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REPORT

OF

THE EXPERT COMMITTEE

ON THE

FUTURES MARKETS (REGULATION) BILL 1950

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REPORT OF THE EXPERT COMMITTEE ON THE FUTURES

Markets (Regulation) Bill, 1950.

The Expert Committee on the Futures Markets (Regulation) Bill was appointed by the Government of India in the Ministry of Commerce on the 27th July 1950, with the following terms of reference :—

(i) To scrutinise and, if necessary, revise the draft Futures Markets (Regulation) Bill in the light of the comments received from various commercial organisations.

(ii) To submit a short report, together with the revised draft Bill and a Memorandum explaining in brief the reasons for each clause of the Bill.

(iii) To express views on Model Rules for Associations, possible abuses of the proposed system of regulation, and methods of checking them.

The Committee was originally composed of the following:—

Shri A. D. Shroff—*Chairman.*

Shri C. C. Shah, M.P.—*Member.*

Shri R. G. Saraiya—*Member.*

Shri K. P. Goenka—*Member.*

Shri Ratilal M. Gandhi—*Member.*

Shri B. Venkatappiah, Secretary, Finance Department, Government of Bombay—*Member.*

Shri B. Dasgupta, Secretary Finance Department, Government of West Bengal—*Member.*

Shri B. N. Adarkar, Member, Indian Tariff Board, Bombay—*Member-Secretary.*

On the 4th August 1950, Government decided to add one more Member to the Committee and invited Shri Mangaldas B. Mehta to serve as an additional Member. Shri Mehta joined the Committee on the 5th August, 1950. The draft Bill had previously been circulated by the Government of India to the State Governments, trade associations and others interested in the subject. The comments received from these were referred to the Committee. The Committee held its first session from the 10th to the 13th August 1950 and met again on the 28th August, 1950. The Committee was asked to submit its Report by the 15th August 1950, but could not do so, because the preparation of the necessary material for the consideration of the Committee took more time than was originally anticipated. In view of the shortness of time available to the Committee and the fact that the interests concerned had already expressed their views in detail in their written representations, the Committee did not consider it necessary to examine witnesses.

2. To start with, there are certain general propositions which must be agreed upon before any scheme for regulating forward markets could at all be considered. Forward trading involves speculation about the future, but not all forms of forward trading could be considered as either unnecessary or undesirable for the efficient functioning of anything but the most primitive economy. With the development of international communications, it has become virtually impossible in normal times for any of the principal commodity markets of the world to function in isolation from the rest, at any rate in respect of those commodities which constitute the staple lines of world commerce. The price system is not merely subject to world influences, but also to influences emanating from unforeseen variations in demand and supply over a period of time. It is an inevitable characteristic of modern industrial civilisation that it involves a lengthening of the process of production, and this increases the risks inherent in any productive enterprise. Most persons engaged in productive enterprises have frequently "to take a view of the market". The same applies to persons engaged in purely trading activities. To the extent to which forward trading enables producers, manufacturers and traders to protect themselves against the uncertainties of the future, and enables all the relevant factors, whether actual or anticipated, local or international, to exercise their due influence on prices, it confers a definite boon on the community, because, to that extent, it minimises the risks of production and distribution and makes for greater stability of prices and supplies. It must be recognised, therefore, that forward trading plays a useful role in modern business. At the same time, it must be admitted that this is an activity in which a great many individuals with small means and inadequate knowledge of the market often participate, in the hope of quick or easy gains, and consequently, forward trading often assumes unhealthy dimensions, thereby increasing, instead of minimising, the risks of business. There are forms of forward trading, for example, options, which facilitate participation by persons with small means and inadequate knowledge. In conditions of shortage or surplus, prices may assume only a one-way trend, and forward trading may accentuate such trend, to the serious detriment of the interests of the community. It is, therefore, necessary to eliminate certain forms of forward trading, and permit others under carefully regulated conditions, in order to ensure that, while producers, manufacturers and traders will have the facilities they need for the satisfactory conduct of their business, the wider interests of the community, and particularly, the interests of consumers, will be adequately safeguarded against any abuse of such facilities by others.

3. During the war and the early post-war period when the shortages of various commodities tended to bring about an undue rise in their prices, the Central Government issued orders under Rule 81 of the Defence of India Rules, prohibiting forward trading in commodities, such as foodgrains, oilseeds, oilcakes, vegetable oils, raw cotton, spices, sugar and bullion. After the Defence of India Act expired, some of these orders, such as those in respect of foodgrains, edible oilseeds and oils, raw cotton and spices were kept

in force under the Essential Supplies (Temporary Powers) Act, 1946 and similar orders about cottonseed and sugar were issued under the latter Act. In the case of raw cotton only, a general exemption was granted, subject to certain conditions, with respect to forward trading conducted under the auspices of the East India Cotton Association, Bombay. Among the States, Bombay is the only one which has enacted legislation for the regulation of forward trading. The Bombay Forward Contracts Control Act, 1947, is a comprehensive piece of legislation empowering the State Government to regulate forward trading in commodities and securities and many of the provisions of the draft Futures Markets (Regulation) Bill have been taken from that Act. The Act has been brought into force with respect to cotton and bullion. In West Bengal, futures trading in raw jute and jute manufacture is prohibited under the West Bengal Raw Jute Futures Act 1948 and the West Bengal Jute Goods Act, 1950, respectively, the latter particularly in view of the situation arising out of the devaluation of the rupee, but no legislation has yet been enacted in that State for the regulation of forward trading in these or any other commodities. In the light of what has been stated in the preceding paragraph, the bans imposed by the Central or the State Governments could only be justified as interim measures, and we understand that the Central Government also regarded them as such. Until the inauguration of the new Constitution, however, the Central Government did not have the power to enact any long-term legislation, on an all-India basis, for the regulation of forward trading. This difficulty has now been removed, since, under the new Constitution, the subject of "Stock exchanges and futures markets" has been included in the Union list. As a result of this change, the State Governments are no longer competent to enact any fresh legislation with regard to forward markets, and unless the Central legislation on this subject is enacted immediately, the resulting lacuna may prevent desirable action being taken, when needed. The Essential Supplies (Temporary Powers) Act, 1946, does not empower the Central Government to regulate forward trading in any commodity other than an "essential commodity" within the meaning of that Act. Action may be needed not only for prohibiting forward trading in commodities in which it is still taking place, but also for reopening forward trading under regulated conditions and if circumstances are favourable to such a course, in commodities in which it is now prohibited. The inclusion of the subject in the Union list has now made it possible to take such action on a co-ordinated basis and the Committee feels that the necessary legislation on this subject should be enacted as early as possible. When the Central Act comes into force, the existing State Acts will cease to operate to the extent to which they are inconsistent with the Central Act.

4. This will be the first occasion in India when the problem of regulating commodity exchanges will be tackled on a country-wide basis. Apart from a widespread realisation of the need for such regulation, the precise form which such regulation should take and the limits up to which it should proceed are matters to which sufficient thought has not yet been devoted in this country. Among the

State Governments, Bombay is probably the only one which has had any experience in regulating the working of commodity exchanges. The experience of the Central Government is limited to the administration of the bans imposed on forward trading during the war and the early post-war period. It is one thing to ban, and quite another to regulate. Regulation is a difficult job, involving a careful and unbiassed consideration of the needs and requirements of each trade to be regulated, and the customs, usages and practices obtaining in that trade. Having regard to the past experience of controls in this country, and the general apprehension in the business community that the administrative agencies entrusted with controls are not sufficiently equipped for the task, the Committee feels that, at this stage, Government will do well to exercise the necessary regulation mainly by promoting the maximum amount of self-government on the part of trade itself. In some of the trades to which this measure will be applied, there already exist powerful associations having considerable influence with all the important sections of the trade, and one of the primary objectives of this measure should be to maintain and enhance the authority of such associations, limiting Government intervention only to extreme emergencies. Secondly, the fact has to be faced that the psychological atmosphere in this country is at the moment not too favourable to controls, necessary though they are in the present circumstances, and this new scheme of regulation may further shake business confidence, and thus hamper economic recovery, unless it is so framed as to evoke the maximum possible co-operation from the business community. One of the cardinal principles of this legislation must, therefore, be to cause the minimum inconvenience to legitimate business activities. Thirdly, much will depend on the administrative arrangements which will be made to implement this legislation. The arrangements must be such as will enable speedy and effective action to be taken in emergencies, and must at the same time provide sufficient safeguards against arbitrary or ill-informed action. Even where there is no difference of opinion about the existence of an emergency, several alternative remedies may be available to deal with it, each of which may have serious financial consequences for individual sections of the trade, and it is important to ensure that no one section will have an opportunity to influence the choice of remedies in a manner which will be prejudicial to the interests of the trade as a whole. The Committee's approach to this measure has been guided by these important considerations. The Committee has also taken due note of the social aspect of this problem, as may be seen from its recommendations with regard to the prohibition of options and the conditions under which a member can act as a principal *vis-a-vis* a non-member.

5. The Committee has given careful consideration to the scope of the Bill, particularly with regard to the classes of forward contracts which it should cover. Forward contracts are mainly of three kinds: Futures contracts, transferable specific delivery contracts and non-transferable specific delivery contracts*. Futures

*See the definitions in Clause 2 of the Revised Draft Bill (Appendix of the Report).

contracts have in practice certain distinguishing characteristics of their own, though, in formal appearance, there may be very little to distinguish them from transferable specific delivery contracts. The Committee felt, however, that if futures contracts were defined with reference to such characteristics, and the scope of the Bill limited to such contracts, there was a possibility of transferable specific delivery contracts being used as futures contracts for all practical purposes, with a view to evading the law. Indeed, in many trades, transferable specific delivery contracts are used for ordinary, non-speculative, commercial transactions. It has been represented to the Committee that in the jute trade, in particular, specific delivery contracts in respect of both raw jute and jute manufactures, are more often than not, performed by issuing transferable delivery orders. The Committee considers, however, that since the exclusion of such contracts from the scope of the Bill may lead to evasion in most of the trades, while their inclusion may be found unnecessary only in a few trades, the proper course would be to include such contracts as a rule, but to provide for their exclusion in special cases, where Government are satisfied about their special conditions, and for such period as may be necessary. Non-transferable specific delivery contracts are in a different category, since such contracts cannot normally be used for speculative purposes. Here also, the Committee's attention has been drawn to instances in which speculation is reported to have taken place or to be taking place, on the basis of non-transferable specific delivery contracts. However, the Committee considers that it would cause serious inconvenience to trade, and make normal trading practically impossible, if such contracts are not exempted from the restrictions applicable to contracts of the other two varieties. The Committee has, therefore, come to the conclusion that while the scheme of regulation envisaged in this Bill should apply to futures contracts and transferable specific delivery contracts, Government should have the power (a) to exempt transferable specific delivery contracts, where their inclusion is likely to cause unnecessary hardships or inconvenience to the trade concerned, and (b) to impose such regulation as it may deem fit on non-transferable specific delivery contracts, where there is positive evidence that their exclusion from the scheme has encouraged practices likely to defeat the purposes of this Bill.

6. As it is not proposed in the Bill to regulate stock exchanges on the same lines, the Committee has not examined the applicability of the provisions of this Bill to stock exchanges.

7. In conformity with the recommendation in paragraph 5 above with regard to the treatment of different classes of forward contracts, the Committee recommends that it would be appropriate to name the Bill as "Forward Contracts (Regulation) Bill" instead of "Futures Markets (Regulation) Bill".

8. The Committee attaches the utmost importance to the principle of unitary control. As a rule, only one association should be recognised for regulating forward contracts in any commodity in any one area and it should be the policy to limit the number of associations recognised to the essential minimum. A multiplicity

of associations dealing with forward contracts of the same or similar varieties in the same commodity in the same area would render effective enforcement extremely difficult, if not impossible.

9. As stated earlier, the success of this measure will largely depend on the administrative arrangements which may be made to implement it. Since effective regulation of commodity exchanges calls for an intimate contact with their day-to-day working, the Central Government will necessarily have to delegate many of the powers conferred upon it by this Act to the State Governments. Such delegation may, however, lead to serious lack of co-ordination, unless an efficient and sufficiently high-powered co-ordinating body is set up at the centre. Considering the nature and magnitude of the problems which will need to be tackled, the Committee does not think that co-ordination through one of the existing Government Departments will meet the requirements of the case, and the Committee accordingly recommends that a special body, to be called the Forward Markets Commission, be established for the purpose by the Central Government. The Commission should consist of a Chairman and two members, one of whom should be an officer of the Government of India in the Ministry of Commerce, and the other a person having wide experience of the organisation and working of forward markets in the country. The establishment of such a Commission will have certain other advantages. The Bill empowers Government at its own initiative to take certain types of action in emergencies, namely, withdrawal of recognition, promulgation of a new bye-law, suspension of forward trading and supersession of the governing body of a recognised association. Such action may, at times, cause serious dislocation in the trade concerned, and may, in any case, entail heavy losses or gains for individual sections of the trade. In view of the general apprehension in business circles that the administrative agencies in this country are not sufficiently well-informed in this matter, the Committee thinks that any such action at the initiative of Government would prove more acceptable, if it carried with it the concurrence of an independent body which commands the confidence of the business community. The Committee is of the opinion that any officer or authority to whom powers in respect of the four matters just referred to may be delegated should invariably seek the concurrence of the proposed Commission in the exercise of such powers. In the event of a difference of opinion between such officer or authority and the Commission, however, the final decision should be taken by the Central Government. The Committee recognises that the procedure recommended by it may result in some delay and that such delay may to some extent affect the efficacy of action in certain serious emergencies. However, considering all the limitations to which action taken solely at the initiative of Government may be subject, the Committee believes that a policy of *festina lente* (hastening slowly) may, on balance, prove more beneficial to both Government and trade. Secondly, the proposed bill is largely an enabling measure and it would not be correct to take it for a comprehensive scheme of reorganisation of the forward markets in the country. This wider question will have to be tackled sooner

or later and a standing body, preferably a whole-time one, will be of considerable assistance to Government in this connection. In the initial period of regulation, Government may encounter a number of practical difficulties, such as, the lack of trained personnel. The Commission will address itself to the task of overcoming these difficulties in course of time and will devise suitable measures to that end. Thirdly, a variety of practical problems will arise in the course of the actual administration of this Act, many of which will have to be dealt with by *ad hoc* rulings and a body of conventions will thus grow up. In order to provide an expert basis for such rulings and to ensure the necessary consistency, it is essential that such rulings should be given by, or in consultation with, a body like the proposed Commission. Fourthly, the Commission can render certain useful services to the business community. One of its functions should be to collect and disseminate information regarding the trading conditions in respect of goods to which any of the provisions of this Act is made applicable, including information regarding supply, demand and prices, and to submit to the Central Government periodical reports on the operation of this Act and on the working of forward markets relating to such goods. These are only a few illustrations of the various ways in which the proposed Commission can promote the development of a well-regulated system of forward markets in India. In view of what has been stated above, the Committee feels that there would be sufficient work to justify the creation of a standing body like the proposed Commission.

10. While, for reasons already stated, the Committee has no doubt about the desirability of introducing this legislation at this stage, it would emphasize, firstly, the need for certain preliminary steps before the provisions of the Act are applied to an individual commodity in a particular area and an Association is recognised in that commodity for that area; and secondly, for an equal need to ensure that these steps are taken with as much expedition as possible. The preparatory steps fall into three categories. Since the whole system of control here advocated hinges on the unitary organization of the trade, that is to say, the existence of one recognised association through which the control is exercised, it will first be necessary to amalgamate all the relevant trading associations in a particular area, should they be more than one in number, into one comprehensive association. In the second place, a body of bye-laws incorporating in the various features which we have elsewhere described as desirable will have to be drawn up and submitted by the association which seeks recognition. The third category of preparatory measures is in respect of Government's own machinery. The appropriate department of the Central Government or the State Government, as the case may be, will have to be reorganised and strengthened so as to enable it to deal with the new problems arising from the control proposed to be taken up. All these steps should be taken before an individual commodity in relation to a particular area is notified under the provisions of this Act. But, given the determination on the part of Government and co-operation on the part of the trade concerned, the carrying out of these measures need not take any unduly long time. The Committee hopes that, under the guidance of the Forward Markets Commission, these steps will

be taken on a country-wide basis in as short a time as possible, so that the scheme of control here envisaged may begin to operate effectively without undue delay.

11. The Committee is impressed with the desirability of prohibiting forward contracts in respect of a number of commodities in which forward trading cannot be justified on grounds applicable to commodities like cotton or oilseeds which are the subject-matter of extensive *bona fide* trade. The Committee accepts the suppression of such activities as a highly desirable social objective, but on closer examination of the administrative practicability of such a blanket prohibition, the Committee feels that it would be an enormous, if not an impossible, task to implement this objective.

12. The principal changes recommended in the individual clauses of the bill are indicated below. Wherever two references are given, the first reference is to the clause of the revised draft and the second to that of the original draft. Where only one reference is given, it is common to both the drafts, unless it is qualified, e.g., as "new" or "old".

(1) In accordance with the recommendation in paragraph 7 above, the title of the Bill has been changed to "Forward Contracts (Regulation) Bill, 1950". The regulation of forward contracts is relatable to both entry 48 "Stock Exchanges and Futures Markets" in the Union List and entry 7 "Contracts" in the Concurrent List.

(2) Clause 2 (a) "Association"—The words "or any other transaction relating to" have been omitted, in order to exclude from the definition of this term associations concerned with measuring, shipping and similar other transactions, not involving a sale or a purchase, relating to any goods.

(3) Clause 2 (b) "forward contract"—the term 'forward contract' has been so defined as to include non-transferable as well as transferable specific delivery contracts. This was considered necessary, since, as pointed out in paragraph 5 above, in certain special circumstances, Government may have to impose some measure of regulation over non-transferable specific delivery contracts also. The term 'forward contract' occurs in the preamble and the title of the Act and the regulation of non-transferable specific delivery contracts may fall outside the scope of the Act, unless the term has been so defined as to include this type of contracts. The definition should, however, be read with Clause 17 (Clause 16) which provides that the provision of Chapters II and III will not apply to non-transferable specific delivery contracts, unless in special circumstances the Central Government by a notification makes any or all of these provisions applicable to such contracts. Chapters II and III will, therefore, ordinarily apply only to forward contracts other than non-transferable specific delivery contracts. It would be necessary, as a rule, to treat all forward contracts other than non-transferable specific delivery contracts similarly for purposes of regulation, because transferable specific delivery contracts can also be used for speculative purposes. The powers conferred by Clause 25 (Clause 24) will, of course, be available to exempt transferable

specific delivery contracts in special cases. It is recommended, further, that forward contracts for export or import should be exempted from the provisions of Chapters II and III under the same clause, as such contracts are subject to the rules and regulations of foreign trade associations.

(4) Clause 2 (c) "*Specific delivery contract*"—The definition has been revised so as to cover "unfixed" or "on-call" contracts and specific delivery contracts providing for delivery during a specified period instead of on a specified date. One of the conditions laid down in the original clause 16, namely, that the names of both the buyer and the seller shall be mentioned in any such contract, has been incorporated.

(5) Clause 2 (d) (e) (new) "*Non-transferable and transferable specific delivery contracts*"—"Non-transferable specific delivery contracts" have been defined on the lines of sub-clause 2 (b) of Clause 16 (old), but the words "to a third party" have been omitted in view of the decision of the Bombay High Court in *Khushalchand Damji and Co. Vs. Visanji Hansraj and Co.* (1947). As pointed out in the note in Clause 2 (b) above, the provisions of Chapters II and III will not apply to non-transferable specific delivery contracts, unless in special circumstances the Central Government applies any or all of these provisions to such contracts. Where it appears that the absence of regulation over non-transferable specific delivery contracts has encouraged practices likely to defeat the purposes of this Act, the Central Government should, under Clause 17 (Clause 16), impose such regulation over such contracts and in such areas as it may deem fit. It may be necessary in certain areas to impose conditions, such as (a) that any such contract shall be entered into only by or through a member of a recognised association, or (b) that one of the parties to any such contract shall be a *bona fide* manufacturer or exporter.

(6) Clause 2 (f) (old) "*difference*"—It is not considered necessary to define this term, because it occurs only at two places, namely, Clause 10 (Clause 9) and Clause 15 (Clause 14), and the meaning is clear in the context.

(7) Clause 2 (k) [Clause 2 (i)] "*ready delivery contract*"—The maximum period of delivery specified in this definition has been changed from 7 to 11 days, in order to bring it into conformity with the practices in certain trades, e.g., cotton (Cf. Bye-law 126 of the East India Cotton Association). Any extension of the period beyond this limit, even if made by mutual agreement between the parties, should disqualify the contract for being treated as a ready delivery contract.

(8) Clause 3 (new)—*Forward Markets Commission*—In order to ensure effective co-ordination of the policies of the various State Governments to which the Central Government may have to delegate many of the powers conferred upon it by this Act and also to provide for a continuous study of the problems relating to forward markets, it is considered essential that a standing body to be called the Forward Markets Commission should be established under the Act. Please see also paragraph 9 above.

(9) Clause 4 (Clause 3)—*Application for recognition of associations*—The “rules” referred to in sub-clause (2) are defined in Clause 2 (m) (new) and include the memorandum and articles of association. The partnerships referred to in sub-clause 4(2)(d) [Sub-clause 3 (c) (d)] are those among the members of an association.

(10) Clause 5 (Clause 4) *Grant of recognition to associations*—In order to facilitate control, recognition should be granted only to a limited number of associations. As a rule, only one association should be recognised for regulating forward trading in any commodity in any one area. All the associations which are recognised under the Bombay Forward Contracts Control Act, 1947, should be ordinarily granted recognition under this Act. The Committee is of the opinion that Government should not impose any limitation on the number of members and has accordingly deleted the words “or that there shall be such limitation on the number as the Central Government may think fit to impose” in sub-clause 4 (2) (a) of the original draft.

Sub-clause 5 (2) (b) [Sub-Clause 4 (2) (b)] has been revised so as to provide that Government may nominate on the governing body of an association (i) one member on its own behalf and (ii) not more than three members on behalf of interests not directly represented through the membership of the association. The Committee thinks that the inclusion of a Government representative in the governing body will have certain advantages, but the Committee does not consider it either necessary or desirable that Government should appoint its representative as the Chairman of the Governing body. The Committee wishes to emphasise that the individuals to be nominated by Government must be selected with due care, in order that their presence on the governing body may be of real help to Government and the trade concerned.

Sub-Clause 5 (3) [Sub-Clause 4 (3)] Revised wording does not alter the sense, but seems preferable.

(11) Clause 6 (Clause 5) *Withdrawal of recognition*—It has been provided that the power to withdraw recognition shall be exercised in consultation with the Commission.

(12) Clause 7 (clause 6) *Power of Central Government to call for information and inquiry*—The Committee is of the opinion that while inspection of the books of a recognised association will serve no purpose, Government inspection of the books of individual members of the association would amount to a degree of interference which is altogether excessive from the point of view of realising any of the purposes of this Act. The Committee has, therefore, replaced the original clause by a new one, which empowers Government to call upon a recognised association to furnish information or explanation regarding its own affairs or those of any of its members and to direct the governing body of the association to institute an inquiry in relation to its own affairs or those of any of its members and to associate one or more representatives of Government with such inquiry.

(13) Clause 8 (new) *Furnishing of annual report to the Central Government by recognised associations*—The Committee thinks that such report should be useful to Government.

(14) Clause 7 (old) *Power of the Central Government to issue directions to recognised associations*.—The scope of this power is indefinite and in any case the powers conferred by clause 9 (Clause 8) and Clause 11 (Clause 10) would be sufficient for the purpose of this Act. This Clause has, therefore, been deleted.

(15) Clause 9 (Clause 8) *Power of Central Government to make, add to, alter, amend or rescind rules*—The Committee considers that the matters covered by sub-clause 5 (2) (b) [sub-clause 4 (2) (b)] should be excluded from the scope of this power. The clause has been revised so as to provide that Government should exercise the power to make an addition to or variation of the rules of a recognised association only if the association fails to carry out within a period of 6 months, a recommendation made by Government in this behalf.

Clause 8(2)(old) becomes superfluous as a result of this amendment.

(16) Clause 10 (Clause 9)—*Power of recognised association to make bye-laws*—The bye-laws of a recognised association will be the chief instrument for controlling the activities of its members. The bye-laws of any association seeking recognition will, therefore, have to be carefully scrutinised before recognition is granted and any subsequent modifications in the bye-laws will also be subject to the approval of Government. The word "previous" in sub-clause (1) has been deleted. In sub-clause 10 (2) (e) [Sub-clause 9 (2) (e)] the words "including opening, closing, highest and lowest rates" have been inserted between the words "market rates" and the words "for goods". In sub-clause 10 (2) (f) [Sub-clause 9 (2) (f)] the words "if any" have been inserted after the words "margin requirements".

(17) Clause 11 (Clause 10)—*Power of Central Government to make, add to, alter, amend or rescind bye-laws of recognised associations*—This clause has been revised so as to provide that Government will exercise the power at the request of the governing body of the association or in the absence of such request in consultation with the proposed Commission. In the latter case, the governing body will be entitled to apply to the Central Government within six months for a review of the action taken in exercise of the power and the Central Government will review the action in consultation with the Commission. The Committee recommends that the power to make bye-laws otherwise than at the request of the governing body should be exercised sparingly.

Sub-clause 10(2)(old) would enable Government to give retrospective effect to a bye-law made by it. This is undesirable and the sub-clause has, therefore, been deleted.

(18) Clause 12 (Clause 11)—*Power of Central Government to supersede governing body of recognised association*—It has been

provided that Government shall exercise this power only in consultation with the Commission. The words "for any reason" appearing at the beginning of the clause are superfluous and have been deleted. It has been provided that where Government appoints more persons than one to exercise and perform the powers and duties of the governing body of an association, it may appoint one of such persons to be the Chairman and another to be the Vice-Chairman.

With regard to the proviso to sub-clause 1 of this clause, the Committee is of the opinion that before superseding a governing body, Government should invariably give it an opportunity to be heard. At the beginning of sub-clause (2) the words "notwithstanding anything to the contrary contained in any law or the rules or bye-laws of an association whose governing body is superseded under sub-section 1" have been added and in the same sub-clause the word "extend" has been substituted by the word "vary".

(19) Clause 13 (Clause 12) *Power to suspend business of recognised association*—This is an emergency power and may have to be exercised at very short notice. It has, therefore, been provided that Government may suspend such of the business of a recognised association (e.g. specified classes of contracts) as it may consider necessary for a period not exceeding 7 days without consulting the Commission, but that any extension of the period should be made only in consultation with the Commission.

(20) Clause 14 (clause 13).—*Forward contracts in notified goods illegal or void in certain circumstances*.—When associations have been recognised under clause 5 (clause 4) in respect of a commodity in a particular area and clause 14 (13) is brought into force with respect to that commodity and in that area, no forward contract will be allowed to be entered into in respect of that commodity and in that area except by or through a member of a recognised association. Contracts which are entered into by or through a member, but are in violation of any of the bye-laws of the association will be void but not illegal. Clause 18 in the original draft has been amended so as to make it clear that such void contracts will not attract the penalties prescribed by that clause. The Committee has considered the suggestion that only wilful and material violation of one of the major bye-laws should render a contract void and that violation of any of the minor bye-laws should be dealt with by penalties not involving voidance of the contract. The Committee, however, does not consider it practicable to draw a distinction between one set of bye-laws and another for the purpose of enforcement and apprehends that any such distinction may lead to evasion. It has been suggested, further, that violation of a bye-law should render a contract void only as regards the rights of any member who has entered into the contract and as regards the rights of any other person who has knowingly and wilfully participated in the act entailing such violation, but that the right of any non-member not guilty of or not having any knowledge of such violation, to enforce the contract or to recover any sum due to him under the contract should remain unaffected. The Committee has considered this suggestion also, but feels that when a contract becomes void because of the breach of a bye-law, there should be no question of anybody having a right to enforce such

contract. So far as the members are concerned, both parties to the contract should be deemed to have committed the breach, and neither of them should have any right under the contract. As regards the non-members on whose behalf the contract has been entered into, the Committee is advised that either of them will, in any case, have the right to recover damages from the member through whom the contract has been entered into for such member's failure to discharge his duties as an agent properly.

The words "relating to" in sub-clause (1) have been omitted. Sub-clause (3) has been revised so as to bring out the meaning more clearly.

The Committee considers that an order given by a non-member should as a rule be executed on the market. If, for any reason, a member has to become the buyer or the seller of any goods which he has been instructed by a non-member to sell or to buy, the member should obtain the written consent of the non-member. This is intended to remove an evil which is widely prevalent. The Committee is satisfied that, in order to protect the public, a member of a recognised association acting for a non-member should not act as a principal, except with the written consent of the non-member.

(21) Clause 15 (clause 14).—*Consequences of notification under the preceding clause.*—The words "relating to" and the words "recognised" have been deleted wherever they occurred.

(22) Clause 16 (clause 15).—*Power to prohibit forward contracts in certain cases.*—This empowers Government to prohibit forward contracts in any commodity to which clause 14 (clause 13) has not been made applicable. Section 3 of the Essential Supplies (Temporary Powers) Act provides similar powers, but they are limited to the essential commodities specified in section 2 of that Act. The power to prohibit forward contracts may have to be exercised in situations in which excessive speculation is found to be taking place, but it is not possible to control it, because no arrangements for control have yet been made. Such prohibition will, of course, be withdrawn as and when such arrangements are made. Even where it is not considered necessary to prohibit forward contracts generally, but Government is contemplating introduction of control over such contracts, it may be advisable, in preparation for the measure, to prohibit the making of contracts maturing after the date from which control is to be introduced. Clause 16, as now revised, does not cover those contingencies in which forward trading may have to be prohibited even in respect of a commodity for which an association has been recognised. Such contingencies, however, can be dealt with under clause 13 (clause 12) or clause 6 (clause 5).

(23) Clause 17 (clause 16).—*Exclusion of non-transferable specific delivery contracts from Chapters II and III and power to apply these chapters to such contracts in special cases.*—See the note on clause 2 (d) (e) (new). The Committee does not think that the licensing of persons engaged in the business of entering into non-transferable specific delivery contracts, which was provided for in sub-clause 16 (3) of the original draft, is an appropriate method of regulating such contracts.

(24) Clause 18 (clause 17).—*Prohibition of options in goods.*—The Committee is of the opinion that options should be prohibited by the Act itself. While options may be of some use to traders in certain circumstances inasmuch as they provide what is claimed to be a relatively cheap form of insurance, the Committee feels that by enabling a large number of persons with small means to participate in forward trading, they unduly increase the volume of speculation and have, on the whole, a demoralising effect on the market.

(25) Clause 19 (clause 18).—*Penalty for contravention of Chapter III.*—The Committee feels that the penalty of imprisonment up to one year or fine or both should be prescribed in respect of acts which are completely prohibited, i.e., for infringement of clause 14(1) [clause 13(1)], clause 15 (clause 14), clause 16 (clause 15), clause 18 (clause 17), and clause 20 (clause 19). A new clause, clause 22, has been added making offences punishable under clause 19 (1) (clause 18) or clause 20 (clause 19) cognizable within the meaning of Section 4(1) (f) of the Code of Criminal Procedure. (Cognizable offence means an offence for which a police officer may under any law for the time being in force arrest without warrant). The Committee does not consider it necessary to prescribe the penalty of forfeiture of property. Any act in contravention of the provisions of clause 14(3) [clause 13(3)] should be punishable with fine.

(26) Clause 20 (clause 19).—*Penalty for owning or keeping a place, used for entering into forward contracts or options in goods.*—The prohibition imposed by this clause applies only to acts in contravention of the law.

(27) Clause 20 (old).—*Penalty for offences not otherwise provided for*—has been deleted, because the revised clause 19 and clause 20 cover all the cases for which penalties need to be prescribed.

(28) Clause 21.—*Offences by corporations.*—The Committee does not think that it would be fair to hold each and every Director, Manager, Secretary, Agent or other officer of a corporation responsible for the offences committed by the corporation. The clause has, therefore, been revised so as to provide that, where an offence is committed by a partnership or a corporation, the representative nominated by such partnership or a corporation should alone be liable to be prosecuted. In the case of a partnership, such representative should be a partner and in the case of a corporation, an officer of the corporation.

(29) Clause 24 (clause 23).—*Power to delegate.*—The Committee considers it essential that any officer or authority to whom the Central Government may delegate its powers under clause 6 (clause 5), clause 11(2) [clause 10(1)], clause 12(1) [clause 11(1)], or clause 13 (clause 12) should exercise such powers with the concurrence of the Commission. In the event of a difference of opinion between such officer or authority and the Commission, the Central Government should give the final decision.

(30) Clause 25 (clause 24).—*Power to exempt.*—Reference has been made in the note on clause 2(b) to a case in which this power will need to be exercised.

(31) Clause 27 (clause 26).—*Power to make rules.*—With regard to the provision in sub-clause 2(a), it is suggested that the fee should not be so heavy as to amount to a tax.

Sub-clause 2(d) in the original draft has been deleted. See the note on clause 17 (clause 16).

13. The Committee has been asked to express views on Model Rules for Associations, possible abuses of the proposed system of regulation and methods of checking them. In the course of the preceding discussion, we have already drawn attention to certain loop-holes and have suggested modifications in the draft Bill with a view to removing them. Apart from acts prohibited by this legislation, any other malpractices on the part of individual members of a recognised association will have to be dealt with under the bye-laws of that association and the latter will, therefore, need to be very carefully scrutinised, before they are approved by Government, in order to remove all possible opportunities for evasion. It has not been possible for the Committee, within the short time at its disposal, to prepare Model Rules and Bye-laws for recognised associations. There are, however, certain matters which, in the opinion of the Committee, are of such vital importance in ensuring the proper working of commodity exchanges in India that the Committee feels that every recognised association should be called upon to provide for them in its bye-laws. These matters are as follows :—

- (i) Penalties should be prescribed for any contravention of the bye-laws by a member of the association.
- (ii) The bye-laws should provide for a well-considered scheme of margins. Over-trading is the bane of forward markets in India, and one effective way of preventing it is by requiring every member to take margins from his customers against their purchases or sales. The association should lay down the rates of margins from time to time.
- (iii) Every member of the association should be required to submit to the association daily reports of the business done by him.
- (iv) Clearings should take place at least at fortnightly intervals.
- (v) The bye-laws should provide that every member of the association shall be bound to furnish such information or explanation, and to produce such books relating to his business as the governing body of the association may require.

14. It is a *sine qua non* of the successful working of any forward market that recognised standards should exist for the commodity concerned. In the case of Indian cotton, there are standards which are internationally known and which are the results of over fifty years' experience. There are many commodities for which no such standards yet exist and considerable work will have to be done by both Governmental and trade agencies before realistic standards which will do justice to producers and consumers, are established for such commodities. The Committee, therefore, recommends that

in the case of every commodity which is to be the subject of forward trading and for which no satisfactory standards exist, Government should require such standards to be established within a specified period and assist the trade concerned in evolving such standards. Government should also encourage every organised trade to establish licensed warehouses. Furthermore, before granting recognition to any association for the purpose of regulating forward trading in a commodity, Government should satisfy themselves that the association is in a position to exercise effective control over the trade concerned.

15. The Committee has assumed that the enactment of the central legislation will leave no inter regnum between the time when the Central Act comes into force with respect to any commodity and the time when the Bombay Act ceases to apply to that commodity. If there is to be any such inter regnum, suitable transitional provisions should be included in the Bill.

16. Appendix I sets out the amendments recommended by the Committee and Appendix II contains the Bill as revised by the Committee. The Committee trusts that the revised Bill will be examined by the Ministry of Law in order to carry out such drafting improvements as may be necessary.

17. In conclusion, the Committee wishes to express its high appreciation of the able manner in which the Chairman has guided its deliberations. His wide knowledge of the subject and independent and unbiassed approach to the various problems under discussion have been of great help to the Committee in its work. We should also like to place on record our appreciation of the valuable assistance received from Mr. B. N. Adarkar, our Member-Secretary. Not only were all the arrangements made satisfactory and conducive to expeditious disposal of our work, but also his contribution to our discussions was informed and constructive.

A. D. SHROFF	Chairman.
C. C. SHAH	Member.
R. G. SARAIYA	Member.
*K. P. GOENKA	Member.
RATILAL M. GANDHI	Member.
B. VENKATAPPIAH	Member.
*B. DASGUPTA	Member.
MANGALDAS B. MEHTA	Member.
B. N. ADARKAR	Member-Secretary.

BOMBAY,
28th August, 1950.

*Subject to the attached minute.

MINUTE

By

Shri K. P. Goenka and Shri B. Das Gupta.

Our difference with the main report which we propose to bring out in this note relates to one point only. The point according to us, is basic enough to require clarification and emphasis in the interest of *bona fide* trade and industry.

2. In para 5 of the report, the Committee points out the difficulty of regulating futures contracts without at the same time taking power to regulate specific delivery contracts, particularly of the transferable variety. The difficulty is stated as follows :—

“Futures contracts have in practice certain distinguishing characteristics of their own, though in formal appearance, there may be very little to distinguish them from transferable specific delivery contracts. The Committee felt, however, that if futures contracts were defined with reference to such characteristics, and the scope of the Bill limited to such contracts, there was a possibility of transferable specific delivery contracts being used as futures contracts for all practical purposes, with a view to evading the law”.

The Committee, on the other hand, recognises that “in many trades transferable specific delivery contracts are used for ordinary, non-speculative, commercial transactions” and the trade in jute and jute goods is referred to as an outstanding instance.

In between these two difficulties, *viz.*, the risk of possible evasion on the one hand and the risk of hampering legitimate business on the other, the Committee decides upon the following :—

“The Committee considers, however, that since the exclusion of such contracts from the scope of the bill may lead to evasion in most of the trades, while their inclusion may be found unnecessary only in a few trades, the proper course would be to include such contracts as a rule, but to provide for their exclusion in special cases.”

The Committee thus recognises (a) the difference between futures contracts and transferable specific delivery forward contracts and (b) the utility of the latter. The bill is in fact designed by the Committee to provide a complete apparatus of control of the futures contracts only and its attempts to control other forward contracts is avowedly incidental. The recommendation in the main report is, however, to include transferable specific delivery forward contracts within the scope of control as a rule and to provide for their exclusion in special cases. The point which we want to emphasise is that having regard to the structure of *bona fide* business in most trades, and also to the nature of the apparatus of control provided for in the bill, exclusion of transferable merchandising contracts should be the general rule and inclusion the exception. It may be observed that the Committee has not attempted to define a futures contract but implies that a futures contract is co-terminous with a forward con-

tract other than a specific delivery forward contract, whether transferable or not, though ordinarily a transferable specific delivery forward contract will be subject to the same apparatus of control as a future contract.

3. The apparatus of control contemplated in the Bill is mainly a recognised Association which is to be granted a monopoly of executing forward contracts and is also to be subjected to a great deal of regulation and control by Government. The apparatus will ordinarily function as follows :—

Under section 1(3) of the Act, the whole Act, except Section 14, will first be brought into force. An Association for dealing with a commodity, say, jute in a specified area, say Calcutta, will then be recognised under the provisions of Chapter II. A notification under Section 1(3) will then be issued applying Section 14 to Calcutta in respect of jute. Thereafter no one in Calcutta can enter into a transferable forward contract in jute (whether a hedge contract or a specific delivery contract) in Calcutta except through a member of the recognised association. The scope of the Act will thus be extended by gradually extending the application of Section 14 from area to area and from goods to goods in relation to such specified areas.

4. It has been represented to the Committee that in the jute trade of Calcutta transferable specific delivery forward contracts are a common feature of the trade and jute mills freely enter into such contracts on their own as legitimate and integral part of their business. The futures market (since stopped as a consequence of partition and devaluation) was dealing with ordinary futures contract in a basis grade. Why, it has been asked, should Government compel a jute mill to execute its normal merchandising contract through a member of the Futures Association? Further, the futures market deals only with a basis contract for fixed delivery periods and executed through an Association providing the necessary facilities; but a mill may have to execute a forward contract any where for any grade or for more than one grade, for any quantity of each grade and for any delivery date fixed according to its own individual convenience. Hence a futures trading association is not able to provide all the facilities required by the mill either in the matter of buying its raw material or in the matter of marketing of jute goods. While, therefore, a futures trading association with monopolistic rights may be a very suitable apparatus for the control of futures contracts, it is a very unsuitable apparatus for dealing with merchandising contracts even though such merchandising contracts may be forward contracts and may also be transferable.

5. In order to be suitable for futures trading, a commodity must have a large supply and a large and regular demand. It must have clear-cut representative grades. It must be subject to both way price fluctuation but the conditions of its supply and demand should be such that it should not be possible for a few men to control the prices. While therefore many commodities are not suitable for futures trading, specific delivery forward contracts are a hand-maid of trade in any commodity.

Secondly the economic function of a futures contract which is dealt with in a futures market is distinct from the economic function of a specific delivery forward contract which is dealt with in the spot market. A person goes to the spot market to get his requirements and to the futures market for hedging against the risk of price fluctuation. A specific delivery forward contract can be executed any where, between any two persons on the basis of their exact requirements and therefore, in any quality of the goods or in any quantity. Consistently with the economic function of a hedge contract, it has the following invariable characteristics :—

- (a) It is executed in terms of a basis grade, delivery being permissible in a few other grades also fixed under the rules of the market.
- (b) It is executed in terms of a unit, usually large and fixed by the rules of the market.
- (c) The delivery is to be given not on any fixed date but within a period extending over a month or two according to the option of the seller. The period is fixed by the rules of the market.
- (d) Though the contract must necessarily take the form of a specific delivery contract and either party has a right to insist on delivery, it invariably provides for payment of a difference.
- (e) The contract has to be executed through an Association in a standard form fixed by the rules thereof.

The above characteristics do not reduce the utility of a future market but in fact greatly enhances it ; for a manufacturer or a trader comes to the futures market not for getting his requirements but for hedging, i.e., for insurance against price-fluctuation and these characteristics greatly enhance the speed, mobility and efficiency of futures markets for purposes of hedging. It is only in conformity with their purpose, that the bulk of the futures contracts are in actual practice settled by payment of difference and only a small percentage ends in actual delivery.

Further it is important to note that the bulk of the specific delivery forward contracts, particularly in certain trades, e.g., jute and jute goods are transferable. Such transferability, usually achieved through shipping documents, bills of lading, warehouse certificates, etc., confers definite advantages by way of easier supply of capital, easier marketability and greater regularity of demand. Such specific delivery contracts, however, almost invariably end in actual delivery. Transferability of specific delivery forward contracts is, therefore, often so integrally connected with the structure of the trade, that it cannot be interfered with without causing serious dislocation.

6. The apparatus provided in the bill, is therefore, specially suitable for regulation of futures markets for which not many commodities will qualify but is not suitable for regulation of specific delivery contracts (transferable or not) which are essential to almost every trade and industry. It was, therefore, suggested to the

Committee that it would be better so to design the bill that transferable merchandising forward contracts, whether transferable or not, were ordinarily left out of the scope of the controlling association but could be brought within its scope by a special notification, if the situation in any trade at any time so demanded. The Committee accepted the suggestion in the case of *non-transferable* specific delivery forward contracts. The Committee recommended, however, that *transferable* specific delivery forward contracts should ordinarily be included within the scope of the controlling association but Government should be given power to exclude them from its scope by a special notification to meet the requirements of any particular trade or industry. Section 24 confers such powers of exclusion on Government. Transferable specific delivery forward contracts could, of course, in certain conditions be used for purposes of unhealthy speculation. But such conditions are not normal but exceptional and therefore occasional. Hence it would be more appropriate and realistic if the normal apparatus of control applied only to normal conditions, an occasional deviation from normal condition being left to be dealt with by special notification. We recognise, however, that commodities qualifying for futures contracts would be only a few, and therefore the regulation contemplated in the bill is not likely to extend to many commodities and merchandising contracts over the general field of trade and industry is thus likely to be left untouched by this bill. Hence the Committee's way of creating transferable specific delivery forward contracts might as well serve the purpose provided the power of exclusion under Section 24 were exercised with sufficient care and having regard to the state of each trade. We are inclined to think, however, that under the procedure proposed in the main report, the power to exclude transferable specific delivery contracts from the scope of the controlling association will have to be exercised so frequently that exclusion of such contracts will be the normal condition in most trades, and therefore such procedure of bringing about exclusion involves risk of injury to *bona fide* trade during the time-lag between notification under Section 14 and the notification to exclude.

7. In the jute trade the futures market and the spot market have been quite distinct. The Government of West Bengal, therefore, did not have any difficulty in having a clear definition of futures contracts in the West Bengal Raw Jute Futures Act, 1948 and the West Bengal Jute Goods Act, 1950. The stopping of the futures market in jute and jute goods without any attempt at controlling transferable specific delivery forward contract has not led to any special evasion. The jute experience does not justify the diffidence in adopting a positive definition of futures contracts or in adopting a scheme under which transferable specific delivery forward contracts were normally excluded from the scope of the controlling association but could, if necessary, be included by a notification. In any case under the scheme adopted by the Committee, where the structure of the trade is similar to that of jute, the merchandising forward contracts of the transferable varieties will have to be exempted from the scope of the controlling association, if large scale dislocation of legitimate trade is to be avoided.

8. As a result of the partition of India and subsequent devaluation of the Indian rupee the futures transactions as distinct from transferable or non-transferable specific delivery forward contracts in jute and jute goods have been indefinitely prohibited. The position which necessitated such prohibition is not likely to change in the near future. It is presumed that under the proposed bill it will be possible to maintain the same condition in the jute and jute goods trade by issuing a notification under Section 16, prohibiting forward contracts other than specific delivery forward contracts, whether transferable or not. As long as such conditions continue, no question of regulation or application of Section 14 to the jute and jute goods trade in Calcutta will arise and hence the question of exercising the power under Section 24 will also not arise in respect of jute and jute goods. The task of adjusting the apparatus of regulation to trade conditions may therefore have to be undertaken first in the case of some other commodity.

9. Subject to examination by drafting experts, the main point which we have wanted to emphasise in this minute could perhaps be given effect to by a simple addition of the words "transferable or" before the word "non-transferable" wherever it occurs in section 17.

(Sd.) K. P. GOENKA.

(Sd.) B. DASGUPTA.

APPENDIX 1.

ORIGINAL AND REVISED DRAFTS OF THE FORWARD CONTRACTS
(REGULATION) BILL, 1950.

ORIGINAL.

REVISED

THE FUTURES MARKETS THE FORWARD CONTRACTS
(REGULATION) BILL, 1950. (REGULATION) BILL, 1950.

A BILL

A BILL

to provide for the regulation of certain matters relating to futures markets, the prohibition of options in goods and for matters connected therewith *to provide for the regulation of certain matters relating to forward markets, the prohibition of options in goods and for matters connected therewith.*

BE it enacted by Parliament as follows :— BE it enacted by Parliament as follows :—

CHAPTER I.

Preliminary.

1. *Short title, extent and commencement.*—(1) This Act may be called the Futures Markets (Regulation) Act, 1950.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date or dates as the Central Government may, by notification in the official Gazette, appoint, and different dates may be appointed for different provisions of this Act, for different States or areas, and for different goods or classes of goods.

2. *Definitions.*—In this Act, unless the context otherwise requires,—

(a) "association" means any body of individuals, whether incorporated or not, constituted for the purpose of regulating and controlling the business of the sale or purchase of, or any other transaction relating to, any goods;

(b) "forward contract" means a contract for the delivery of goods at a future date and which is not a ready delivery contract;

1. *Short title, extent and commencement.*—(1) This Act may be called the Forward Contracts (Regulation) Act, 1950.

(2) No change.

(3) No change.

2. No change.

(a) "association" means any body of individuals, whether incorporated or not, constituted for the purpose of regulating and controlling the business of the sale or purchase of any goods;

(b) No change.

CHAPTER I—contd.

ORIGINAL	REVISED
(c) "forward contract for specific delivery" means a contract which provides for the specific delivery of specific qualities or types of goods at a specified future date for a specified price;	(c) "specific delivery contract" means a forward contract which provides for the actual delivery of specific qualities or types of goods during a specified future period at a price fixed thereby or to be fixed in the manner thereby agreed and in which the names of both the buyer and the seller are mentioned;
[New]	(d) "non-transferable specific delivery contract" means a specific delivery contract rights or liabilities whereunder or under any delivery order, railway receipt, bill of lading, warehouse receipt or any other document of title relating thereto are not transferable;
[New]	(e) "transferable specific delivery contract" means a specific delivery contract which is not a non-transferable specific delivery contract;
[New]	(f) "Commission" means the Forward Market Commission established under section 3;
(d) "goods" means every kind of movable property other than actionable claims, money and securities;	(g) No change.
(e) "Government security" means a Government security as defined in the Public Debt Act, 1944 (XVIII of 1944);	(h) No change.
(f) "Difference" means the difference between the price specified in a contract relating to the purchase or sale of any goods and the prevailing market price for the same quality and quantity of those goods on the relevant day;	Deleted.
(g) "option in goods" means a contract for the purchase or sale of a right to buy or sell or a right to buy and sell, goods in future and includes a <i>teji</i> , a <i>mandi</i> or a <i>teji mandi</i> in goods.	(i) "option in goods" means a contract, by whatever name called for the purchase or sale of a right to buy or sell, or a right to buy and sell, goods in future and includes a <i>teji</i> , a <i>mandi</i> , a <i>teji-mandi</i> , a <i>galli</i> , a <i>put</i> , a <i>call</i> or a <i>put and call</i> in goods.

CHAPTER I—contd.

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|---|--|
| (h) "prescribed" means prescribed by rules made under this Act; | (j) No change. |
| (i) "ready delivery contract" means a contract which provides for delivery and payment of price either immediately or within such number of days not exceeding seven after the date of the contract and under such conditions as the Central Government may, by notification in the Official Gazette, specify in this behalf in respect of any goods; | (k) "ready delivery contract" means a contract which provides for delivery and payment of price either immediately or within such period not exceeding eleven days after the date of the contract and under such conditions as the Central Government may from time to time, by notification in the Official Gazette, specify in this behalf in respect of any goods, and which period cannot be extended by mutual consent of the parties thereto or otherwise; |
| (j) "recognised association" means an association which is for the time being recognised by the Central Government under section 4; | (l) "recognised association" means an association which is for the time being recognised by the Central Government under section 5; |
| [New] | (m) "rules" means, rules relating in general to the constitution and management of an association and includes in the case of an incorporated association its memorandum and articles of association; |
| (k) "securities" includes share, scrips, stocks, bonds, debentures, debenture-stocks, or other marketable securities of a like nature in or of any incorporated company or other body corporate and also Government securities. | (n) No change. |

[New]

3. *Establishment, constitution and functions of Forward Markets Commission.*—(1) The Central Government shall, by notification in the official Gazette, establish a Commission to be called the Forward Markets Commission for the purpose of exercising such functions and discharging such duties as may from time to time be assigned to the Commission by or under this Act.

(2) The Commission shall consist of a Chairman and two other members all of whom shall be

CHAPTER I—concl'd.

ORIGINAL

REVISED

appointed by the Central Government, one of such members being an officer of the Central Government and another of such members being a person having a wide experience in the organisation and working of forward markets in India.

(3) The terms and conditions of service shall be such as may be prescribed.

(4) The functions of the Commission shall be :—

(a) to advise the Central Government in respect of any matter arising out of the administration of this Act ;

(b) to keep forward markets under continuous observation and to draw the attention of the Central Government or of any other prescribed authority to any important development taking place in, or in relation to, such markets and to make recommendations thereon ;

[New]

(c) to collect and disseminate information regarding the trading conditions in respect of goods to which any of the provisions of this Act is made applicable, including information regarding supply, demand and prices, and to submit to the Central Government periodical reports on the operation of this Act and on the working of forward markets relating to such goods ;

(d) to make recommendations with a view to improving the organisation and working of forward markets ; and

(e) to perform the duties and exercise the powers assigned to, or vested in, the Commission by or under this Act, and to perform such other duties as may be prescribed.

CHAPTER II.

Recognised Associations

ORIGINAL

REVISED

3. *Application for recognition of Association.*—(1) Any association concerned with the regulation and control of forward contracts which is desirous of being recognised for the purposes of this Act may make an application in writing to the Central Government in that behalf in such manner as may be prescribed.

(2) Any application made under sub-section (1) shall be accompanied by a copy of the rules relating in general to the constitution of the association, and, in particular, to—

- (a) the governing body of such association, its constitution and powers of management and the manner in which its business is to be transacted;
- (b) the powers and duties of the office bearers of the association;
- (c) the admission into the association of various classes of members, and the exclusion, suspension, expulsion and re-admission of members therefrom or thereinto;
- (d) the formation and registration of partnerships and the appointment of authorised representatives and clerks.

4. *Grant of recognition to associations.*—(1) If the Central Government is satisfied, after making such inquiry as may be necessary in this behalf and after obtaining such further information, if any, as may be required, that the rules of the association are suitable in the interest of the trade and are in the public interest, it may grant recognition to the association in such form as may be prescribed.

4. (1) No change.

(2) Any application made under sub-section (1) shall be accompanied by a copy of the bye-laws for the regulation and control of forward contracts and also a copy of the rules relating in general to the constitution of the association, and in particular, to—

(a) No change.

(b) No change.

(c) the admission into the association of various classes of members, the qualifications of members, and the exclusion, suspension, expulsion and re-admission of members therefrom or thereinto:

(d) the procedure for registration of partnerships, and the appointment of authorised and nominated representatives and clerks.

5. *Grant of recognition to Associations.*—(1) If the Central Government is satisfied, after making such inquiry as may be necessary in this behalf and after obtaining such further information, if any, as may be required, that the rules and bye-laws of the association are suitable in the interests of the trade and are in the public interest, it may grant recognition to the association in such form as may be prescribed.

CHAPTER II—contd.

ORIGINAL

REVISED

(2) Before granting recognition under sub-section (1), the Central Government may by order direct,—

(a) that there shall be no limitation on the number of members of the association or that there shall be such limitation on the number as the Central Government may think fit to impose;

(b) that the association shall provide for the appointment by the Central Government of any person, whether a member of the association or not, to be the chairman or a member of the governing body of such association and may require the association to incorporate in the rules any such direction and the conditions, if any, accompanying it.

(3) No recognised association shall alter or amend any rules except with the previous approval of the Central Government.

[New]

5. *Withdrawal of recognition.*—If the Central Government is of opinion that any recognition granted to an association under the provisions of this Act should, in the interest of the trade or in the public interest, be withdrawn, the Central Government may, after giving a reasonable opportunity to the association to be heard in the matter, by order in writing, withdraw the recognition granted to the said association;

Provided that no such withdrawal shall affect the validity of any contract entered into or made before the date of the order, and the Central Government may make such provision as it deems fit in the order of

(2) No change.

(a) that there shall be no limitation on the number of members of the association;

(b) that the association shall provide for the appointment by the Central Government of a person, whether a member of the association or not, as its representative, and of not more than three persons representing the interests not directly represented through the membership of the association as member or members of the governing body of such association, and may require the association to incorporate in its rules any such direction and the conditions, if any, accompanying it;

(3) Any addition, alteration, amendment or rescission of any rules of a recognised association shall be subject to the approval of the Central Government.

(4) Every grant of recognition under this section shall be published in the Official Gazette.

6. *Withdrawal of recognition.*—If the Central Government is of opinion that any recognition granted to an association under the provisions of this Act should, in the interest of the trade or in the public interest, be withdrawn, the Central Government may, after giving a reasonable opportunity to the association to be heard in the matter and in consultation with the Commission, by a notification in the Official Gazette, withdraw the recognition granted to the said association;

Provided that no such withdrawal shall affect the validity of any contract entered into or made before the date of the notification, and the Central Government may make such provision as it deems fit in the

CHAPTER II—*contd.*

ORIGINAL

withdrawal or any order made subsequent thereto for the due performance of any contract outstanding on that date.

6. *Power to inspect recognised associations and business of members thereof.*—(1) Notwithstanding anything to the contrary contained in section 138 of the Indian Companies Act, 1913 (VII of 1913), the Central Government may direct an inspection to be made, by one or more officers appointed by it in this behalf, of any recognised association or the business of any of its members, and also of the books, accounts, correspondence and other documents of any such association or business.

(2) The Central Government may also direct that the accounts of the recognised association or the business, as the case may be, shall be audited in such manner as may be prescribed.

(3) Any officer making an inspection or audit under the provisions of this section may examine any person exercising control over, or employed in connection with, the recognised association or the business, as the case may be.

(4) Where any recognised association or the business of any member thereof is being inspected or audited under this section,—

(a) every director, manager, secretary or other officer of such recognised association,

(b) every member of such association, and

(c) if the member of the recognised association is a firm, every partner, manager, secretary or other officer of the firm, shall be bound to produce before the officer making the inspection or audit all such books, accounts, correspondence and other documents in his custody or power, relating to the recognised association or business, as the case may be, and also to furnish him with any such statement or information

REVISED

notification of withdrawal or any subsequent notification published in the Official Gazette for the due performance of any contracts outstanding on that date.

7. *Power of Central Government to call for information and inquiry.*—Whenever the Central Government considers it expedient so to do, it may, by an order in writing—

(a) call upon a recognised association to furnish in writing such information or explanation relating to its affairs or the affairs of any of its members as the Central Government may consider necessary, or

(b) direct the governing body of such association to institute an inquiry in relation to its affairs or the affairs of any of its members, associating therewith one or more representatives of the Central Government and make and submit a report of the result of such inquiry to the Central Government within such time as may be specified in the order.

CHAPTER II—contd.

ORIGINAL

REVISED

relating thereto, as the officer may require of him, within such time as may be specified.

(5) A copy of every report made to the Central Government by any officer as a result of any inspection, or audit made under this section shall be supplied to the recognised association or the member concerned as the case may be.

[New]

7. *Power of Central Government to issue directions to recognised associations.*—For the purpose of carrying into effect the purposes of this Act, the Central Government may issue directions to any recognised association on such matters as the Central Government may consider necessary, and if any recognised association to which any such directions have been issued fails to act in compliance therewith, the Central Government may, after giving a reasonable opportunity to the association to be heard in the matter, by order in writing withdraw the recognition granted to the association.

8. *Power of Central Government to make, add to, or vary rules or rescind rules.*—(1) The Central Government may at any time add to, vary or rescind, any rules made by a recognised association or may make any rules for all or any of the matters specified in sub-section (2) of section 3 or sub-section (2) of Section 4 or require such association to add to, vary or rescind its articles of association in such manner as may be specified.

(2) If any recognised association against whom an order is issued by

8. *Furnishing of annual reports to the Central Government by recognised associations.*—(1) Every recognised association shall furnish to the Central Government a copy of its annual report.

(2) Such annual report shall contain such particulars as may from time to time be prescribed.

Deleted.

9. *Power of Central Government to make, add to, alter, amend or rescind rules.*—(1) Whenever the Central Government considers it expedient so to do, it may by an order in writing direct any recognised association to add to, alter, amend or rescind any rules made by such association for all or any of the matters specified in sub-section (2) of section 4 other than the matter specified in clause (b) of sub-section (2) of section 5 within a period of six months from the date of the order.

CHAPTER II—contd.

ORIGINAL

REVISED

the Central Government under sub-section (1) fails or neglects to comply with such order within the period specified in the said sub-section, the Central Government may make such additions, alterations, amendments or rescissions as are specified in the said order, without modification or with such modification as may be agreed upon between the association and the Central Government.

(2) The making, of or the addition to, variation or rescission of, any rules under sub-section (1) shall be subject to the condition of previous publication ;

Provided that the Central Government may, in the interest of the trade or in the public interest, by order in writing, dispense with the condition of previous publication in any case.

(3) Where in pursuance of this section any rules have been made or the rules of the recognised association have been added to, varied or rescinded, the rules so made, added to or varied or the fact of such rescission, as the case may be, shall be published in the official Gazette, and, on such publication, the rules so made, added to, varied or rescinded shall be deemed to have been made or rescinded by the recognised association.

9. *Power of recognised association to make bye-laws.*—(1) Any recognised association may, subject to the previous approval of the Central Government, make bye-laws for the regulation and control of forward contracts.

(2) In particular, and without prejudice to the generality of the foregoing power, such bye-laws may provide for.

(a) The opening and closing of markets and the regulation of the hours of trade ;

Deleted.

(3) Where in pursuance of sub-section (2) any rules of any recognised association have been added to, altered, amended or rescinded, the rules so added to, altered, amended or the fact of such rescission as the case may be shall be published in the Official Gazette, and on such publication, notwithstanding anything to the contrary contained in the Indian Companies Act (VII of 1913) or any other law for the time being in force, the rules so added, altered, amended or rescinded, shall be deemed to have been added, altered, amended or rescinded by such recognised association.

10. *Power of recognised association to make bye-laws.*—(1) Any recognised association may, subject to the approval of the Central Government, make bye-laws for the regulation and control of forward contracts.

(2) No change.

(a) No change.

CHAPTER II—contd.

ORIGINAL	REVISED
(b) a clearing house for the periodical settlement of contracts and differences thereunder, the delivery of, and payment for, goods, the passing on of delivery orders and for the regulation and maintenance of such clearing house ;	(b) No change.
(c) the number and classes of contracts in respect of which settlements shall be made or differences paid through the clearing house ;	(c) No change.
(d) Fixing, altering, or postponing days for settlement ;	(d) No change.
(e) Determining and declaring market rates for goods.	(e) determining and declaring market rates, including opening, closing, highest and lowest rates, for goods ;
(f) the terms, conditions and incidents of contracts including the prescription of margin requirements and conditions relating thereto, and the forms of contracts in writing ;	(f) the terms, conditions and incidents of contracts including the prescription of margin requirements, if any, and conditions relating thereto and the forms of contracts in writing ;
(g) regulating the entering into, making, performance, rescission and termination of contracts, including contracts between members, or between a commission agent and his constituent, or between a broker and his constituent, or between a member of the recognised association and a person who is not a member, and the consequences of insolvency on the part of a seller or buyer or intermediary, the consequences of a breach or omission by a seller or buyer and the responsibility of commission agents and brokers who are not parties to such contracts ;	(g) No change.
(h) the admission and prohibition of specified classes or types of goods or of dealings in goods by a number of the recognised association ;	(h) No change.
(i) the method and procedure for the settlement of claims or disputes including the settlement thereof by arbitration ;	(i) No change.
(j) the levy and recovery of fees, fines and penalties ;	(j) No change.
(k) regulating the course of business between parties to contracts in any capacity ;	(k) No change.

CHAPTER II—contd.

ORIGINAL	REVISED
(l) the fixing of a scale of brokerage and other charges;	(l) No change.
(m) the making, comparing, settling and closing of bargains;	(m) No change.
(n) the regulation of fluctuations in rates and prices;	(n) No change.
(o) the emergencies in trade which may arise and the exercise of powers in such emergencies;	(o) No change.
(p) the regulation of dealings by members for their own account;	(p) No change.
(q) the limitations on the volume of trade done by any individual member.	(q) No change.
[New]	(r) the obligation of members to supply such information or explanation and to produce such books relating to their business as the governing body may require.
(3) The bye-laws made under this section may provide that the contravention of any of the provisions thereof shall;	(3) No change.
(a) make a contract entered into made or to be performed otherwise than in accordance with the bye-laws, void;	(a) make a contract entered into, made or to be performed otherwise than in accordance with the bye-laws void; and
(b) render the member concerned liable to fine;	(b) render the member concerned liable to fine; or
(c) render the member concerned liable to expulsion or suspension from the recognised association or to any other penalty of a like nature not involving the payment of money.	(c) No change.
(4) Any bye-laws made under this section shall be subject to such conditions in regard to previous publication as may be prescribed and, when approved by the Central Government, shall be published in the Official Gazette of the State in which the principal office of the recognised association is situate :	(4) Any bye-laws made under this section shall be subject to such conditions in regard to previous publication as may be prescribed, and when approved by the Central Government, shall be published in the Official Gazette and reproduced in the Official Gazette of the State in which the principal office of the recognised association is situate :
Provided that the Central Government may, in the interest of the trade or in the public interest, by order in writing, dispense with the condition of previous publication, in any case.	No change.

CHAPTER II—contd.

ORIGINAL

10. *Power of Central Government to make or amend bye-laws of recognised associations.*—(1) The Central Government may add to, vary or rescind any bye-laws made by a recognised association under section 9 or may make bye-laws for all or any of the matters specified in that section.

REVISED

11. *Power of Central Government to make, add to, alter, amend or rescind bye-laws of recognised association.*—(1) If the governing body of a recognised association so requests, in writing, the Central Government may add to, alter, amend or rescind any bye-laws made by such association under section 10 or may make bye-laws for all or any of the matters specified in that section ;

(2) whenever the Central Government considers it expedient so to do, it may in consultation with the Commission add to, alter, amend or rescind any bye-laws made by any recognised association under section 10 or may make bye-laws for all or any of the matters specified in that section ;

(3) the governing body of a recognised association objecting to the making of or the addition to, alteration, amendment or rescission of all or any of its bye-laws under sub-section (2) may, within six months of the publication thereof, apply to the Central Government for a revision thereof and the Central Government, after giving a reasonable opportunity to the governing body of such association to be heard in the matter, revise in consultation with the Commission all or any of the bye-laws made, or added to, altered, amended or rescinded under sub-section (2).

(2) Any bye-laws, or any addition to, variation or rescission of any bye-laws made under sub-section (1) may contain such provisions as the Central Government thinks suitable for the regulation of any contract entered into or made previously to and subsisting at the date of the making of the bye-laws or of the addition to, variation or rescission of such bye-laws as the case may be, and all rights and obligations arising out of any contract so regulated shall thereafter be determined accordingly.

Deleted.

CHAPTER II—contd.

ORIGINAL

(3) The making of, or the addition to, variation or rescission of, any bye-laws under sub-section (1) shall be subject, to the condition of previous publication :

Provided that the Central Government may, in the interest of the trade or in the public interest, by order in writing, dispense with the condition of previous publication.

(4) Where in pursuance of this section, any bye-laws have been made, or the bye-laws of the recognised association have been added to, varied or rescinded, the bye-laws so made, added to or varied or the fact of such rescission shall be published in the Official Gazette, and on such publication, the bye-laws so made, added to, varied or rescinded shall be deemed to have been made or rescinded by the recognised association.

11. *Power of Central Government to supersede governing body of recognised association.*—(1) Where for any reason the Central Government is of opinion that the governing body of any recognised association should be superseded, then notwithstanding anything contained in this Act or in any other law for the time being in force, the Central Government may, after giving a reasonable opportunity to the Governing body of the recognised association concerned to show cause why it should not be superseded, by order published in the Official Gazette, declare the governing body of such association to be superseded, and may appoint any person or persons to exercise and perform all the powers and duties of the governing body and where more persons than one are

REVISED

(4) The making of or the addition to, alteration, amendment or rescission of any bye-laws under sub-section (1) or sub-section (2) or any revision thereof under sub-section (3) shall be subject to the condition of previous publication.

No change.

(5) Where in pursuance of this section, any bye-laws have been made, or the bye-laws of the recognised association have been added to, altered, amended or rescinded, the bye-laws so made, or added to, altered, amended or the fact of such rescission shall be published in the Official Gazette and reproduced in the Official Gazette of the State in which the principal office of the recognised association is situate, and on such publication the bye-laws so made, or added to, altered amended or rescinded shall be deemed to have been made, or added to, altered, amended or rescinded by the recognised association.

12. *Power of Central Government to supersede governing body of recognised association.*—(1) Where the Central Government is of opinion that the governing body of any recognised association should be superseded, than notwithstanding anything contained in this Act or in any other law for the time being in force the Central Government may in consultation with the Commission, after giving a reasonable opportunity to the governing body of the recognised association concerned to show cause why it should not be superseded, by a notification published in the Official Gazette, declare the governing body of such association to be superseded, and may appoint any person or persons to exercise and perform all the powers and duties of the governing body, and where more persons than one are appointed may appoint one of such persons to be the

CHAPTER II—contd.

ORIGINAL

REVISED

appointed, may appoint one of such persons to be the chairman :

Provided that the Central Government may, if it is of opinion that in the interest of the trade or in the public interest, immediate supersession is necessary, by order in writing, dispense with the requirement for calling upon the governing body to show cause

(2) The person or persons appointed under sub-section (1) shall hold office for such period as may be specified in the order made under sub-section (1), and the Central Government may from time to time by like order extend such period.

(3) On the publication of an order in the Official Gazette, under sub-section (1), the following consequences shall ensue, namely:—

(a) the members of the governing body which has been superseded shall, as from the date of the order of supersession, cease to hold office as such members ;

(b) the person or persons appointed under sub-section (1) may exercise and perform all the powers and duties of the governing body which has been superseded.

(c) all such property if the recognised association as the person or persons appointed under sub-section (1) may, by order in writing, specify in this behalf as being necessary for the purpose of enabling him or them to carry out the purposes of this Act, shall vest in such person or persons.

(4) On the determination of the period of office of any person or persons appointed under this section, the recognised association shall forthwith reconstitute a governing body in accordance with its rules.

chairman and another of such persons to be the vice-chairman :

Provided that the Central Government may, if it is of opinion that in the interest of the trade or in the public interest, immediate supersession is necessary, by a notification published in the Official Gazette, dispense with the requirement for calling upon the governing body to show cause.

(2) Notwithstanding anything to the contrary contained in any law or the rules or bye-laws of the association whose governing body is superseded under sub-section (1), the person or persons appointed under that sub-section shall hold office for such period as may be specified in the notification published under that sub-section and the Central Government may from time to time by like notification published in the official Gazette vary such period.

(3) On the publication of a notification in the official Gazette under sub-section (1) the following consequences shall ensue, namely:—

(a) the members of the governing body which has been superseded shall, as from the date of the notification of supersession, cease to hold office as such members ;

(b) No change.

(c) No change.

(4) No change.

CHAPTER II—*concl.*

ORIGINAL

REVISED

Provided that until a governing body is so reconstituted the person or persons appointed under sub-section (1) shall continue to exercise and perform their powers and duties.

(5) On the reconstitution of a governing body under sub-section (4), all the property of the recognised association which had vested in, or was in the possession of, the person or persons appointed under sub-section (1) shall vest or revert as the case may be, in the governing body so reconstituted.

(5) No change.

12. *Power to suspend business of recognised association.*—If in the interest of the trade or in the public interest the Central Government considers it expedient so to do, it may, by order published in the Official Gazette, direct a recognised association to suspend its business for such period and subject to such conditions as may be specified in the order, and any order so issued may by like order be extended from time to time.

13. *Power to suspend business of recognised association.*—If in the interest of the trade or in the public interest the Central Government considers it expedient so to do, it may, by a notification published in the Official Gazette, direct a recognised association to suspend such of its business for such period not exceeding seven days and subject to such conditions as may be specified in the notification, and may in consultation with the Commission by like notification published in the official Gazette from time to time extend the said period.

CHAPTER III

Forward contracts and options in goods.

ORIGINAL

REVISED

13. *Forward contracts in notified goods illegal or void in certain circumstances.*—(1) The Central Government may, by notification in the official Gazette, declare this section to apply to such goods or class of goods as may be specified in the notification, and thereupon, every forward contract for the sale or purchase of, or relating to, any goods specified in the notification which is entered into otherwise than between members of a recognised association or through or with such member shall be illegal.

(2) Any forward contract in goods entered into in pursuance of sub-section (1) shall be void, if it has not been entered into in accordance with the bye-laws of the recognised association concerned with the regulation and control of forward contracts in such goods.

(3) No member of a recognised association shall, in respect of any goods specified in the notification under sub-section (1), enter into any contract as a principal with any person other than a member of the recognised association, unless he has secured the written consent or authority of such person or closed out the account of such person in accordance with the bye-laws and unless he has disclosed in the note, memorandum or agreement of sale or purchase that he is acting as a principal.

14. *Forward contracts in notified goods illegal or void in certain circumstances.*—(1) The Central Government may, by a notification published in the Official Gazette, declare this section to apply to such goods or class of goods as may be specified in the notification, and thereupon every forward contract for the sale or purchase of any goods specified in the notification which is entered into otherwise than between members of a recognised association or through or with such member shall be illegal.

(2) No change.

(3) No member of a recognised association shall, in respect of any goods specified in the notification under sub-section (1), enter into any contract as a principal with any person other than a member of the recognised association, unless he has secured the written consent or authority of such person and disclosed in the note, memorandum or agreement of sale or purchase that he is acting as a principal:

Provided that no such written consent or authority of such person shall be necessary for closing out in accordance with the bye-laws any outstanding contract entered into by the member as a principal with such person if the member discloses in the note, memorandum or agreement of sale or purchase in respect of such closing out that he is acting as a principal.

CHAPTER III—contd.

ORIGINAL

REVISED

14. *Consequences of notification under section 13.*—Where a notification has been issued under section 13, then, notwithstanding anything contained in any other law for the time being in force or in any custom, usage or practice of the trade or the terms of any contract of the bye-laws of any recognised association concerned relating to any contract,—

(a) every forward contract for the sale or purchase of or relating to any goods specified in the notification, entered into before the date of the notification, and remaining to be performed after the said date, and which is not in conformity with the provisions of section 13, shall be deemed to be closed out at such rate as the Central Government may fix in this behalf, and different rates may be fixed for different classes of such contracts ;

(b) all differences arising out of any contract so deemed to be closed out shall be payable on the basis of the rate fixed under clause (a), and the seller shall not be bound to give and the buyer shall not be bound to take delivery of the goods.

15. *Power to prohibit forward contracts in certain cases.*—(1) Notwithstanding anything contained in section 13, the Central Government may, by notification in the Official Gazette, declare that no person shall, save with the permission of the Central Government enter into any forward contract for the sale or purchase of or relating to any goods specified in the notification, except to the extent and in the manner, if any, as may be specified in the notification.

15. *Consequences of notification under section 14.*—Where a notification has been issued under section 14, then notwithstanding anything contained in any other law for the time being in force or in any custom, usage or practice of the trade or the terms of any contract or the bye-laws of any association concerned relating to any contract.—

(a) every forward contract for the sale or purchase of any goods specified in the notification, entered into before the date of the notification, and remaining to be performed after the said date, and which is not in conformity with the provisions of section 14, shall be deemed to be closed out at such rate as the Central Government may fix in this behalf, and different rates may be fixed for different classes of such contracts ;

(b) No change.

16. *Power to prohibit forward contracts in certain cases.*—(1) The Central Government may by notification in the Official Gazette declare that no person shall, save with the permission of the Central Government, enter into any forward contract for the sale or purchase of any goods or class of goods specified in the notification to which the provisions of Section 14 are not made applicable, except to the extent and in the manner, if any, as may be specified in the notification.

(2) All forward contracts in contravention of the provisions of subsection (1) entered into after the date of publication of the notification thereunder shall be illegal.

CHAPTER III—contd.

ORIGINAL

REVISED

(2) Where a notification has been issued under sub-section (1), the provisions of section 14, shall in the absence of anything to the contrary in the notification apply to all forward contracts for the sale, purchase of or relating to any goods specified in the notification entered into before the date of the notification and remaining to be performed after the said date as they apply to all forward contracts for the sale, purchase of or relating to any goods specified in the notification under section 13.

(3) Where a notification has been issued under sub-section (1), the provisions of section 15 shall, in the absence of anything to the contrary in the notification, apply to all forward contracts for the sale or purchase of any goods specified in the notification entered into before the date of the notification and remaining to be performed after the said date as they apply to all forward contracts for the sale or purchase of any goods specified in the notification under section 14.

16. *Power to exempt from this Chapter forward contracts for specific delivery.*—(1) The Central Government may, by notification, in the Official Gazette, declare that nothing contained in this Chapter shall apply to forward contracts for specific delivery of such goods as may be specified in the notification in such area and subject to such conditions as may be so specified.

(2) The following conditions shall be deemed always to be specified in every notification issued under sub-section (1), namely:—

(a) the names of both the buyer and the seller shall be mentioned in every such forward contract for specific delivery;

(b) either party of such contract shall not transfer any of his rights or liabilities under the contract or under any delivery order, railway receipt, bill of lading or warehouse receipt relating to the contract to a third party.

(3) The Central Government may make rules providing for the grant of licences to persons engaged in, or desirous of engaging in, the business of entering into forward contracts for the specific delivery of any goods to which this section applies, and where rules have been so made, it shall be deemed to be a further condition of the contract that either party thereof shall be a person holding a licence in that behalf.

17. *Exclusion of non-transferable specific delivery contracts from Chapters II and III and the power to apply these Chapters to such contracts in certain cases.*—Notwithstanding anything contained hereinbefore, nothing in Chapter II or Chapter III shall apply to non-transferable specific delivery contracts:

Provided, however, if in the interest of the trade or in the public interest the Central Government deems it expedient so to do, it may by a notification published in the Official Gazette declare that all or any of the provisions of Chapters II and III shall apply to non-transferable specific delivery contracts in respect of such goods or class of goods as may be specified in the notification in such area, in such manner and to such extent as may be specified therein.

CHAPTER III—concl'd.

ORIGINAL

REVISED

17. *Power to prohibit options in goods.*—(1) The Central Government may, by notification in the Official Gazette, declare that options in such goods as may be specified in the notification shall be illegal.

18. *Prohibition of options in goods.*—(1) Notwithstanding anything contained in this Act or any other law for the time being in force, all options in goods entered into after the date on which this Act comes into force shall be illegal.

(2) On the issue of a notification under sub-section (1), any option in any goods specified in the notification which has been entered before the date thereof and which remains to be performed, whether wholly or in part after the said date shall to that extent become void.

that extent become void.

CHAPTER IV

Penalties and Procedure.

ORIGINAL

REVISED

18. *Penalty for contravention of Chapter III.*—(1) Any person who enters into any forward contract or any option in goods in contravention of any of the provisions contained in Chapter III shall, on conviction be punishable with imprisonment which may extend to three years, or with fine or with both.

(19) *Penalty for contravention of certain provisions of Chapter III.*—(1) Any person who enters into any forward contract or any option in goods in contravention of any of the provisions contained in section 14(1), section 15, section 16 or section 18 shall on conviction be punishable with imprisonment which may extend to one year, or with fine, or with both.

(2) Any court sentencing an offender under this section may direct that any property in respect of which the offence has been committed shall be forfeited to the Government either wholly or in part.

(2) Any person who enters into any forward contract in contravention of the provisions of Section 14(3) shall on conviction be punishable with fine.

Deleted.

19. *Penalty for owning or keeping place used for entering into forward contracts or options in goods.*—Any person who (a) owns or keeps a place which is used for the purpose of entering into or making or performing, whether wholly or in part, any forward contracts in contravention of any of the provisions of this Act and knowingly permits such place to be used for such purposes, or

20. *Penalty for owning or keeping place used for entering into forward contracts or options in goods.*

(b) without the permission of the Central Government, organises, or assists in organising, or becomes a member of any association for the purpose of assisting in, entering into or making or performing, whether wholly or in part, any forward contracts in contravention of any of the provisions of this Act, or

No change.

(c) manages, controls or assists in keeping any place which is used for the purpose of entering into or making or performing, whether wholly or in part, any forward contracts in contravention of any of the provisions of this Act or at which such forward

CHAPTER IV—contd.

ORIGINAL

REVISED

contracts are recorded or adjusted, or rights or liabilities arising out of such forward contracts or any options in goods are adjusted, regulated or enforced in any manner whatsoever, or

(d) not being a member of a recognised association, wilfully represents to, or induces, any person to believe, that he is a member of a recognised association or that forward contracts can be entered into or made or performed, whether wholly or in part, under this Act through him, or

(e) canvasses, advertises or touts in any manner, either for himself or on behalf of any other person for any business connected with forward contracts in contravention of any of the provisions of this Act, or

(f) joins, gathers, or assists in gathering at any place, any person for entering into or making any forward contracts, in contravention of any of the provisions of this Act,

shall, on conviction, be punishable with imprisonment which may extend to three years, or with fine or with both.

shall, on conviction, be punishable with imprisonment which may extend to one year, or with fine or with both.

20. *Penalty for offences not otherwise provided for.*—Any person who contravenes any of the provisions of this Act or the rules made thereunder for which no separate punishment is provided in this Act shall, on conviction, be punishable with imprisonment which may extend to three years or with fine or with both.

Deleted.

21.—*Offences by corporations.*—Where a person committing an offence under this Act is a company or other body corporate or an association of persons, whether incorporated, or not, or a firm, every director, manager, secretary, agent, or other officer or person concerned with the management thereof and every partner of the firm shall unless he proves that the offence was committed without his knowledge or consent, be deemed to be guilty of such offence.

21. *Offences by corporations or firms.*—(1) Where a person committing an offence under this Act is a company or other body corporate, any of the directors thereof shall be deemed to be guilty of such offence.

Provided that the Company or the body corporate may give notice, in writing, to the Central Government or any authority appointed by it for the purpose, that it has nominated an officer to be the person responsible for carrying out the purposes of this

CHAPTER IV—*concl.*

ORIGINAL

REVISED

Act and such officer shall be deemed to be responsible for any offence committed under this Act, until further notice, in writing, cancelling his nomination is received by the Central Government or any authority appointed by it for the purpose or until he ceases to be an officer of the company or body corporate.

Explanation.—For purposes of this sub-section the term "Officer" includes any director managing agent, manager or secretary of the company or the body corporate.

(2) Where the person committing an offence is a firm or other association of individuals, any one of the individual partners or members thereof shall be deemed to be guilty of such offence.

Provided that the firm or association may give notice, in writing, to the Central Government or any officer or authority appointed by it for the purpose, that it has nominated one of its members to be the person responsible for carrying out the purposes of this Act and such member shall be deemed to be responsible for any offence committed under this Act until further notice in writing, cancelling his nomination is received by the Central Government or any officer or authority appointed by it for the purpose or until he ceases to be a partner or member of the firm or association.

[New].

22. *Offences punishable under section 19(1) or section 20 made cognizable.*—An offence punishable either under section 19(1) or section 20 shall be a cognizable offence within the meaning of section 4(1)(f) of the Code of Criminal Procedure (V of 1898).

22. *Jurisdiction to try offences under this Act.*—No court inferior to that of a presidency magistrate or a magistrate of the first class shall take cognizance of or try any offence punishable under this Act.

23. No change.

CHAPTER V.

Miscellaneous.

ORIGINAL

REVISED

23. *Power to delegate.*—The Central Government may, by notification in the Official Gazette, direct that any power exercisable by it under this Act may be exercised, in such circumstances and subject to such conditions, if any, as may be specified by such officer or authority including any State Government or officers or authorities thereof as may be specified in the direction.

[New].

24. *Power to exempt.*—The Central Government may, by notification in the Official Gazette, exempt, subject to such conditions and in such circumstances as may be specified in the notification, any contract or class of contracts from the operation of all or any of the provisions of this Act.

25. *Protection of action taken in good faith.*—No suit, prosecution or other legal proceeding whatsoever shall lie in any court against the governing body or any member, office bearer or servant of any recognised association or against any person or persons appointed under sub-section (1) of section 11 for anything which is in good faith done or intended to be done in pursuance of this Act or of any rules or bye-laws made thereunder.

24. (1) No change.

(2). Where the Central Government has delegated all or any of its powers exercisable by it under section 6, section 11(2), section 12(1) and section 13 to any officer or authority including any State Government or officers or authorities thereof under sub-section (1), such delegated powers or powers shall be exercised by the officer or authority to whom the same are or is delegated with the concurrence of the Commission.

Provided that in case of difference of opinion between such officer or authority and the Commission as regards the exercise of such delegated powers or power, the decision of the Central Government shall be final.

25. No change.

26. *Protection of action taken in good faith.*—No suit, prosecution or other legal proceeding whatsoever shall lie in any court against the governing body or any member, office bearer or servant of any recognised association or against any person or persons appointed under sub-section (1) of section 12 for anything which is in good faith done or intended to be done in pursuance of this Act or of any rules or bye-laws made thereunder.

CHAPTER V—contd.

ORIGINAL

REVISED

26. *Power to make Rules.*—(1) The Central Government may, by notification in the Official Gazette, make rules for the purpose of carrying into effect the objects of this Act.

(2) In particular, and without prejudice, to the generality of the foregoing power, such rules may provide for—

(a) the manner in which applications for recognition may be made under section 3 and the levy of a fee in respect thereof;

(b) the manner in which any inquiry for the purpose of recognising any association may be made and the form in which recognitions shall be granted;

(c) the manner in which bye-laws of a recognised association shall before being made be published for criticism;

(d) the manner in which application for licences for engaging in the business of entering into forward contracts for the specific delivery of goods may be made and the form in which and the conditions (including the payment of a fee) subject to which such licences may be granted.

27. *Power to make Rules.*—(1) No change.

(2) No change.

(a) the manner in which applications for recognition may be made under section 4 and the levy of a fee in respect thereof;

(b) No change.

(c) the manner in which any proposed additions to, alterations, amendments or rescissions of, any bye-laws of a recognised association shall, before being made, be published for criticism.

Deleted.

APPENDIX—II

THE FORWARD CONTRACTS (REGULATION) BILL, 1950

A

BILL

to provide for the regulation of certain matters relating to forward contracts, the prohibition of options in goods and for matters connected therewith.

BE it enacted by Parliament as follows :—

CHAPTER I

Preliminary

1. *Short title extent and commencement* :—(1) This Act may be called the Forward Contracts (Regulation) Act, 1950.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date or dates as the Central Government may by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act, for different States or areas, and for different goods or classes of goods.

2. *Definitions* :—In this Act, unless the context—otherwise requires,

- (a) "association" means any body of individuals, whether incorporated or not, constituted for the purpose of regulating and controlling the business of the sale or purchase of any goods;
- (b) "forward contract" means a contract for the delivery of goods at a future date and which is not a ready delivery contract;
- (c) "specific delivery contract" means a forward contract which provides for the actual delivery of specific qualities or types of goods during a specified future period at a price fixed thereby or to be fixed in the manner thereby agreed and in which the names of both the buyer and the seller are mentioned;
- (d) "non-transferable specific delivery contract" means a specific delivery contract rights or liabilities whereunder or under any delivery order, railway receipt, bill of lading, warehouse receipt or any other document of title relating thereto are not transferable;
- (e) "transferable specific delivery contract" means a specific delivery contract which is not a non-transferable specific delivery contract;
- (f) "Commission" means the Forward Markets Commission established under Section 3;
- (g) "goods" means every kind of moveable property other than actionable claims, money and securities;
- (h) "Government security" means a Government security as defined in the Public Debt Act, 1944 (XVIII of 1944);

- (i) "option in goods" means a contract, by whatever name called, for the purchase or sale of a right to buy or sell, or a right to buy and sell, goods in future and includes a *teji*, a *mandi*, a *teji-mandi*, a *galli*, a *put*, a *call* or a *put and call in goods*;
- (j) "prescribed" means prescribed by rules made under this Act;
- (k) "ready delivery contract" means a contract which provides for delivery and payment of price either immediately or within such period not exceeding eleven days after the date of the contract and under such conditions as the Central Government may from time to time, by notification in the Official Gazette, specify in this behalf in respect of any goods, and which period cannot be extended by mutual consent of the parties thereto or otherwise;
- (l) "recognised association" means an association which is for the time being recognised by the Central Government under section 5;
- (m) "rules" means rules relating in general to the constitution and management of an association and includes in the case of an incorporated association its memorandum and articles of association.
- (n) "securities" includes shares, scrips, stocks, bonds, debentures, debenture-stocks, or other marketable securities of a like nature in or of any incorporated company or other body corporate and also Government securities.

3. Establishment, constitution and functions of Forward Markets Commission :—(1) The Central Government shall, by notification in the Official Gazette, establish a Commission to be called the Forward Markets Commission for the purpose of exercising such functions and discharging such duties as may from time to time be assigned to the Commission by or under this Act.

(2) The Commission shall consist of a Chairman and two other members, all of whom shall be appointed by the Central Government, one of such members being an officer of the Central Government and another of such members being a person having a wide experience in the organisation and working of forward markets in India.

(3) The terms and conditions of service shall be such as may be prescribed.

(4) The functions of the Commissions shall be :—

- (a) to advise the Central Government in respect of any matter arising out of the administration of this Act;
- (b) to keep forward markets under continuous observation and to draw the attention of the Central Government or of any other prescribed authority to any important development taking place in, or in relation to, such markets and to make recommendations thereon;
- (c) To collect and disseminate information regarding the trading conditions in respect of goods to which any of the provisions of this Act is made applicable, including information regarding supply, demand and prices, and to submit to the Central Government periodical reports on the operation of this Act and on the working of forward markets relating to such goods;
- (d) to make recommendations with a view to improving the organisation and working of forward markets; and
- (e) to perform the duties and exercise the powers assigned to, or vested in, the Commission by or under this Act, and to perform such other duties as may be prescribed.

CHAPTER II

Recognised Associations.

4. *Application for recognition of Associations.*—(1) Any association concerned with the regulation and control of forward contracts which is desirous of being recognised for the purposes of this Act may make an application in writing to the Central Government in that behalf in such manner as may be prescribed.

(2) Any application made under sub-section (1) shall be accompanied by a copy of the bye-laws for the regulation and control of forward contracts and also a copy of the rules relating in general to the constitution of the association, and, in particular, to—

- (a) the governing body of such association, its constitution and powers of management and the manner in which its business is to be transacted;
- (b) the powers and duties of the office bearers of the association;
- (c) the admission into the association of various classes of members, the qualifications of members, and the exclusion, suspension, expulsion and re-admission of members therefrom or thereinto;
- (d) the procedure for registration of partnerships, and the appointment of authorised and nominated representatives and clerks.

5. *Grant of recognition to associations.*—(1) If the Central Government is satisfied, after making such inquiry as may be necessary in this behalf and after obtaining such further information, if any, as may be required, that the rules and bye-laws of the association are suitable in the interest of the trade and are in the public interest it may grant recognition to the association in such form as may be prescribed.

(2) Before granting recognition under sub-section (1), the Central Government may by order direct,—

- (a) that there shall be no limitation on the number of members of the association;
- (b) that the association shall provide for the appointment by the Central Government of a person, whether a member of the association or not, as its representative, and of not more than three persons representing the interests not directly represented through the membership of the association as member or members of the governing body of such association, and may require the association to incorporate in its rules any such direction and the conditions, if any, accompanying it;
- (3) Any addition, alteration, amendment or rescission of any rules of a recognised association shall be subject to the approval of the Central Government.

(4) Every grant of recognition under this section shall be published in the Official Gazette.

6. *Withdrawal of recognition.*—If the Central Government is of opinion that any recognition granted to an association under the provisions of this Act should, in the interest of the trade or in the public interest, be withdrawn, the Central Government may, after giving a reasonable opportunity to the association to be heard in the matter, and in consultation with the Commission, by a notification in the Official Gazette, withdraw the recognition granted to the said association;

Provided that no such withdrawal shall affect the validity of any contract entered into or made before the date of the notification, and the Central Government may make such provision as it deems fit in the notification of withdrawal or any subsequent notification published in the Official Gazette for the due performance of any contracts outstanding on that date.

7. Power of Central Government to call for information and inquiry.—Whenever the Central Government considers it expedient so to do, it may, by an order in writing

- (a) call upon a recognised association to furnish in writing such information or explanation relating to its affairs or the affairs of any of its members as the Central Government may consider necessary; or
- (b) direct the governing body of such association to institute an inquiry in relation to its affairs or the affairs of any of its members associating therewith one or more representatives of the Central Government and make and submit a report of the result of such inquiry to the Central Government within such time as may be specified in the order.

8. Furnishing of annual reports to the Central Government by recognised associations.—(1) Every recognised association shall furnish to the Central Government a copy of its annual report.

(2) Such annual report shall contain such particulars as may from time to time be prescribed.

9. Power of Central Government to make, add to, alter, amend or rescind rules.—(1) Whenever the Central Government considers it expedient so to do, it may by an order in writing direct any recognised association to add to, alter, amend or rescind any rules made by such association for all or any of the matters specified in sub-section (2) of section 4 other than the matter specified in clause (b) of sub-section (2) of section 5 within a period of six months from the date of the order.

(2) If any recognised association against whom an order is issued by the Central Government under sub-section (1) fails or neglects to comply with such order within the period specified in the said sub-section, the Central Government may make such additions, alterations, amendments or rescissions as are specified in the said order without modification or with such modification as may be agreed upon between the association and the Central Government.

(3) Where in pursuance of sub-section (2) any rules of any recognised association have been added to, altered, amended or rescinded, the rules so added to, altered, amended or the fact of such rescission as the case may be shall be published in the Official Gazette, and on such publication, notwithstanding anything to the contrary contained in the Indian Companies Act (VII of 1913) or any other law for the time being in force, the rules so added, altered, amended or rescinded, shall be deemed to have been added, altered, amended or rescinded by such recognised association.

10. Power of recognised association to make bye-laws.—(1) Any recognised association may, subject to the approval of the Central Government, make bye-laws for the regulation and control of forward contracts.

(2) In particular and without prejudice to the generality of the foregoing power, such bye-laws may provide for—

- (a) the opening and closing of markets and the regulation of the hours of trade;

- (b) a clearing house for the periodical settlement of contracts and differences thereunder, the delivery of, and payment for, goods, the passing on of delivery orders and for the regulation and maintenance of such clearing house;
 - (c) the number and classes of contracts in respect of which settlements shall be made or differences paid through the clearing house;
 - (d) fixing, altering or postponing days for settlement;
 - (e) determining and declaring market rates, including opening, closing, highest and lowest rates for goods;
 - (f) the terms, conditions and incidents of contracts including the prescription of margin requirements, if any, and conditions relating thereto, and the forms of contracts in writing;
 - (g) regulating the entering into, making, performance, rescission and termination of contracts, including contracts between members or between a commission agent and his constituent, or between a broker and his constituent, or between a member of the recognised association and a person who is not a member, and the consequences of insolvency on the part of a seller or buyer or intermediary, the consequences of a breach or omission by a seller or buyer and the responsibility of commission agents and brokers who are not parties to such contracts;
 - (h) the admission and prohibition of specified classes or types of goods or of dealings in goods by a member of the recognised association;
 - (i) the method and procedure for the settlement of claims or disputes including the settlement thereof by arbitration;
 - (j) the levy and recovery of fees, fines, and penalties;
 - (k) regulating the course of business between parties to contracts in any capacity;
 - (l) the fixing of a scale of brokerage and other charges;
 - (m) the making, comparing, settling and closing of bargains;
 - (n) the regulation of fluctuations in rates and prices;
 - (o) the emergencies in trade which may arise and the exercise of powers in such emergencies;
 - (p) the regulation of dealings by members for their own account;
 - (q) the limitations on the volume of trade done by any individual member;
 - (r) the obligation of members to supply such information or explanation and to produce such books relating to their business as the governing body may require.
- (3) The bye-laws made under this section may provide that the contravention of any of the provisions thereof shall—
- (a) make a contract entered into, made or to be performed otherwise than in accordance with the bye-laws, void; and
 - (b) render the member concerned liable to fine; or
 - (c) render the member concerned liable to expulsion or suspension from the recognised association or to any other penalty of a like nature not involving the payment of money.

(4) Any bye-laws made under this section shall be subject to such conditions in regard to previous publication as may be prescribed, and when approved by the Central Government, shall be published in the Official Gazette and reproduced in the Official Gazette of the State in which the principal office of the recognised association is situate.

Provided that the Central Government may, in the interest of the trade or in the public interest, by order in writing, dispense with the condition of previous publication, in any case.

11. *Power of Central Government to make, add to, alter, amend or rescind bye-laws of recognised association.*—(1) If the governing body of a recognised association so requests, in writing, the Central Government may add to, alter, amend or rescind any bye-laws made by such association under section 10 or may make bye-laws for all or any of the matters specified in that section ;

(2) Whenever the Central Government considers it expedient so to do, it may in consultation with the Commission add to, alter, amend or rescind any bye-laws made by any recognised association under section 10 or may make bye-laws for all or any of the matters specified in that section ;

(3) the governing body of a recognised association objecting to the making of or the addition to, alteration, amendment or rescission of all or any of its bye-laws under sub-section (2) may, within six months of the publication thereof, apply to the Central Government, for a revision thereof and the Central Government after giving a reasonable opportunity to the governing body of such association to be heard in the matter, revise in consultation with the Commission all or any of the bye-laws made, or added to, altered, amended or rescinded under sub-section (2).

(4) The making of or the addition to, alteration, amendment or rescission of any bye-laws under sub-section (1) or sub-section (2) or any revision thereof under sub-section (3) shall be subject to the condition of previous publication ;

Provided that the Central Government may, in the interest of the trade or in the public interest, by order in writing, dispense with the condition of previous publication ;

(5) Where in pursuance of this section, any bye-laws have been made, or the bye-laws of the recognised association have been added to, altered, amended or rescinded, the bye-laws so made or added to, altered, amended or the fact of such rescission shall be published in the Official Gazette and reproduced in the Official Gazette of the State in which the principal office of the recognised association is situate, and on such publication the bye-laws so made, or added to, altered, amended or rescinded shall be deemed to have been made, or added to, altered, amended or rescinded by the recognised association.

12. *Power of Central Government to supersede Governing body of recognised association.*—(1) Where the Central Government is of opinion that the governing body of any recognised association should be superseded, then notwithstanding anything contained in this Act or in any other law for the time being in force, the Central Government may in consultation with the Commission after giving a reasonable opportunity to the governing body of the recognised association concerned to show cause why it should not be superseded, by a notification published in the Official Gazette declare the governing body of such association to be

superseded, and may appoint any person or persons to exercise and perform all the powers and duties of the governing body, and where more persons than one are appointed may appoint one of such persons to be the Chairman and another of such persons to be the vice-chairman;

Provided that the Central Government may, if it is of opinion that in the interest of the trade or in the public interest, immediate supersession is necessary, by a notification published in the Official Gazette, dispense with the requirement for calling upon the governing body to show cause.

(2) Notwithstanding anything to the contrary contained in any law or the rules or bye-laws of the association whose governing body is superseded under sub-section (1), the person or persons appointed under that sub-section shall hold office for such period as may be specified in the notification published under that sub-section, and the Central Government may from time to time by like notification published in the Official Gazette vary such period.

(3) On the publication of a notification in the Official Gazette under sub-section (1), the following consequences shall ensue, namely :—

- (a) the members of the governing body which has been superseded shall, as from the date of the notification of supersession cease to hold office as such members;
- (b) the person or persons appointed under sub-section (1) may exercise and perform all the powers and duties of the governing body which has been superseded;
- (c) all such property of the recognised association as the person or persons appointed under sub-section (1) may, by order in writing, specify in this behalf as being necessary for the purpose of enabling him or them to carry out the purposes of this Act, shall vest in such person or persons.

(4) On the determination of the period of office of any person or persons appointed under this section the recognised association shall forthwith reconstitute a governing body in accordance with its rules;

Provided that until a governing body is so reconstituted, the person or persons appointed under sub-section (1) shall continue to exercise and perform their powers and duties.

(5) On the reconstitution of a governing body under sub-section (4), all the property of the recognised association which had vested in, or was in the possession of, the person or persons appointed under sub-section (1) shall vest or re-vest, as the case may be, in the governing body so reconstituted.

13. *Power to suspend business of recognised association.*—If in the interest of the trade or in the public interest the Central Government considers it expedient so to do, it may, by a notification published in the Official Gazette, direct a recognised association to suspend such of its business for such period not exceeding seven days and subject to such conditions as may be specified in the notification, and may in consultation with the Commission by like notification published in the Official Gazette from time to time extend the said period.

CHAPTER III

Forward contracts and options in goods.

14. *Forward contracts in notified goods illegal or void in certain circumstances.*—(1) The Central Government may, by a notification published in the Official Gazette, declare this section to apply to such goods or class of goods as may be specified in the notification, and thereupon every forward contract for the sale or purchase of any goods specified in the notification which is entered into otherwise than between members of a recognised association or through or with such member shall be illegal.

(2) Any forward contract in goods entered into in pursuance of sub-section (1) shall be void, if it has not been entered into in accordance with the bye-laws of the recognised association concerned with the regulation and control of forward contracts in such goods.

(3) No member of a recognised association shall, in respect of any goods specified in the notification under sub-section (1), enter into any contract as a principal with any person other than a member of the recognised association, unless he has secured the written consent or authority of such person and discloses in the note, memorandum or agreement of sale or purchase that he is acting as a principal :

Provided that no such written consent or authority of such person shall be necessary for closing out in accordance with the bye-laws any outstanding contract entered into by the member as a principal with such person if the member discloses in the note, memorandum or agreement of sale or purchase in respect of such closing out that he is acting as a principal.

15. *Consequences of notification under section 14.*—Where a notification has been issued under section 14, then notwithstanding anything contained in any other law for the time being in force or in any custom, usage or practice of the trade or the terms of any contract or the bye-laws of any association concerned relating to any contract :—

- (a) every forward contract for the sale or purchase of any goods specified in the notification, entered into before the date of the notification, and remaining to be performed after the said date, and which is not in conformity with the provisions or section 14, shall be deemed to be closed out at such rate as the Central Government may fix in this behalf, and different rates may be fixed for different classes of such contracts ;
- (b) all differences arising out of any contract so deemed to be closed out shall be payable on the basis of the rate fixed under clause (a), and the seller shall not be bound to give and the buyer shall not be bound to take delivery of the goods.

16. *Power to prohibit forward contracts in certain cases.*—(1) The Central Government may by notification in the Official Gazette declare that no person shall, save with the permission of the Central Government, enter into any forward contract for the sale or purchase of any goods or class of goods specified in the notification to which the provisions of Section 14 are not made applicable, except to the extent and in the manner, if any, as may be specified in the notification.

(2) All forward contracts in contravention of the provisions of sub-section (1) entered into after the date of publication of the notification thereunder shall be illegal.

(3) Where a notification has been issued under sub-section (1), the provisions of section 15 shall, in the absence of anything to the contrary in the notification, apply to all forward contracts for the sale or purchase of any goods specified in the notification entered into before the date of the notification and remaining to be performed after the said date as they apply to all forward contracts for the sale or purchase of any goods specified in the notification under section 14.

17. Exclusion of non-transferable specific delivery contracts from Chapter II and III and the power to apply these Chapters to such contracts in certain cases.—Notwithstanding any thing contained hereinbefore, nothing in Chapter II or Chapter III shall apply to non-transferable specific delivery contracts :

Provided, however, if in the interest of the trade or in the public interest the Central Government deems it expedient so to do, it may by a notification published in the Official Gazette declare that all or any of the provisions of Chapters II and III shall apply to non-transferable specific delivery contracts in respect of such goods or class of goods as may be specified in the notification in such area, in such manner and to such extent as may be specified therein.

18. Prohibition of options in goods.—(1) Notwithstanding anything contained in this Act or any other law for the time being in force, all options in goods entered into after the date on which this Act comes into force shall be illegal.

(2) Any option in goods which has been entered into before the date on which this Act comes into force and which remains to be performed, whether wholly or in part, after the said date shall to that extent become void.

CHAPTER IV

*Penalties and Procedure.***19. Penalty for contravention of certain provisions of Chapter III.—**

(1) Any person who enters into any forward contract or any option in goods in contravention of any of the provisions contained in section 14(1), section 15, section 16 or section 18 shall on conviction be punishable with imprisonment which may extend to one year, or with fine, or with both.

(2) Any person who enters into any forward contract in contravention of the provisions of section 14(3) shall on conviction be punishable with fine.

20. Penalty for owning or keeping place used for entering into forward contracts or options in goods.—Any person who

- (a) owns or keeps a place which is used for the purpose of entering into or making or performing, whether wholly or in part, any forward contracts in contravention of any of the provisions of this Act and knowingly permits such place to be used for such purposes, or
- (b) without the permission of the Central Government, organises, or assists in organising, or becomes a member of any association for the purpose of assisting in, entering into or making or performing, whether wholly or in part, any forward contracts in contravention of any of the provisions of this Act, or
- (c) manages, controls or assists in keeping any place which is used for the purpose of entering into or making or performing, whether wholly or in part, any forward contracts in contravention of any of the provisions of this Act or at which such forward contracts are recorded or adjusted, or rights or liabilities arising out of such forward contracts or any options in goods are adjusted, regulated or enforced in any manner whatsoever, or
- (d) not being a member of a recognised association, wilfully represents to, or induces, any person to believe that he is a member of a recognised association or that forward contracts can be entered into or made or performed, whether wholly or in part, under this Act through him, or
- (e) canvasses, advertises or touts in any manner, either for himself or on behalf of any other person, for any business connected with forward contracts in contravention of any of the provisions of this Act, or
- (f) joins, gathers, or assists in gathering at any place, any person for entering into or making any forward contracts, in contravention of any of the provisions of this Act,

shall, on conviction, be punishable with imprisonment which may extend to one year or with fine, or with both.

21. Offences by corporations or firms.—(1) Where a person committing an offence under this Act is company or other body corporate, any of the directors thereof shall be deemed to be guilty of such offence.

Provided that the Company or the body corporate may give notice, in writing, to the Central Government or any authority appointed by it

CHAPTER V.

Miscellaneous.

24. *Power to delegate.*—(1) The Central Government may, by notification in the Official Gazette, direct that any power exercisable by it under this Act may be exercised, in such circumstances and subject to such conditions, if any, as may be specified by such officer or authority including any State Government or officers or authorities thereof as may be specified in the direction.

(2) Where the Central Government has delegated all or any of its powers exercisable by it under Section 6, section 11(2), section 12(1) and section 13 to any officer or authority including any State Government or officers or authorities thereof under sub-section (1), such delegated powers or power shall be exercised by the officer or authority to whom the same are or is delegated with the concurrence of the Commission.

Provided that in case of difference of opinion between such officer authority and the Commission as regards the exercise of such delegated powers or power, the decision of the Central Government shall be final.

25. *Power to exempt.*—The Central Government may, by notification the Official Gazette, exempt, subject to such conditions and in such circumstances as may be specified in the notification, any contract or class of contracts from the operation of all or any of the provisions of this Act.

26. *Protection of action taken in good faith.*—No suit, prosecution or other legal proceeding whatsoever shall lie in any court against the governing body or any member, office bearer or servant of any recognised association or against any person or persons appointed under sub-section (1) of section 12 for anything which is in good faith done or intended to be done in pursuance of this Act or of any rules or bye-laws made thereunder.

27. *Power to make rules.*—(1) The Central Government may, by notification in the Official Gazette, make rules for the purpose of carrying into effect the objects of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for

- (a) the manner in which applications for recognition may be made under section 4 and the levy of a fee in respect thereof;
- (b) the manner in which any inquiry for the purpose of recognising any association may be made and the form in which recognitions shall be granted;
- (c) the manner in which any proposed additions to, alterations, amendments or rescissions of, any bye-laws of a recognised association shall, before being made, be published for criticism.

for the purpose, that it has nominated an officer to be the person responsible for carrying out the purposes of this Act and such officer shall be deemed to be responsible for any offence committed under this Act, until further notice, in writing cancelling his nomination is received by the Central Government or any authority appointed by it for the purpose or until he ceases to be an officer of the company or body corporate.

Explanation.—For purposes of this sub-section the term "Officer" includes any director managing agent, manager or secretary of the company or the body corporate.

(2) Where the person committing an offence is a firm or other association of individuals any one of the individual partners or members thereof shall be deemed to be guilty of such offence.

Provided that the firm or association may give notice, in writing, to the Central Government or any officer or authority appointed by it for the purpose, that it has nominated one of its members to be the person responsible for carrying out the purposes of this Act and such member shall be deemed to be responsible for any offence committed under this Act until further notice, in writing, cancelling his nomination is received by the Central Government or any officer or authority appointed by it for the purpose or until he ceases to be a partner or member of the firm or association.

22. *Offences punishable under Section 19(1) or Section 20 made cognizable.*—An offence punishable either under Section 19(1) or Section 20 shall be a cognizable offence within the meaning of Section 4(1)(f) of the Code of Criminal Procedure (V of 1898).

23. *Jurisdiction to try offences under this Act.*—No court inferior to that of a presidency magistrate or a magistrate of the first class shall take cognizance of or try any offence punishable under this Act.
