
SEVENTEENTH REPORT

**STANDING COMMITTEE ON FOOD, CIVIL
SUPPLIES AND PUBLIC DISTRIBUTION
(2002)**

THIRTEENTH LOK SABHA

**MINISTRY OF CONSUMER AFFAIRS, FOOD AND
PUBLIC DISTRIBUTION
(DEPARTMENT OF CONSUMER AFFAIRS)**

**THE FORWARD CONTRACTS (REGULATION)
AMENDMENT BILL, 1998**

Presented to Lok Sabha on
Laid in Rajya Sabha on



**LOK SABHA SECRETARIAT
NEW DELHI**

May, 2002/ Vaisakha, 1924 (Saka)

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COMPOSITION OF THE STANDING COMMITTEE ON FOOD, CIVIL
SUPPLIES AND PUBLIC DISTRIBUTION (2002)

Shri Devendra Prasad Yadav — *Chairman*

MEMBERS

Lok Sabha

2. Shri Vishnu Dev Sai
3. Shri Sahib Singh Verma
4. Shri Mansinh Patel
5. Shri Ram Chandra Veerappa
6. Shri Ram Naresh Tripathee
7. Shri Namdeorao Harbaji Diwathe
8. Shri Shyam Bihari Mishra
9. Shri Abdul Hamid
10. Smt. Preneet Kaur
11. Shri Rameshwar Dudi
12. Shri Tara Chand Bhagora
13. Shri Sujan Singh Bundela
14. Shri Sisram Ola
15. Shri A.P. Abdullakutty
16. Shri Baju Ban Riyan
17. Shri Ram Sagar Rawat
18. Shri Rajbhar Babban
19. Shri Ezhilmalai Dalit Capt. (Retd.)
20. Inder Singh
21. Shri Nagmani
22. Shri Jai Prakash
- *23. Shri M.V.V. S. Murthi
- @@@24. Shri Kishan Lal Diler
- @@@25. Dr. A.D.K. Jeyaseelan
- @@@26. Shri Bali Ram Kashyap
- @@@27. Shri Shivaji Mane
- @@@28. Shri Rama Mohan Gadde
- @@@29. Shri Ramshakal
- @@@30. Shri Tejveer Singh

(iv)

Rajya Sabha

31. Smt. Bimba Raikar
32. Smt. Gurcharan Kaur
33. Shri Lajpat Rai
34. Shri M.A. Kadar
35. Dr. Swami Sakshi Ji Maharaj
36. Shri Vijay Singh Yadav
37. Shri Anil Sharma
38. Shri R.N. Arya
- @39. Dr. (Ms.) P.Selvie Das
- @@40. Shri C. Perumal
- #41. Shri Rishang Keishing
- ##42. Shri Ravula Chandra Sekar Reddy

SECRETARIAT

1. Shri John Joseph - *Additional Secretary*
2. Shri Ram Autar Ram - *Joint Secretary*
3. Shri A.S. Chera - *Deputy Secretary*
4. Shri R. S. Mishra - *Under Secretary*
5. Smt. Manju Chaudhry - *Committee Officer*

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- * Ceased to be a member of the Committee w.e.f. 18th January, 2002 (*vide* Bulletin Part -II, No. 2540, dated 18th January, 2002).
- @ Nominated to the Committee w.e.f. 17th January, 2002 (*vide* Bulletin Part-II, No. 2575, dated 25th January, 2002).
- @@ Nominated to the Committee w.e.f. 8th April, 2002 (*vide* Bulletin Part - II, No. 2796, dated 10th April, 2002).
- @@@ Nominated to the Committee w.e.f. 19th April, 2002 (*vide* Bulletin Part - II, No. 2814 dated 19th April, 2002).
- # Nominated to the Committee w.e.f. 22nd April, 2002 (*vide* Bulletin Part -II, No. 2832 dated 26th April, 2002).
- ## Nominated to the Committee w.e.f. 2nd May, 2002 (*vide* Bulletin Part -II, No. 2866 dated 7th May, 2002).

INTRODUCTION

I, the Chairman of the Standing Committee on Food, Civil Supplies and Public Distribution 2002 having been authorized by the Committee to submit the Report on their behalf, present this 17th Report on "The Forward Contracts (Regulation) Amendment Bill, 1998" of the Ministry of Consumer Affairs, Food and Public Distribution, Department of Consumer Affairs.

Hon'ble Speaker in consultation with the Chairman, Rajya Sabha, referred the Forward Contracts (Regulation) Amendment Bill, 1998, as introduced in Rajya Sabha, to the Standing Committee on Food, Civil Supplies and Public Distribution for examination and report *vide* Bulletin-Part II, No. 862, dated 7th January, 1999 under Rule 331E (b) of the Rules of Procedure and Conduct of Business in Lok Sabha.

The Committee considered the Bill clause by clause at their sitting held on 8.5.2002. The Report was considered and adopted by the Committee on 8.5.2002.

The Committee wish to express their thanks to the various officers of the Ministry of Consumer Affairs, Food and Public Distribution, Department of Consumer Affairs, Forward Markets Commission and the Ministry of Law, Justice and Company Affairs for placing before them detailed written notes on the subject and for furnishing the information to the Committee, desired in connection with the examination of the Bill.

NEW DELHI,
8 May, 2002
18 Vaisakha, 1924 (Saka)

DEVENDRA PRASAD YADAV
Chairman,
Standing Committee on Food,
Civil Supplies and Public Distribution.

CHAPTER 1

INTRODUCTORY

The Forward Contracts (Regulation) Amendment Bill, 1998, as introduced in Rajya Sabha, on 23rd December, 1998 was referred to the "Standing Committee on Food, Civil Supplies and Public Distribution" for examination and report.

- 1.2 Future trading performs two important economic functions of price discovery and price risk management. Such trading in commodities is useful to all sectors of the economy. The increasing trend in the forward prices indicates an imbalance between demand and supply. This enables the Government and the private sector to make plans and arrangements for timely imports, instead of rushing for such imports in a crisis-like situation when the prices are already high. This ensures availability of adequate supplies and averts spurt in prices. Similarly, in a situation of a bumper crop, the early price signals emitted by forward market help the importers to defer or stagger their imports, which protects the producers against unremunerative prices. Thus, with the stabilization of forward trading, seasonal variations in the prices get reduced. At the same time, it enables the importers to hedge their position against commitments made for import. Similarly, exporters are able to hedge their export commitments. As a result, the export competitiveness of the country improves.
- 1.3 While the farmers and growers may not directly participate in the futures markets, they are benefited through the price signals emitted by the futures trading. The future markets lead to reduction in the amplitude of seasonal price variation and help the farmer realize somewhat better price at the time of harvest. This also helps the

farmer in planning his cultivation in advance as well as to determine the kind of crop which he would prefer to raise, by taking advantage of the advance information of the price, and probable supply and demand of various commodities in advance. By providing the manufacturers and the bulk consumers a mechanism for covering price-risk, the futures market induces them to pay higher price to the producers, as the need to pass on the price-risk to farmers is obviated. The manufacturers are able to hedge their requirement of the raw-material and also to hedge their finished products. This results in greater competition in the market and ensures viability of the manufacturing units.

Brief Background

1.4 The institution of commodity futures markets in India is as old as in the USA and UK. The first organised futures market was established in 1875, under the name and style of Bombay Cotton Trade Association to trade in cotton contracts. This was followed by institutions for futures trading in oilseeds and foodgrains, etc.. The futures market in India underwent rapid growth between the period of First and Second World Wars. As a result, before the outbreak of the Second World War, a large number of commodity exchanges trading futures contracts in several commodities like cotton, groundnut, groundnut oil, raw jute, jute goods, castorseed, wheat, rice, sugar, precious metals like gold and silver were flourishing throughout the country. Futures trading came to be prohibited during the Second World War under the Defence of India Act. After independence specially in the second half of the 1950s and first half of 1960s, the commodity futures trading again picked up and there were thriving commodity markets. However, in mid 1960s commodity futures trading in most of the Commodities came to be banned and futures trading continued only in two minor commodities viz., pepper and turmeric. In the 1980s, the futures trading in some commodities like potato, castorseed, and gur (jaggery) was permitted, in 1992 future trading in hessian was permitted.

- 1.5 Forward Trading has been in existence in India for over a century. Presently, forward trading is governed under the provisions of the Forward Contracts (Regulation) Act, 1952 (hereinafter referred to as the Act,) a central enactment. The subject futures trading is in the union (Federal) List of Seventh Schedules of the Constitution and the Parliament enacted the Forward Contracts (Regulation) Act in 1952 and the same has been on the statute book since then. This act governs forwards trading in India.
- 1.6 Under this Act, there are three broad categories of contracts namely ready delivery contracts, forward contracts and option in goods.
- 1.7 Ready delivery contracts, are contracts for delivery of goods where delivery of goods and payment thereof is completed within 11 days from the date of the contract. Such contracts are outside the purview of the Act.
- 1.8 Forward contracts are contracts for the delivery of goods which are not ready delivery contracts (i.e. where the delivery of goods and/ or payment for goods is not completed with 11 days from the date of the contract.) Further although a contract may provide for delivery of goods and payment of price therefor within a period of 11 days but if the contract is performed in a manner whereby the delivery of goods and full payment therefor is dispensed with that contract too becomes a forward contract. Such contracts are governed by the Act.
- 1.9 Option in goods means an agreement 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. Option in goods are totally prohibited under the Act.

Major objectives of the Amendment

1.10 The Major objectives of the amendments are:

1. definition of specific delivery contracts and non-transferable specific delivery contracts is proposed to be modified so as to make delivery of goods compulsory and to make performance of such contracts by any means, other than delivery, punishable;
2. enhancement in the quantum of fine from Rs. 1,000 to Rs. 5,000;
3. to recognise the dealings through brokers in addition to the members of the commodity exchanges. For this, it is proposed to have a definition of 'broker' and a substantive provision recognizing only registered broker as person eligible to trade in commodity exchange in addition to the members of the exchanges;
4. to increase the period of delivery of goods and payment under ready delivery contracts from eleven days to thirty days;
5. to provide a definition of futures contract as there is no definition of futures contract in the Act at present; to remove prohibition on option in goods under section 19 and to provide for its regulation; to increase the maximum number of members of Forward Markets Commission from four to seven.

1.11 The Parliamentary Standing Committee on Food, Civil Supplies and Public Distribution examined the Forward Contracts (Regulation) Amendment Bill, 1998. The Committee took evidence of the representatives of Ministry of Consumer Affairs, Food and Public Distribution (Department of Consumer Affairs) and also heard the views of the representatives of the Forward Markets Commission.

1.12 During preliminary discussion on the Bill the Secretary, Ministry of Consumer Affairs, Food and Public Distribution, Department of Consumer Affairs stated as under:-

"Forward Markets Commission (FMC) has been playing a very

important role in organising the functioning of the commodity exchanges in a regulated manner. They have put in place certain mechanism to ensure that the exchanges function within the four corners of the law. It covers training of members, bringing in professionalisation in the working, better clearing mechanism, introduction of computerization, introduction of trade guarantee mechanism, simplification of the reporting system, daily mark to market margining system, time stamping, reporting system and customer protections as well as gradual demutualisation and monitoring on the basis of agreed parameters to watch the performance. In spite of the efforts made by us, the futures trading has not developed to the extent, we wanted it to be developed, because of initial restrictions. But it is gradually picking up and today, 21 exchanges put together have a kind of volume of trade which runs to something close to Rs. 28,000 crore in term of transactions”.

1.13 He further added:-

“We are trying to introduce some of the new features which could follow shortly. For example, we are trying to set up a National Commodity Exchange, and for that, we have been working for the last one year. Recently we have also advertised requesting all interested people to respond. We are also trying to bring in trading in futures of sugar, which is very important commodity, and for that, we have already given, in principle, approval to three new exchanges which will be screen-based, on-line, real time, and we hope that by about October-November 2002 we will be able to reach certain direction in that”.

1.14 Asked to state the steps taken by the Ministry in regard to checking of illegal trading, the representatives of the Ministry stated:-

“We have got a roster by which we inspect all the exchanges. Generally, one exchange is inspected once a year. Apart from

that, there is an officer of the FMC on the Board of Directors, who is nominated by us as per the provisions of the FCR Act and whenever he goes, he tries to see the procedure which has been followed in the exchanges and suggest improvements”.

- 1.15 The Secretary, Ministry of Consumer Affairs, Food and Public Distribution, Department of Consumer Affairs further added as under :-

“The chances of any irregular trading within the ring are very, very limited. If at all it is happening, it must be happening outside the ring. For that we do require a proper intelligence machinery which, today, we do not have”.

- 1.16 The Committee note with concern that though Forward Markets Commission (FMC) has been playing a very important role in organizing the functioning of the Commodity exchanges in a regulatory manner, the futures trading has not developed to the extent it would have been because of the initial restrictions. The Ministry have, also accepted this fact. The Ministry have, however, informed the Committee that they are trying to introduce some new features such as setting up of National Commodity Exchange, bringing in professionalism in the working, better clearing mechanism, simplification of reporting system, gradual de-mutualisation and monitoring on the basis of agreed parameters, etc. for strengthening the Forward Markets Commission to achieve its objective of making Futures Trading more purposeful.

While appreciating the steps taken by the Ministry for improvement in the performance of the Forward Markets Commission, the Committee are of the opinion that the Forward Markets Commission should be restructured on professional lines with powers to hire and contract professionals of appropriate qualifications and experience. For this, the

Exchanges can be professionalised by way of de-mutualisation.

1.17 The Committee are concerned to note that though the Government are aware that irregular trading is taking place outside the ring, they are help less in nabbing the culprits for want of proper intelligence machinery. The Committee further note that the enforcement division of the Forward Markets Commission does not seem to be effective and sometimes their working is hampered due to non availability of police assistance in time. The Committee, therefore, strongly recommend that the Enforcement Division of Forward Markets Commission should be further strengthened and they should be given powers to prosecute the illegal traders by filing suits in the law the courts directly eliminating the intervention of the State Police. For this, professionally managed intelligence wing should immediately be created in the Forward Markets Commission.

CHAPTER II

REPORT

2.1 The Committee considered the Bill clause by clause.

Clause 11

Clause 11 seeks to amend section 21 of the Principal Act and it proposes to increase the quantum of fine so as to be not less than Rs. 5000/-. The Committee note that the Kabra Committee in its Report submitted to the Ministry in 1994 had recommended that the penalties may be raised from the existing level of not less than rupees one thousand to rupees ten thousand, while maintaining the existing duration of the imprisonment the same as before. Giving reasons for the enhancement of fine from Rs. 1000 to 5000 in the Bill, the Secretary of Ministry of Consumer Affairs, Food and Public Distribution, Department of Consumer Affairs stated as under:-

"The Kabra Committee report recommended for a fine of Rs. 10,000/-. That was the minimum, not the maximum about. When we examined this, we found that there is a practical difficulty in that. It is because a minimum penalty of Rs. 10,000 could be imposed by a District Judge and then the problem will be that such judges are available only at the district level. But if the penalty is made Rs. 5,000/-, then a first class Judicial Magistrate can impose the fine and the appeal would also lie with the District Judge but in case of a penalty of Rs.10,000 imposed by a District Judge, the appeal would lie with the High Court. We felt that perhaps from a practical consideration it would be more practical and convenient to have minimum limit of Rs. 5,000/-. But ceiling has not been prescribed. We do expect that while giving the punishment. Presiding Officer would keep in mind the gravity of the offence and he will not necessarily restrict it to Rs. 5,000/-"

- 2.2 The Committee are not satisfied with the reply of the Government. The Government have to move amendments for increasing the quantum of fine time and again. In the opinion of the Committee the quantum of fine should be fixed in accordance with the gravity of the offence and executive should have powers to change the same. The Committee, therefore, recommend that instead of quantifying the fine, the word "as prescribed in the existing law" should be substituted so that Executive have the power to change the same at appropriate time instead of moving fresh amendments to the Act.

NEW DELHI;
8 May, 2002
18 Vaisakha, 1924 (Saka)

DEVENDRA PRASAD YADAV
Chairman,
Standing Committee on Food,
Civil Supplies and Public Distribution.

PART II

MINUTES OF THE FOURTH SITTING OF THE STANDING COMMITTEE ON FOOD, CIVIL SUPPLIES AND PUBLIC DISTRIBUTION HELD ON THURSDAY, THE 2nd MAY, 2002.

The Committee sat from 16.10 hours to 16.45 hours.

PRESENT

Shri Devendra Prasad Yadav — *Chairman*

MEMBERS

Lok Sabha

2. Smt. Preneet Kaur
3. Shri Rameshwar Dudi
4. Shri Tara Chand Bhagora
5. Shri A.P. Abdullakutty
6. Shri Kishan Lal Diler
7. Dr. A.D.K. Jeyaseelan

Rajya Sabha

8. Smt. Bimba Raikar
9. Smt. Gurcharan Kaur
10. Shri Lajpat Rai
11. Dr. (Ms.) P. Selvie Das
12. Shri C. Perumal

SACRETARIAT

1. Shri Ram Autar Ram — *Joint Secretary*
2. Shri A.S. Chera — *Deputy Secretary*
3. Shri R.S. Mishra — *Under Secretary*

WITNESSES

**Ministry of Consumer Affairs, Food and Public
Distribution (Department of Consumer Affairs)**

1. Shri S. Bandopadhyay, Secretary
2. Dr. Kalyan Raipuria, Economic Adviser
3. Shri C.K.G. Nair, Director

Forward Markets Commission (FMC)

4. Shri A.K. Bhatt, Chairman
5. Shri Baldev Chand, Member
6. Dr. Kewal Ram, Member
7. Shri D.S. Kolamkar, Director

**Ministry of Law, Justice and Company Affairs
(Legislative Department)**

8. Dr. K.N. Chaturvedi, Additional Secretary

2. At the outset, Hon'ble Chairman welcomed the Secretary of the Ministry of Consumer Affairs, Food and Public Distribution (Department of Consumer Affairs), Chairman of the Forward Markets Commission and representatives of Ministry of Law, Justice and Company Affairs. The Secretary, Ministry of Consumer Affairs, Food and Public Distribution (Department of Consumer Affairs) and Chairman, Forward Markets Commission briefed the Committee about the existing provisions and desirability of proposed amendments in the Forward Contracts (Regulation) Amendment Bill, 1998. The queries raised by Hon'ble Chairman and the Members on the Bill were replied to by the witnesses.

3. A verbatim record of the sitting has been kept separately.

The Committee then adjourned.

MINUTES OF THE FIFTH SITTING OF THE STANDING
COMMITTEE ON FOOD, CIVIL SUPPLIES AND
PUBLIC DISTRIBUTION HELD ON WEDNESDAY,
THE 8TH MAY, 2002

The Committee sat from 15.30 hours to 16.20 hours.

PRESENT

Shri Devenra Prasad Yadav — *Chairman*

MEMBERS

Lok Sabha

2. Shri Mansinh Patel
3. Shri Namdeorao Harbaji Diwathe
4. Shri A.P. Abdullakutty
5. Shri Bajji Ban Riyan
6. Shri Ezhilmalai Dalit
7. Shri Kishan Lal Diler
8. Shri Bali Ram Kashyap
9. Shri Tejveer Singh

Rajya Sabha

10. Smt. Bimba Raikar
11. Smt. Gurcharan Kaur
12. Shri Lajpat Rai
13. Dr. Swami Sakshi Ji Maharaj
14. Dr. (Ms.) P.Selvie Das

SECRETARIAT

1. Shri Ram Autar Ram — *Joint Secretary*
2. Shri A.S. Chera — *Deputy Secretary*
3. Shri R.S. Mishra — *Under Secretary*

2. **The Committee Considered Draft Seventeenth Report of the Standing Committee on Food, Civil Supplies and Public Distribution on 'The Forward Contracts (Regulation) Amendment Bill, 1998'. The Committee adopted the Report without any amendment.**

3. **The Committee authorized the Chairman to make verbal changes as may be needed, if any, and present/ lay the same in both the Houses of Parliament.**

The Committee then adjourned.

APPENDIX

AS INTRODUCED IN RAJYA SABHA

Bill No. XLV of 1998

**THE FORWARD CONTRACTS (REGULATION) AMENDMENT
BILL, 1998**

**A
BILL**

further to amend the Forward Contracts (Regulation) Act, 1952.

BE it enacted by Parliament in the Forty-ninth Year of the Republic of India as follows:-

Short title 1. This Act may be called the Forward
Contracts (Regulation) Amendment Act, 1998.

Amendment of long title. 2. In the Forward Contracts (Regulation) 74 of 1952.
Act, 1952 (hereinafter referred to as the
principal Act), in the long title, for the words,
"the prohibition of options in goods", the
words "and of options in goods" shall be
substituted.

Amendment of section 3. In section 2 of the principal Act:-
(a) after clause (a), the following clause shall be
inserted, namely:-
 '(aa) "broker" means a person who trades
or clears contracts on behalf of a client, whether
or not the client is a member of a recognised
association or a registered association and who
has been granted a certificate of registration under
section 14;

(b) after clause (c), the following clause shall be inserted, namely:-

'(cc) "futures contract" means a forward contract and which is not a specific delivery contract;'

(c) in clause (f), the following proviso shall be inserted at the end, namely:-

"Provided that where any such contract is performed either wholly or in part—

(1) by the realisation of any sum of money being the difference between the contract rate and the settlement rate or clearing rate or the rate of any offsetting contract; or

(2) by any other means whatsoever, and as a result of which the actual tendering of the goods covered by the contract or payment of the full price thereof is dispensed with,

then, such contract shall not be deemed to be a non-transferable specific delivery contract";

(d) in clause (i),—

(i) for the word "eleven", the word "thirty" shall be substituted; (ii) in the Explanation, in paragraph (i), the words, figures and brackets "or under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980" shall be inserted at the end;

40 of 1980.

(e) in clause (m), for the words "forward contract which provides for", the words

"forward contract which provides for and is performed by" shall be substituted.

4. In section 3 of the principal Act, in sub-section (2), for the word "four", the word "seven" shall be substituted. Amendment of section 3.

Amendment of sections 5,6,11,12A, 12B, 20 and 21.

5. In the principal Act,—

- (a) in sections 5,6,11,12A,12B and 21, for the expression "forward contracts" the expression "forward contracts and option in goods" shall be substituted;
- (b) in section 20 in clause (a), in sub-clause (iii) and in clause (c), for the expression "forward contracts", the expression "forward contracts and option in goods" shall be substituted.

Amendment of section 14A

6. In section 14A of the principal Act, after sub-section (3), the following sub-section shall be inserted, namely:-

"(4) On and from the date of the commencement of the Forward Contracts (Regulation) Amendment Act, 1998, any association desirous of entering into business relating to option in goods may-

- (a) make an application for a certificate of registration for entering into business relating to option in goods and the provisions of sub-section (2) shall apply as they apply in respect of an association concerned with the regulation and control of business relating to forward contracts;

(b) apply for the modification of certificate of registration granted to it under section 14B so as to enable it to get itself registered for entering into business relating to option in goods also”.

Insertion of
new
Chapter
IIIB.

7. After Chapter IIIA of the principal Act, the following Chapter shall be inserted, namely:-

**“CHAPTER IIIB
REGISTERED BROKER**

14D. (1) On and from the commencement of the Forward Contracts (Regulation) Amendment Act, 1998 no person intending to act as a broker shall enter into, make, perform, rescind or terminate any specific delivery contract, futures contract or option in goods except under, and in accordance with, the conditions of a certificate of registration granted by the Commission under this Act.

Registration
of brokers.

(2) A person who, in his capacity as a broker, intends to commence the business of entering into, making, performing, rescinding or terminating any specific delivery contract, futures contract or option in goods shall make application for a certificate of registration to the Commission in such form and containing such particulars as may be prescribed:

Provided that a person who was acting as a broker immediately before the commencement of the Forward Contracts (Regulation)

Amendment Act, 1998 may continue to do so for a period of three months from the date of such commencement and if he has made an application for registration within the said period of three months, till the disposal of such application whichever is later.

(3) On receipt of an application under sub-section (2), the Commission, after making such enquiry as it considers necessary in this behalf, may by order in writing grant a certificate of registration on such terms and conditions as may be prescribed or refuse to grant it:

Provided that before refusing to grant such certificate, the person making the application shall be given an opportunity of being heard in the matter.

Cancellation
of certificate
of
registration

14E The Commission may, by order, suspend or cancel certificate of registration in such manner as may be prescribed:

Provided that no order under this section shall be made unless the person concerned has been given an opportunity of being heard in the matter."

Amendment
of section
15.

8. In section 15 of the principal Act, in sub-section (1), for the words "between members of a recognised association or through or with any such member", the words " between members of a recognised association or through or with any such member or through a registered broker" shall be substituted.

Substitution
of new
section for
section 19.

9. For section 19 of the Principal Act, the following section shall be substituted, namely:-

"19. (1) Any option in goods which has been entered into on or after the commencement of the Forward Contracts,(Regulation) Amendment Act, 1998, shall be illegal unless it complies with the requirements laid down in sub-sections (2) and (3).

(2) The Central Government may, by notification in the Official Gazette, declare this section to apply to such goods or class or classes of goods and in such areas as may be specified in the notification, and thereupon, every option in goods for the sale or purchase of any goods specified in the notification which is entered into in the area specified there in otherwise than between members of an association or through or with any member or through a registered broker shall be illegal.

(3) The provisions of sub-sections (2),(3),(3A) and (4) of section 15 shall apply to option in goods as they apply in relation to a forward contract.

(4) Where a notification has been issued under sub-section(2), the provisions of section 16 shall, in the absence of anything to the contrary in the notification, apply to all contracts in option in goods for the sale or purchase of any goods specified in the notification entered into on or before the date of notification and remaining to

be performed after the said date as they apply to all contracts for option in goods for the sale or purchase of any goods specified in the notification under sub-section(2).”

Amendment
of section
20

10. In section 20 of the principal Act,—

(a) after clause (d) the following clause shall be inserted, namely:-

“(dd) fails to make or accept delivery of goods covered by non- transferable specific delivery contracts or by transferable specific delivery contracts where rights and obligations have not been transferred, as the case may be;or”;

(b) after clause (e),in clauses (i) and (ii), for the words “one thousand”, the words “five thousand” shall be substituted.

Amendment
of section
21.

11. In section 21 of the principal Act, in clause (h) in sub-clauses (i) and (ii) for the words “one thousand”, the words “five thousand” shall be substituted.

Amendment
of section
28.

12. In section 28 of the principal Act, in sub-section (2) after clause (cc), the following clauses shall be inserted, namely:-

“(ccc) the form in which and the terms and conditions subject to which applications for certificates of registration may be made under section 14D and the levy of fees in support of such application;

(ccd) the terms and conditions subject to which registration may be granted under subsection (3) of section 14D;

(cce) the manner in which the certificate of registration may be suspended or cancelled under section 14E;”.

STATEMENT OF OBJECTS AND REASONS

With the commencement of the process of economic liberalisation in the Indian economy, the Government have been expanding the scope of futures trading in India. In that direction, the Government had constituted a Committee in June, 1993 under the Chairmanship of Prof K. N. Kabra, Professor of Indian Institute of Public Administration to review the operations of forward markets and to assess the role of the Forward Markets Commission. The Committee, in its report submitted in September, 1994, had made several recommendations which, *inter alia*, include proposals for amendments to the Forward Contracts (Regulation) Act, 1952 in order to strengthen the Forward Market's Commission as also arrangements for trading.

2. Based on the recommendations of the Committee and taking into account the experience in the administration of the Act and present requirements, it is proposed to amend the Forward Contracts (Regulation) Act, 1952 in respect of the following :-

- (i) definition of specific delivery contract and non-transferable specific delivery contracts is proposed to be modified so as to make delivery of goods compulsory and to make performance of such contracts by any means, other than delivery, punishable;
- (ii) enhancement in the quantum of fine from Rs. 1,000 to Rs. 5,000;
- (iii) to recognise the dealings through brokers in addition to the members of the commodity exchange. For this, it is proposed to have a definition of "broker" and a substantive provision recognising only registered broker as a person eligible to trade in commodity exchange in addition to the members of the exchange;
- (iv) to increase the period of delivery of goods and payment under ready delivery contracts from eleven days to thirty days;

- (v) to provide for a definition of futures contract as there is no definition of futures contract in the Act at present;
- (vi) to remove prohibition on option in goods under section 19 and to provide for its regulation;
- (vii) to increase the maximum number of members of the Forward Markets Commission from four to seven.

3. The Bill seeks to achieve the above objectives.

NEW DELHI;
The 15th December, 1998.

SURJEET SINGH BARNALA.

FINANCIAL MEMORANDUM

Section 3 of the Forward Contracts (Regulation) Act, 1952 provides for the establishment and constitution of the Forward Markets Commission. The maximum number of members of the Commission shall not exceed four and the minimum number of member shall not be less than two. At present there are only two members of whom one is designated as Chairman. The Chairman is of the rank of the Joint Secretary to the Government of India and the member is of the rank of Director to the Government of India.

2. In view of the expansion of futures trading it has been proposed *vide* clause 4 of the Bill to increase the maximum number of members from four to seven. The object is to appoint four full time members and three part time members from the Ministries of Law, Finance, Consumer Affairs, representatives of trade and experts known for their practical knowledge of futures trading. It has been further decided to upgrade the post of Chairman from the present level of Joint Secretary to the Government of India to that of Additional Secretary to the Government of India and of member from the present level of Director to that of a Joint Secretary to the Government of India.

3. Since presently only two full time members including the Chairman are being appointed the annual expenditure on account of the two additional full time members will be approximately Rs. 6 lakhs. Besides this, there will be supporting staff and other incidental expenditure.

4. There will be no other recurring and non-recurring expenditure.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 12 enlarges the rule making power of the Central Government and empowers it to make rules regarding the manner in which applications for certificate of registration may be made under section 14D and levy of fees in respect of such application and the terms and conditions subject to which the certificate of registration may be granted under that section. Section 14E empowers the Central Government to make rules regarding the manner in which certificate of registration may be suspended or cancelled.

2. The matter in respect of which rules are to be made are generally matters of procedure and administrative detail and it is not practicable to provide for them in the Bill itself. The delegation of legislative procedure is, therefore, normal in character.

ANNEXURE

EXTRACTS FROM THE FORWARD CONTRACTS
(REGULATION) ACT, 1952

(74 OF 1952)

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

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

Definitions.

(i) "ready delivery contract" means a contract which provides for the delivery of goods and the payment of a price therefore, either immediately or within such period not exceeding eleven days after the date of the contract and subject to such conditions as the Central Government may, by notification in the Official Gazette, specify in respect of any goods, the period under such contract not being capable of extension by the mutual consent of the parties thereto or otherwise:

Provided that where any such contract is performed either wholly or in part,—

(1) by tendering of the documents of title to the goods covered by the contract by any party thereto (not being a commission agent or a bank) who has acquired ownership of the said documents by purchase, exchange or otherwise, to any other person (including a commission agent but not including a bank); or

(2) by the realisation of any sum of money, being the difference between the contract rate and the settlement rate or clearing rate or the rate of any offsetting contract; or

(3) by any other means whatsoever, and as a result of which the actual tendering of the goods covered by the contract or the payment of the full price therefor is dispensed with, then, such contract shall not be deemed to be a ready delivery contract.

Explanation.— For the purposes of this clause,—

(i) “bank” includes any banking company as defined in the Banking Regulation Act, 1949, 10 of 1949, a co-operative bank as defined in the Reserve Bank of India Act, 1934, the State Bank of India 2 of 1934. and any of its subsidiaries and any corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970; 5 of 1970

(ii) “Commission agent” means a person who, in the ordinary course of business, makes contract for the sale or purchase of goods for others for a remuneration (whether known as commission or otherwise) which is determined in

Provided that members to be so appointed shall be persons of ability, integrity and standing who have shown capacity in dealing with problems relating to commerce or commodity markets, or in administration or who have special knowledge or practical experience in any matter which renders them suitable for appointment on the Commission.

CHAPTER III

RECOGNISED ASSOCIATIONS

5. (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 the prescribed manner to the Central Government.

Application
for
recognition
of
associations.

(2) Every application made under subsection (1) shall contain such particulars as may be prescribed and 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 readmission of members therefrom or thereinto;
- (d) the procedure for registration of partnerships as members of the association and the nomination and appointment of authorised representatives and clerks.

Grant of
recognition
to
association.

6. (1) If the Central Government, after making such inquiry as may be necessary in this behalf and after obtaining such further information, if any, as it may require, is satisfied that it would be in the interest of the trade and also in the public interest to grant recognition to the association which has made an application under section 5, it may grant recognition to the association in such form and subject to such conditions as may be prescribed or specified, and shall specify in such recognition the goods or classes of goods with respect to which forward contracts may be entered into between members of such association or through or with any such member.

(2) Before granting recognition under subsection (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 of members as may be specified;

- (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 on, and of not more than three persons representing interests not directly represented through 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) No rules of a recognised association shall be amended except with the approval of the Central Government.

(4) Every grant of recognition under this section shall be published in the Gazette of India and also in the Official Gazette of the State in which the principal office of the recognised association is situate, and such recognition shall have effect as from the date of its publication in the Gazette of India.

11. (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.

Power of recognised association to make bye-laws.

(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 default or 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 dealing 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) the regulation of 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 including the power to fix maximum and minimum prices;**
- (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—

(a) specify the bye-laws the contravention of any of which shall make a contract entered into otherwise than in accordance with the bye-laws void under sub-section (2) of section 15;

(aa) specify the bye-laws the contravention of any of which shall make a forward contract entered into otherwise than in accordance with the bye-laws illegal under sub-section (3A) of section 15;

(b) provide that the contravention of any of the bye-laws shall—

(i) render the member concerned liable to fine; or

(ii) 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 Gazette of India.

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.

12A. Any amendment of a bye-law under section 11 other than an amendment made in pursuance of clause (a) or clause (aa) of sub-section (3) of that section or under section 12 shall also apply to all forward contracts entered into before the date of its approval by the Central Government or before the date of its publication in the Gazette of India, as the case may be, and remaining to be performed on or after the said date.

Application of amendment of bye-laws to existing forward contracts.

Power of Commission to suspend member of recognised association or to prohibit him from trading.

12B. (1) If, in the interest of trade or in the public interest, the Commission considers it necessary to suspend a member from his membership of any recognised association or to prohibit such members from entering into any forward contract for the sale or purchase in his own name or through another member of a recognised association of any goods or class of goods, then, notwithstanding anything contained in any law for the time being in force or in the rules or bye-laws of a recognised association, the Commission may, after giving an opportunity to the member concerned of being heard, by order suspend his membership of any association or prohibit him from entering into any such contract.

(2) An order made under sub-section (1) shall specify the period for which the suspension

or prohibition is to have effect and such period may be extended from time to time but so as not to exceed three years in the aggregate.

(3) No order made under sub-section (1) in respect of any member of a recognised association shall affect the validity of any forward contract entered into or made by, with or through such member on or before the date of such order and remaining to be performed on or after the said date; but the Commission may make such provision as it deems fit in such order or in any subsequent order for the closing out of any such forward contract.

CHAPTER-III A

REGISTERED ASSOCIATIONS

14B. On receipt of an application under section 14A, the Commission, after making such enquiry as it considers necessary in this behalf, may by order in writing grant a certificate of registration or refuse to grant it:

Grant or
refusal of
certificate
of
registration.

Provided that before refusing to grant such certificate, the association shall be given an opportunity of being heard in the matter.

CHAPTER-IV

FORWARD CONTRACTS AND OPTIONS IN GOODS

15. (1) The Central Government may, by notification in the official Gazette, declare this section to apply to such goods or classes of goods and in such areas as may be specified in the notification, and thereupon, subject to the provisions contained in section 18, every forward contract for the sale or purchase of any goods specified in the notification which is entered into in the area specified therein otherwise than between members of a recognised association or through or with any such member shall be illegal.

Forward contracts in notified goods illegal or void in certain circumstances.

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

Prohibition of options in goods.

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

section 15], with imprisonment which may extend to one year and also with fine: provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the court, imprisonment shall be not less than one month and the fine shall be not less than one thousand rupees.

21. Any person who—

penalty for
owning or
keeping
place used
for entering
into
forward
contracts
in goods.

(h) manipulates or attempts to manipulate prices in respect of forward contracts for the sale or purchase of any goods specified in any notification under section 15, in any area specified in that notification,—

shall on conviction, be punishable—

- (i) for a first offence, with imprisonment which may extend to two years, or with a fine of not less than one thousand rupees, or which both;
- (ii) for a second or subsequent offence, with imprisonment which may extend to two years and also with fine: provided that in

