

*PAYMENT SYSTEMS
AND ELECTRONIC
FUND TRANSFERS
ACT, 2005*

A BILL

AN ACT TO PROVIDE REGULATORY FRAMEWORK FOR PAYMENT SYSTEMS AND ELECTRONIC FUND TRANSFERS.

WHEREAS it is necessary to supervise and regulate payment systems and electronic fund transfers in Pakistan and to provide minimum standards for protection of the customers and to determine respective rights and liabilities of the financial institutions, their customers and participants;

It is hereby enacted as follows:-

CHAPTER I PRELIMINARY

1. **Short title, extent and commencement.**- (1) This Act may be called the Payment Systems and Electronic Fund Transfers Act, 2005.
 - (2) It extends to the whole of Pakistan.
 - (3) It shall come into force at once.

2. **Definitions.**- In this Act, unless there is anything repugnant in the subject or context –
 - (a) **“Accepted Card”** means a card, code or other means of access to a consumer’s account for the purpose of initiating electronic fund transfers;
 - (b) **“Access code”** includes pin, password or code, which provides a means of access to a consumer’s account for the purpose of initiating an electronic fund transfer;
 - (c) **“Account”** means a current deposit, saving deposit, or any other account maintained by a consumer in a financial institution in which credits and debits may be effected by virtue of electronic fund transfers;

- (d) **“Automated teller machine operator”** means any person or a financial institution operating any automated teller machine at which consumers initiate electronic fund transfers;
- (e) **“Book-Entry Government securities”** means any securities issued by the Government under any written law transferable by a book-entry on a register or otherwise;
- (f) **“Business day”** means any day on which the offices of the consumer’s financial institution involved in electronic fund transfer are open to the public;
- (g) **“Card”** means any card including an ATM card, EFT POS card, debit card, credit card or stored value card, used by a consumer to effect an electronic fund transfer;
- (h) **“Clearing House”** means a corporation, association, partnership, agency or other entity that provides clearing or settlement services for a payment system;
- (i) **“Code”** for the purposes of investigation and trial of offences under this Act means the Code of Criminal Procedure (Act V of 1898);
- (j) **“Consumer”** means any person including a legal person;
- (k) **“Debit instrument”** means a card, code, or other device other than a cheque, draft or similar paper instrument, by the use of which a person may initiate an electronic fund transfer;
- (l) **“Designated Payment Instrument”** means a payment instrument designated as payment instrument under section 12 to be a designated payment Instrument for the purposes of this Act;
- (m) **“Designated payment system”** means a payment system designated by the State Bank under section 4 to be a designated payment system for the purposes of this Act;
- (n) **“Electronic”** has the same meaning as assigned to it by Electronic Transactions Ordinance, 2002;

- (o) **“Electronic fund or Electronic money”** means money transferred through an electronic terminal, telephone instrument, computer, magnetic medium or any other electronic device so as to order, instruct or authorize a banking company, a financial institution or any other company or person to debit or credit an account and includes monetary value as represented by a claim on the issuer which is stored in an electronic device or payment instrument, issued on receipt of funds of an amount not less in value than the monetary value issued, accepted as means of payment by undertakings other than the issuer and includes electronic store of monetary value on a technical device that may be used for making payments;
- (p) **“Electronic fund transfer”** means any transfer of funds, other than a transaction originated by cheque, draft or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, point-of-sale terminal, stored value card terminal, debit card, automated teller machine, computer magnetic tape or any other electronic device so as to order, instruct, or authorize a financial institution to debit or credit an account;
- (q) **“Electronic Money institution”** means an undertaking, that issues means of payment in the form of electronic money and is duly authorized to do so ;
- (r) **“Electronic Payment System”** means implementation of payment system electronically;
- (s) **“Electronic terminal”** means an electronic device, other than a telephone, operated by a consumer, through which a consumer may initiate an electronic fund transfer;
- (t) **“Financial institution”** means an institution as is defined in the Financial Institutions (Recovery of Finances) Ordinance, 2001 or any other institution or person that directly or indirectly holds an account belonging to a consumer, or that issues a card and agrees with the consumer to provide electronic fund transfer services and includes a banking company as defined in the Banking Companies Ordinance, 1962.

- (u) **“Government”** means the Federal or any Provincial government of Pakistan;
- (v) **“Netting”** means the conversion into one net claim or one net obligation of claims and obligations resulting from transfer orders which a participant either issues to, or receives from, one or more other participants with the result that only a net claim can be demanded or a net obligation be owed;
- (w) **“Participant”** means a party to an arrangement that establishes a payment system;
- (x) **“Payment Instrument”** means any instrument, whether tangible or intangible, that enables a person to obtain money, goods or services or to otherwise make payment; but excludes payment instruments prescribed in Negotiable Instrument Act 1881;
- (y) **“Payment system”** inter-alia means a system relating to payment instruments, or transfer, clearing, payment settlement, supervision, regulation or infrastructure thereof and includes clearing, settlement or transfer of book entry government securities;
- (z) **“Pre-authorized electronic fund transfer”** means an electronic fund transfer authorised in advance;
- (aa) **“prescribed”** means prescribed by rules;
- (bb) **“State Bank”** means the State Bank of Pakistan established under section 3 of the State Bank of Pakistan Act, 1956;
- (cc) **“Systemic risk”** means the risk that the inability of a participant to meet its obligations in the payment system as they become due or a disruption to the payment system could, for whatever reason, cause other participants in the payment system to be unable to meet their obligations as they become due;
- (dd) **“Real-time gross settlement system”** means a payment system which can effect final settlement of funds, payment obligations and book entry securities and instruments on a continuous basis during such operating hours of a processing day as the State Bank may determine on a transaction-by-transaction basis;

3. **Powers of the State Bank.-** (1) The State Bank may, generally in respect of this Act, or in respect of any particular provision of this Act, or generally in respect of the conduct of all or any of the operators of payment systems or issuers of payment instruments, issue such rules, guidelines, circulars, standards or directions as it may consider desirable.
- (2) The guidelines, circulars or directions issued by the State Bank shall have the same force as rules made under this Act.
- (3) The State Bank may, by written notice, require an operator of a designated payment system or issuer of a designated payment instrument to make modifications or alterations to –
- (i) the designated payment system or designated payment instrument including governance arrangements;
 - (ii) operational arrangements;
 - (iii) documents and information submitted by operator of a payment system or issuer of payment instruments;
 - (iv) any other documents relating to the designated payment system or designated payment instrument.
- (4) In exercising its powers under sub-section (1), the State Bank shall have regard to-
- (i) Systemic risk;
 - (ii) The object of the Bank to promote monetary stability and a sound financial structure;
 - (iii) The interest of the public including market conditions and behaviour;
 - (iv) The safety, integrity, efficiency or reliability of the designated payment system or designated payment instrument including security and operating standards and infrastructure arrangements;
 - (v) The interests of the current participants of the designated payment system or users of the designated payment instruments; or

- (vi) The interests of persons who, in the future, may want access to the designated payment system or may want to use the designated payment instrument.

CHAPTER II

Payment Systems And Their Operation

- 4. Designation of payment system.-** (1) The State Bank may, by order published in the Official Gazette, designate a payment system as a designated payment system, if it is of the opinion that –
- (i) The payment system poses systemic risk; or
 - (ii) The designation is necessary to protect the interest of the public.
- (2) The State Bank may, in considering whether to designate a payment system as a designated payment system, inspect the premises, equipment, machinery, apparatus, books or other documents, or accounts and transactions relating to the payment system.
- 5. Revocation of designation of Payment System.-** (1) The State Bank may, by order published in the Official Gazette, revoke the designation of a designated payment system if it is satisfied that –
- (i) the designated payment system has ceased to operate as a payment system;
 - (ii) the operator of the designated system has knowingly furnished information or documents to the State Bank in connection with the designation of the payment system which is or are false or misleading in any material particular;
 - (iii) the operator or settlement institution of the designated payment system is in the course of being wound up or otherwise dissolved, whether in Pakistan or elsewhere;

- (iv) any of the terms and conditions of the designation has been contravened; or
- (v) the State Bank considers that it is in the public interest to revoke the designation.

(2) The State Bank shall not revoke a designation without giving the operator of the designated payment system an opportunity to be heard.

6. Real-time Gross Settlement (RTGS) System.- (1) The State Bank may establish and operate one or more real-time gross settlement systems for the transfer of funds and settlement of payment obligations as approved by it.

- (2) A settlement system may be linked to another payment system in Pakistan or elsewhere for the clearing or settlement of payment obligations, securities or instruments, whether or not such payment system is operated on a real-time gross settlement basis.
- (3) The State Bank may enter into agreements with participants of a settlement system and issue to the participants in writing rules for the operation of the settlement system.
- (4) The State Bank may, if it considers it necessary in the interests of the payment system, stop or suspend the operation of the payment system or stop or suspend the privileges or right of any participant or class of participants;
- (5) Without prejudice to the generality of sub-section (3), the rules provided for in the said sub-section, may provide-
 - (i) for the conduct of participants;
 - (ii) for the authentication of transactions carried out electronically;
 - (iii) for the appointment of auditors or inspectors for the auditing or inspection of the operating systems of participants in respect of the settlement system; and

(iv) for the payment of fees to the State Bank.

7. **Requirement for retention of electronic record.-** Financial institutions or other institutions providing funds transfer facility shall be required to retain complete record of electronic transactions in electronic form in the same manner as provided in section 6 of the Electronic Transactions Ordinance, 2002 for a period as may be determined by the State Bank.
8. **Disqualification of staff.-** A person shall be disqualified from being appointed as an officer of an operator of a designated payment system if –
- (i) such person has been adjudged a bankrupt, or has suspended payments, or has compounded with his creditors, whether in or outside Pakistan, within ten years prior to the date of the appointment;
 - (ii) such person has been convicted of an offence under this Act or committed any other offence involving moral turpitude or such an offence has been compounded against him.
9. **Effect of disqualification.-** (1) Where a person becomes disqualified, as provided for in the foregoing provisions, after his appointment –
- (i) He shall immediately cease to hold office; and
 - (ii) The operator of the designated payment system shall immediately terminate his appointment.
- (2) That person, notwithstanding any contract of service, shall not be entitled to claim any compensation for his loss of office or termination of appointment.
10. **Governance arrangements.-** The operator of a designated payment system shall establish adequate governance arrangements which are effective, accountable and transparent or which may be required by the State Bank to ensure the continued integrity of such designated payment system.

11. Operational arrangement.- An operator of a designated payment system shall establish the following operational arrangements:

- (i) rules and procedures setting out the rights and liabilities of the operator and the participant and the financial risks the participant may incur;
- (ii) procedures, controls and measures for the management of credit, liquidity and settlement risk, including rules determining the time when a payment instruction and a settlement is final;
- (iii) criteria for participation in the designated payment system; and
- (iv) measures to ensure the safety, security and operational reliability of the designated payment system including contingency arrangements.

CHAPTER III

Payment Instruments

12. Designation of Payment Instrument.- (1) Where the State Bank is of the opinion that –

- (i) a payment instrument is or may be in widespread use as a means of making payment and may affect the payment systems of Pakistan; and
- (ii) It is necessary to protect the interest of the public or it is necessary to maintain the integrity, efficiency and reliability of a payment instrument, the State Bank may prescribe such payment instrument as a designated payment instrument.

(2) Where a payment instrument is prescribed as a designated payment instrument, the issuer of such designated payment instrument shall comply

with the requirements of section 13 within such period as the State Bank may specify.

13. Issuing of designated payment instruments.- (1) No person shall be issued a designated payment instrument unless the issuer has –

- (i) complied with the requirements of this Act;
- (ii) submitted to the State Bank the documents and information as may be prescribed thereby;
- (iii) paid the fee prescribed by the State Bank; and
- (iv) obtained a written approval from the State Bank to issue a designated payment instrument.

(2) The State Bank may in giving its approval –

- (i) require all or any of the documents submitted to be modified and altered as it may deem necessary; and
- (ii) impose such restrictions, limitations or conditions as it may deem fit.

(3) Any payment instrument so issued should carry minimum security features to make its usage secure as per the current international standards.

14. Prohibition of issuance of payment instruments.- (1) The State Bank may, by a written order, prohibit any person from issuing or using any payment instrument if, in its opinion –

- (i) the issuing or use of the payment instrument is detrimental to the reliable, safe, efficient and smooth operation of the payment systems of Pakistan or monetary policy of the State Bank;
- (ii) the prohibition is in the interest of the public; or
- (iii) the payment instrument has been issued with an object to entice and defraud the public.

- (2) The State Bank may, in considering whether to prohibit any person from issuing or using any payment instrument inspect the premises, equipment, machinery, apparatus, books or other documents, or accounts and transactions of the issuer of the payment instrument.
- (3) Any person causing or attempting to cause obstruction to an officer or representative of the State Bank in inspection of the premises or equipment shall, upon complaint made to a court having jurisdiction, be liable to punishment which may extend to six months or with fine which may extend to fifty thousand rupees or with both.
- (4) The State Bank shall before passing an order under this section, give such person a reasonable opportunity to make representation before it.

15. **Security.**- Financial Institutions and other institutions providing funds transfer facilities shall ensure that secure means are used for transfer, compliant with current international standards.

16. **Third Party.**- If a person other than a financial institution is holding a consumer's account, the State Bank shall by instructions ensure that the disclosures, required to be made for electronic fund transfers, and the protections, responsibilities and remedies created by this Act, are made applicable to such persons and services.

CHAPTER IV

Clearing and Other Obligations

17. **Audits and Inspections.**- (1) The State Bank may, for the purposes of carrying out its functions under this Act, conduct audits and inspections of clearing house, and clearing house shall, as required, assist the State Bank to the extent necessary to enable it to carry out an audit or inspection.

- (2) Auditors for carrying out the purposes provided for in sub-section (1) may be appointed with prior approval in writing of the State Bank.

18. Notice required of significant changes.- Every clearing house shall, in respect of its designated payment system, provide the State Bank with reasonable notice of not less than fifteen business days in advance of any change to be made by the clearing house that is of a significant nature in relation to the designated payment system and, without limiting the generality of the foregoing, the notice shall be provided in respect of any change affecting –

- (a) the legal documents and by-laws of the clearing house;
- (b) the operation of the designated payment system;
- (c) the by-laws, agreements, rules procedures, guides or other documentation governing the designated payment system;
- (d) the composition of a board of directors of the clearing house due to resignation or otherwise; or
- (e) the appointed auditor of the clearing house.

19. Participants responsible where clearing house fails to comply etc. .- Where a clearing house fails to comply with the obligations imposed on it under this Act in respect of its payment system or otherwise contravenes the provisions of this Act, the participants jointly and severally shall comply with those obligations in the same manner and to the same extent as if the participants were the clearing house on which the obligations are imposed or that committed the contravention.

20. Settlement Provisions.- (1) Notwithstanding anything to the contrary provided in this Act or any other law for the time being in force, the settlement rules of a designated Payments system shall be valid and binding on the Operator and the participants, and any action may be taken or payment made in accordance with the settlement rules.

(2) Where the settlement rules of a designated payments system provide that the settlement of a payment obligation through an entry to or a payment out of an account of a participant, or a clearing house at the State Bank is final and irrevocable, the entry or payment shall not be required to be reversed, repaid or set aside.

21. **Rights, etc., not subject to stay** .- (1) The rights and remedies of a participant, a clearing house, or the State Bank in respect of collateral granted to it as security for a payment or the performance of an obligation incurred in a designated payment system may not be the subject of any stay to be granted by any court or order affecting the ability of creditors to exercise rights and remedies with respect to the collateral.

22. **Settlement Rules** .- (1) The State Bank may make “settlement rules” to provide the basis on which payment obligations are calculated, netted or settled including rules for the taking of action in the event that a participant is unable or likely to become unable to meet its obligations to the clearing house, or to the other participants.

(2) Every participant and clearing house shall, in respect of its designated payment system, provide the State Bank with such information, at such times and in such form as it may in writing require.

23. **Electronic Money Institution**.- (1) An applicant that wants to become an electronic money institution shall submit an application to the State Bank for issue of a license to perform electronic money activity.

(2) An electronic money institution may perform only such activities as are specified in its license to perform electronic money activity on the basis of such license;

Provided that no electronic money institution shall issue electronic money in excess of value of funds received by it from a consumer.

24. **Preservation of rights, etc.** .- (1) Except to the extent expressly provided, this Act shall not operate to limit, restrict or otherwise affect -
- (i) any right, title, interest, privilege, obligation or liability of a person resulting from any transaction in respect of a transfer order which has been entered into a designated payment system; or
 - (ii) any investigation, legal proceeding or remedy in respect of any such right, title, interest, privilege, obligation or liability.
- (2) Nothing in this section shall be construed to require.
- (i) The unwinding of any netting done by the operator of a designated payment system, whether pursuant to its default arrangements or otherwise;
 - (ii) The revocation of any transfer order given by a participant which is entered into a designated payment system; or
 - (iii) The reversal of a payment or settlement made under the rules of a designated payment system.

CHAPTER V

Supervisory Control of the State Bank

25. **Issuance of model clauses.-** The State Bank may issue model clauses for use by the financial institutions to facilitate compliance with the disclosure requirements as specified in section 29 of this Act and to aid consumers in understanding the rights and responsibilities of participants in electronic fund transfers by utilizing readily understandable language.

- 26. Modification of requirements.-** Instructions issued by the State Bank may provide for such adjustments and exceptions for any class of electronic fund transfers, as in the opinion of the State Bank are necessary or proper for the purposes of this Act, to prevent circumvention or evasion thereof, to facilitate compliance therewith and to alleviate any undue compliance burden on small financial institutions.
- 27. Service providers other than financial institutions.-** The State Bank shall determine, whether any provision of this Act, subject to any modifications, adjustments or exceptions as provided for in section 26, shall apply to a person other than a financial institution, holding a consumer's account.
- 28. Requirement of notice.-** (1) The instructions issued by the State Bank under section 3 shall require any automated teller machine operator who imposes a fee on any consumer for providing services to such consumer, to provide notice in accordance with sub-sections (2) and (3) to the consumer of the fact that –
- (i) a fee is imposed by such operator for providing the service; and
 - (ii) the amount of any such fee.
- (2) The notice required by clause (i) of sub-section (1) with respect to any fee shall be posted at a prominent and conspicuous location on or at the automated teller machine at which the consumer initiates the electronic fund transfer.
- (3) The notice required under clauses (i) and (ii) of sub-section (1) with respect to charging of fee shall appear on the screen of the automated teller machine, in the manner as may be determined and notified by the State Bank in this behalf.
- (4) No fee may be imposed by any automated teller machine operator in connection with any electronic fund transfer initiated by a consumer for

which a notice is required under sub-section (1), unless the consumer receives such notice in accordance with sub-sections (2) and (3) and such consumer elects to continue in the manner necessary to effect the transaction after receiving such notice.

29. Terms and conditions of transfers.- (1) The terms and conditions of electronic fund transfers involving a consumer's account shall be disclosed by a financial institution in English or if so required by the consumer, in Urdu language at the time the consumer contracts for an electronic fund transfer service, in accordance with the instructions of the State Bank.

(2) Such disclosures may include the following, namely-

- (i) The consumer's liability for unauthorized electronic transfers and, at the financial institution's option, notice of the advisability of prompt reporting of any loss, theft, or unauthorized use of a card, code or other means of access;
- (ii) the telephone number and address of the person or office to be notified in the event the consumer believes that an unauthorized electronic fund transfer has been or may be effected;
- (iii) the kind and nature of electronic fund transfers which the consumer may initiate, including any limitations on the frequency or amount of such transfers, except that the details of such limitations need not be disclosed if their confidentiality is necessary to maintain the security of all electronic fund transfer system, as determined by the State Bank;
- (iv) any charges for electronic fund transfers or for the right to make such transfers;
- (v) the consumer's right to stop payment of a preauthorized electronic fund transfer and the procedure to initiate such a stop payment order;

- (vi) the consumer's right to receive documentation of electronic fund transfers under section 29;
- (vii) a summary, in a form prescribed by the State Bank, of the error resolution provisions of section 36 which, the financial institutions shall be required to transmit at least once per calendar year;
- (viii) the financial institution's liability to the consumer;
- (ix) the circumstances under which the financial institution will in the ordinary course of business disclose information concerning the consumer's account to third persons; and
- (x) a notice to the consumer that a fee may be imposed by an automated teller machine operator, if the consumer initiates a transfer from an automated teller machine that is not operated by the person or the financial institution issuing the card or other means of access.

30. Notification of changes.- (1) A financial institution, shall notify a consumer in writing at least twenty-one days prior to the effective date of any material change in any term or condition of the consumer's account required to be disclosed under sub-section (1) of section 29, unless such change is immediately necessary to maintain or restore the security of an electronic fund transfer system or a consumer's account.

- (2) Such institution shall be required to make a subsequent notification, provided for in sub-section (1), if such a change is made permanent.

CHAPTER VI

Documentation of transfers

31. Availability of documentation and proof.- For each electronic fund transfer initiated by a consumer from an electronic terminal, the financial institution holding such consumer's account shall, directly or indirectly, at the time the transfer is initiated, make available to the consumer documentation and proof of such transfer, clearly setting forth, as may be required by such transaction, the following particulars, namely –

- (i) The amount involved and date or value date associated with the transfer;
- (ii) The type of transfer;
- (iii) The identity of the consumer's account with the financial institution from which or to which funds are transferred;
- (iv) The identity of any third party to whom or from whom funds are transferred; and
- (v) The location or identification of the electronic terminal involved.

32. Periodic statement.- (1) A financial institution shall provide each consumer with a periodic statement for each account of such consumer that may be accessed by means of an electronic fund transfer.

- (2) Such statement shall be provided at least once every month, or as required by the consumer, or such other period as the State Bank may determine.
- (3) Such statement shall include all the necessary particulars in respect of the consumer's account and shall clearly set forth the balances in consumer's account at the beginning and the close of the period, the amount of any fee or charge assessed by the financial institution during the period, for whatever purpose and the address and telephone number to be used by

the financial institution for the purpose of receiving any enquiry or notice of account error from the customer.

33. Documentation as evidence.- In any action involving a consumer, any documentation required by either section 31 or 32 of this Act to be given to the consumer, which indicates that an electronic fund transfer was made to another person, shall be admissible as evidence of such transfer and shall constitute prima facie proof that such transfer was made.

34. Preauthorized transfers.- (1) A preauthorized electronic fund transfer from a consumer's account may be authorized by the consumer only in writing, and a copy of such authorization shall be provided to the consumer when made.

(2) A consumer may stop payment of a preauthorized electronic fund transfer by notifying the financial institution orally or in writing at any time upto three business days preceding the scheduled date of such transfer.

(3) The financial institution may require written confirmation to be provided to it within fourteen days when the consumer receives advice in respect of such requirement and the address to which such confirmation should be sent.

CHAPTER VII

Notification of error

35. Notification of error.- (1) In this section, the following shall be construed as error, namely –

- (i) an unauthorized electronic fund transfer;
- (ii) an incorrect electronic fund transfer to or from the consumer's account.
- (iii) the omission of an electronic fund transfer from a periodic statement;

- (iv) a computational or book keeping error made by the financial institution relating to an electronic fund transfer;
- (v) the consumer's receipt of an incorrect amount of money from an electronic terminal; or
- (vi) any other error as determined by the State Bank.

- (2) When an error has occurred, the financial institution shall investigate the alleged error to determine whether an error has occurred, and report in writing the result of such investigation to the consumer within ten business days.
- (3) The financial institution may require written confirmation to be provided to it within ten business days of an oral notification of error.
- (4) A financial institution shall not be liable to credit a consumer's account in accordance with the provisions of section 36 in case the written confirmation is not received by it within the ten days period, provided for in sub-section (3).

36. Correcting error.- If the financial institution determines that an error did occur, it shall promptly, and in no event one business day after such determination, correct the error, including the crediting of mark up where applicable.

Provided that the financial institution may provisionally recredit the consumer's account for the amount alleged to be in error, including mark up where applicable, pending conclusion of its investigation and determination of whether an error has occurred.

Provided further that such investigation shall be concluded not later than ten business days after receipt of notice of the error and during the pendency of the investigation, the consumer shall have full use of the funds provisionally recredited.

37. **Absence of error.**- If the financial institution determines after its investigation that an error did not occur, it shall deliver or mail to the consumer an explanation of its findings within three business days after the conclusion of its investigation, and upon request of the consumer promptly deliver or mail to the consumer copies of all documents which the financial institution relied on to conclude that such error did not occur.
38. **Triple damages.**- (1) If in any case filed under section 49 of this Act, the court finds that a financial institution is guilty of the commission of any act, provided for in sub-section (2) or (3) of this section, the financial institution, shall be liable to pay to the consumer, triple damages determined under section 49.
- (2) The financial institution shall be liable to pay damages, provided for in sub-section (1), if it did not provisionally recredit a consumer's account within the ten days period specified in section 35 and the financial institution did not make a good faith investigation of the alleged error or it did not have reasonable basis for believing that the consumer's account was not in error.
- (3) The financial institution shall also be liable to pay damages, provided in sub-section (1), if it knowingly and willfully concluded that the consumer's account was not in error when such conclusion could not reasonably have been drawn from the evidence available to the financial institution at the time of its investigation.

CHAPTER VIII

Liability of parties

39. **Consumer's liability.**- A consumer shall be liable for any unauthorized electronic fund transfer involving the account of such consumer only if the card or other means of access utilized for such transfer was an accepted card or other

means of access and if the issuer of such card, code or other means of access has provided a means whereby the user of such card, code or other means of access can be identified as the person authorized to use it, such as by signature, photograph, or finger print or by electronic or mechanical confirmation.

40. **Burden of proof.**- In any action which involves a consumer's liability for an unauthorized electronic fund transfer, the burden of proof shall be upon the financial institution to show that the electronic fund transfer was authorized or, if the electronic fund transfer was unauthorized, then the burden of proof shall be upon the financial institution to establish that the conditions of liability set forth in section 39 were met, and the disclosures required to be made to the consumer under section 29 were in fact made in accordance with such section.
41. **Liability in case of extension of credit.**- In the event of transaction which involves both an unauthorized electronic fund transfer and an extension of credit limit pursuant to an agreement between the consumer and the financial institution, nothing shall impose liability upon a consumer for an unauthorized electronic fund transfer in excess of his liability for such transfer under any other applicable law or under any agreement with the consumer's financial institution.
42. **Liability of financial institutions.**- Subject to what is provided in section 43 or 44, a financial institution shall be liable to a consumer for all damages proximately caused by –
- (i) the financial institution's failure to make an electronic fund transfer, in accordance with the terms and conditions of an account, in the correct amount or in a timely manner when properly instructed to do so by the consumer, except where-
 - (a) the consumer's account has insufficient funds;
 - (b) the funds are subject to legal process or other encumbrance restricting such transfer;
 - (c) such transfer would exceed an established credit limit;

(d) an electronic terminal has insufficient cash to complete the transaction; or

(e) as otherwise provided in instructions by the State Bank.

- (ii) the financial institution's failure to make an electronic fund transfer due to insufficient funds when the financial institution failed to credit, in accordance with the terms and conditions of an account, a deposit of funds to the consumer's account which would have provided sufficient funds to make the transfer, and
- (iii) the financial institution's failure to stop payment of preauthorized transfer from a consumer's account when instructed to do so in accordance with the terms and conditions of account.

43. Acts of God and technical malfunctions.- A financial institution shall not be liable under clauses (i) and (ii) of section 42 if the financial institution shows by a preponderance of evidence that its action or failure to act resulted from –

- (i) an act of God or other circumstance beyond its control, that it exercised reasonable care to prevent such an occurrence, and that it exercised such diligence as the circumstances required; or
- (ii) a technical malfunction, which was known to the consumer at the time, he attempted to initiate an electronic fund transfer or, in case of preauthorized transfer, at the time such transfer should have occurred.

44. Intent.- In case of failure described in clause (i) of section 42, the failure was not intentional and it resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adopted to avoid any such error, the financial institution shall be liable for actual damages proved.

45. Prohibition on improper issuance.- No person may issue to a consumer any card, code or other means of access to such consumer's account for the purpose of initiating an electronic fund transfer other than in response to a request or

application therefor; or as a renewal of, or in substitution for, an accepted card, code or other means of access, whether issued by the initial issuer or a successor.

46. **Exceptions.**- (1) Notwithstanding the provisions of section 45, a person may distribute to a consumer on an unsolicited basis a card, code or other means of access for use in initiating an electronic fund transfer from such consumer's account if –

- (i) such card, code or other means of access is not validated;
- (ii) such distribution is accompanied by a complete disclosure, in accordance with section 29 of the consumers' rights and liabilities which will apply if such card, code or other means of access is validated;
- (iii) such distribution is accompanied by a clear explanation, in accordance with instructions of the State Bank, that such card, code, or other means of access is not validated and how the consumer may dispose of such code, card, or other means of access if validation is not desired and such card, code, or other means of access is validated only in response to a request or application from the consumer, upon verification of the consumer's identity.

(2) For the purpose of this section, a card, code, or other means of access is validated when it may be used to initiate an electronic fund transfer.

47. **Suspension of obligation** - If a technical malfunction prevents the effectuation of an electronic fund transfer initiated by a consumer to another person, and such other person has agreed to accept payment by such means, the consumer's obligation to the other person shall be suspended until the malfunction is corrected and the electronic fund transfer may be completed, unless such other person has subsequently, by written request, demanded payment by means other than an electronic fund transfer.

48. **Waiver of rights.**- No writing or other agreement between a consumer and any other person may contain any provision which constitutes a waiver of any right conferred or cause of action created by this Act, and any such writing waiving any right or cause of action shall be void and of no legal effect.

CHAPTER IX

Action before the Court

49. **Damages.**- Except as otherwise provided by this section or the provisions of this Act, any person who fails to comply with any provision of this Act with respect to any consumer, except for an error resolved in accordance with the provisions of this Act, shall, upon an action brought before a court by the consumer, be liable to such consumer for payment of an amount equal to the sum of any actual damage sustained by such consumer as a result of such failure.
50. **Bona fide error.**- Except as provided by section 43, a person may not be held liable in any action brought under this chapter for any violation of this Act if the person shows by preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.
51. **Actions taken in good faith.**- (1) The provision of section 49 shall not apply to any act done or omitted in good faith, or purported to be done in conformity with any rule, instruction or interpretation of approval by an official of the State Bank duly authorized to issue such interpretations or approvals under such procedure of the State Bank as may be prescribed for.
- (2) A financial institution shall not incur any liability under section 49 on account of any failure to make a disclosure in proper form, if such institution utilized an appropriate model clause issued by the State Bank,

notwithstanding the fact that after such act, omission, or failure has occurred, such rule, instruction, approval or model clause under subsection (1) was amended, rescinded or determined by judicial or other authority as invalid for any reason.

52. **Notification to consumer prior to action.**- A person shall not incur any liability for any failure to comply with any requirement under this Act, if prior to the institution of an action under this Act, such person notifies the consumer concerned of the failure, complies with the requirements of this Act and makes an appropriate adjustment to the consumer's account and pays actual damages or, where applicable, damages in accordance with section 42.
53. **Action in bad faith.**- On finding by the court that an unsuccessful action for any alleged failure was brought in bad faith or for the purposes of harassment, the court shall award to the defendant costs of such litigation and the attorney's fees reasonable in relation to the work expended.
54. **Jurisdiction of courts.**- With regard to the amount in controversy, any action under this Act may be brought in any court of competent jurisdiction.
55. **Criminal liability.**- Whoever knowingly and willfully gives false information or inaccurate information or fails to provide information which he is required to disclose by this Act or any instruction issued thereunder, or otherwise fails to comply with any provision of this Act shall be punished with imprisonment which may extend to three years and may also be liable to pay fine which may extend to three hundred thousand rupees.
56. **Violations affecting foreign commerce.**- Whoever –
- (1) Knowingly, in a transaction affecting foreign commerce, uses or attempts or conspires to use any counterfeit, fictitious, altered, forged, lost, stolen, or

fraudulently obtained debit instrument to obtain money, goods, services or anything else of value aggregating fifty thousand rupees or more, or

- (2) Knowingly receives, conceals, uses or transports money, goods, services or anything else of value aggregating fifty thousand rupees or more obtained by use of any counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained debit instrument, or
- (3) Knowingly receives, conceals, uses, sells, or transports one or more tickets for foreign transportation, which within one year period have a value aggregating thirty thousand rupees or more, and which have been purchased or obtained with one or more counterfeit, fictitious, altered, forged, lost, stolen or fraudulently obtained debit instrument, shall be punished with rigorous imprisonment for a term which may extend to ten years and may also be liable to pay fine which may extend to ten hundred thousand rupees.

57. Cheating by use of electronic device.- Whoever cheats by pretending to be some other person, or by knowingly substituting one person for another, or representing that he or any other person is a person other than he or such other person really is, or by cheating by personation, fraudulently or dishonestly uses any credit or debit card, or code or any other means of access to an electronic fund transfer device, and thereby causes any wrongful gain to himself or any wrongful loss to any other person, shall be punished with rigorous imprisonment for a term which may extend to ten years and with fine which shall not be less than the wrongful loss caused to any person.

CHAPTER X

Miscellaneous

- 58. Modification of Law of Insolvency:** (1) Notwithstanding anything to the contrary provided in the general law of insolvency, rights and liabilities of persons arising from transfer orders in this Act shall be governed subject to the provisions of this section, in case such person is a participant.
- (2) No transfer order passed under this Act, any disposition of property in pursuance of such order, or the default arrangements of a designated system shall be regarded to any extent as invalid on the ground of inconsistency with the law of insolvency.
- (3) No order of the court or any office holder acting under general law of insolvency shall interfere with settlement of a transfer order passed in accordance with the rules of the designated system.
- (4) A debt or other liability arising out of a transfer order which is the subject of action taken under default arrangements, may not to be proved in a bankruptcy or winding up proceedings, or may not be taken into account for the purpose of any set-off until the completion of the action taken under default arrangements.
- (5) The netting arrangement shall be valid and enforceable and an operator or participant of a designated system shall be required to give effect to such arrangement.
- (6) This section shall not apply in relation to any transfer order which is entered into a designated payment system after the expiry of the day on which a court made an order for insolvency, judicial management or winding up in respect of the participant, or after a resolution for voluntary winding up of the participant was passed.

(7) Nothing in this section shall be construed to require the unwinding of any netting done by the operator of a designated payment system, whether pursuant to its default arrangements or otherwise

“Default Arrangements” in this section means the arrangements put in place by a designated system to limit systemic and other kinds of risks which arise in the event of a participant appearing to be unable, or likely to become unable, to meet its obligations in respect of a transfer order, including any arrangements for netting.

59. Operator of Designated Payment System Insolvent: (1) Any operator of a designated payment system who is insolvent or likely to become insolvent, or has become or likely to become unable to meet all or any of his obligations, or has suspended payments or compounded with his creditors, shall immediately inform the State Bank.

(2) When the State Bank receives information under sub-section (1), it may assume control of the whole of the property, business and affairs of the operator of the designated payment system and carry on the whole of his business and affairs and appoint its own officers, or assume control of such part of its property, business and affairs and carry on such part of its business and affairs as the State Bank may determine, and it may further order that the cost and expenses of the State Bank or the remuneration of any person so appointed by the State Bank, may be paid out of the funds and properties of the operator of the designated payment system which shall be regarded as the first charge thereon.

(3) Whether or not an order has been made under the preceding sub-section, the State Bank may take any action or initiate any proceedings against the operator under the law of insolvency.

(4) No order under this section shall be made unless the operator of a designated payment system or any director or officer of the operator of the designated payment system in respect of which an order is to be made, or who in pursuance of such order is to be removed from office, has been given a reasonable opportunity of making representation against the proposed order.

60. Application of fine.- A court imposing any fine under this Act may direct that the whole or any part thereof shall be applied towards compensation to the aggrieved person for any loss caused by the person committing an offence under this Act.

61. Power to investigate.- (1) Notwithstanding anything to the contrary provided by any other law for the time being in force, every information relating to commission of an offence under this Act shall be recorded in writing by an officer-in-charge of a police station, generally empowered in this behalf under the Code.

(2) Investigation of offences committed under this Act shall be carried out by an officer-in-charge of the police station empowered under the Code to exercise such powers, including power to examine witnesses, to arrest any person or to seize any document or a thing or search any place, and do all other acts or things necessary for such purpose;

provided that such officer shall be subject to the same restrictions in respect of any document or record of a financial or electronic money institution as is provided in respect of documents in custody of a bank or a banker in section 94 of the Code.

62. Trial of offence.- (1) Notwithstanding anything to the contrary provided by any other law for the time being in force, offences provided for in Chapter IX of this Act shall be tried by the Court of Sessions, having territorial jurisdiction in the case, which shall observe the same procedure as provided for trial of offences by the Code.

- (2) Cognizance shall be taken by the court upon a report of facts made in writing by a police officer or upon receiving a complaint of facts which constitute the offence.
- (3) In case of a complaint, the court may postpone the issue of process for attendance of the person complained against and refer the complaint to the officer-in-charge of a police station for investigation and report.
63. **Procedure.**- (1) Except for offences provided for in sections 56 or 57, all offences under this Act are bailable.
- (2) All offences under the Act are cognizable and compoundable with permission of the court.
- (3) Offences provided for in section 56 and 57 shall be non-bailable.
64. **Overriding effect.**- This Act shall have effect notwithstanding anything to the contrary provided in any other law for the time being in force or any agreement, contract, memorandum or articles of association.
65. **Removal of difficulties.**- If any difficulty arises in giving effect to any provision of this Act, the Federal Government may in consultation with the State Bank, make such order as appears to it to be necessary for the purpose of removing the difficulty.
66. **Power to call for information.**- (1) The State Bank may direct any financial institution or service provider other than a financial institution to give or furnish to the State Bank, within such time as the State Bank may specify in this behalf, such information, documents or records respecting any business carried on by such institution or service provider, as may be within its knowledge or under its possession, custody or control.

- (2) If such institution or service provider fails or omits to furnish any information required by the State Bank under sub-section (1) or willfully makes a statement which is false in any material particular it shall be liable to get its licence under section 24 withdrawn by the State Bank and to pay a fine which may extend to one hundred thousand rupees.
- (3) Any party or person aggrieved by an order passed under sub-section (2) may appeal within 15 days of such order to the Central Board of Directors of the State Bank, which shall dispose of the appeal within 60 days.

67. Secrecy and Privacy.- (1) A financial institution shall, except as otherwise required by law, shall not divulge any information relating to an electronic fund transfer, affairs or account of its consumer, except in circumstances in which, according to the practice and usage customary among bankers, it is necessary or appropriate for a financial institution to divulge such information, or the consumer has given consent therefor.

- (2) No person other than an officer or agent appointed by the financial institution that maintains the account of a consumer, may have access through an electronic terminal to information relating to electronic fund transfer, the affairs, or the account of the consumer.
- (3) The rules governing the operation of individual accounts will be applicable to electronic fund transfers in relation to disclosure of information to third parties.

68. Complaint resolution.- A consumer who is not satisfied with the outcome of a complaint made to a financial institution in relation to any electronic fund transfer or disclosure made by a financial institution to a third party, without prejudice to any right to seek any other remedy under the law, he may make a complaint to the State Bank.

69. Suspension of operation.- (1) The Federal Government in consultation with the State Bank may, by a general order, for the time being suspend operation of any provision of this Act, and from the date of such order, such provision shall cease to apply.

(2) When the order made under sub-section (1) is withdrawn by the Federal Government such suspension shall cease to operate with effect from the date, specified by the Federal Government in this behalf.

70. Immunity of State Bank and its employees etc. .- (1) No suit or other legal proceedings shall lie against the State Bank or any officer or employee thereof or any person acting under its direction:

- (i) for any act done in good faith.
 - (a) in the performance, or intended performance, of any function or duty; or
 - (b) in the exercise, or intended exercise, of any power, in the capacity of the State Bank as the designated Bank under this Act; or
- (ii) for any neglect or default in the performance or exercise in good faith of such function, duty or power.

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