

THE PAYMENT SYSTEMS AND ELECTRONIC FUND
TRANSFERS ACT, 2007

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THE PAYMENT SYSTEMS AND ELECTRONIC FUND TRANSFERS ACT,
2007

ACT No. IV OF 2007

[30 June, 2007]

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 standards for protection of the consumer and to determine respective rights and liabilities of the financial institutions and other Service Providers, their consumers 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, 2007.

(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) “Authorized” means authorized by the State Bank for the purposes of this Act;

(e) “Automated Teller Machine (ATM) Card” means any card for use at any ATM to initiate Electronic Fund Transfers;

(f) “Authorized Party” means a bank, a Financial Institution, a Clearing House, a

Service Provider or any person authorized by the State Bank to transact business under this Act in Pakistan;

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“Automated Teller Machine (ATM) Operator” means any person or a Financial Institution operating any ATM at which consumers initiate Electronic Fund Transfers;

“Bank” means a banking company as defined in section 5 of the Banking Companies Ordinance, 1962 (LVII of 1962);

“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;

“Business Day” means any day on which offices of consumers, Financial Institutions, operators or Service Providers involved in Electronic Fund Transfer are open to the public;

“Card” means any card including an ATM card, Electronic Fund Transfer point of sale card, debit card, credit card or stored value card, used by a Consumer to effect an Electronic Fund Transfer;

“Cheque in the Electronic Form” means a cheque which contains the exact image of a paper cheque in electronic form and is generated, written and signed in a secure system ensuring minimum safety standards as may be prescribed by the State Bank;

“Clearing House” means corporation, company, association, partnership, agency or other entity that provides clearing or settlement services for a Payment System;

“Consumer” means any person who or which avails the facility of Electronic Fund Transfer;

“Debit Instrument” means a Card, Access 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;

“Designated Payment Instrument” means a Payment Instrument designated by the State Bank as Payment Instrument under section 12.

“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;

“Electronic” has the same meaning as assigned to it by the Electronic Transactions Ordinance, 2002 (LI of 2002);

“Electronic Fund or Electronic Money” means money transferred through an Electronic Terminal, ATM, 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,

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accepted as means of payment by undertakings other than the issuer and includes electronic store of monetary value on a electronic device that may be used for making payments or as may be prescribed by the State Bank;

“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, ATM, computer magnetic tape or any other electronic device so as to order, instruct, or authorize a Financial Institution to debit or credit an Account;

“Electronic Money Institution” means an undertaking, that issues means of payment in the form of Electronic Money and is duly authorized to do so;

“Electronic Payment System” means implementation of Payment System Electronically;

“Electronic Terminal” means an electronic device, operated by a consumer, through which a consumer may initiate an Electronic Fund Transfer;

“Financial Institution” means. a financial institution as defined in the Financial Institutions (Recovery of Finances) Ordinance, 2001(XLVI of 2001) and includes a banking company or any other Electronic Money Institution or person, authorized by the State Bank in this behalf, that directly or indirectly holds an account belonging to a consumer;

“Government” means the Federal Government or any Provincial Government;

“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;

“Operator” means any financial or other institution or any person, authorized by the State Bank to operate any Designated Payment System;

“Participant” means a party to an arrangement that establishes a Payment System;

“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 (XXVI of 1881);

“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;

“Person” includes a legal person or a body of persons whether incorporated or

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not;

“Preauthorized Electronic Fund Transfer” means an Electronic Fund Transfer Authorized in advance;

“Prescribed” means prescribed by rules, circulars, directions, orders or bye-laws.

“Real Time Gross Settlement System” means a Payment System which can effect final settlement of funds, payment obligations and Book Entry Government 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;

“Service Provider” includes an operator or any other Electronic Fund Transfer Service Provider.

“State Bank” means the State Bank of Pakistan established under section 3 of the State Bank of Pakistan Act, 1956 (XXXIII of 1956);

“Systemic Risk” means the risk that relates to the inability of a participant to meet its obligations in the Payment System as they become due or a disruption to the Payment System that could, for whatever reason, cause other participants in the Payment System to be unable to meet their obligations as they become due; and

“Truncated Cheque” means a cheque which is truncated in a secure system, during the course of a clearing cycle, by an Authorized Party, whether paying or receiving payment, immediately on capture of a scanned image, substituting physical movement of the cheque in the original form, and includes a cheque in the electronic form.

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 payment systems, the conduct of all or any of the Service Providers, Operators of Payment Systems or issuers of Payment Instruments, issue such rules, guidelines, circulars, bye-laws, standards or directions as it may consider appropriate.

(2) The State Bank may, by written notice, require an operator of a Designated Payment System or issuer of Designated Payment Instrument to make modifications or alterations to—

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the Designated Payment System or Designated Payment Instrument including governance arrangements;

operational arrangements;

documents and information submitted by operator of a Payment System or issuer of Payment Instruments;

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any other documents relating to the Designated Payment System or Designated Payment Instrument.

(3) In exercising its powers under sub-section (1), the State Bank shall have regard to—

(i) the Systemic Risk;

(ii) the object of the State 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, if it finds it to be necessary

in the public interest, by a written order designate a Payment System a Designated Payment System.

(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 revoke the designation of a Designated Payment System if it is satisfied that—

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the Designated Payment System has ceased to operate effectively as a Payment System;

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;

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;

any of the terms and conditions of the designation or requirements of this Act has been contravened; or

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;

Provided that the State Bank may, if an immediate systemic risk is involved, suspend the designation of a Payment System without notice pending the final order.

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 interest 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 Authorized Parties 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 (LI of 2002) for a period as may be determined by the State Bank.

8. Disqualification of Staff.— (1) No person shall be appointed to serve in any capacity by an operator of a Designated Payment System if —

(i) such person has been adjudged a bankrupt, or has suspended payments, or has compounded a debt with his creditors, whether in or outside Pakistan, within ten years prior to the date of the appointment; or

(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.

(2) Any person being the chairman, director, chief executive, by whatever name called, or

official liquidator, or an officer of a designated payment system mismanages the affairs of the payment system or misuses his position for gaining direct or indirect benefit for himself or any of his family

members or any other person, shall be disqualified to serve in any capacity in a designated payment system.

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) Any person disqualified under section 8, 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 Arrangements.— 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 participants 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 fits.

(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 or defraud the public.

(iv) _ the Person has, in the opinion of the State Bank, failed to comply with the requirements of this Act.

(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 three years imprisonment of either description or with fine which may extend to five million 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;

Provided that State Bank may, in appropriate cases, without notice direct a Person to

immediately stop issuing a Payment Instrument, pending the final order.

15. Security.— Financial Institutions and other institutions providing Electronic Funds Transfer facilities shall ensure that secure means are used for transfer, compliant with current international standards and as may be prescribed by the State Bank from time to time.

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.

17. Payment by Truncated Cheque.— (1) Notwithstanding anything to the contrary provided in the Negotiable Instruments Act, 1881 (XXVI of 1881), or any other law, for the time being in force, Electronic Fund Transfers may be initiated by an Authorized Party by means of a truncated cheque.

(2) In case, any transfer of funds takes place in the manner as provided in sub-section (1), the original cheque shall cease to be negotiable.

(3) Validity of a cheque shall not be affected if for any technical reason or otherwise, transfer of funds as provided in sub-section (1) fails to take effect.

(4) If transfer of funds does not take effect as provided in sub-section (3), the Bank or the Authorized Financial Institution concerned may require physical delivery of the cheque from the originator.

CHAPTER IV

CLEARING AND OTHER OBLIGATIONS

18. Clearing Houses, Audit and Inspection.— (1) The State Bank may nominate one or more Clearing Houses to provide clearing or settlement services for a Payment System on such terms and conditions as may be determined by it.

(2) The State Bank may, for the purposes of carrying out its functions under this Act, conduct audits and inspections of Clearing Houses, and the Clearing House shall, as required, assist the State Bank to the extent necessary to enable it to carry out an audit or inspection.

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

19. 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 bye-laws of the Clearing House;

(b) the operation of the Designated Payment System;

(c) the bye-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.

20. Participants Responsible Where Clearing House Fails to Comply, etc.— Where 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 they committed the contravention.

21. 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 Payment 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 Payment 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.

22. 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.

23. 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 the State Bank may require in writing.

24. 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.

25. 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 Act 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

26. Issuance of Model Clauses.— The State Bank may issue model clauses for use by the Financial Institutions and Authorized Parties to facilitate compliance with the disclosure requirements as specified in section 29 and to aid consumers in understanding the rights and responsibilities of participants in Electronic Fund Transfers by utilizing readily understandable language.

27. 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.

28. Service Providers Other Than Financial Institutions. The State Bank shall determine, which provisions 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.

29. Requirement of Notice.— (1) The instructions issued by the State Bank under section 3 shall require any ATM Operator or any other Service Provider 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 or Service Provider for providing the service;
and

(ii) the amount of any such fee.

(2) The notice required by sub-section (1) with respect to any fee shall be posted at a prominent and conspicuous location on or at the ATM or other Electronic Terminal at which the consumer initiates the Electronic Fund Transfer.

(3) The notice required under sub-section (1) with respect to charging of fee shall appear

on the conspicuous part of the ATM or Electronic Terminal in the manner as may be determined and notified by the State Bank in this behalf.

(4) No fee may be imposed by any ATM Operator or other Service Provider, as the case may be, 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.

30. 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, operator or other Authorized Party in English and in a manner clearly understood by the consumer, 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:—

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the Consumer's liability for unauthorized Electronic Fund Transfers and, at the option of the Financial Institution or Authorized Party or Operator, notice of the advisability of prompt reporting of any loss, theft, or unauthorized use of a Card, Access Code or other means of access;

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;

the kind and nature of Electronic Fund Transfers which the Consumer may initiate, including any limitations on the frequency or amount of such transfers;

any charges for Electronic and Transfers or for the right to make such transfers;

the Consumer's right to stop payment of a Preauthorized Electronic Fund Transfer and the procedure to initiate such a stop payment order;

the Consumer's right to receive information of Electronic Fund Transfers under section 29;

a summary, in a form Prescribed by the State Bank, of the error resolution

provisions of section 36 which, the Financial Institutions, Authorized Parties or Operators shall be required to transmit at least once per calendar year;

the Financial Institution's, Authorized Party's or Operator's liability to the Consumer;

the circumstances under which the Financial Institution, Authorized Party or Operator will in the ordinary course of business disclose information concerning the Consumer's Account to third Persons; and

a notice to the Consumer that a fee may be imposed by an ATM Operator or Service Provider, if the Consumer initiates a transfer from an ATM or other Electronic Terminal that is not operated by the Person or the Financial Institution issuing the Card or other means of access.

31. Notification of Changes.— (1) A Financial Institution or any other Authorized party, shall notify a Consumer in writing or such other means as may be prescribed by the State Bank from

time to time, 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) Financial 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

32. 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 the date on which the transfer is initiated;
(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;
(v) the location or identification of the Electronic Terminal involved; and
(vi) name of the Accountholder from or to which funds are transferred.

33. Periodic Statement.— (1) A Financial Institution shall provide each consumer with a periodic statement for each account of such consumer that may be accessed electronically.

(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 from time to time.

(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 Consumer.

34. Documentation as Evidence.— In any action involving a Consumer or any Participant, 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.

35. Preauthorized Transfers.— (1) A preauthorized Electronic Fund Transfer from a

Consumer's Account may be authorized by the Consumer either in writing, or in any other accepted form.

(2) A consumer may stop payment of a Preauthorized Electronic Fund Transfer by notifying the Financial Institution.

CHAPTER VII

NOTIFICATION OF ERROR

36. 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) | acomputational 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 or the Authorized Party 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 or Authorized. Party shall not be liable to credit a Consumer's Account in accordance with the provisions of section 37 in case no error is found pursuant to investigation under sub-section (2) and or the written confirmation required by it is not received by it within the ten days period, provided for in sub-section (3).

37. Correcting Error.— If the Financial Institution or Authorized Party determines that an error did occur, it shall promptly, and in no event later than one Business Day after such determination, correct the error, including the crediting of a Consumer's Account with mark up where applicable:

Provided that such investigation shall be concluded not later than ten Business Days after receipt of notice of the error.

38. Absence of Error.— If the Financial Institution or the Authorized Party 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 or the Authorized Party relied on to conclude that such error did not occur.

39. Triple Damages.— (1) If in any case filed under section 50 of this Act, the court finds that a Financial Institution and/or an Authorized Party is guilty of the commission of any act, provided for in sub-section (2) or (3) of this section, the Financial Institution, shall in addition to costs incurred

by the consumer, be further liable to pay to the Consumer, triple damages determined under section.

(2) The Financial Institution or the Authorized Party shall be liable to pay damages, provided for in sub-section (1), if it did not re-credit a Consumer's Account within the ten days period specified in section 37 and the Financial Institution and or the Authorized Party 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 or the Authorized Party 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 or the Authorized Party at the time of its investigation.

CHAPTER VIII

LIABILITY OF PARTIES

40. 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.

41. 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 or the Authorized Party to show that the Electronic Fund Transfer was authorized or, if the Electronic Fund Transfer was authorized, then the burden of proof shall be upon the Financial Institution or the Authorized Party to establish that the conditions of liability set forth in this Act were met, and the disclosures required to be made to the consumer under this Act were in fact made in accordance with the provision thereof.

42. 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 or the Authorized Party, 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 or Authorized Party.

43. Liability of Financial Institutions/Authorized Parties.— Subject to what is provided in this section or section 44, a Financial Institution or the Authorized Party shall be liable to a consumer for all damages proximately caused by—

(i) the Financial Institution's or Authorized Party'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) as otherwise provided in instructions by the State Bank.

(ii) the Financial Institution's or Authorized Party's failure to make an Electronic Fund Transfer due to insufficient funds when the Financial Institution or Authorized Party 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

(ii) the Financial Institution's or Authorized Party'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.

44. Force Majeure.— A Financial Institution, an Authorized Party, Operator or a Participant shall not be liable under clauses (i) and (ii) of section 43 if it shows by a preponderance of evidence that its action or failure to act resulted from—

(i) force majeure 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;

(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.

45. Intent.— In case of failure described in clauses (i) and (ii) of section 43 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, Authorized Party, operator or the participant shall be liable for actual damages proved.

46. 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 Funds 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.

47. Exceptions.— (1) Notwithstanding the provisions of section 46, 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.

48. 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.

49. 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

50. 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 other person, except for an error resolved in accordance with the provisions of this Act, shall, upon an action brought before a court, be liable to such person for payment of an amount equal to the sum of any actual damage sustained by that person as a result of such failure.

51. Bonafide Error. — Except as provided by section 50, 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 bonafide error notwithstanding the maintenance of procedures reasonably adopted to avoid any such error.

52. Actions Taken in Good Faith.— (1) The provisions of section 50 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 or an Authorized Party shall not incur any liability under section 50 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 sub-section (1) was amended, rescinded or determined by judicial or other authority as invalid for any reason.

53. 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 39.

54. 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 may award to the defendant (s) costs of such litigation and the attorney's fees found reasonable in relation to the work.

55. Jurisdiction of Courts.— (1) With regard to the amount in controversy, any civil action under this Act may be brought in any court of competent jurisdiction.

(2) The court exercising jurisdiction shall not adjourn the case for more than ten days at a time; provided that the aggregate of adjournments granted to the defendant shall not exceed three.

(3) The court shall announce its judgment within ninety days after notice upon the defendant in the case was first served.

56. Criminal Liability. Whoever knowingly and wilfully 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 of either description which may extend to three years, or with fine which may extend to three million rupees, or with both.

57. _- Violations Affecting Electronic Commerce.—Whoever—

(1) knowingly, in a transaction effected by electronic 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 five thousand rupees or more, or

(2) knowingly receives, conceals, uses or transports money, goods, services or anything else of value aggregating five 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 transportation, 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 imprisonment of either description for a term which may extend to seven years, or with fine which may extend to one million rupees, or with both.

Explanation.— For the purpose of this section e-commerce means the activity of buying, selling or contracting for goods, services and making payments using internet or worldwide web through communication networks including of wireless networks, within or outside Pakistan.

58. Cheating by Use of Electronic Device. — Whosoever 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 impersonation, 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 imprisonment of either description for a term which may extend to seven years, or with fine which shall not be less than the wrongful loss caused to any person, or with both.

CHAPTER X MISCELLANEOUS

59. Act to override Law of Insolvency.— (1) Notwithstanding anything to the contrary provided in the 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 the 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 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) Nothing in this section shall be construed to require the unwinding of any netting or gross payment done by the operator of a Designated Payment System, whether pursuant to its default arrangements or otherwise:

Provided that 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.

Explanation.— In this section “Default Arrangements” 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.

60. Operator of Designated Payment System Insolvent.— (1) Where the State Bank is satisfied that any operator of a Designated Payment System 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, or where it is in the public interest, State Bank may:—

(i) 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; and

(ii) take any action or initiate any proceedings against the operator under the law of insolvency, whether or not an order has been made under the preceding sub-section

(2) 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:

Provided that State Bank may, if an immediate systemic risk is involved, take immediate action under this section pending the final order.

61. 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.

62. Power to Investigate—(1) Notwithstanding anything to the contrary provided by any other law for the time being in force, any 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 of Criminal Procedure, 1898 (Act V of 1898).

(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 of Criminal Procedure, 1898 (Act V of 1898) to exercise such powers, including power to examine witnesses, to arrest any person or to seize any document or 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 of Criminal Procedure 1898 (Act V of 1898).

63. 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 of Criminal Procedure, 1898 (Act V of 1898).

(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.

64. Application to acts done outside Pakistan. —The provisions of this Act shall apply notwithstanding the matters being the subject hereof occurring outside Pakistan, in so far as they are directly or indirectly connected to, or have an effect on or bearing in relation to persons, Payment Systems or events within the territorial jurisdiction of Pakistan.

65. Offences to be non-cognizable etc. Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), all offences under this Act are bailable, non-cognizable and compoundable with the permission of the court.

66. Procedure.—(1) Notwithstanding anything to the contrary provided in this Act or any other law for the time being in force, no Court or authority or officer shall take cognizance of any offence against this Act which is alleged to have been committed by any person, party, participant, Service Provider, operator or Financial Institution or any officer or auditor thereof, who is authorized, licensed or designated under the Act, except on the complaint in writing of the State Bank:

Provided that nothing in this sub-section shall apply to a prosecution by a person, party, participant, Service Provider, operator or Financial Institution or any of its officers or employees:

Provided further that, where the State Bank is itself empowered to impose a penalty or fine, it may take cognizance of the offence and start proceedings on the basis of a memorandum of allegations placed on record by an officer of State Bank.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), the personal attendance of the complainant before the Court or authority trying the offence shall not be necessary unless the Court, for reasons to be recorded, requires his personal attendance at the trial.

67. 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.

68. 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.

69. Power to Call For Information.— (1) The State Bank may direct any Financial Institution or Service Provider or any other Authorized Party 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 in respect of any business carried on by such institution or Service Provider or other Authorized Party, as may be within its knowledge or under its possession, custody or control.

(2) If such institution or Service Provider or other Authorized party fails or omits to furnish any information required by the State Bank under sub-section (1) or wilfully makes a statement which is false in any material particular it shall be liable to get its license under section 24 withdrawn by the State Bank and to pay it fine which may extend to one million rupees.

(3) Any party or person aggrieved by an order passed under sub-section (2) may appeal within fifteen days of such order to the Governor of the State Bank, who shall dispose of the appeal within sixty days.

70. Secrecy and Privacy.— (1) A Financial Institution or any other Authorized party shall, except as otherwise required by law, 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 in 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.

71. Complaint Resolution.— (1) A consumer, 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, may make a complaint to the State Bank.

(2) The State Bank after hearing the parties may pass such order as it deems fit under the circumstances of the case.

72. 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.

73. Immunity of the 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.

74. Penalties— (1) Any financial Institution or Service Provider, who wilfully fails to comply with any provision of this Act or rules, circulars, directions, orders or bye-laws issued under this Act or any provision thereof, shall be liable to pay fine to the State Bank which may, extend to one million rupees.

(2) In case of failure to pay the fine, State Bank may suspend or revoke the license of the Service Provider or Financial institution concerned, as the case may be.

(3) If any amount of fine under sub-section (1) remains unpaid, it may be recovered as arrears of land revenue.