

The Payments Regulatory Board: Getting the Design Right
IGIDR-Paypal roundtable on Enabling Institutional Architecture
for Payments Sector Reforms, Mumbai

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Ingredients: Effective Payments Regulation

Examples: Payments Regulatory Design

India: Payments Regulatory Board

Unique problems in payments market

- Improving payments is *dependent on the systems through which the payments must pass*.
- Facilitating business models to enable both access and adoption requires *co-ordination* as well as *prevention of abuse of market power*.

Other problems in payments market

- *Industry governance issues:* Banks dominate the industry at every level. Increasingly non-bank fintech led non banks are entering the market.
- *Regulatory design:* A Central bank's key responsibility is ensuring financial stability. Traditionally, Central banks have the role of a settlement institution. They are also the payment system operator, participant and the regulator.

Remedy

- An enabling regulatory design with a mandate towards encouraging competition, enabling innovation, consumer protection, consumer service and safety, in a balanced manner.
- A robust accountability framework along with the regulation making powers.

Australia: Design

The Payments System Board (PSB) was created in 1998 by amending The Reserve Bank Act, 1959.

- PSB is one of two boards of the Reserve Bank, along with the Reserve Bank Board (RBB).
- PSB: Has responsibility for the Bank's payments system policy, including policy in relation to clearing and settlement (CS) facilities.
- RBB: Has responsibility for the Bank's monetary and banking policies and all other policies except for payments system policy.

There is an onus on the Reserve Bank and the Australian Competition and Consumer Commission (ACCC) to take a consistent approach to policies on access and competition in the payments system.

Australia: Accountability

- Regulation making process
- Annual self appraisal
- Annual report

Australia: KPIs

1. Regulators do not unnecessarily impede the efficient operation of regulated entities.
2. Communication with regulated entities is clear, targeted and effective.
3. Actions undertaken by regulators are proportionate to the regulatory risk being managed.
4. Compliance and monitoring approaches are streamlined and coordinated.
5. Regulators are open and transparent in their dealings with regulated entities.
6. Regulators actively contribute to the continuous improvement of regulatory frameworks.

Australia: 2015/16 Assessment

Box A: Actions Identified in this Assessment

Retail Payment Systems

- consider a more structured approach to identifying emerging issues
- during regulatory consultations, explicitly seek views on the two-to-three year effects of any regulatory change
- investigate the potential for greater use of standardised electronic approaches to consultation and certification of compliance
- make greater use of 'plain-English' in communications
- consider a more structured process for determining when a shorter consultation is appropriate
- consult with regulated entities when making future information requests to ensure that both requests and timeframes are reasonable

Clearing and Settlement Facilities

- review the annual assessment process with a view to minimising the burden on regulated entities without compromising the benefits of disclosure
- continue to improve coordination with overseas regulators and give further consideration to the scope for greater reliance on foreign regulatory authorities
- consult with stakeholders on additional questions for the survey to be used in 2017 in relation to KPI 3 (actions undertaken by regulators are proportionate to the regulatory risk being managed)
- continue to explore ways to ensure consistency in the regulatory approach.

UK: Design

The Payment Systems Regulator was created by the FCA as mandated by the Financial Services (Banking Reform) Act 2013

- It is setup as a subsidiary of the FCA.
- PSR: To advance one or more of its payment systems objectives: the *competition objective*, the *innovation objective* and the *service-user objective*.

The PSR is a concurrent competition regulator with the powers to enforce competition law in relation to participation in payments systems.

UK: Accountability

UK's PSR has all the mechanisms put in place as in case of Australia. In addition PSR also publishes the minutes of its board meeting.

UK: Annual report and accounts 2016/2017

Delivering our commitments

What we said we'd do	What we've done
Market reviews Publish our final reports for both market reviews.	We published the final reports in July 2016. We consulted on two remedies for infrastructure and published our final decision in June 2017, implementing competitive procurement and common message standards.
Regulatory directions on access Monitor and assess the effectiveness of our access and governance directions.	In March 2017 we published our second report on access to payment systems and the governance of operators in the UK, outlining progress and setting focus areas for the operators to work on.
Card payment systems programme of work Consult on Phase 2 of our guidance on the implementation of the Interchange Fee Regulation (IFR).	We published our final guidance on the IFR in October 2016. We also published two infographics in April 2017 aimed at educating merchants and consumers about the IFR.

UK: Composition

- 1 member to chair it, appointed by the FCA with the approval of the Treasury;
- 1 member to be the Managing Director, appointed by the FCA with the approval of the Treasury;
- one or more other members appointed by the FCA.

The Chair has a casting vote. There is no one from the Bank of England on the PSR's Board.

Board for Payment and Settlement Systems: Sub-committee of RBI

- 1 Governor
- 3 Deputy Governors (There is no limit on the number of Deputy Governors)
- 2 Central Board Members

Permanent Invitees: 1 Executive Director, RBI; 1 Legal Advisor, RBI; 1 former Subrao M. Nilekani Chair Professor IIT, Bombay; 1 Ex-CMD, Bank of Baroda.

The Finance Act, 2017

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THE GAZETTE OF INDIA EXTRAORDINARY

[PART II—

Amendment
of Act 51 of
2007.

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

51 of 2007.

'CHAPTER II

DESIGNATED AUTHORITY

Designated
authority.

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

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

(3) The Board shall consist of the following members, namely:—

(a) the Governor of the Reserve Bank—Chairperson, *ex officio*;

(b) the Deputy Governor of the Reserve Bank in-charge of the Payment and Settlement Systems—Member, *ex officio*;

(c) one officer of the Reserve Bank to be nominated by the Central Board of the Reserve Bank—Member, *ex officio*; and

(d) three persons to be nominated by the Central Government—Members.

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

Amendment
of section 38.

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

Requirements: Regulatory objectives and industry participation mechanism

- Regulations: To enable competition, encourage innovation, protect consumers and ensure safety.
- Mechanism for innovation: *regulatory sandbox*.
- Mechanism for the industry to suggest changes in regulations or seek formal clarifications: *rule making petition*.
- Independent appeal mechanism and appellate mechanism.

Requirements: Accountability

- Publishing draft regulations with sufficient explanation and justification, and
- Considering public feedback and provide an analysis of its treatment of such feedback.
- Performance oriented annual report with self appraisal.
- Publication of Board minutes.

Thank you