transactions admitted for
settlement, thereby becoming the buyer to every seller and the seller to every buyer, for the purpose of effecting settlement of their transactions.

(e) “clearing” means the process of transmitting, reconciling and confirming transactions prior to settlement and the establishment of final positions for settlement;

(f) “clearing house” means a central location or central processing mechanism through which system participants agree to exchange payment instructions or other payment obligations;

(g) “common standard” means any technical standard or set of technical standards with characteristics or specifications that the Payments Regulatory Board may specify in respect of which a payment instruction is accepted or a payment transaction is processed on the payment system.

(h) “consumer” means a person who has availed, avails, or intends to avail of a payment service.

(i) “default arrangements” means the arrangements made by the system provider of a designated payment system to limit systemic risk.

(j) “derivative” includes derivative as defined in section 45U(a) of the Reserve Bank of India Act, 1934 (2 of 1934) or clause (ac) of section 2 of the Securities Contract (Regulation) Act, 1956 (42 of 1956);

(k) “electronic fund transfer” means any transfer of funds which is initiated by a person by way of instruction, authorisation or order to a system provider to debit or credit an account maintained with that system provider through electronic means and includes point of sale transfers, automated teller machine transactions, direct deposits or withdrawal of funds, transfers initiated by telephone, internet, and card payment;

(l) “financial sector regulator” means a regulator as described under Schedule 2 or any other agency as declared by the Central Government by notification in the Official Gazette.

(m) “financial year” means the period beginning April 1 and ending March 31 of the immediately following year, or as may be prescribed;

(n) “gross settlement system” means a payment system in which each settlement of funds or securities occurs on the basis of separate or individual instructions;

(o) “infrastructure institution” means any person, which operates an authorised infrastructure system;

(p) “infrastructure system” means a -

(i) payment system to effect payment between other payment systems;

(ii) designated trade repository;

(iii) central counterparty;

(iv) settlement system; and

(v) any other system notified by the Central Government.

(q) “interoperability” means a set of arrangements, procedure and standards that allow system participants in different payment systems to settle payments across payment systems while continuing to operate in their respective payment systems;

(r) “issuer” means a person, not being an individual, who issues a legal entity identifier or such other unique identification (by whatever name called), as may be specified by the Payments Regulatory Board from time to time;
(s) "legal entity identifier" means a unique identity code assigned to a person by an issuer for the purpose of identifying that person in such derivatives or financial transactions, as may be specified by the Payments Regulatory Board in consultation with the Reserve Bank from time to time;

(t) "member" means a member of the Payments Regulatory Board and includes the Chairman;

(u) "money remittance" means a payment service where funds are received from a payer, without any payment accounts being created in the name of the payer or the payee, for the sole purpose of transferring a corresponding amount to a payee or to another payment service provider acting on behalf of the payee, and/or where such funds are received on behalf of and made available to the payee;

(v) "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 dissolution or winding up of any system participant or such other circumstances as may be provided in the bye-laws, in relation to the payment system, of the transactions admitted for settlement at a future date so that only a net claim be demanded or a net obligation be owned;

(w) "notification" means a notification published in the Official Gazette, and the terms “notified” and “notify” will be construed accordingly;

(x) "payment instruction" means an instruction by a payer or payee to its payment service provider requesting the execution of a payment transaction;

(y) "payment instrument" means a personalised device(s) and/or set of procedures agreed between the consumer and the payment service provider and used in order to initiate a payment instruction;

(z) "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;

(aa) "payment service" means any business activity covering:

(i) execution of payment instructions, including transfers of funds in relation to an account of a consumer with a system provider, such as:

(A) execution of direct debits, including single direct debits;

(B) execution of payment instructions through a card or a similar device, or any electronic means;

(C) execution of credit transfers, including standing instruction.

(ii) execution of payment instructions where the funds are covered by a credit line for a consumer such as:

(A) execution of direct debits, including single direct debits;

(B) execution of payment instructions through a card or a similar device, or any electronic means;

(C) execution of credit transfers, including standing instructions.

(iii) issuing of payment instruments and/or acquiring of payment instructions.

(iv) issuing of prepaid instruments.

(v) money remittance.
(vi) any other service as may be specified by the Payments Regulatory Board.

(ab) "payment system" means a system that enables payment to be effected between a payer and a beneficiary, involving payment service, clearing or settlement or all of them;

(ac) "person" includes individuals, companies, partnerships, limited partnerships, any association of persons and body corporate.

(ad) "personal information" means, -

(i) any information that allows a consumer to be identified; or

(ii) any information that discloses the identity of a consumer with respect to any transaction in, any payment system or payment service; or

(iii) the same meaning as assigned to it in clause (iii) of the Explanation to section 43A of the Information Technology Act, 2000.

(ae) "prepaid payment instrument" means payment instruments that facilitates purchase of goods and services, including financial services, remittance facilities, etc., against the value stored on such instruments or on an account of the consumer with the issuer of such instrument.

(af) "prescribed" means prescribed by rules made by Central Government under this Act;

(ag) "publish" means publishing of information within a period as may be specified, in the official gazette and on the website of the Payments Regulatory Board or any other specified electronic means, to the public at large;

(ah) "regulations" means the regulations made by the Payments Regulatory Board under this Act;

(ai) "regulatory data" means all information -

(i) that the Payments Regulatory Board generates in the course of performance of its functions under this Act;

(ii) that a person authorised under section 19(1) is obligated to submit to the Payments Regulatory Board under law.

(aj) "Reserve Bank" means the Reserve Bank of India, constituted under section 3 of the Reserve Bank of India Act, 1934 (2 of 1934);

(ak) "securities" means the securities as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) or clause (e) of section 45U of the Reserve Bank of India Act, 1934 (2 of 1934);

(al) "Securities Appellate Tribunal" means a Securities Appellate Tribunal established under sub-section (1) of section 15K of the Securities and Exchange Board of India Act, 1992 (15 of 1992);

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

(an) "settlement system" means a system which provides -

(i) accounts to the system participants to hold funds or facilitates system participants to hold funds; and

(ii) settlement between the system participants.

(ao) "specified" means specified by regulations made under this Act and the term "specify" will be construed accordingly.

(ap) "systemic risk" means the risk arising from-
(i) the inability of a system participant to meet its 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 and is likely to have an impact on the stability of the system:

(aq) "system participant", in relation to a payment system, means a person who is permitted to participate in a payment system to settle payments, on behalf of consumers, through the payment system with other system participants, or processes payments through the payment system.

(ar) "system provider" means a person who operates an authorised payment system;

(as) "trade repository" means a person who is engaged in the business of collecting, collating, storing, maintaining, processing or disseminating electronic records or data relating to such derivatives or financial transactions, as may be specified by the Payments Regulatory Board from time to time;

(2) Words and expressions used, but not defined in this Act and defined in the Reserve Bank of India Act, 1934 (2 of 1934) or the Banking Regulation Act, 1949 (10 of 1949), shall have the meanings respectively assigned to them in those Acts.
PART II
PAYMENTS REGULATORY BOARD

CHAPTER 3
ESTABLISHMENT OF PAYMENTS REGULATORY BOARD

3. (1) With effect from such date as the Central Government may notify, there shall be established, a Board to be called the Payments Regulatory Board.

(2) The Payments Regulatory Board shall be a body corporate by the name aforesaid, having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to contract and shall, by the said name, sue or be sued.

(3) The head office of the Payments Regulatory Board shall be in Mumbai and it may establish offices at other places in or outside India.

(4) The Payments Regulatory Board shall consist of the following members,-

(a) a Chairperson, appointed by the Central Government in consultation with the Reserve Bank;

(b) a Deputy Chairman, nominated by the Central Board of the Reserve Bank, not below the rank of Executive Director, ex-officio;

(c) one officer, nominated by the Central Government, not below the rank of Joint Secretary, ex-officio;

(d) two whole-time members, appointed by the Central Board of the Reserve Bank; and

(e) two whole-time members, appointed by the Central Government.

4. (1) The members of the Payments Regulatory Board referred to in subclause 3(4)(d) and 3(4)(e) shall be from amongst persons of ability, integrity and standing, having skills, qualifications, experience, and expertise of at least ten years in matters relating to payments, banking, finance, economics, technology or law.

(2) The Chairperson of the Payments Regulatory Board referred to in clause 3(4)(a) shall be from amongst persons of ability, integrity and standing, having skills, qualifications, experience, and expertise of at least fifteen years in matters relating to central banking, banking, payments, finance, economics, technology, law or public administration.

(3) The members to be appointed by the Central Government, other than the nominated members, shall be appointed on the recommendation of selection committee of the Central Government, which has been set up to recommend names of candidates to be appointed as chairperson or as members, on the board of financial sector regulators. If for any reason, such selection committee is not operational, the selection committee to recommend names of Chairperson and other members, other than the nominated members, shall comprise of -

(a) Cabinet Secretary - Chairperson
(b) a Secretary to the Government of India to be nominated by the Central Government - member;

(c) three experts of repute from the field of payments, banking, finance or economics and related subjects, to be nominated by the Central Government Bank - member;

(d) Chairperson of the Payments Regulatory Board (to be part of the committee only when the committee is recommending candidates to be appointed as members) — member.

(4) The members to be appointed by the Central Board of the Reserve Bank, other than the nominated members, shall be appointed on the recommendation of selection committee of the Reserve Bank, which has been set up to recommend names of candidates to be appointed as chairperson or as members, on the board of financial sector regulators. If for any reason, such selection committee is not operational, the selection committee to recommend names of the members, other than the nominated members, shall comprise of -

(a) Governor, Reserve Bank - Chairperson

(b) three experts of repute from the field of payments, banking, finance or economics and related subjects, to be nominated by the Reserve Bank - member;

(c) Chairperson of the Payments Regulatory Board (to be part of the committee only when the committee is recommending candidates to be appointed as members) — member.

(5) The selection committees referred to in sub-section (3) and (4) must consider the following factors when selecting persons, -

(a) merit;

(b) balance of the board;

(c) independence; and

(d) conflict of interest

(6) For the purposes of sub-section (5),

(a) "merit" means qualifications, experience, and expertise as per sub-section (1) and sub-section (2);

(b) "balance of the board" means that the board proportionately and adequately represents different skills and expertise as per sub-section (1) and sub-section (2);

(c) "independence" means the ability to maintain and exercise independent judgement in the discharge of duties; and

(d) "conflict of interest" means that the persons appointed do not have interests which may conflict with the duties of that member.

(7) The Chairperson and other members, other than the nominated members, will hold office for a term of five years or until the age of retirement under sub-section (10), whichever is earlier.

(8) Age of retirement shall be:

(a) Sixty-five years for the Chairperson and the Whole-time members.

(b) Seventy-five years for independent members.
(9) The members nominated on the Payments Regulatory Board shall serve at the
pleasure of the nominating authority.

(10) A person shall not be qualified for appointment as the Chairperson or as a
member, other than an nominated Member, if at the time of appointment, such
person,-

(a) has been appointed twice as a member;
(b) shall not be able to serve a term of at least three years before reaching the
age of retirement; or
(c) holds or has held, in three years preceding such appointment, any position
which is likely to conflict with the person’s duties as a member.

(11) A person shall not be qualified for appointment as the Chairperson or as a
member if at the time of appointment, such person,-

(a) is an employee of a person authorised under this Act;
(b) is not a fit and proper person;
(c) is an employee of the Central Government or any State Government;
(d) is a sitting judge of a court of law or a sitting member of a statutory
tribunal;
(e) is a member of Parliament, state legislature, a local legislature under Part
VIII of the Constitution of India, a panchayat or a municipality;
(f) has been appointed twice as a member of the Payments Regulatory Board;
(g) has served as the chairperson of any regulator in the financial sector; or
(h) will not be able to serve a term of at-least three years before reaching the
age of retirement.

Provided that disqualifications under clause (a), (c) and (h) shall not apply
to nominee members.

(12) The salaries and allowances payable to, and other terms and conditions of ser-
vice of the Chairperson and other members (other than nominated members)
shall be prescribed.

5. (1) The Central Government may remove the Chairperson or any other member
from office if such person -

(a) has been adjudged as insolvent;
(b) has become physically or mentally incapable of acting as a member;
(c) has been convicted of an offence, which in the opinion of the Central
Government involves moral turpitude;
(d) has engaged in any employment during the term of such person’s mem-
bership, in violation of the terms and conditions of service applicable to
such person;
(e) has so abused the position held by such person as to render continuation
of such person in office detrimental to the public interest; or
(f) has acquired such financial or other interest as is likely to affect preju-
dicially the functions of such person as a Chairperson or member, as the
case may be.
(2) Before removing the Chairperson or a member under clause (b), clause (d), clause (e) or clause (f) of sub-section (1) above the Central Government shall,

(a) establish an inquiry committee to inquire if the grounds for removal have been met;
(b) give the inquiry committee, in writing, all facts and information relevant to the grounds on which the Central Government proposes to remove the member; and
(c) allocate adequate resources to the inquiry committee to enable it to make its inquiry.

(3) The inquiry committee shall comprise three persons to be nominated by the Chief Justice of India, as under,

(a) two sitting or retired judges of the Supreme Court or a High Court; and
(b) one independent expert having experience in the field of finance and public administration.

(4) The inquiry committee will be chaired by the senior-most judge from amongst the judges nominated under sub-section (3) of this section.

(5) The inquiry committee shall give the member,

(a) an inquiry notice; and
(b) a reasonable opportunity to be heard and present any relevant evidence.

(6) The inquiry committee shall, within thirty days from the date on which it is established, submit a written report to the Central Government stating,

(a) whether the grounds on which the Central Government proposes to remove the member have been met; and
(b) the facts and reasons in support of its opinion.

(7) If the report of the inquiry committee states that any ground for removal has been met, then the Central Government shall publish,

(a) a notification removing the member from the board; and
(b) the report under sub-section (6) of this section.

(8) The Central Government shall issue the notification within,

(a) thirty days from the date of submission of the report by the inquiry committee; or
(b) within fifteen days from the date of submission of the report by the inquiry committee, where the Central Government has issued a suspension order.

(9) The member will cease to hold office from the date of the notification under sub-section 8 of this section.

(10) In this section, “inquiry notice” means a notice which –

(a) is in writing;
(b) states the grounds on which the member is proposed to be removed;
(c) contains all the facts and information provided to the inquiry committee by the Central Government; and
(d) allows the member to make written representations to the inquiry committee against such proposed removal within a reasonable time stated in that notice.

6. (1) Where the board is satisfied that any of the grounds for removal of a member have been met, it may recommend the temporary suspension of such member, to the Central Government.

(2) The recommendation made to the Central Government under sub-section (1):

(a) shall be in writing and signed by all members of the board; and
(b) will not bind the Central Government to suspend the concerned member.

(3) Where the Central Government accepts the recommendation of the board, it shall,

(a) issue a suspension order; and
(b) constitute the inquiry committee within fifteen days from the date of the suspension order.

(4) The inquiry committee may, in writing, recommend the temporary suspension of a member to the Central Government and will bind the Central Government.

(5) A suspension order,

(a) shall be in writing;
(b) shall be made after giving the concerned member a reasonable opportunity of being heard;
(c) shall state the reasons for suspension;
(d) shall be accompanied with the recommendation of the board or the inquiry committee, as the case may be; and
(e) will cease to have effect on the date on which the inquiry committee submits its report under section 5(6).

(6) The Central Government may reverse a suspension order,

(a) where the recommendation for suspension was made by the board and the inquiry committee has not been established, on a written recommendation of the board signed by all members of the board; and
(b) in all other cases, on a written recommendation by the inquiry committee.

(7) A member suspended under this section will be entitled to his salary, allowances and other benefits as per the conditions of service applicable to him.

(8) The Chairperson and other members, other than the nominee members shall not, for a period of one year from the date on which they cease to hold office, except with the previous approval of the Central Government, accept-

(a) any employment under the Central Government or any State Government; or
(b) any appointment under a person authorised under this Act.

7. (1) Subject to sub-section (2) of this section, the Chairperson shall have the powers of general superintendence and direction in respect of all administrative matters of the Payments Regulatory Board and may also exercise such other powers as may be delegated to him or her by the Payments Regulatory Board.
The Payments Regulatory Board may make regulations to authorise officers to carry out any functions for the purposes of this Act.

The Payments Regulatory Board shall meet at such times and places, and observe such rules of procedure in regard to the transaction of business at its meetings as may be specified.

The quorum for a meeting of the Payments Regulatory Board shall be five Members.

If, for any reason, the Chairperson is unable to attend any meeting of the Payments Regulatory Board, any other Member chosen by the Members present at the meeting shall preside at the meeting.

The participation of members in a meeting of the Payments Regulatory Board may be either in person or through video conferencing or other audio visual means, as may be specified, which are capable of recording and recognising the participation of the members and of recording and storing the proceedings of such meetings along with date and time:

Provided that the Payments Regulatory Board may specify such matters which shall not be dealt with in a meeting through video conferencing or other audio visual means.

Each member of the Payments Regulatory Board shall have one vote.

All questions which come up before a meeting of the Payments Regulatory Board shall be decided by a majority of votes of Members present and voting and in the event of an equality of votes, the Chairperson or in his absence, the person presiding, shall have a casting vote.

The procedure, conduct, time and venue of its meeting and any other incidental matter for the functioning of the Payments Regulatory Board shall be such as may be specified.

Provided that the gap between consecutive meetings of the Payments Regulatory Board should not be more than ninety days.

Any member who has any direct or indirect interest in any matter likely to come up for consideration at a meeting of the Payments Regulatory Board must, as soon as possible after the relevant circumstances have come to that member’s knowledge, disclose the nature of his interest to the Payments Regulatory Board.

No act or proceeding of the Payments Regulatory Board, shall be invalid merely by reason of -

(a) any vacancy in or any defect on the constitution of the Payments Regulatory Board;
(b) any defect in the appointment of a person as a member; or
(c) any irregularity in the procedure of the Payments Regulatory Board not affecting the merits of the case.

The Payments Regulatory Board shall publish, after every meeting of the Payments Regulatory Board, the record of the meeting and the resolution adopted at the meeting of the Payments Regulatory Board within a period of 7 days.

Provided, selected portions of records may be published with appropriate delay if such portions meet any of the following conditions, -
(a) they relate exclusively to the conduct of individuals with regard to the performance of their functions within the Payments Regulatory Board;

(b) they relate to information that has been obtained from a person in confidence, where such information is exempt from disclosure by that person under the Right to Information Act, 2005 (22 of 2005);

(c) they involve discussion of a particular instance of violation of laws or censuring any person;

(d) they disclose information about a particular investigation which is ongoing;

(e) they disclose techniques for investigation or inspection;

(f) they disclose information of a commercial nature which has been obtained for regulatory purposes;

(g) they deprive a person of a right to a fair and impartial adjudication.

(13) The selected portions of the record of meeting as per sub-section 13 of this section shall not be published if such portions meet any of the following conditions, –

(a) they are likely to lead to systemic risk;

(b) they are likely to significantly frustrate implementation of an action proposed by the Payments Regulatory Board, where such action has not been disclosed to the public; or

(c) they involve discussion of any particular legal proceeding before a tribunal, court or arbitrator.

(14) The publication of portions of records relating to a particular meeting may be delayed or prevented only if the Payments Regulatory Board, in such meeting, –

(a) records the reason in respect of such portions of the records;

(b) the majority of members present at the meeting vote in favour of such action for each portion of the records separately; and

(c) the vote of each member is recorded and published in accordance with sub-section (10) above.

(d) Portions of records delayed for publication must be published by the Payments Regulatory Board within six months, or as soon as the reasons for their delay cease to be applicable, whichever is later.

(e) In this sub-section, “records” mean the agenda, minutes of the proceedings, decisions taken at the meeting, and includes the votes of each member.

(15) The Payments Regulatory Board may-

(a) appoint such officers and employees as it considers necessary for the efficient discharge of its functions under this Act; and

(b) specify the salaries and allowances payable to, and other terms and conditions of service of the officers and employees.

(16) The Payments Regulatory Board may engage, in accordance with the procedure specified, such number of experts and professionals of integrity and ability, who have relevant knowledge and experience in, payments, economics, law, business or such other disciplines as it deems necessary to assist the Payments Regulatory Board in the discharge of its functions under this Act.
(17) The Payments Regulatory Board shall maintain a website or any other universally accessible repository of electronic information to –

(a) publish all information that the Financial Agency is obliged to publish under this Act or any other law;
(b) publish this Act and all regulations and rules made under it along with an updated version of the same in a manner that all the modifications and amendments are easily accessible.
(c) provide information about the manner in which applications to the Payments Regulatory Board are to be made; and
(d) provide material information about the functions of the Payments Regulatory Board.

(18) All information published must be in an easily accessible and text information should be in a text-searchable format.

CHAPTER 4

OBJECTIVES OF PAYMENTS REGULATORY BOARD

8. (1) The Payments Regulatory Board shall regulate the payments sector and make regulations under this Act.

(2) The Payments Regulatory Board shall consider and balance the following objectives while making regulations and issuing directions under this Act:

(a) consumer protection;
(b) systemic stability and resilience; and
(c) competition and innovation.

(3) The consumer protection objective is to –

(a) protect the interest of consumers;
(b) ensure safety and soundness of the payment systems; and
(c) create trust and confidence in the payment systems.

(4) The systemic stability and resilience objective is to ensure –

(a) control of systemic risk and
(b) systemic efficiency, stability and resilience.

(5) The competition and innovation objective is to enable, in the interest of consumers, –

(a) system participants to access payment systems based on objective, ownership neutral and proportionate standards;
(b) interoperability among system participants and among payment systems,
(c) payments systems and payment services to be developed and operated in a manner that promotes their ease of use, and
(d) improvements in the quality, efficiency and economy of payment systems and payment services.
COORDINATION WITH THE RESERVE BANK

9. (1) The Payments Regulatory Board shall make a reference to the Reserve Bank when it proposes to make any regulation under VII of this Act against a designated payments system.

(2) The reference mentioned in sub-section (1) shall contain:

(a) a brief description of the proposed action to be taken by the Payments Regulatory Board and the reasons for it; and

(b) any particular issue relating to the proposed action on which the Payments Regulatory Board requires Reserve Bank's inputs.

(3) On receipt of the reference under sub-section (1), the Reserve Bank shall give its opinion, in writing, to the Payments Regulatory Board within twenty-one days of the receipt of such information.

(4) The opinion under sub-section (3) shall contain:

(a) Reserve Bank's response with reasons; and

(b) Reserve Bank's recommendation, if any.

(5) The Payments Regulatory Board shall take into account the opinion submitted to it by the Reserve Bank. If the Payments Regulatory Board disagrees with any or all of the recommendation made by the Reserve Bank, it shall give the Reserve Bank a statement in writing with reasons for its disagreement.

(6) If the Reserve Bank is not satisfied with the reasons for disagreement provided by the Payments Regulatory Board under sub-section (5), it shall intimate the reasons for its non-satisfaction to the Central Government and the Payments Regulatory Board.

(7) If the Reserve Bank has intimated the Central Government under sub-section (6), then the Central Government may issue directions within a period of thirty days to the Payments Regulatory Board under section 87.

(8) If the Reserve Bank does not furnish its opinion under sub-section (3), the Payments Regulatory Board may, after waiting for a period not exceeding 21 days, frame regulations.

10. (1) The Reserve Bank may make a reference to the Payments Regulatory Board to consider any matter which, in the opinion of the Reserve Bank, is essential to its monetary policy function.

(2) The reference mentioned in sub-section (1) shall contain:

(a) a brief description of the proposed action to be taken by the Reserve Bank and the reasons for it; and

(b) any particular issue relating to the proposed action on which the Reserve Bank requires Payment Regulatory Board’s inputs.

(3) On receipt of the reference under sub-section (1), the Payments Regulatory Board shall give its opinion, in writing, to the Reserve Bank within twenty-one days of the receipt of such information.
(4) The opinion under sub-section (3) shall contain:

(a) the Payment Regulatory Board's response with reasons; and
(b) the Payment Regulatory Board's recommendation, if any.

(5) The Reserve Bank shall take into account the opinion submitted to it by the Payments Regulatory Board. If the Reserve Bank disagrees with any or all of the recommendation made by the Payments Regulatory Board, it shall give the Payments Regulatory Board a statement in writing with reasons for its disagreement.

(6) If the Payments Regulatory Board is not satisfied with the reasons for disagreement provided by the Reserve Bank under sub-section (5), it shall intimate the reasons for its non-satisfaction to the Central Government and the Reserve Bank.

(7) If the Payments Regulatory Board has intimated the Central Government under sub-section (6) or if the Payments Regulatory board does not furnish its opinion under sub-section (3) then the Central government, after waiting for a period not exceeding twenty-one days, may issue directions within a period of thirty days to the Payments Regulatory Board under section 87.
PART IV

FINANCE, ACCOUNTS, AUlD

11. The Payments Regulatory Board shall prepare, in such form and at such time in each financial year as may be prescribed, its budget for the next financial year, showing the estimated receipts and expenditure of the Payments Regulatory Board and forward the same to the Central Government, for information.

12. (1) There shall be constituted a fund to be called the Payments Regulatory Fund and there shall be credited thereto, –

(a) all Government grants, fees and charges received by the Payments Regulatory Board.

(b) all sums received by the Payments Regulatory Board from such other source as may be decided upon by the Central Government.

(2) The fund shall be applied for meeting, –

(a) the salaries, allowances and other remuneration of the Chairperson and other members and officers and other employees of the Payments Regulatory Board.

(b) other expenses of the Payments Regulatory Board in connection with the discharge of its functions and for the purposes of this Act.

13. (1) The Board shall maintain proper accounts and other relevant records and prepare an annual financial statement in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the Payments Regulatory Board shall be audited by the Comptroller and Auditor-General of India at such intervals as may be prescribed and any expenditure incurred in connection with such audit shall be payable by the Payments Regulatory Board to the Comptroller and Auditor-General of India.

(3) The Comptroller and Auditor-General of India and any other person appointed by him in connection with the audit of the accounts of the Payments Regulatory Board shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the officers of the Payments Regulatory Board.

(4) The accounts of the Payments Regulatory Board as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government and the Central Government shall cause the same to be laid before each House of Parliament.

14. (1) The Board shall, within ninety days after the end of each financial year, submit to the Central Government an annual report in accordance with section 97.

(2) A copy of the report received under sub-section (1) shall be laid, as soon as may be after it is received, before each House of Parliament.

15. The Central Government may, after due appropriation made by Parliament by law in this behalf, make to the Payments Regulatory Board grants of such sums of money as it may think fit for being utilized for the purposes of this Act.
16. (1) No person shall operate or commence operation of a payment system or infrastructure system, except under and in accordance with an authorisation, issued by the Payments Regulatory Board under the provisions of this Act.

(2) Notwithstanding anything contained in sub-section (1), if the Reserve Bank operates or commences operation of an infrastructure system then such an infrastructure system shall be deemed to have been authorised under this Act and the Reserve Bank shall be deemed to be an infrastructure institution under this Act.

(3) Nothing contained in sub-section (1) shall apply to the excluded payment systems specified in Part XII.

(4) The Payments Regulatory Board may, by a reasoned order, exempt an infrastructure system operated by the Reserve Bank under sub-section (2) from any regulations made under this Act.

17. (1) The Payments Regulatory Board shall specify criteria for the grant of an authorisation to operate a payment system.

(2) The criteria under sub-section (1), shall be risk based and ownership neutral and may accordingly be different for different categories of payment systems and infrastructure systems.

(3) The Payments Regulatory Board shall consider the appropriate risks while determining the criteria under sub-section (1), including risks associated with:

(a) settlement;
(b) operational reliability and scalability;
(c) business continuity and resilience;
(d) safety of consumer funds; and
(e) money-laundering and terrorism financing.

(4) The Payments Regulatory Board shall specify criteria under sub-section (1), covering -

(a) the reasonable requirements with respect to capital structure;
(b) the legal and organisation structure;
(c) the ownership structure and restrictions on ownership by specified persons or a specified class of persons;
(d) the system of governance required to be put in place;
(e) the design or the technical standards in order to ensure objectives under sub-section 8(2) of section 8;
(f) fit and proper person criteria for persons engaged in the oversight or strategic management of the applicant; and
19. (g) such other criteria as may be specified.

18. (1) Any person desirous of commencing or operating a payment system may apply to the Payments Regulatory Board 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 specified.

19. (1) After the receipt of an application under section 18, and before an authorisation is issued under this Act, the Payments Regulatory Board may make such inquiries as it may consider necessary for the purpose of satisfying itself about:

(a) the genuineness of the particulars furnished by the applicant in relation to the criteria specified under section 17,
(b) applicant’s capacity to operate the payment system,
(c) the credentials of the applicant.

(2) When an inquiry under section (1) is conducted by any person authorised by it in this regard, the Payment Regulatory Board may require a report from such person in respect of the inquiry.

20. (1) The Payments Regulatory Board shall, if satisfied, after any inquiry under section 19 or otherwise, that the application is complete in all respects and that it conforms to the regulations specified under section 17(1), issue an authorisation in writing.

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

(a) state the date on which it takes effect;
(b) state the conditions, if any, subject to which the authorisation shall be in force along with reasons;
(c) indicate the payment of fees, as may be specified, if any, to be paid for the authorisation to be in force;
(d) if it considers necessary, require the applicant to furnish such security, as may be specified, 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) If the Payments Regulatory Board issues an authorisation with any conditions under sub-section (2)(b) subject to which the authorisation shall be in force, it shall pass a reasoned order for imposing such conditions after giving the applicant a reasonable opportunity of being heard.

(4) The authorisation issued under sub-section (1) shall be published in the official gazette.

(5) Where the Payments Regulatory Board considers that the application for authorisation should be refused, it shall pass a reasoned order in writing stating the reasons for refusal:

Provided that no such application shall be refused unless the applicant is given a reasonable opportunity of being heard.
(6) Every application for authorisation shall be processed by the Payments Regulatory Board as soon as possible and an endeavour shall be made to dispose of such application within 90 days from the date of filing of such application.

21. (1) The Payments Regulatory Board may, by a reasoned order, revoke the authorisation given to a system provider under this Act, if such system provider:

(a) contravenes any provisions of this Act or any regulations issued under this Act;
(b) fails to comply with the orders or directions issued under this Act;
(c) operates the payment system contrary to the conditions subject to which the authorisation was issued; or
(d) makes an application, as may be specified, for revocation of its authorisation.

(2) Except under clause (1)(d) of sub-section (1), no order of revocation under sub-section (1) shall be made -

(a) except after giving the system provider a reasonable opportunity of being heard; and
(b) without prejudice to the direction under this Act to the system provider that the operation of the payment system shall not be carried out till the order of revocation is issued.

(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, except the system provider whose authorisation is being revoked.

(4) Where, based on information provided by a system provider or opinion of the Payments Regulatory Board, a system provider becomes or is likely to become insolvent or dissolved or wound up, the Payments Regulatory Board shall take necessary action in the interest of consumers as deemed necessary to revoke the authorisation issued to such system provider to operate the payment system.

22. (1) A person authorised under section 20, may file an application to the Payments Regulatory Board to seek a temporary exemption from any specific regulations issued under this Act to experiment with a proposed payment service or payment system.

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

(3) The Payments Regulatory Board may grant an exemption, in such form, manner and process as may be specified, for a period not more than six months, having regard to the following considerations, namely:-

(a) such exemption is essential to test a proposed payment service or payment system;
(b) the proposed payment service or payment system is a genuine innovation;
(c) the proposed payment service or payment system has potential to benefit consumers in India;
(d) such exemption is not likely to compromise financial stability and interests of consumers in India;
(e) after the expiry of the temporary exemption, the proposed payment service or payment system is likely to be deployed on a broader scale in India; and
(f) such other criteria as may be specified from time to time.

(4) The Payments Regulatory Board may, while granting exemption under sub-section (3), state the following conditions, subject to which exemption shall be in force, including -

(a) providing adequate disclosure of the potential risks to consumers associated with the proposed payment service or payment system;
(b) limiting the number of consumers with respect to the proposed payment service or payment system;
(c) limiting the aggregate value of transactions with respect to the proposed payment service or payment system;
(d) availability of consumer redress mechanism;
(e) such other safeguards to protect the interests of consumers and overall safety and soundness of the payment systems.

(5) A person granted exemption under sub-section (3) may file an application along with reasons, in such form and manner as may be specified, to the Payments Regulatory Board to extend the period of such exemption.

(6) The Payments Regulatory Board may, upon receiving the application under subsection (5), extend the period of exemption for further terms, not exceeding six months.

(7) Any exemption given to an authorised person under sub-section (3) of this section shall be in the form of an order and shall be published by the Payments Regulatory Board along with reasons for satisfaction of the Payments Regulatory Board.

23. (1) A person granted exemption under section 22 shall file a report after the end of six months or if an exemption is granted under subsection (6) of section 22, at the end of the extended period, in such form and manner as may be specified, with the Payments Regulatory Board.

(2) Payments Regulatory Board shall within the time specified, examine the report submitted under subsection (1) and take either of the following actions,-

(a) Permit the person granted exemption under section 22 to operate the proposed payment system or provide the proposed payment service; or
(b) Not permit the person granted exemption under section 22 to operate the proposed payment system or provide the proposed payment service.

(3) If the Payments Regulatory Board decides to take action under clause (a), the Payments Regulatory Board shall amend the applicable regulations under this Act to ensure that the proposed payment system or proposed payment service is operated within the regulatory framework.

(4) If the Payments Regulatory Board decides to take action as per clause (b), the Payments Regulatory Board shall pass a reasoned order in writing.
24. (1) If the Payments Regulatory Board is of the opinion that exemption granted to system provider under sub-section 3 of section 21 should, in the interest of financial stability and consumers, be withdrawn, or the system provider has violated the conditions subject to which exemption was granted, the Payment Regulatory Board shall revoke the exemption granted to a system provider under sub-section (3) of section 21.

(2) No order of revocation of exemption shall be made under sub-section (1) unless:

(a) a written notice is sent to the system provider, providing reasons for considering the revocation of the exemption, and;

(b) the system provider has been given reasonable opportunity of being heard.

25. (1) A system provider authorised under section 20(1) shall make and maintain bye-laws governing the operation of the payment system consistent with the provisions of this Act and regulations made under this Act.

(2) The bye-laws shall be in such form and manner as may be specified.

CHAPTER 6
SUPERVISION

26. The Payments Regulatory Board may, from time to time, specify:

(a) the format of payment instructions and the size and shape of such instructions, other than cheque as defined in section 6 of the Negotiable Instruments Act, 1881;

(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, amongst system participants;

(d) 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; and

(e) such other standards, as may be specified, necessary for the proper and efficient management of the payment systems generally.

27. (1) The Payments Regulatory Board may specify common standards and any other criteria as it may consider necessary on a category of payments systems to enable:

(a) system participants to access payment systems; and

(b) interoperability among system participants and among payment systems.

(2) Such criteria shall be objective, ownership neutral and proportionate and shall not inhibit access more than necessary to safeguard against specific risks such as data security risk, settlement risk, operational risk and business risk and to protect the financial and operational stability of the payment system.

(3) Such access criteria shall not restrict effective participation of such system participants in other payment systems;
(4) Before imposing common standards under subsection (1) or mandating payment systems to require interoperability with other payment systems under subsection (1)(b), the Payment Regulatory Board shall consider:

(a) the interests of the consumers and public;
(b) the interests of the system participants and payment systems;
(c) the interests of the persons on whom the common standards are to be imposed;
(d) the interests of persons who, in the future, may be required to be a system participant; and
(e) such other matters as the Payment Regulatory Board may consider to be relevant.

(5) If a payment system refuses to provide access to a person, such person may make an application as may be specified to the Payments Regulatory Board.

(6) The Payments Regulatory Board may pass a reasoned order, in writing, to such payment system to enable the applicant to become a system participant in relation to that payment system, if it is determined that access has been unreasonably denied.

28. (1) Every system provider shall make reports to the Payments Regulatory Board relating to its business and occurrence of any event as may be specified.

(2) The Payments Regulatory Board shall make regulations requiring system providers to make reports under sub-section (1) in a specified form, manner and frequency.

29. (1) The Payments Regulatory Board may require a system provider or a system participant to provide such documents and information as are reasonably required by it for the discharge of its functions under this Act.

(2) If the Payments Regulatory Board requires a system provider to provide information or produce documents under sub-section (1), the Payments Regulatory Board shall give a notice in writing to that system provider.

(3) The Payments Regulatory Board shall specify the manner in which a system provider shall provide information or documents sought by Payments Regulatory Board under sub-section (1) including,-

(a) the designation of the officer of the Payments Regulatory Board who may seek such information or documents;
(b) the time-limit within which such information or document has to be produced;
(c) the form in which such information or document has to be produced.
(d) such other information as may be specified.

30. (1) Any officer of the Payments Regulatory Board duly authorised by it, in writing, on this behalf, may for ensuring compliance with the provisions of this Act or any regulation, in accordance with any regulations specified on this behalf, 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 employees of such system provider or its system participants thereof or any other persons working in such premises to furnish such information or documents as may be required by such officer.
(2) While making regulations under sub-section (1), the Payments Regulatory Board shall, governing the manner for inspection, specify-

(a) the process for initiating and conducting inspections;
(b) occasions at which a system provider or its system participant may be inspected;
(c) the manner in which the record of such documents inspected and the findings be provided to the system provider or its system participant;
(d) the time period within which the record of documents shall be inspected and findings arrived at; and
(e) such other requirements to be met by a system provider or its system participant to enable the Payments Regulatory Board to collect accurate information about a system provider or its system participants.

(3) Any regulation made under this section shall balance the requirements of the Payments Regulatory Board to,

(a) cause minimum disruption in the business of a system provider or its system participant; and
(b) not impose unreasonable burden upon a system provider or its system participant.

31. (1) The Central Government, Payments Regulatory Board, every member and every employee of the Payments Regulatory Board, shall maintain the confidentiality of any regulatory data and other commercially sensitive information that is obtained or produced in the discharge of any of its functions under this Act, unless,

(a) any provision of this Act permits or requires its publication or disclosure;
(b) any other law or any agreement in force permits or requires its publication or disclosure;
(c) the person from whom it was obtained and if different, the person to whom it relates, consents to the disclosure;
(d) it is already available to the public from other sources;
(e) it is in the form of a summary or collection of information so framed, that it is not possible to ascertain from it information relating to any particular person;
(f) the disclosure enables or assists the Payments Regulatory Board or the Central Government to discharge its functions under this Act; or
(g) the disclosure is directed by a judicial authority having appropriate jurisdiction, for the purpose of any judicial proceeding.

(2) In sub-section (1), “agreement” means an agreement in accordance with this Act, between-

(a) Payments Regulatory Board and any financial sector regulator; or
(b) Payments Regulatory Board and the Central Government; or
(c) Payments Regulatory Board and a State Government.

(3) Nothing in this section will restrict the power of a public authority to exempt any information under section 8 of the Right to Information Act, 2005 (22 of 2005).
32. (1) The Payments Regulatory Board may, for the purpose of carrying out its functions under this Act, conduct or get audits and inspections conducted of a payment system or system participants thereof and it shall be the duty of the system provider and system participant to assist the Payments Regulatory Board to carry out such audit or inspection.

(2) The Payments Regulatory Board may specify the criteria, form, manner, and frequency of audits and inspections.

33. (1) Where the Payments Regulatory Board has reasonable ground to believe that any system provider or system participant is violating or has violated any provision of this Act or regulations made under this Act, it may, at any time by a reasoned order in writing, direct any officer to investigate such violation.

(2) The Payments Regulatory Board shall duly authorise, in writing, such officer for investigating the violation and record such authorisation.

(3) The record of authorisation shall provide for:
   (a) the authorisation of the officer;
   (b) reason for commencing the investigation;
   (c) scope of the investigation;
   (d) the duration of the investigation, which shall not exceed one hundred and eighty days in any one instance; and
   (e) the method of reporting of the investigation.

(4) The Payments Regulatory Board may modify the terms of authorisation contained in sub-section (3), if the circumstances of the investigation require such modification.

(5) In this section, "officer" means an employee of the Payments Regulatory Board not below the rank of Chief General Manager.

34. (1) The officer authorised under section 33(2) shall have the same powers as are vested in a civil court under the Civil Procedure Code, 1908 (5 of 1908) in respect of the following matters:
   (a) the discovery and production of any document, including books of account;
   (b) summoning and enforcing the attendance of any individual in relation to operation of the payment system and examining him on oath;
   (c) requiring such individuals to produce relevant records and documents; and
   (d) issuing commissions for the examination of persons in relation to operation of the payment system or documents.

(2) The officer may require any employee, director or person in control of a person under investigation to:
   (a) produce any book, document, records or information relating to the person under investigation, which are in his custody or power; and
   (b) appear in person or through an authorised representative before the officer and respond to the questions of the officer.
(3) The officer may—
(a) make copies of any document, record, or information produced; and
(b) retain the books, accounts, or any other records obtained in the course of investigation, for a period not exceeding thirty days from the date on which they are obtained.

(4) Where the investigator proposes to retain such books, accounts or records for a period exceeding thirty days, it must comply with the process set out in section 36.

(5) Any copy of a document or record made by the officer shall be presumed to be a true and accurate copy, unless evidence is produced to the contrary.

35. The officer authorised under section 33 shall exercise the powers contained under this Act only after giving a notice in writing to the person under investigation stating—
(a) the relationship between the person who is investigated and the scope of the investigation under sub-section 33(3) of section 33; and
(b) the reasons recorded for such investigation.

36. (1) The officer authorised under section 33(3) of this Act may—
(a) enter and search the premises of the person being investigated;
(b) seize and retain custody of books, accounts or any other records of the person being investigated;
(c) attach, for a period not exceeding thirty days, the proceeds, involving in the violation being investigated.

(2) If the officer authorised under section 33(3) of this Act, proposes to use the powers under sub-section (1), the officer—
(a) shall make an application to the Magistrate;
(b) may requisition the services of any police officer or any officer of the Central Government or both, to assist him for all or any of the purposes set out in sub- section (1), and it will be the duty of every such officer to comply with such requisition.

(3) The Magistrate may issue an order authorising the officer to carry out the actions contained in sub-section (1), if the officer satisfies the Magistrate that—
(a) the person being investigated may not co-operate with the investigation; or
(b) if the authorised officer calls for any document, the person may cause destruction of information or records which is required by the officer.

(4) The order of the Magistrate under sub-section (3) will have the same legal effect as a warrant issued by a court under the Criminal Procedure Code, 1973 (2 of 1974).

(5) The officer may keep in his custody the books, accounts and other records seized under this section for a period set out in the order passed by the Magistrate, not exceeding the duration of the investigation.
(6) On completion of the investigation, the officer shall—

(a) return such books, accounts and records to the person from whose custody or power they were seized, with or without identification marks placed on them or any part of them; and

(b) inform the Magistrate of such return.

(7) Except as otherwise provided in this section, every search or seizure made under this section shall be carried out in accordance with the provisions of the Criminal Procedure Code, 1973 (2 of 1974) relating to searches or seizures made under that Code.

(8) In this section, “Magistrate” means a Magistrate or Judge of such designated court in Mumbai as may be notified by the Central Government.

37. The officer authorised under section 33(3) of this Act shall make the following reports to the Payments Regulatory Board containing such details as may be specified by the regulations—

(a) after the lapse of time mentioned in the record of appointment, an interim report indicating the reasons for not completing the investigation within such time; and

(b) after the conclusion of the investigation, a final report.

38. (1) Where, on a complaint received by the Payments Regulatory Board or suo motu, the Payments Regulatory Board, after conducting an inspection under section 30 or investigation under section 33 of this Act, is of the opinion that it is necessary to do so, it may appoint one or more officers of the Payments Regulatory Board as observer in the manner as may be specified by the Payments Regulatory Board, by a reasoned order in writing, with effect from such date as may be mentioned in the order.

(2) Any person appointed as observer in pursuance of this section shall hold office during the pleasure of the Payments Regulatory Board and subject thereto for a period not exceeding three years or such further periods not exceeding three years at a time.

(3) The Payments Regulatory Board while making regulations under sub-section (1) shall ensure that any person responsible to conduct an inquiry under sub-section 33(2) shall not be eligible for appointment as an observer.

(4) The officer appointed in sub-section (1) may for the purpose mentioned in sub-section (1):

(a) attend such meetings of the board or the sub-committee of the board of the system provider of a payment system where the agenda at such meetings is directly related to the affairs of the payment system, and

(b) require the system provider to submit to the Payments Regulatory Board such information as the officer may require in relation to the payment system.

Provided the officer shall submit the requirement for information under sub-section (b) in writing with a justification for requesting the information.

39. (1) Where the Payments Regulatory Board 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 act, omission or course of conduct under clause (a) is likely to adversely affect the payment systems operating in India, the Payments Regulatory Board may issue directions in writing to such payment system or system participant requiring it, within such time as the Payments Regulatory Board may specify-

(i) to cease and desist from engaging in the act, omission or course of conduct or to ensure any other system participant 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 Payments Regulatory Board, to remedy the situation.

(2) The Payments Regulatory Board may, on representation made to it or on its own motion, modify or cancel any direction issued under sub-section (1), and in so modifying or cancelling any direction may impose such conditions as it thinks fit, subject to which the modification or cancellation shall have effect.

(3) If the Payments Regulatory Board decides to give directions or modify or cancel any direction under this section, it shall issue an order containing details of the same with reasons.

(4) No order under sub-section (3) shall be made except after giving the system provider or system participant a reasonable opportunity of being heard.

40. (1) Without prejudice to the foregoing provisions, the Payments Regulatory Board may make regulations to issue necessary direction in public interest to system providers or system participants or any other person either generally or to such agency and in particular, pertaining to the conduct of business relating to payment systems.

(2) For the purposes of this section, a direction that can be issued by the Payments Regulatory Board in public interest under sub-section (1) shall only be to regulate the payment systems including electronic, non-electronic, domestic and international payment systems affecting domestic transactions.

(3) If the Payments Regulatory Board decides to give directions under this section, it shall issue an order containing details of the direction issued with reasons.

(4) No order under sub-section (3) shall be made except after giving the system provider or system participant or any other person a reasonable opportunity of being heard.

41. Payments Regulatory Board can call for or furnish to any such agencies, as may be specified by the Payments Regulatory Board, such information as may be considered necessary by it for the efficient discharge of its functions.

CHAPTER 7
ENFORCEMENT ACTIONS

42. (1) The Payments Regulatory Board may take one or more enforcement action, by an order in writing, against a person, if such person,
(a) fails to comply with the conditions subject to which the authorisation has been issued under section 20 of this Act;
(b) fails to produce any statement, information, returns or other documents, or to furnish any statement, information, return or other documents, which are required under section 28(1) or under section 29 of this Act;
(c) fails to furnish any documents or answer any question relating to the operation of a payment system which is required by an officer making inspection under section 30 of this Act;
(d) violates any applicable provision of this Act or any regulation made under it;
(e) violates any order or direction under this Act; or
(f) knowingly and wilfully disrupts, attempts to disrupt, or aids in disrupting, the normal functioning of a payment system.

(2) The enforcement action referred in sub-section (1) constitutes-

(a) issuance of a private warning;
(b) issuance of a public statement;
(c) requiring a person to correct a violation;
(d) imposition of a monetary penalty on a person which may extend to one crore rupees or twice the amount involved in such contravention, whichever is more, and if the person fails to pay the penalty, a further monetary penalty which may extend to one lakh rupees for every day for which the contravention or default continues; and
(e) issuance of a disgorgement order; and
(f) declaring a person to be not fit and proper person for this Act or regulations made under this Act as may be mentioned in the order.

(3) When the Payments Regulatory Board issues a private warning, it shall not publish such warning, but may provide copies of the warning to such person.

(4) No enforcement action shall be made without giving a reasonable opportunity to be heard.

43. (1) For the purpose of determining whether any enforcement action should be taken under sub-section (1) section 39, the Payments Regulatory Board shall appoint such adjudicating officers, for holding an inquiry in the manner prescribed after giving the concerned party a reasonable opportunity of being heard for the purpose of taking any enforcement action referred in sub-section (2) of section 39.

(2) The Payments Regulatory Board shall ensure that -

(a) there is operational segregation and independence of the adjudicating officers; and
(b) adjudicating officers are not involved in any function that conflicts with the independence and neutrality of such officers.

(3) While holding an inquiry, the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document, which in the opinion of the adjudicating officer, may be useful for or relevant to the subject matter of the inquiry and if, on such inquiry, the officer is satisfied that the person has failed to comply with the provisions of the Act, the officer may impose such penalty as the officer thinks fit in accordance with the provisions of this Act.
(4) Save as otherwise provided in the Act, any action to be taken or power to be exercised by the Payments Regulatory Board in the following sections of this Act, shall be delegated to and exercised by the adjudicating officer appointed as per sub-section (1) above -

(a) Power to issue disgorgement order under sub-section 42(2)(e).
(b) Any enforcement action to be taken by the Payments Regulatory Board under section 42.
(c) Power to issue a show-cause notice under section 46.
(d) Power to issue discontinuance notice under section 49.

(5) The adjudicating officer can take any other action or exercise any power, as may be specified.

44. (1) A disgorgement order may be issued under sub-section 42(2)(e) of section 42 by the Payments Regulatory Board against any person who made profit or averted loss by indulging in any activity in contravention of this Act or regulations made under this Act, to pay an amount equivalent to the wrongful gain made or loss averted by such contravention.

(2) The Payments Regulatory Board may pay to such persons who have been affected by a violation of the provisions of this Act or regulations made under this Act, from the amount received under sub-section (1) by the Payments Regulatory Board. While making such payment, the Payments Regulatory Board may take account of any consideration as it deems fit, including but not limited to the following criteria:

(a) the loss suffered by the persons is directly attributable to the violation;
(b) the persons who have suffered loss due to the violation can be reasonably identified; and
(c) the amount disgorged is sufficient to provide restitution to similarly placed persons.

(3) The Payments Regulatory Board shall make necessary regulations in relation to disgorgement order, including-

(a) the procedure for claiming amount under this section by persons suffering a loss;
(b) the time-period within which such amount may be claimed; and
(c) other matters incidental to enable the Payments Regulatory Board to pay from the amount received under sub-section (1).

45. (1) Any enforcement action taken by the Payments Regulatory Board under sub-section 42(1) of section 42 shall be proportionate to the action or omission in respect of which the enforcement action is proposed to be undertaken.

(2) The Payments Regulatory Board shall consider the following factors while determining the enforcement action to be taken against a person, -

(a) the nature and seriousness of the action or omission by the person, including whether the action or omission was -
   (i) deliberate on the part of the person;
   (ii) caused due to the recklessness of the person; or
   (iii) caused due to negligence on the part of the person;
(b) the consequences and impact of the action or omission, including the extent of:
   (i) benefit or unfair advantage gained by the person as a result of the action or omission; and
   (ii) loss caused, or likely to be caused, to consumers or other persons as a result of the action or omission;
(c) the conduct of the person upon the discovery of the occurrence of the action or omission; and
(d) repetitive nature of the action or omission.

46. (1) The Payments Regulatory Board shall issue a show cause notice to a person against whom it proposes to take an enforcement action under section 42.

(2) The Payments Regulatory Board shall provide access to the material that exists in support of the show-cause notice to the person against whom it proposes to take an enforcement action under section 42.

(3) Nothing contained in this section (1) shall be applicable when the Payments Regulatory Board proposes to issue a private warning against a person under section 42.

47. (1) A show cause notice issued under section 46(1) of this Act shall,-

   (a) be in writing;
   (b) state the action which the Payments Regulatory Board proposes to take;
   (c) give causes requiring the proposed action; and
   (d) state whether any material exists in support of the show cause notice.

(2) The show cause notice shall provide the noticee a reasonable period, which shall not be less than twenty-one days, within which the noticee may make representations to the Payments Regulatory Board.

(3) The Payments Regulatory Board may grant a reasonable extension of time for making the representations as may be specified.

(4) After the period under sub-section (2) or as extended under sub-section (3) has expired, the Payments Regulatory Board shall decide within a specified period whether to issue an order undertaking an enforcement action.

48. (1) Every order issued under section 42 of this Act by the Payments Regulatory Board shall,-

   (a) be in writing;
   (b) state the reasons for the order;
   (c) state the material relied upon in making the order;
   (d) be delivered immediately to the person against whom the order has been made by registered post; and
   (e) be published except as may be specified.

(2) If the order was preceded by a show cause notice, the action to which the order relates shall be the same action proposed in the show cause notice.

(3) An order does not, unless it states otherwise with reasons, become effective until thirty days have elapsed from the date of issue of the order.
(4) An order, which requires a person to take certain identified actions under section 42(2), shall provide reasonable time to such person to perform such actions.

49. (1) The Payments Regulatory Board shall give a discontinuance notice in writing to the concerned person, within a reasonable period of time, if it decides not to take an action proposed in a show cause notice.

(2) A discontinuance notice shall identify the action or actions which are being discontinued.

(3) A discontinuance notice may be published by the Payments Regulatory Board if the person to whom such discontinuance notice relates, requests such publication.

50. (1) Any person aggrieved by any order made under this Act may prefer an appeal before the Securities Appellate Tribunal which shall have jurisdiction over the matter.

(2) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date of receipt of the order appealed against and it shall be in such form and manner and shall be accompanied by such fee as may be prescribed:

Provided that the Securities Appellate Tribunal may entertain an appeal after the expiry of the said period, if it is satisfied that there was sufficient cause for not preferring the appeal within that period.

(3) On receipt of an appeal under sub-section (1), the Securities Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(4) The Securities Appellate Tribunal shall send a copy of every order made by it to the Payments Regulatory Board and the parties to the appeal.

(5) The appeal filed before the Securities Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date on which the appeal is presented to it.

(6) Without prejudice to the provisions of sections 15T and 15U of the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Securities Appellate Tribunal shall deal with an appeal under this section in accordance with such procedure as may be prescribed.

51. No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter for which the Payments Regulatory Board under this Act or a Securities Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

52. Any person aggrieved by any decision or order of the Securities Appellate Tribunal under this Act may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Securities Appellate Tribunal to him on any question of law arising out of such order:

Provided that the Supreme Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.
PART VI

CONSUMER PROTECTION AND RIGHTS AND DUTIES
OF A SYSTEM PROVIDER

CHAPTER 8

CONSUMER PROTECTION

53. (1) The Payments Regulatory Board shall consider and balance the following principles while making regulations under this Chapter,-

(a) the level of protection required for a consumer may vary depending on the following,-

(i) the level of knowledge, experience and expertise of the consumer;

(ii) the nature and degree of risk embodied in the payment service by the consumer; and

(iii) the extent of dependence of the consumer on the system participant.

(b) any obligation imposed on a system provider or a system participant should be reasonably commensurate with the anticipated aggregate benefits for consumers.

54. (1) The Payments Regulatory Board shall make such regulations so as to impose adequate obligations on system provider to ensure protection of funds of persons using the payment system.

(2) While making a regulation under sub-section (1), the Payments Regulatory Board shall consider the necessity for the system provider to,-

(a) place the funds in a separate account that it holds with a bank;

(b) invest the funds in such secure, liquid assets as may be specified;

(c) maintain the funds in a separate account as may be specified;

(d) any other mechanism as it may deem fit.

(3) While making a regulation under sub-section (1), if the regulation requires a class of payment systems to mandatorily use, directly or indirectly, the services of another class of regulated entities, the Payments Regulatory Board shall endeavour to ensure that such payment systems suffer least competitive disadvantage due to such mandatory requirement.

(4) The funds of any person held in the account or accounts, referred to in sub-section (2)(a), shall not be utilised for any purpose other than for discharging the liabilities arising on account of the usage of the payment system by the customers or for repaying to the customers or for such other purpose as may be specified by the Payments Regulatory Board from time to time.

(5) Notwithstanding anything contained in the Banking Regulation Act, 1949 or the Companies Act, 1956 or the Companies Act, 2013 or any other law for the time being in force, the persons entitled to receive payment under sub-section (4) shall have a first and paramount charge on the balance held in that account and the liquidator or receiver or assignee (by whatever name called) of the system provider of the payment system or the scheduled commercial bank concerned, whether appointed as provisional or otherwise, shall not utilise the
said balances for any other purposes until all such persons are paid in full or adequate provision is made therefore.

Explanation - For the purposes of this section, “scheduled commercial bank” shall mean a “banking company”, “corresponding new bank”, “State Bank of India” and “subsidiary bank” as defined in section 5 of the Banking Regulation Act, 1949 (10 of 1949) and included in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934).

55. (1) The Payments Regulatory Board may specify regulations to –

(a) access, process, handle, retain and transmit of personal information of consumers in relation to a payment system including, -

(i) the manner of maintenance of records of personal information;
(ii) the time-periods for which the records are to be maintained; and
(iii) the manner in which records of personal information should be dealt with after the expiry of the specified period;
(iv) mechanisms to ensure that consumers have access to, and are given an effective opportunity to seek modifications to, their personal information.

(b) determine security standards to ensure safety and protection from unauthorised access, use, disclosure, disruption, modification or destruction in relation to payment systems.

(2) The Payments Regulatory Board shall ensure that regulations made under clauses (1)(a) and (1)(b) shall be consistent with the provisions and regulations made under Information Technology Act, 2000 (21 of 2000).

56. (1) Every system provider shall disclose information, as may be specified, to enable consumers to make an informed decision.

(2) The Payments Regulatory Board shall specify the information to be disclosed in relation to a payment service under sub-section (1), which may include-

(a) the main characteristics of the payment service, including its features, benefits and risks to the consumer;
(b) the consideration to be paid for the payment service;
(c) the attributes of the system participant including their identity and details of authorisation;
(d) the contact details of the system participant and the methods of communication to be used between the system participant and the consumer;
(e) the rights of the person who uses payment services, if any, to rescind a contract for the provision of a payment service; and
(f) any other information as may be specified from time to time.

57. (1) Every system provider shall provide effective mechanism for receipt and redressal of complaints in relation to payment services in a prompt and efficient manner.

(2) The Payments Regulatory Board shall specify the essential features of the mechanism to be provided by a system provider under sub-section (1), including,-

(a) the manner in which a complaint may be made and the time-period within which the complaint must be filed; and
the process to be followed by a system provider to receive and redress complaints and the time limits for each step of the process.

(3) Any person, who filed a complaint under sub-section (1), may file an application, in the form and manner as may be specified, before an independent redress mechanism as may be specified by the Payments Regulatory Board if:

(a) the system provider has failed to resolve the complaint within time-period specified under sub-section (2)(b); or

(b) the complainant is not satisfied with the resolution of the complaint by the system provider.

(4) Any party to the complaint filed under sub-section (1) who is not satisfied by the order passed by the independent redress mechanism specified in sub-section (3) may prefer an appeal before the Securities Appellate Tribunal under section 50(1).

58. Notwithstanding anything contained in this Act, no consumer shall be barred from filing a complaint for redressal under the Consumer Protection Act, 1986 (68 of 1986).

CHAPTER 9
RIGHTS AND DUTIES OF A SYSTEM PROVIDER

59. 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 Payments Regulatory Board from time to time.

60. A 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, and supply them with copies of the bye-laws governing the operation of the payment system, netting arrangements and other relevant documents as may be specified.

61. (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.

(2) Every chairperson, director, member, auditor, officer or other employee of a system provider shall, before entering upon his duties, make a declaration of fidelity and secrecy in the form, as may be specified in this regard.

(3) The provisions of the Bankers’ Book Evidence Act, 1891 (18 of 1891) shall apply in relation to the information or documents, or other books in whatever form maintained by the system provider.
62. (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 Payments Regulatory Board while issuing authorisation to a payment system under section 20, or, such gross or netting procedure as may be approved by it under any other provisions of this Act.

(2) Where the rules providing for the operation of a payment system indicates a procedure for the distribution of losses between the system participants, 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, by an order of a court, Tribunal or authority–

(a) a system participant is declared as insolvent or is dissolved or wound up; or

(b) a liquidator or receiver or assignee (by whatever name called), whether provisional or otherwise, is appointed in a proceeding relating to insolvency or dissolution or winding up of a system participant,

then, notwithstanding anything contained in the Banking Regulation Act, 1949 (10 of 1949) or the Companies Act, 2013 (18 of 2013) or any other law for the time being in force, such order shall not affect any settlement that has become final and irrevocable prior to such order or immediately thereafter, and the right of the system provider to appropriate any collateral contributed by the system participants towards its settlement or other obligations in accordance with the bye-laws relating to such system provider.

(5) Where an order referred to in sub-section (4) is made with respect to a central counter party, then, notwithstanding such order or anything contained in the Banking Regulation Act, 1949 (10 of 1949) or the Companies Act, 2013 (18 of 2013) or any other law for the time being in force, the payment obligations and settlement instructions between the central counter party and the system participants including those arising from transactions admitted for settlement at a future date, shall be determined forthwith by such central counter party in accordance with the gross or netting procedure, as the case may be, approved by the Payments Regulatory Board, while issuing authorisation or under any other provisions of this Act, and such determination shall be final and irrevocable.

(6) Notwithstanding anything contained in the Banking Regulation Act, 1949 (10 of 1949) or the Companies Act, 2013 (18 of 2013) or any other law for the time being in force, the liquidator or receiver or assignee (by whatever name called) of the central counter party, whether appointed as provisional or otherwise, shall–

(a) not re-open any determination that has become final and irrevocable; and

(b) after appropriating in accordance with the rules, regulations or bye-laws of the central counter party, the collateral provided by the system participants towards their settlement or other obligations, return the collateral held in excess to the system participants concerned.

Explanation 1- 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.

(7) Notwithstanding anything contained in sub-section (3) of section 77 of Compa-
nies Act, 2013 (18 of 2013), the liquidator, receiver or assignee (by whatever
name called), whether appointed as provisional or otherwise, and other cred-
itors of the system participant shall take into account the right of the system
provider to appropriate the collateral contributed by the system participant to-
wards its settlement or other obligations in accordance with the bye-laws of
such system provider and shall not have any right to such collateral.

(8) The system provider shall, after appropriating the collateral under sub-section
(7), return the collateral held in excess to the liquidator, receiver or assignee
(by whatever name called) of the system participant concerned, whether ap-
pointed as provisional or otherwise.
63. (1) The Payments Regulatory Board may, by a reasoned order in writing, designate a payment system, authorised under section 20(1), as a designated payment system if it is satisfied that -

(a) a disruption in the operations of the payment system could trigger, cause or transmit further disruption to the system participant or systemic disruption to the financial system of India; or

(b) a disruption in the operation of the payment system could affect public confidence in payment systems of India; or

(c) it is otherwise in the interest of the public to do so.

(2) The Payments Regulatory Board shall specify the criteria to evaluate if the conditions mentioned in sub-section (1) are satisfied by a payment system based on the following features:

(a) the market share controlled;

(b) degree of interconnectedness and interdependencies with other payment systems;

(c) number and type of system participants;

(d) volume, value and type of transactions that the payment system processes or is likely to process in the future; and

(e) the available alternatives to using the payment system at a short notice.

(3) The Payments Regulatory Board shall publish an order made under sub-section (1) immediately after it is made and submit a copy of the same to the Reserve Bank and the Central Government.

(4) Notwithstanding anything contained in section 63, an infrastructure system shall be deemed to be a designated payment system under this Act.

64. The Payments Regulatory Board, before making a designation order in respect of a payment system, shall -

(a) intimate the system provider of the payment system and consider any representation made by such system provider,

(b) give the system provider an opportunity to be heard.

65. (1) The Payments Regulatory Board shall review as frequently as required, and at least once every financial year, the applicability of the criteria contained in regulations made under section 63(2) to the designated payment systems.

(2) The Payments Regulatory Board may at any time after making a designation order amend or revoke such designation order, by a reasoned order in writing, on its own or through an application made by the system provider of the designated payment system.
(3) The Payments Regulatory Board, before amending or revoking a designation order in respect of a payment system, shall -

(a) intimate the system provider of the payment system and consider any representation made by such system provider, and

(b) give the system provider an opportunity to be heard.

(4) The Payments Regulatory Board shall revoke a designation order under sub-section (2) if it is satisfied that the conditions mentioned in section 63(1) are no longer applicable to the payment system to which the order relates.

(5) The Payments Regulatory Board shall publish an order made under sub-section (2) immediately after it is made and submit a copy of the same to the Reserve Bank and the Central Government.

CHAPTER 11
PRINCIPLES AND POWERS UNDER THIS PART

66. (1) The Payments Regulatory Board may, in order to achieve the objective of systemic stability and resilience, specify additional requirements on a designated payment system.

(2) The additional requirements under sub-section (1) may be relating to authorisation, supervision, consumer protection and rights and duties of system provider under this Act.

67. (1) If the Payments Regulatory Board is of the opinion that in pursuance objectives mentioned in section 8(4), it is necessary to do so, it may, from time to time, appoint one or more officers of the Payments Regulatory Board as observer(s) for a period and in such manner as may be specified, by a reasoned order in writing, with effect from such date as may be specified in the order, to observe the manner in which the affairs of the designated payment system are being conducted and make a report thereon.

(2) The officer appointed in sub-section (1) may for the purpose mentioned in sub-section (1):

(a) attend such meetings of the board or the sub-committee of the board of the system provider of a designated payment system where the agenda at such meetings is directly related to the affairs of the designated payment system, and

(b) require the system provider to submit to the Payments Regulatory Board such information as the officer may require in relation to the designated payment system.

Provided the officer shall submit the requirement for information under sub-section (b) in writing with a justification for requesting the information.

68. (1) The board of a designated payment system must approve the draft of every bye-law proposed to be made by that designated payment system.

(2) The Payments Regulatory Board shall specify the basic features to be contained in the bye-laws of a designated payment system including those related to default arrangements.
(3) The system provider of the designated payment system shall issue bye-laws in accordance with the regulations under sub-section (2).

(4) Before the system provider issues such bye-laws, the bye-laws shall be approved by the Payments Regulatory Board to ensure that they are in compliance with the regulations under sub-section (2).

(5) A system provider of a designated payment system shall inform and take prior approval of the Payments Regulatory Board before changing any bye-law.

69. (1) The Payments Regulatory Board may suo motu or on an application of a party to an agreement, by direction, vary the terms of a payment system agreement by varying any of the fees or charges payable under such agreement or any other terms and conditions relating to the participation of a system participant in the designated payment system.

(2) The Payments Regulatory Board shall, before directing the variation of a payment system agreement under this section:

(a) intimate the system provider of the payment system the justification for the proposed variation along with the text of the proposed variation,
(b) consider any representation made by such system provider,
(c) give the system provider an opportunity to be heard, and
(d) give the system provider a recourse to revisit the contract in entirety.

(3) For the purpose of this section, the expression "payment system agreement" means-

(a) any agreement made between the system provider of a designated payment system and a system participant;
(b) any agreement made between a system participant with direct access to a designated payment system and another person for the purpose of enabling that other person to become a system participant in relation to the designated payment system;
(c) any agreement concerning fees or charges payable in connection with participation in a designated payment system, or the use of services provided by a designated payment system.

(4) Any direction issued under this section shall be a reasoned order in writing and shall be published in the official gazette.

Provided that no commercially sensitive information shall be published in relation to the contract, the terms of which are varied through a direction issued under this section.

70. Where, based on information provided by a system provider or opinion of the Payments Regulatory Board, a system provider of a designated payment system becomes or is likely to become insolvent or dissolved or wound up, the Payments Regulatory Board shall take necessary action in the interest of consumers and system participants as deemed necessary including:

(1) revocation of the authorisation;
(2) require the system provider to immediately take any action or to do or not to do any act in relation to its business as the Payments Regulatory Board may consider necessary;
(3) appoint one or more persons, on such terms as the Payments Regulatory Board may specify, to advise the system provider on the proper management of its business as the Payments Regulatory Board may determine; or

(4) such other action as may be necessary to control and manage the operation of the designated payment system.

CHAPTER 12
ADDITIONAL REQUIREMENTS FOR INFRASTRUCTURE SYSTEMS

71. Infrastructure systems shall be deemed to be designated payment systems and the requirements of section 66 to section 70 shall apply accordingly.

72. (1) An infrastructure institution shall ensure that its ownership and governance structures give precedence to the interests of consumers over the profit-making motive, if any, of the infrastructure institution.

(2) The Regulator may specify,

(a) the maximum ownership interest that can be held by a class or classes of persons in an infrastructure institution;
(b) the manner of calculating the ownership interests of different classes of persons in an infrastructure institution;
(c) the requirement to have independent members on the governing body of an infrastructure institution; and
(d) the requirement to have a representative or class of representatives of consumers availing of the services provided by the infrastructure institution, on the governing body of an infrastructure institution.

73. The bye-laws of an infrastructure system must promote the objective that the Payments Regulatory Board is required to pursue as contained in Chapter 4.

74. Employees of an infrastructure institution shall not be liable in damages for anything done or omitted in the discharge of their duties under this Act, unless it is shown that such act or omission was in bad faith.

75. Nothing contained in section 72 shall be applicable to the Reserve Bank in its role as an infrastructure institution.
PART VIII

OFFENCES

76. (1) Where a person contravenes section 16(1), 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 day during which the contravention or failure to comply continues.

(2) Whoever in any application for authorisation or in any return or other document or on 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 discloses any information, the disclosure of which is prohibited under section 61, 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.

(4) Where a direction issued under section 42(2)(c) or section 42(2)(d) of this Act is not complied with within the period stipulated by the Payments Regulatory Board, or where no such period is stipulated, within thirty days from the date of issuance of the direction, the system provider or the system participant or any person which has failed to comply with the direction 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 day during which the contravention continues.

77. (1) Where an electronic funds transfer initiated by a person from an account main‐tained by him cannot be executed on the ground that the amount 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 system provider, such person shall be deemed to have committed an offence and shall, without prejudice to any other provi‐sions of this Act, be punished with imprisonment for a term which may extend to two years, or with fine which may extend to twice the amount of the elec‐tronic 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 beneficiary 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 system provider 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 beneficiary within fifteen days of receipt of the said notice.

(2) It shall be presumed, unless the contrary is proved, that the electronic funds transfer was initiated for the discharge, in whole or in part, of any debt or other liability.

(3) It shall not be a defence in a prosecution for an offence under sub-section (1) that the person, who initiated the electronic funds transfer through an instruction, authorisation, order or agreement, did not have reason to believe at the time of such instruction, authorisation, order or agreement that the credit of his account is insufficient to effect the electronic funds transfer.

(4) The court shall, in respect of every proceeding under this section, on production of a communication from the system provider denoting the dishonour of electronic funds transfer, presume the fact of dishonour of such electronic funds transfer; unless and until such fact is disproved.

(5) 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.

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

78. (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 anybody corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.
79. (1) No court shall take cognisance of an offence punishable under this Act except upon a complaint in writing made by an officer of the Payments Regulatory Board 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:
Provided that the court may take cognisance of an offence punishable under section 77 upon a complaint in writing made by the person aggrieved by the dishonour of the electronic funds transfer.

(2) The Payments Regulatory Board may specify the terms of authorisation of the officer mentioned in sub-section (1) as are necessary for the efficient discharge of his functions.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), a Magistrate may dispense with the personal attendance of the officer of the Payments Regulatory Board filing the complaint, but the Magistrate may, in his discretion, at any stage of the proceedings, direct the personal attendance of the complainant.

80. 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.

81. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence punishable under this Act for any contravention 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 Payments Regulatory Board duly authorised by it in this behalf.

(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.

(3) The Payments Regulatory Board shall specify the circumstances and conditions under which an offence under this Act may be compounded by it.
582. (1) The Payments Regulatory Board may make regulations to carry out the objectives of this Act by notification, in a manner consistent with this Act.

(2) Without prejudice to the generality of the foregoing provision, such regulations may provide for all or any of the following matters, namely:

(a) a person who issues a legal entity identifier or such other unique identification (by whatever name called) under clause 2(1)(r) of section 2;

(b) a unique identity code assigned to a person by an issuer for the purpose of identifying that person in such derivatives or financial transactions under clause 2(1)(s) of section 2;

(c) service under sub-clause 2(1)(aa)(vi) of section 2;

(d) publishing of information under clause 2(1)(ag) of section 2;

(e) a person who is engaged in the business of collecting, collating, storing, maintaining, processing or disseminating electronic records or data relating to such derivatives or financial transactions under clause 2(1)(as) of section 2;

(f) frequency, place of meeting, and rules of procedure under sub-section 7(3) of section 3;

(g) the procedure, manner of conducting of meetings and related matters of the Payments Regulatory Board under sub-section (9) of section 7;

(h) the period within which minutes and resolution adopted at the meeting of the Payments Regulatory Board be published under sub-section 7(14)(e) of section 3;

(i) salaries and allowances under clause 7(15)(b) of section 3;

(j) engagement of experts and professionals under sub-section 7(16) of section 3;

(k) exempt any person from authorisation under this Act under clause (4) of section 16;

(l) the criteria for the grant of an authorisation to operate a payment system under sub-section 17(1) of section 17;

(m) 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 18(2) of section 18;

(n) the form in which an authorisation to operate a payment system under this Act shall be issued under sub-section 20(2) of section 20;

(o) revocation of authorisation under sub-section 21(1) of section 21;

(p) the form and manner in which an application for seeking exemption or an extension shall be made under section 22;
(q) the form and manner in which the an exemption may be granted under sub-section 22(3) and other criteria under sub-section 22(3) of section 22;

(r) form and manner of bye-laws governing the operation of the payment system under sub-section 25(2) of section 25;

(s) the format of payment instructions and other matters relating to determination of standards to be complied with by the payment systems under sub-section 26(2)(e) of section 26;

(t) the form and manner in which the reports required by the Payments Regulatory Board shall be made under section 28;

(u) the manner in which information and documents shall be submitted to the Payments Regulatory Board under sub-section 29(3) of section 29;

(v) the manner in which inspection shall be carried out under sub-section 30(2) of section 30;

(w) the manner in which the investigation report shall be submitted to the Payments Regulatory Board under section 37;

(x) appointment of observer under sub-section 38(1) of section 38;

(y) the matters incidental to enable the Payments Regulatory Board to pay from the amount disgorged under sub-section 44(3) of section 44;

(z) time for making the representations under sub-section 47(3) and decision to issue an order under sub-section 47(4) of section 47;

(aa) documents to be disclosed by the system provider to its system participants under section 60;

(ab) the manner in which funds of the consumers be protected by the system provider under sub-section 54(1) of section 54;

(ac) the matters in relation to accessing, processing, handling, retaining and transmitting of personal information of consumers and security standards under section 55;

(ad) the information to be disclosed to a consumer in relation to a payment service under section 56;

(ae) the mechanisms to redress complaints in a prompt and fair manner under and other incidental matters under section 57;

(af) declaration of fidelity and secrecy under sub-section 61(2) of section 61;

(ag) manner of application on refusal of access under sub-section 27(5) of section 27;

(ah) the designation criteria under sub-section 63(2) of section 63;

(ai) additional requirements on designated payment systems under sub-section 66(1) of section 66;

(aj) power to appoint observer in public interest under section 67(1);

(ak) basic features of bye-laws of a designated payment system under sub-section 68(2) of section 68;

(al) time-period for considering representations under clause 83(2)(b) of section 83;

(am) the manner and form in which an application be filed to modify, alter or repeal any regulation and other incidental matters under sub-section 86(2) of section 86;

(an) form and manner of application under sub-section 89(2) of section 89;

(ao) reasoned order by an officer under sub-section 89(4) of section 89;
(ap) designation of trade depository under sub-section 93(1)(b)(i) of section 93;

(aq) such other matters as are required to be, or may be, specified by regulations by the Payments Regulatory Board or in respect of which provisions are to be made or may be made by the regulations.

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

(4) Every regulation shall, as soon as may be after it is made by the Payments Regulatory Board, 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.

83. (1) Before making any regulation under section 82 of this Act, the Payments Regulatory Board shall approve and publish a draft of such regulation, accompanied with a statement setting out,

(a) the objectives of such proposed regulation;

(b) the problem that such proposed regulation seeks to address;

(c) how solving this problem is consistent with the objectives of the Payments Regulatory Board under this Act;

(d) the manner in which such proposed regulation will address this problem;

(e) the manner in which such proposed regulation complies with the provision of this Act under which such a regulation is made;

(f) an analysis of costs and an analysis of benefits of such proposed regulation as far as possible; and

(g) the process by which any person may make a representation in relation to such a proposed regulation.

(2) The Payments Regulatory Board shall, –

(a) give a time of not less than twenty-one days to enable any person to make a representation in relation to such a proposed regulation; and

(b) consider all representations made to it within such time as may be specified.

(3) The Payments Regulatory Board shall publish, –

(a) all the representations received by it under sub-section (2) of this section; and

(b) a general account of the response of the Payments Regulatory Board to the representations.

(4) If a regulation made differs substantially from such a proposed regulation, the Payments Regulatory Board, in addition to the requirements of sub-section (2) of this section, shall also publish, –

Process of making regulations.
(a) the details and reasons for such difference; and
(b) an analysis of costs and an analysis of benefits, of the differing provisions.

(5) The Payments Regulatory Board shall review every regulation made under section 82 of this Act within three years from the date on which such regulation is notified.

84. (1) The Payments Regulatory Board may dispense with the procedure under section 83 if it is of the opinion that the time required to comply with such procedure may be detrimental to the objectives of this Act.

(2) If the Payments Regulatory Board makes a regulation under this section, it shall –
(a) publish the reasons for its opinion under this section along with the regulation;
(b) within seven days from the date on which such regulation is notified, submit a report containing statement under sections 83(1)(a) to 83(1)(e).

(3) A regulation made under this section will cease to have effect after one hundred and eighty days from the date on which that regulation is notified.

85. (1) The Central Government may make rules for carrying out the provisions of this Act.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely—
(a) the period of financial year under clause 2(1)(m) of section 2;
(b) salaries and allowances under sub-section (11) of section 3;
(c) form and timing of its budget for the next financial year under sub-section 11 of section 11;
(d) form of annual financial statements under sub-section 13(1) of section 13;
(e) interval of audit under sub-section 13(2) of section 13;
(f) the form and manner in which an appeal may be filed before the Securities Appellate Tribunal and the fee which shall accompany such appeal, under sub-section 50(2) of section 50;
(g) the procedure to be followed by the Securities Appellate Tribunal in dealing with an appeal, under sub-section 50(6) of section 50;
(h) the form and contents of the annual report under sub-section 97(3) of section 97;
(i) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made, by rules.

86. (1) A person may file an application to the Payments Regulatory Board to modify, alter, or repeal any regulation made under this Act.

(2) An application under sub-section (1) shall be in a form or manner as may be specified, including—
(a) the text of a regulation to be repealed, modified or altered;
(b) the text of a proposed regulation;
(c) the problem that such proposed regulation seeks to address and the manner in which such proposed regulation addresses the problem;

(d) how solving this problem is consistent with the objectives of the Payments Regulatory Board under this Act;

(e) the manner in which such proposed regulation complies with the provisions of this Act and regulations made under this Act;

(f) any other information as may be specified.

(3) If the Payments Regulatory Board is of the opinion that the application filed under sub-section (1) is frivolous or devoid of merit, it shall pass a reasoned order rejecting the application.

(4) Subject to sub-section (3), the Payments Regulatory Board shall publish the application and shall-

(a) give a time of not less than twenty-one days to enable any person to make a representation in relation to such an application;

(b) consider all representations made to it within such time as may be specified.

(5) The Payments Regulatory Board shall, after receiving and considering all representations made under sub-section (4), evaluate the application in the next meeting convened under section 7(3) and pass an order rejecting or accepting the application in whole or part.

(6) Any order passed under sub-section (3) and (5) shall be published in writing.

(7) Notwithstanding anything contained in section 50 of the Act, no order passed under this section shall be appealable on merits.

(8) After accepting the application under sub-section (5), the Payments Regulatory Board shall take the necessary action as it may deem fit, in order to give effect to an order passed under sub-section (5) of this section.
87. (1) Without prejudice to the foregoing provisions of this Act, the Payments Regulatory Board shall, in exercise of its powers or the performance of its functions under this Act, be bound by such directions on questions of policy, as the Central Government may give, in writing to it, from time to time:

Provided that the Payments Regulatory Board shall, as far as practicable, be given an opportunity to express its views before any direction is given under sub-section (1).

(2) The decision of the Central Government, whether a question is one of policy or not, shall be final.

88. (1) If at any time the Central Government is of the opinion that -

(a) on account of circumstances beyond the control of the Payments Regulatory Board, it is unable to discharge the functions or perform the duties imposed on it by or under the provisions of this Act; or

(b) the Payments Regulatory Board has persistently defaulted in complying with any direction issued by the Central Government that the Central Government is entitled to issue under this Act or in the discharge of the functions or performance of the duties imposed on it by or under the provisions of this Act and as a result of such default the financial position of the Payments Regulatory Board or the administration of the Payments Regulatory Board has deteriorated; or

(c) circumstances exist which render it necessary in the public interest so to do,

the Central Government may, by notification and for reasons to be specified therein, supersede the Payments Regulatory Board for such period, not exceeding six months, as may be specified in the notification:

Provided that before issuing any such notification, the Central Government shall give a reasonable opportunity to the Payments Regulatory Board to make representations against the proposed supersession and shall consider the representations, if any, of the Payments Regulatory Board.

(2) Upon the publication of a notification under sub-section (1) superseding the Board,—

(a) all the members shall, as from the date of supersession, vacate their offices as such;

(b) all the powers, functions and duties which may, by or under the provisions of this Act, be exercised or discharged by or on behalf of the Board, shall until the Board is reconstituted under sub-section (3), be exercised and discharged by such person or persons as the Central Government may direct; and

(c) all property owned or controlled by the Board shall, until the Board is reconstituted under sub-section (3), vest in the Central Government.
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(3) On or before the expiration of the period of supersession specified in the notification issued under sub-section (1), the Central Government shall reconstitute the Payments Regulatory Board by a fresh appointment and in such case any person or persons who vacated their offices under clause (2)(a) of sub-section (2), shall not be deemed disqualified for appointment:

Provided that the Central Government may, at any time, before the expiration of the period of supersession, take action under this sub-section.

(4) The Central Government shall, as soon as may be, cause a copy of the notification issued under sub-section (1) and a full report of any action taken by it, to be laid before each House of Parliament at the earliest.

89. (1) Every system provider shall provide effective mechanism for receipt and redress of disputes between two or more system participants in respect of any matter connected with payment system operated by it.

(2) The Payments Regulatory Board shall specify the essential features of the mechanism to be provided by a system provider under sub-section (1), including,

(a) the manner in which a dispute may be made and the time-period within which the dispute must be filed; and

(b) the process to be followed by a system provider to receive and redress disputes and the time limits for each step of the process.

(3) Any one or more of the parties to the dispute under sub-section (1) may file an application, in the form and manner as may be specified, before the Payments Regulatory Board if,

(a) it is not satisfied with the resolution of the dispute by the system provider; or

(b) the system provider has failed to resolve the dispute within time-period specified under sub-section (2)(b).

(4) Where any dispute in respect of any matter connected with the operation of the payment system arises between any system participant and the system provider of the payment system or between two system providers of two different payment systems, any one of the parties to the dispute may file an application to the Payments Regulatory Board.

(5) An application under sub-section (3) and (4) shall be in such form and manner as may be specified.

(6) The dispute referred to the Payments Regulatory Board under sub-section (1) and (4) shall be disposed through a reasoned order by an officer of the Payments Regulatory Board as may be specified.

(7) Notwithstanding anything contained in sub-section (6), where a dispute arises between the Reserve Bank and another system provider of payment system or system participant, the dispute shall be disposed, by a reasoned order in writing, by the Central Government.

(8) Every order under sub-section (6) or sub-section (6) shall be passed, after giving parties to the dispute, an opportunity of being heard.

90. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.
91. (1) The penalty imposed on the defaulter by the Payments Regulatory Board under section 42(2)(d) 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 Payments Regulatory Board by way of penalty and pay to the Payments Regulatory Board.

(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 insurer, 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 with respect to any property in relation to which a notice under this 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 Payments Regulatory Board 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 Payments Regulatory Board, whichever is less.

(5) The Payments Regulatory Board 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 Payments Regulatory Board 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 Payments Regulatory Board 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 Payments Regulatory Board, 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 Payments Regulatory Board, 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 Payments Regulatory Board has imposed a penalty under section 42(2)(d).
92. Nothing contained in this Act shall apply to any of the securities traded on stock exchanges or other exchanges, authorised by or under any law for the time being in force, except in so far as they relate to settlement of payment instructions.

93. (1) The provisions of this Act shall apply to, or in relation to, a designated trade repository or issuer, as they apply to, or in relation to, payment systems to the extent applicable, subject to the modification that, throughout this Act, unless the context otherwise requires,-

(a) references to a “payment system” or “system provider” shall be construed as references to a "designated trade repository" or “issuer”, as the case may be;

(b) references to "commencement of this Act" shall be construed with reference to--

(i) a designated trade repository, as references to the date on which a trade repository is specified by the Payments Regulatory Board as a designated trade repository; and

(ii) an issuer, as references to commencement of the Payment and Settlement Systems (Amendment) Act, 2015 (18 of 2015).

(2) The Payments Regulatory Board may, on an application by a designated trade repository or otherwise, permit or direct the designated trade repository to provide such other services as are deemed necessary from time to time. Explanation-- For the purposes of this section, the expression "designated trade repository" shall mean a trade repository or a class of trade repositories, as may be specified by the Payments Regulatory Board from time to time.

94. Every member of the Payments Regulatory Board who is entrusted with any power under this Act, shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code, 1860 (45 of 1860).

95. No suit or other legal proceedings shall lie against the Central Government, the Payments Regulatory Board, 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.

96. (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 provisions not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty:

Provided that no order shall be made under this section after 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.

97. (1) The Payments Regulatory Board shall publish an annual report within ninety days of the expiry of the financial year to which the report relates.

(2) The annual report of the Payments Regulatory Board shall, -

(a) contain its audited financial statements;
(b) contain an analysis of the effectiveness of the regulations made by the Payments Regulatory Board;
(c) set out an analysis of the performance of the Payments Regulatory Board in pursuance of its objectives mentioned in sub-section 8(2) of section 8;
(d) contains an analysis of the total number of authorisations granted and applications rejected, investigations conducted, enforcement actions taken and complaints handled under section 20, section 33, section 42 and section 57 of this Act respectively;
(e) contain summary of its plans and anticipated activities for the next year in pursuance of its objectives mentioned in sub-section 8(2) of section 8;
(f) contain an analysis of how the Payments Regulatory Board has compiled with process of making regulations under section 83;
(g) contain such other matters, as may be prescribed by the Central Government, to give a complete disclosure and analysis of the performance of functions by Payments Regulatory Board under this Act.

(3) The form and contents of the annual report shall be such as may be prescribed by the rules made by the Central Government.

98. (1) All payment systems authorised under the Payment and Settlement Systems Act, 2007 (51 of 2007) shall be deemed to be authorised payment systems under this Act.
(2) The Payments Regulatory Board may provide such authorised payment system, adequate time to comply with the provisions and regulations made under this Act.
(3) The bye-laws or any like instrument made by an authorised payment system under the Payment and Settlement Systems Act, 2007 (51 of 2007) shall continue to be applicable for a period of one year from the date on which that Act is repealed, or till such time as notified by the Payments Regulatory Board, as if the Payment and Settlement Systems Act, 2007 (51 of 2007) has not been repealed, whichever is earlier.
(4) All rules, directions, guidelines, instruction, circulars, or any like instruments, made by the Reserve Bank applicable to such payment system under the Payment and Settlement Systems Act, 2007 (51 of 2007) shall continue to remain in force for a period of one year from the date on which that Act is repealed, or till such time as notified by the Payments Regulatory Board, whichever is earlier, as if the Payment and Settlement Systems Act, 2007 (51 of 2007) had not been repealed.

(2) Anything done or any action taken or purported to have been done or taken including any rule, regulation, standard, guideline, notification, inspection, order, penalty, proceeding or notice made, initiated or issued or any confirmation or declaration made or any licence, permission, authorisation or exemption granted, modified or revoked, or any document or instrument executed, or any direction given under the Payment and Settlement Systems Act, 2007 (51 of 2007) shall be deemed to have been done or taken under the corresponding provision of this Act unless amended, resigned, revoked or modified under this Act.
PART XI

AMENDMENT

100. In Reserve Bank of India Act, 1934 (2 of 1934), clause (p) and (pp) of sub-section (2) of the section 58 shall be omitted.
PART XII

SCHEDULE

Schedule 1

The following payment transactions and services shall not constitute a payment system requiring authorisation for the purposes of this Act and are excluded payment systems:

(1) Payment transactions through a commercial agent on behalf of the payer or the payee. The exclusion applies when agents act only on behalf of the payer or only on behalf of the payee, regardless of whether or not they are in possession of client funds. Where agents act on behalf of both the payer and the payee (such as e-commerce platform), they are excluded only if they do not, at any time enter into possession or control of consumer funds.

(2) Payment transactions by a provider of electronic communications networks or services provided in addition to electronic communications services for a subscriber to the network or service performed using an electronic device and charged to a prepaid account balance or post-paid bill payment facility for purchase of digital content, voice-based services, tickets or for making other low value purchase of goods or services. The low value threshold shall be Rs. 2000 for a single transaction subject to being revised by the Payments Regulatory Board from time to time.

(3) Any service provided by any technical service provider, which supports the provision of payment services, where the provider does not at any time enter into possession of the money to be transferred, including -

(a) the processing and storage of data;
(b) trust and privacy protection services;
(c) data and entity authentication;
(d) information technology;
(e) communication network provision; and
(f) the provision and maintenance of terminals and devices used for payment services.

(4) Prepaid payment instruments issued by a person for facilitating the purchase of goods and services from that person only without permitting cash withdrawal.

(5) Payment transactions carried out between system providers, or their agents or branches, for their own account.

(6) Payment transactions between holding, subsidiary or associate companies or between subsidiaries and or associate companies of the same holding company as defined in section 2 of the Companies Act, 2013, where there is no intermediary intervention by any system provider unless the system provider is one of the companies mentioned herein.

(7) Any other payment system as may be specified in interests of efficient operation of payment systems, the size of any payment system, efficient use of payment service or for any other reason.
Schedule 2: Financial Sector Regulator

For the purposes of this Act, the financial sector regulator shall be, -

(1) The Insolvency and Bankruptcy Board of India, as established under sub-section (1) of section 3 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016);

(2) The Insurance Regulatory and Development Authority of India, as established under sub-section (1) of section 3 of the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999);

(3) The Pension Fund Regulatory and Development Authority, as established under sub-section (1) of section (3) of the Pension Fund Regulatory and Development Authority Act, 2013 (23 of 2013);

(4) The Reserve Bank of India, as constituted under sub-section (1) of section 3 of the Reserve Bank of India Act, 1934 (2 of 1934);

(5) The Securities and Exchange Board of India, as established under sub-section (1) of section 3 of the Securities and Exchange Board of India Act, 1992 (15 of 1992); and

(6) Any other financial sector regulator as may be notified by the Central Government.