

Committee on Payment Systems

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CHAPTER 1 **INTRODUCTION**

- 1.1 Payment and settlement systems in India have had a long and chequered history, starting from usage based modes of funds settlement – in the form of hundis and other instruments accepted by practice, to the role of banks which has become pronounced during the last fifty years or more.
- 1.2 Recognising that payment and settlement systems constitute the backbone of any economy, the Reserve Bank has been initiating many reforms aimed at improving the efficiency of payment and settlement systems of the country. Although these initiatives have technology as an integral component, the various other requirements are also being addressed as part of the process of reforms. The current predominant mode of funds settlement is through the clearing process – achieved by the functioning of 1030 clearing houses in the country, where settlement of net pay-ins and pay-outs is worked out for clearing of cheques which are issued under the precincts of the Negotiable Instruments Act, 1881. The legal basis for the functioning of the clearing houses is the ‘Uniform Regulations and Rules for Bankers’ Clearing Houses’ (URR), derived under the Indian Contracts Act, 1872. All member banks of a clearing house enter into a contractual relationship with the manager of the clearing house and the conduct of clearing and settlement operations follow the provisions of this contract which is based on the URR.
- 1.3 From the above, it would be evident that there is no explicit legal basis for payment and settlement systems in its entirety. Further, from an era characterised by payment systems being predominantly confined to cheque clearing, many other components have

also gained significance – such as securities settlement, foreign exchange, etc. The Bank for International Settlements, Basle, has formulated a set of ‘Core principles for Systemically Important Payment Systems’ which are the minimum requirements for a sound payment system which prevent the occurrence of systemic risks. India reports conformity to most of the core principles, while a couple of them – especially relating to a legal basis for netting systems – have to be provided for. In view of all these factors, the Reserve Bank has constituted a committee to go into the entire gamut of the payment systems, and to examine the various aspects relating to the legal basis for the systems as well as for regulation and oversight. The composition of the Committee is as under:

Dr R H Patil Chairman The Clearing Corporation of India Ltd Mumbai	Chairman
Shri N V Deshpande, Principal Legal Adviser Reserve Bank of India, Mumbai	Member
Shri Y S P Thorat, Regional Director for Maharashtra and Goa Reserve Bank of India, Mumbai	Member
Smt Usha Thorat, Chief General Manager-in-charge Internal Debt Management Cell, Reserve Bank of India, Mumbai	Member
Shri M R Srinivasan Chief General Manager-in-charge Department of Banking Operations and Development, Reserve Bank of India, Mumbai	Member
Shri Y Radhakrishnan Managing Director (Retired) State Bank of India, Mumbai	Member
Shri H N Sinor Joint Managing Director ICICI Bank, Mumbai	Member
Shri S Venkatachalam Regulatory Head, Citibank NA, Mumbai	Member

Shri R Gandhi
Chief General Manager
Department of Information Technology
Reserve Bank of India, Mumbai

Member-Secretary

- 1.4 The terms of reference of the Committee are as follows:
1. To examine the adequacy of legal basis for payment systems
 2. To suggest appropriate legislative changes for regulation of payment systems
 3. To suggest an administrative set-up within the Bank for administering regulation and supervision of payment systems
 4. Any other related matter.
- 1.5 The memorandum of constitution of the Committee is given in Annexure I.
- 1.6 The Committee met on three occasions – August 16, 2002, September 2, 2002 and September 21, 2002, and deliberated at great length on the various issues involved. The results of these discussions have taken the form of recommendations outlined in this report.
- 1.7 The Committee wishes to place on record its appreciation of the untiring efforts of the members of the secretariat (consisting of Shri S Ganesh Kumar, Deputy General Manager, Shri G Raghuraj, Assistant General Manager and Kumari Nilima C Ramteke, Assistant General Manager) of the Department of Information Technology, Reserve Bank of India, in the preparation of this report.
- 1.8 The Chairman wishes to express his deep appreciation of the work done by the Member-Secretary but for whose contributions, this report would not have been completed within the time frame allotted to the Committee.

Chapter 2 **Methodology**

- 2.1 Core Principles for Systemically Important Payment Systems
- 2.1.1 The Core Principles for the Systemically Important Payment Systems (Core Principles) as enunciated by the Committee on Payment and Settlement Systems of the Bank for International Settlements (BIS) emphasised several features. A brief account of the Core Principles is given in Annexure II.
- 2.1.2 The first principle highlighted by the BIS relates to ensuring a sound legal basis for payment systems since that is at the heart of any systemically important system. In order to amplify the specific requirements under this principle, specific elements were detailed, which are as under:
- The rules and procedures of the systems should be enforceable

- The consequences of the rules and procedures of the system should be predictable
- The legal issues arising out of the system should not be poorly understood
- The system should be legally robust
- Any material legal risks stemming from other relevant jurisdictions should be taken care of.

2.1.3 The Reserve Bank had, in the year 2000, constituted an advisory Group under the chairmanship of Shri M.G. Bhide, former Chairman and Managing Director, Bank of India, for considering aspects of applicability of international standards and codes in respect of the payment and settlement systems in India. The Group examined the various Core Principles and formulated its recommendations relating to the various requirements indicated as part of the Lamfalussy standards, which are an integral part of the Core Principles. In respect of the requirement indicating the need for such systems to have a well founded legal basis, the Group had recommended that a well-founded legal framework needs to be put in place at the earliest, and in order to accomplish this, a statutory basis was to be provided to the Reserve Bank so that necessary changes could be brought about to that effect.

2.1.4 Based on all the above, the Committee decided that its recommendations, pertaining to the requirements to be covered in the proposed legislation for payment systems, should conform fully to the Core Principles – with special reference to the components in respect of the legal requirements.

2.2 IOSCO-CPSS Securities Settlement Recommendations

2.2.1 In addition to the Core Principles for Systemically Important Payment Systems, the Committee on Payment and Settlement Systems (CPSS) of the BIS had also issued a set of recommendations for Securities Settlement Systems. Stemming out of the ‘Objectives and Principles of Securities Regulation’ developed by the International Organization of Securities Commissions (IOSCO) and the Core Principles of the BIS, the recommendations detail the essential minimum standards for securities settlement systems, including those relating to regulation and oversight over such systems. As in the case of the Core Principles, the first major recommendation relates to the need for a well founded, clear and transparent legal basis for securities settlement systems. Other requirements indicate the need for determining the finality of settlement and for providing a legal basis for netting.

2.2.2 The Committee decided that its recommendations would also take into account the requirements relating to securities settlements – as far as the payment leg of securities settlement is concerned.

2.3 Earlier Efforts of the Reserve Bank

2.3.1 The Reserve Bank had, as a part of its efforts to usher in safe and sound payment systems in the country, constituted a National Payments Council (NPC) to proffer advice to the Bank on matters relating to payment systems. The NPC which has a Task Force on Legal Issues deliberated on various options and decided to retain an expert consultant for drafting the legislation for Payment Systems. A draft of the Payment

Systems Bill was prepared by the legal consultant. The major provisions in the bill relate to the following broad areas:

- Payment Systems Regulation;
- Regulatory powers to the Reserve Bank for regulation of payment systems;
- Provision of legal basis for Clearing Services and for netting of clearing settlements
- Powers to frame regulations.

2.3.2 Since substantial efforts have been put in to prepare the draft bill and it has been internally debated within the Reserve Bank, the Committee decided to use the draft as the base and examine it thoroughly vis-à-vis the requirements as concluded by the Committee.

2.4 Survey of International Practices

2.4.1 The Committee carried out a survey of the international position with regard to law on regulation and supervision of payment systems, finality of settlement and recognition of netting.

2.4.2 Recognising the important role of payment and settlement systems in any economy and among other aspects, the impact in the form of systemic risks which these systems carry, most of the central banks the world over have a regulatory oversight over such systems. While some of the countries have explicit laws to provide the overall composite legal basis for such functions, other economies have laws for specific activities (such as clearing). A brief position on this along with a few cases is detailed in Annexure III.

2.4.3 The survey brought out clearly that there is no single method which can be taken as superior to any other. The Committee decided that its own efforts should attempt to bring in the best provisions on the subject.

Chapter III Regulation of Payment Systems

3.1 The first set of issues to be dealt with relates to the need for regulation of payment systems and who should be the regulator. The Committee is of the opinion that payment systems in any economy are crucial for its normal functioning and any disturbance in its operations has the potential to destabilise the entire economy. Further, disturbances in any important system have the capacity to generate systemic risk.

3.2 The primary concern of a regulator with regard to payment systems is whether systemic risks are adequately being managed with reference to each of the systemically important payment systems.

3.3 The issue relating to classification of payment systems as systemically important or not, has been already examined in depth by a Working Group on Systemically Important

Payment Systems (SIPS). The Group had recommended that the Interbank Clearing System, the High Value Clearing System, the Securities Clearing and Settlement System, the MICR Clearing System, the proposed Government Securities and Foreign Exchange Clearing Systems, and, the Real Time Gross Settlement System are systemically important payment systems. The Committee recommends that the classification recommended by the Working Group be reviewed from time to time taking into account their vulnerabilities and possible impact of such settlement systems on the stability financial sector.

3.4 The other issues relating to providing a legal basis for regulation over SIPS are as follows.

3.4.1 *Jurisdiction*

3.4.1.1 To address these concerns, the regulator needs to decide whether the regulation should cover all the payment systems in the country or only selected systems. Another consideration will be whether the selected systems should be regulated on a continuous basis or in exceptional circumstances only.

3.4.1.2 From a legal perspective, the issue relates to whether it is the responsibility of the system operators to approach the regulator for commencement / continuance of the payment systems or should the regulator go in search of them.

3.4.1.3 After considering the implications of these issues, the Committee concluded that the coverage of the legal basis would encompass all types of payment and settlement systems in the country. In view of the size and magnitude of such systems and given the fact that the thrust may be on SIPS, the applicability of the legislation could be made to certain systems – for which either a general exemption could be provided, or specific case-to-case approval given by the Reserve Bank. Since this was a matter relating to the process of authorisation / exemption of systems, the Committee recommends that the law should provide for coverage of all systems and empower the Reserve Bank to grant general exemption / authorisation as the case may be.

3.4.2 *Entry Norms*

3.4.2.1 Aspects to be covered in this sphere include the entry norms for the payment system which will be regulated, its organisational structure, capital, its members, criteria for admission and termination of membership, its internal policies, rules and regulations and its systems (including computer and network systems) and procedures, risk management policies and procedures, standards (both technical and others), etc. The proposed statute was examined to analyse the extent of mentioning the details of these specifics in the statute itself, or whether these could be decided on the basis of the decisions of the regulator or be disclosed by way of prescribed regulation under the statute.

3.4.2.2 The Committee felt that it would be optimal to have these on the basis of regulation under the statute which would be easier to implement rather than incorporating the provisions in the main statute – in which case amendments may become difficult to be incorporated on each occasion.

3.4.3 *Monitoring and Supervision*

- 3.4.3.1 A regulator should have adequate powers for monitoring and supervising the activities of a payment system. Such powers include power to
- call for information/documents, periodical returns to carry out off-site surveillance
 - inspect the systems and procedures; and perform audit of the payment system's books, or have such inspection or audit conducted by its authorised representative
- 3.4.3.2 On the basis of off-site surveillance, on-site inspection or audit or otherwise, when the regulator comes to the conclusion that a particular or group of payment systems are functioning in a manner that increases systemic risk and / or is detrimental to the monetary and credit policies or public interest in general, the regulator should have powers to issue directions to issue cease and desist orders with or without monetary penalty, generally or specific to the system, system operator, system participant or service provider.
- 3.4.3.3 Further, the regulator should also have powers of suspension or withdrawal of authorisation / exemption granted to any system or participant of a system.
- 3.4.4.3 Other areas which need to be part of the statute, include the provisions to take care of the requirements of the future while being technology neutral, to cover the payment systems and their components / products currently in vogue and envisaged in the near future – and to bring them under the regulatory powers of the Reserve Bank.
- 3.4.4.4 The Committee observed that all the above requirements are essential from the perspective of effective regulation and oversight over the payment and settlement systems in general, and with specific reference to the SIPS.
- 3.4.5 *Role of the Reserve Bank as a regulator and service provider of payment and settlement systems:*
- 3.4.5.1 The Committee observed that keeping in view the combined function of the Reserve Bank as a regulator and service provider of Payment and Settlement systems, the following aspects need to be provided for in the statute:
- Empowering the Reserve Bank to regulate / supervise payment systems / services of entities which are not banks and financial institutions and such other entities which are not under the direct regulatory / supervisory purview of the Reserve Bank;
 - Coverage to electronic and other similar technology driven systems as well as paper based systems;
 - Legal basis for payment, clearing, settlement, (netting and gross) and finality of the settlements arrived at and accounted for;
 - Regulation and Supervision of Payment Systems, keeping a clear demarcation from operation of Payment and Settlement Systems by the Reserve Bank;
 - Role of the Reserve Bank as operator and regulator of the Payment and Settlement Systems to be performed by separate distinctive wings within the Reserve Bank

- which would operate at arms length and with Chinese walls built in between;
- The Act to provide for all types of payment transactions and systems including the new products planned such as RTGS, e-cash, etc.
- 3.4.5.2 Considering the importance of the above, the Committee recommends that these can also be addressed in the statute which is being drafted.

Chapter IV Netting and Gross modes of Settlement

- 4.1 At the heart of any settlement system is the mode of arriving at the settlement. Two modes of settlement are available the world over – net settlements and gross settlements. While gross settlements – which imply a one-to-one settlement are inherently attributable to the transactions between the parties concerned, thereby binding both the parties, netting results in the creation of fresh payment obligations among the participants of any such system. This necessitates that netting acquires legal backing, for which the requisite base has to be provided for in the proposed legislation.
- 4.2 The Committee recommends that the definition of netting be clearly spelt out in the Act and the legal basis of netting also provided for.
- 4.3 One of the major issues examined by the Committee relates to the netting of payment obligations vis-à-vis the legal basis for netting of the underlying transactions, with specific reference to the netting of securities transactions and the generation of securities settlement in the country.
- 4.4 The Committee concluded – after extensive deliberations – that the proposed legislation needs to primarily provide a legal basis for the funds settlement arising out of the systemically important systems – including the settlement of securities. It also needs to be ensured that appropriate legal framework be worked out for securities netting also.
- 4.5 One of the important modes of settlement generation is by means of netting. Netting results in an amount which is not related to the original amount between the parties to the settlement and thus needs to be provided for under the law. This is also a requirement indicated as part of the Core Principles of the BIS. Taking all these into consideration, the Committee recommends that the draft should provide for both gross settlements and as well as netting.

Chapter V Finality of Settlement

- 5.1 One of the most important issues to be addressed in respect of accounting of settlements arrived at relates to the finality of the settlements thus arrived at.
- 5.2 An aspect related to the finality of settlement is the applicability of other laws in vogue which may have an impact of the settlement which has been generated and accounted for.

- 5.3 The Committee recommends that the statute should explicitly provide for various aspects such as
- Settlement
 - Gross and netted
 - Protection from the application of other acts such as, the Insolvency Act
 - Framing schemes of settlement of assets and liabilities on insolvency
 - Provision of a rule for finality of settlement.
- 5.4 Such provisions would ensure that a settlement would be final and would not be affected in any way by the enforcement of any other law in vogue. The settlement would be the result of a process which has taken into account the Principal Risk involved which would be covered adequately, and mismatches provided for – either by means of assets or through unwinding.
- 5.5 The Committee discussed at length what could be the ideal point in settlement process cycle when the finality of settlement should be occurring. The various alternatives discussed were:
- a. When the settlement is arrived at by the system operator
 - b. On receipt of confirmation that the participants have issued irrevocable instructions to their correspondent banks / custodians for delivery of funds / securities
 - c. On receipt of confirmation from the settlement banks / depositories about the availability of / lien on clear funds / securities
 - d. On receipt of funds / securities in the settlement account i.e., when all the pay-ins are completed
 - e. On disbursement of funds / securities from the settlement account i.e., when all the pay-outs are effected and
 - f. When the participants receive funds / securities.
- 5.6 It was clear that a trade off has to be made between the risk of unwinding and the credit risk. After deliberations, the Committee decided that the point of finality should occur as early as possible in the settlement cycle when the risk of unwinding and the credit risk are minimised. In the Committee's opinion this point occurs when the system operator receives confirmation from the settlement bank / depositories about the availability of / lien on clear funds / securities to meet the participants' settlement obligations. The Committee accordingly recommends that the draft bill should have suitable provisions for this.

Chapter VI

Other Miscellaneous Requirements

- 6.1 The legislation needs to contain all the requirements to be sustainable in its entirety. These are described in the following paragraphs.
- 6.2 Objectives of the legislation including the provisions for creation of the structure for the

regulation and oversight over payment systems; the definitions relating to the various terms referred to in the statute, legal basis for the authorisation / approval / exemption of payment systems etc.

- 6.3 The Act should provide for a redressal mechanism in the form of provisions for appeals, role of the Reserve Bank and / or courts, the process to be followed for dispute resolution etc.
- 6.4 The Act should also empower the Reserve Bank to issue directions as also clauses relating to penalty in case of non-compliance of these directions.
- 6.5 Another essential requirement would be the power for the Reserve Bank to formulate and notify Regulations under the Act so that these could get the legal backing from the Act.
- 6.6 Taking a cue from the legislation planned by Singapore, it may be worthwhile to incorporate a clause on applicability of this statute irrespective of any other international law on insolvency.
- 6.7 The Committee recommends that all these are also part of the statute so as to ensure that it would be a largely self contained piece of legislation.

Chapter VII

Model/Illustrative Payment and Settlement Systems Bill

- 7.1 In order to reflect the Committee's recommendations, it decided to prepare a model or illustrative draft for the proposed statute for the regulation of payment and settlement systems in the country.

Chapter VIII

Set up for Administering the Statute

- 8.1 In order to ensure that the Statute is administered efficiently, the following administrative infrastructure within the Reserve Bank is recommended by the Committee:
 - 8.1.1 The Reserve Bank would be the authority empowered to administer the Act. In order to have focussed attention on the regulation of payment and settlement systems, it is recommended that a separate Board for Payment Systems (BPS) be constituted within the Reserve Bank, on the lines of Board for Financial Supervision (BFS). The Board for Payment Systems could have representation from among the members of the Central Board of Directors of the Reserve Bank of India. The BPS would give overall policy directions to the operating wings of the Reserve Bank.
 - 8.1.2 The Committee has observed that Payment Systems constitute an important component

of monetary policy and most central banks of the world have exclusive departments to take care of the functions related to payment systems. Such departments have the responsibility of regulation and oversight of payment and settlement systems including those relating to foreign exchange, securities and other systemically important systems as decided by the Central Bank.

- 8.1.3 The Committee recommends that a similar approach could be followed for India too.
- 8.1.4 In order to conduct regular operations of not only the proposed statute and for other activities relating to Payment and Settlement Systems, an exclusive Department of Payment and Settlement Systems could be constituted within the Reserve Bank of India
- 8.1.5 The functionalities of the Department of Payment And Settlement Systems(DPSS) could include, among other things, formulation of Payment and Settlement system policies, regulation of Payment and Settlement systems, implementation of the Core Principles relating to Payment and Settlement systems (as enunciated by the Bank for International Settlements), administering the proposed Payment and Settlement Systems Act, other international standards and research in payment and settlement system issues. DPSS should be the secretariat for the proposed Payment Systems Board (PSB).

(R H Patil)
Chairman

(N V Deshpande)
Member

(Y S P Thorat)
Member

(M R Srinivasan)
Member

(Usha Thorat)
(Member)

(Y Radhakrishnan)
Member

(H N Sinor)
Member

(S Venkatachalam)
Member

(R Gandhi)

Member-Secretary

Annexure I

Memorandum
COMMITTEE ON PAYMENT SYSTEMS

Payment and settlement systems constitute an important component of any economy. Recognising this, the Reserve Bank has initiated many reforms in the area of Payment and Settlement systems of the country, and had constituted infrastructural support for the reforms process, which is headed by the apex level National Payments Council. Regulation of payment and settlement systems is an important area of activity which may have to be based on adequate legal backing.

It has been decided to constitute a committee to go into the entire gamut of the payment systems against the back drop of the road map already drawn up, which would be culminating with the Real Time Gross Settlement System (RTGS) going live in the second half of 2003. The Committee would examine the various aspects relating to payment and settlement systems including the legal base for the systems as well as for regulation and oversight. The composition of the Committee will be as under:

Dr. R H Patil Chairman The Clearing Corporation of India Ltd Mumbai	Chairman
Shri N V Deshpande, Principal Legal Adviser Reserve Bank of India, Mumbai	Member
Shri Y S P Thorat, Regional Director for Maharashtra and Goa Reserve Bank of India, Mumbai	Member
Smt Usha Thorat, Chief General Manager-in-charge Internal Debt Management Cell, Reserve Bank of India, Mumbai	Member
Shri M R Srinivasan Chief General Manager-in-charge Department of Banking Operations and Development, Reserve Bank of India, Mumbai	Member
Shri Y Radhakrishnan Managing Director (Retired) State Bank of India, Mumbai	Member
Shri H N Sinor Jt. Managing Director. ICICI Bank, Mumbai	Member
Shri S Venkatachalam Regulatory Head, Citibank NA, Mumbai	Member
Shri R Gandhi Chief General Manager Department of Information Technology	Member-Secretary

Reserve Bank of India, Mumbai

The terms of reference are as follows:

1. To examine the adequacy of legal basis for payment systems
2. To suggest appropriate legislative changes for regulation of payment systems
3. To suggest an administrative set-up within the Bank for administering regulation and supervision of payment systems
4. Any other related matter.

The Committee will submit its report by September 30, 2002.

(Vepa Kamesam)
Deputy Governor
July 16, 2002

Annexure II

Core Principles for Systemically Important Payment Systems

1. The system should have a well-founded legal basis under all relevant jurisdictions.
2. The system's rules and procedures should enable participants to have a clear understanding of the system's impact on each of the financial risks they incur through participation in it.
3. The system should have clearly defined procedures for the management of credit risks and liquidity risks, which specify the respective responsibilities of the system operator and the participants and which provide appropriate incentives to manage and contain those risks.
4. The system should provide prompt final settlement on the day of value, preferably during the day and at a minimum at the end of the day.
5. A system in which multilateral netting takes place should at the minimum, be capable of ensuring the timely completion of daily settlements in the event of an inability to settle by the participant with the largest single settlement exposure.
6. Assets used for settlement should preferably be a claim on the Central Bank; where other assets are used, they should carry little or no credit risk.
7. The system should ensure a high degree of security and operational reliability and should have contingency arrangements for timely completion of daily processing.
8. The system should provide a means of making payments which is practical for its users and efficient for the economy.
9. The system should have objective and publicly disclosed criteria for participation, which permit fair and open access.
10. The system's governance arrangements should be effective, accountable and transparent.

Annexure III

Survey of International Practices

1 England

In the case of the Bank of England, the bank has oversight over payment systems – stemming out of a memorandum of understanding between the Treasury, the Bank and the Financial Services Authority. – and performs the oversight function as part of the overall role for economic and financial stability. It also has a role under the ‘Financial Markets and Insolvency (Settlement Finality) Regulations, 1999.

2 Canada

Canada has a ‘Payment Clearing and Settlement Act’, aimed at regulating the clearing and settlement systems of the country. The Act regulates the clearing houses, banks participating in these houses and gives powers to the Bank of Canada to regulate the functioning of the clearing houses. It provides powers to the Bank of Canada to issue guidelines pertaining to functioning of the clearing houses and also to prescribe standards for any component of the clearing system, apart from powers for audit, inspection and issue of directives.

3 UNCITRAL

The UNCITRAL (United Nations Commission on International Trade Law) is an act which provides for a model law on International Credit Transfers. Most of the countries have drawn excerpts from this model law for finalising their requirements.

4 Australia

In Australia, the Payment Systems (Regulation) Act 1998 gives the Reserve Bank of Australia regulatory responsibility for the efficiency as well as stability of the payment system. The Act allows the Reserve Bank to collect data from payment systems and to designate a payment system as subject to its powers. It may then determine rules for participation in that system, including rules on access for new participants. The Bank may also set standards for safety and efficiency for that system. These may deal with issues such as technical requirements, procedures, performance benchmarks and pricing. The Act provides for the Bank to arbitrate on disputes in that system over matters relating to access, financial safety, competitiveness and systemic risk, if the parties concerned wish it to do so. The Bank has power under the Act to issue directions to payment systems and there is an enforcement regime of fines and other penalties.

5 Euro Area

In the euro area, since 1 January 1999, payment system oversight is performed by the Eurosystem.¹² The legal foundation of the function is contained in the Treaty establishing the European Community (“Treaty”) and in the Statute of the European System of Central Banks (ESCB) and the European Central Bank (ECB) (“Statute”), where it is established that one of the basic tasks of the Eurosystem is “to promote the smooth operation of payment systems”. In addition, Article 22 of the Statute states that “The ECB and national central banks may provide facilities, and the ECB may make regulations, to ensure efficient and sound clearing and payment systems within the Community and with other countries.” In line with the provisions of the Treaty and Statute, the Governing Council formulates the common policy stance. In particular, the

Governing Council determines the objectives and core principles of a common Eurosystem oversight policy in those cases where the functioning of payment systems may affect: (i) the implementation of monetary policy; (ii) systemic stability; (iii) the establishment of a level playing field between market participants; and (iv) cross-border payments within the EU and with other countries. In line with the principle of subsidiarity, in areas not specifically covered by the common oversight policy, policies defined at the NCB level apply within the framework of the objectives and core principles defined at the Eurosystem level, in relation to which the Governing Council can always take an initiative, where necessary. In line with the principle of decentralisation, enforcement of the common oversight policy stance is usually entrusted to the NCB of the country where the system is located. It can be ensured by different legal means (e.g. legal instruments available to an NCB, ECB regulations or guidelines) or more informal tools (e.g. moral suasion).

6 Italy

In Italy, article 146 of the 1993 Banking Law, in line with Article 22 of the ESCB and ECB Statute, assigns the Bank of Italy the task of overseeing the payment system, giving it the power to “issue regulations to ensure the efficiency and safety of clearing and payment systems”. Because of this general formulation in the law, oversight in Italy is able to cover payment instruments and services, technological infrastructure, interbank exchange procedures, and funds transfer systems. This legal framework means that, as well as its more traditional means of promoting cooperation among intermediaries by moral suasion, the Bank of Italy also performs oversight through the exercise of regulatory powers. It does this in accordance with general rules established by law and with the principle of competition. In order to disclose more explicitly its objectives, role and major policies in the field of payment systems, the Bank of Italy published two White Papers in 1997 and 1999.

7 Malaysia

In Malaysia, the legal basis for oversight powers entrusted to the central bank consists of various pieces of legislation, which include the Central Bank of Malaysia Act of 1958, the Banking and Financial Institutions Act of 1989, the Islamic Banking Act of 1983 and the Exchange Control Act of 1953. The central bank also issues guidelines and circulars to the banking and financial institutions from time to time. The central bank, together with the industry, issued a code of conduct and rules to govern participants in the system. The main objectives of payment system oversight are to minimise risks, to promote efficiency, to protect consumers/users and to ensure the ready availability of a mechanism for implementation of monetary policy. Policies and regulations are formulated and issued by the Bank Regulation Department and the Payment Systems Department, whilst on-site inspection is undertaken by the Bank Supervision Department and the Information System Supervision Unit.

8 Mexico

In Mexico, Article 2 of the Central Bank Law states that one of the aims of the Bank of Mexico is the smooth functioning of the payment system; Article 3 empowers the Bank of Mexico to regulate the payment system, and Article 31 allows it to regulate

electronic funds transfers. The main objective of the function is to achieve an appropriate balance between a high level of safety and a low level of costs associated with the production of payment services. The Bank of Mexico issues regulations to pursue its objectives and, should system participants not abide by them, can apply sanctions.

9 Singapore

Singapore has planned for a Payment and Settlement Systems (Finality and Netting) Act 2002 which designates the Monetary Authority of Singapore (MAS) as the authority to designate systems for clearing, settlement and transfer of government securities. The Authority (MAS) can designate a system in a prescribed manner subject to terms and conditions which the authority decides. There is an explicit provision of finality of payment in case of settlement of any payment obligation or settlement and transfer of government securities in an account of a participant kept with the operator making it final and irrevocable. The Act takes precedence over other laws in case of insolvency, bankruptcy, etc., apart from providing for applicability of international laws as well. The Authority has been bestowed with powers to make regulations for criteria for the designated system, manner in which designation is to be made and other matters relating to giving effect to the provisions of the Act.

10 South Africa

In the Republic of South Africa, the National Payment System Act, 1998, (Act No. 78 of 1998) (NPS Act), provides for the management, administration, operation, regulation and supervision of payment, clearing and settlement systems. The NPS Act, read with the South African Reserve Bank Act, 1989 (Act No. 90 of 1989), gives the South African Reserve Bank (SARB) powers to oversee the activities both of the payment system management body, known as the Payments Association of South Africa (PASA), and of its members. The SARB's responsibilities cover the monitoring, regulation and supervision of payment, clearing or settlement systems. The NPS Act also states that a system participant must be a member of the payment system management body and will therefore be subject to the applicable entry criteria for membership. The objectives of payment system oversight focus on ensuring the efficiency and integrity of the national payment system. To this end, the SARB may issue directives and notices and can make use of moral suasion. In addition, the SARB designed, developed and implemented the payment systems technical solution, infrastructure and payment instruments used to effect electronic settlement for participating banks across the books of the SARB.

11 West Africa

In the West African Monetary Union (WAMU) there is a common central bank, the Central Bank of West African States, (BCEAO), which has the exclusive right to issue the legal tender throughout the Union. To ensure the full and effective implementation of the guiding principles of the Union, the member states have adopted uniform legislation on cheques and other financial instruments which results in banking supervision and oversight functions being based on laws which are applicable throughout the Union territory. In accordance with its statutes, the BCEAO is currently

the overseer of the clearing houses in all the WAMU countries. A comprehensive payment system reform is under way. In the reformed system, the BCEAO will be entrusted formally, through its statutes, with the function of oversight of all payment systems.