

Clause-by-clause comments of Cooperative Development Foundation, Hyderabad, Andhra Pradesh
Submitted to Parliamentary Standing Committee on Finance

Micro Financial Sector Development and Regulation Bill 2007

(Bill No 41 of 2007)

(As introduced by the Union Finance Minister in Lok Sabha on 20th March 2007)

Text of Micro Finance Bill 2007	Comments of Cooperative Development Foundation
<p style="text-align: center;">Preamble</p> <p>A Bill to provide for promotion, development and orderly growth of the micro finance sector in rural and urban areas for providing an enabling environment for ensuring universal access to integrated financial services, especially to women and certain disadvantaged sections of the people, and thereby securing prosperity of such areas and regulation of the micro finance organisations not being regulated by any law for the time being in force and for matters connected therewith or incidental thereto.</p> <p>Be it enacted by Parliament in the fifty-eighth year of the Republic of India as follows:</p>	<p>The purported objective of this Bill is for</p> <ol style="list-style-type: none">1. promotion, development and orderly growth of the micro finance sector in rural and urban areas;2. prosperity of such rural and urban areas;3. universal access to integrated financial services, especially to women and certain disadvantaged sections of the people;4. regulation of the micro finance organisations not being regulated by any law for the time being in force; and5. matters connected therewith or incidental thereto. <ul style="list-style-type: none">• It is absolutely necessary to review various important provisions in the Bill before we come to a conclusion whether the Bill fulfils the stated objective.

	<ul style="list-style-type: none"> The proposed legislation is an extremely complicated piece. If the objective of the Bill is to create universal access to integrated financial services, especially to women and to certain disadvantaged sections of the people, we will need thousands and thousands of institutions that have to be managed by “average” and “below average” people. This piece of proposed legislation is beyond the comprehension of the persons who have drafted it and also of the persons who are able to read it, leave alone “average” and “below average” people.
<p>1. Short title and commencement:</p> <p>(1) This Act may be called the Micro Financial Sector (Development and Regulation) Act 2007.</p> <p>(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:</p> <p>Provided that different dates may be appointed for different provisions of this Act and any reference in such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.</p>	<p>-----</p> <p>-----</p> <p>-----</p>

<p>2. Definitions:</p> <p>In this Act, unless the context otherwise requires,</p> <p>(a) "cooperative society" means a society as defined in clause (f) of section 2 of the National Bank for Agriculture and Rural Development Act 1981 and includes a cooperative society registered under the Multi State Cooperative Societies Act 2002 and mutually aided or mutual benefit cooperative society registered under any other law relating to cooperative societies for the time being in force in any state;</p>	<p>We will review this provision in detail at Section 2(e) wherein the expression "cooperative society" is used again while defining the expression "micro finance organisation."</p>
<p>.....</p> <p>(b) "eligible client" means any member of a self help group or a self help group itself or any other groups formed for the purposes of providing micro finance services belonging to anyone of the following categories, namely:</p> <p>(i) farmers owning not more than two hectares of agricultural land or such area of agricultural land as may be prescribed;</p> <p>(ii) disadvantaged cultivators of agricultural land including oral lessees, tenants, share croppers;</p> <p>(iii) landless labourers and migrant labourers;</p> <p>(iv) artisans, micro entrepreneurs and persons engaged in small and tiny economic activities;</p> <p>(v) women;</p> <p>(vi) such other categories as may be prescribed;</p>	<p>.....</p> <p>Anyone of the following individuals will be recognised as an "eligible client" only when such individual is a member of a self help group or of any other group formed for providing "micro finance services" [This expression is defined at Section 2(e)].</p> <ol style="list-style-type: none"> 1. small farmer as defined by the GoI; 2. oral lessee; 3. tenant; 4. share cropper; 5. landless labourer; 6. migrant labourer; 7. artisan; 8. micro entrepreneur; 9. person engaged in small economic activities; 10. person engaged in tiny economic activities;

	<p>11. woman; and</p> <p>12. such other individual as may be prescribed by GoI.</p> <p>A self help group (SHG) itself is defined as an “eligible client”.</p> <p>Even when a person belongs to any of the above categories but does not become a member of an SHG or of any group that is formed for the purpose of providing micro finance services, that person will not be taken as an “eligible client”.</p> <p>Even when a person belongs to any of the above categories and becomes a member of an SHG or of any group that is formed for the purposes other than the purpose of providing micro finance services, that person will not be taken as an “eligible client”.</p> <p>A person, who belongs to any of the above categories, will be taken as an “eligible client”, only when that person is a member of an SHG or of any group that is formed for the purpose of providing micro finance services.</p> <p>In effect, it means that the micro finance services of a micro finance organisation (MFO) will be available only to the persons who belong to any one of the above categories and who, at the same time, are members of an SHG or of any group that are formed for the purpose of providing micro finance services.</p>
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<p>(c) "financial assistance" means any loan, advance, grant or any guarantee given or any other credit facility extended in cash or kind with or without security or guarantee;</p>	<p>"financial assistance" means</p> <ol style="list-style-type: none"> 1. loan; 2. advance; 3. grant; 4. guarantee; or 5. credit. <p>"credit" means</p> <ol style="list-style-type: none"> (a) credit facility in cash, with security; (b) credit facility in cash, without security; (c) credit facility in cash, with guarantee; (d) credit facility in cash, without guarantee; (e) credit facility in kind, with security; (f) credit facility in kind, without security; (g) credit facility in kind, with guarantee; or (h) credit facility in kind, without guarantee. <p>The expression "financial assistance" is used for the purpose of defining the expression "micro finance services" in Section 2(e).</p>
<p>(d) "group" means any association of eligible clients formed either as self help group or joint liability group or a group called by any other name for the purpose of providing thrift services and micro finance services to the individual members of such association;</p>	<p>"group" means an association of "eligible clients" called</p> <ol style="list-style-type: none"> 1. self help group (SHG); 2. joint liability group (JLG); or 3. a group called by any other name <p>for the purpose of providing "thrift services" and "micro finance services" to the members of such association.</p>

	<p>There is a clear contradiction between the description of a “group” in Section 2(b) and the definition of a “group” in Section 2(d). The “group” that is described in Section 2(b), it is sufficient if it is formed for the purpose of providing “micro finance services”, an expression that does not include “thrift services”. The “group” that is defined in Section 2(d), it is necessary that it is formed for the purpose of providing “micro finance services” as well as “thrift services” that are two distinct and separate services under the proposed legislation.</p>
<p>(e) "micro finance organisation" means an organisation, other than group, established for the purpose of carrying on the business of extending micro finance services and includes the following:</p> <ul style="list-style-type: none"> (i) a society registered under the Societies Registration Act 1860 or any other state enactment governing such societies; (ii) a trust created under the Indian Trusts Act 1882 or public trust registered under any state enactment governing trust for public, religious or charitable purposes; (iii) a cooperative society or mutual benefit society or mutually aided society registered under any state enactment relating to such societies or any multi state cooperative society registered under the Multi State Cooperative Societies Act 2002, but not including: 	<p>.....</p> <p>"micro finance organisation" means an organisation, other than a “group”, established for the purpose of providing “micro finance services”, including the following legal entities:</p> <ul style="list-style-type: none"> 1. a “society” registered under the Societies Registration Act 1860; 2. a “society” registered under any other state enactment governing societies; 3. a “private trust” created under the Indian Trusts Act 1882; 4. a “public trust” registered under any state enactment governing trusts for public, religious, or charitable purposes 5. a “cooperative” registered under the Cooperative Societies Act 1912; 6. a “cooperative” registered under any law relating to cooperative societies for the time being in force; 7. a “multi-state cooperative” registered under the Multi State Cooperative Societies Act 2002; 8. a “mutually aided cooperative” or “mutual benefit cooperative” registered

under any other law relating to cooperative societies for the time being in force in any state; and

9. a “mutually aided society” or “mutual benefit society” registered under any state enactment relating to such societies.

A “mutual benefit society” can be incorporated under Section 620A of the Companies Act 1956, which is an union law. Obviously, that is not covered by item 9 above. There is no state enactment in any part of the country that enables registration of “mutually aided society” or “mutual benefit society”. It may be noticed that “mutually aided society” and “mutual benefit society” are not same as “mutually aided cooperative” and “mutual benefit cooperative”.

By implication, it is clear that a society, a private trust, a public trust, a cooperative, a mutual benefit society, etc that are providing, to “eligible clients”, financial services that are above the limits of “micro financial services” will not fall within the purview of the proposed regulation.

Similarly, by implication, it is clear that any of the above entities that are providing “micro financial services” to non-eligible clients will not fall within the purview of the proposed regulation.

Again, by implication, it is clear that any of the above entities that are providing, to non-eligible clients, financial services that are above the limits of micro financial services will not fall within the purview of the proposed regulation.

	<p>Since, in the three instances explained above, none of the entities is an MFO as defined in this Bill, they need not file any return under Section 18 nor do they need a certificate of registration under Section 10 to provide “thrift services”.</p> <p>It is quite possible that there might be organisations that are not established for the purpose of extending “micro finance services” and/or “thrift services” but, in practice, provide such services. The proposed legislation does not address such situations. Provision of “micro finance services” and/or “thrift services” by such organisations apparently seems to be legal or, at least, such organisations do not attract the provisions of the proposed legislation.</p>
<p>.....</p> <p>(A) a cooperative bank as defined in clause (cci) of section 5 of the Banking Regulation Act 1949; or</p>	<p>.....</p> <p>Apex cooperative bank [widely known as state apex cooperative bank (SCB)], central cooperative bank [widely known as district central cooperative bank (DCCB)] and primary cooperative bank [widely known as urban cooperative bank (UCB)] are excluded from the purview of this legislation. These so-called “cooperative banks” are regulated by the RBI under the Banking Regulation Act.</p>
<p>.....</p> <p>(B) a cooperative society engaged in agricultural operations or industrial activity or purchase or sale of any goods and services</p>	<p>.....</p> <p>Cooperatives that are known in the Gol, the RBI and the Nabard parlance as non-credit cooperatives are also excluded from the purview of this legislation.</p>

<p>(f) "micro finance services" means</p> <p>(i) providing financial assistance to an individual or an eligible client being under any of the sub-clauses (i) to (vi) of clause (b) either directly or through a group mechanism for</p> <p>(A) an amount, not exceeding rupees fifty thousand in aggregate per individual, for small and tiny enterprise, agriculture, allied activities (including for consumption purposes of such individual), or</p>	<p>The expression "financial assistance" that is used here is already defined at Section 2(c) as</p> <ol style="list-style-type: none"> 1. loan; 2. advance; 3. grant; 4. guarantee; or 5. credit: and "credit" means <ol style="list-style-type: none"> (a) credit facility in cash, with security; (b) credit facility in cash, without security; (c) credit facility in cash, with guarantee; (d) credit facility in cash, without guarantee; (e) credit facility in kind, with security; (f) credit facility in kind, without security; (g) credit facility in kind, with guarantee; or (h) credit facility in kind, without guarantee.
<p>(B) an amount not exceeding rupees one lakh fifty thousand in aggregate per individual for housing purposes; or</p>	<p>Here, Section 2(f)(i) is defining "micro finance services" as "financial assistance" up to Rs 1,50,000 for housing purpose under 2(f)(i)(B), up to Rs 50,000 for other specified purposes under 2(f)(i)(A), or any amount for any purpose as prescribed by the GoI under 2(f)(i)(C).</p>
<p>(C) such other amounts, for any of the purposes mentioned at items (A) and (B) above or other</p>	<p>Basically, Section 2(f)(i) is about quantum of "financial assistance" and purposes for which "financial assistance" can be availed.</p>

<p>purposes, as may be prescribed;</p>	<p>Strangely, Section 2(f)(i) permits individuals, other than the “eligible clients”, to avail “micro finance services” from a “micro finance organisation” that is defined at Section 2(e).</p>
<p>(ii) financial services to an eligible client or individual borrower under any of the sub-clauses (i) to (vi) of clause (b) through the business facilitator or business correspondent mechanism authorised by the scheduled banks or any such other agency as may be permitted by the Reserve Bank of India;</p>	<p>It is not clear why the expression <i>financial services</i> [that is not defined anywhere in the Bill] is used instead of “financial assistance” [that is defined at Section 2(c) and already used in Section 2(f)(i)].</p> <p>It is also not clear why the expression <i>individual borrower</i>, which is separate from the expression <i>eligible client</i>, is brought into the picture.</p> <p>One thing becomes clear from Section 2(f): a “micro finance organisation” may provide one or more “micro finance services”, an expression that does not include “thrift services”. The expression “thrift services” is defined separately in Section 2(l) and it is different from “micro finance services”.</p> <p>The RBI has recently endorsed a scheme titled “<i>The Business Facilitator or Business Correspondent Mechanism</i>”, through non-statutory guidelines, for the banks that are regulated by it. We understand that the real parents of this mechanism are the ICICI Bank and some other new generation private banks. It is still a toddler. However, the Gol, in its wisdom, is trying to provide a statutory support to this scheme as far as “micro finance organisations” are concerned. When a micro finance organisation itself, in a sense, is a</p>

	<p><i>business facilitator</i> and/or <i>business correspondent</i>, where is the need for including this scheme in the MF Bill? Why did the Banking Division of the Union Finance Ministry exclude the expression <i>Business Agent</i> from the aforesaid mechanism?</p> <p>The ICICI Bank and some other new generation private banks are also credited with the parentage of one more “innovation” known as “<i>The Loan Recovery Facilitator or Correspondent or Agent Mechanism</i>”. The recently released convicts, with "impressive" track records, seem to be engaged for implementation of this mechanism. The results of this “innovative mechanism” are just trickling in around Hyderabad and elsewhere. Already we have some deceased and many injured loan defaulters because of the "friendly" treatment meted out to them under “<i>The Loan Recovery Mechanism</i>”. The Banking Division, the RBI and the Nabard seem to be studying the “impressive” loan recoveries. Initially, the RBI may issue guidelines to all banks extending the mechanism to all banks. Then, the Banking Division will extend statutory support to “<i>The Loan Recovery Mechanism</i>”, by getting an amendment enacted in some bill or other.</p>
<p>.....</p> <p>(iii) life insurance or general insurance services and pension services which have been approved by the authority regulating such services;</p>	<p>.....</p> <p>A statute is not expected to include such vague provisions. However, when the core purpose of the Bill is flawed, one may ignore some of these indiscreet intrusions.</p>

<p>(iv) any other services as may be specified by regulations made by the National Bank;</p>	<p>The definition of the “National Bank” is given in Section 2(g) below. The “National Bank” [i.e. the Nabard] seems to be vested with quite a few divine powers. The expression “micro finance services” is being defined as <i>any other services</i> specified by the “National Bank”.</p>
<p>(g) "National Bank" means the National Bank for Agriculture and Rural Development established under section 3 of the National Bank for Agriculture and Rural Development Act 1981;</p>	<p>-----</p>
<p>(h) "notification" means a notification published in the Official Gazette;</p>	<p>-----</p>
<p>(i) "prescribed" means prescribed by rules made under this Act;</p>	<p>-----</p>
<p>(j) "Reserve Bank" means the Reserve Bank of India constituted under section 3 of the Reserve Bank of India Act 1934;</p>	<p>-----</p>
<p>(k) "scheme" means the scheme framed under sub-section (1) of section 24;</p>	<p>This definition seems to be superfluous, as the word “scheme” is used in only one place in the Bill [Section 24(1)] and it is explicit where it is used. It is used only in the context of “micro finance ombudsman”.</p>
<p>(l) "thrift" means any monies collected (other than in the form of current account or demand deposit) by a micro finance organisation from a group or by a group from its members</p>	<p>This Bill does not define the expressions <i>current account</i> and <i>demand deposit</i>, nor are these expressions defined in the RBI Act 1934, in the Banking Regulation Act 1949 and in the Nabard Act 1981. In the absence of</p>

<p>through the group mechanism, not exceeding such amounts and subject to such other terms and conditions as may be prescribed;</p>	<p>the definitions of these expressions, the definition of the word “thrift” is certainly ambiguous.</p> <p>Section 2(f) and Section 2(l) make a clear distinction between the expressions “micro finance services” and “thrift services”. A “micro finance organisation” [Section 2(e)] may choose to provide both the services; it may choose to offer only “micro finance services” and not “thrift services”; however, it is not clear from the provisions of the Bill whether a “micro finance organisation” can choose to provide only “thrift services” and not “micro finance services”. This distinction assumes importance in the context of the provisions in Chapter III, which deals with the subject of registration of “micro finance organisations” with the Nabard.</p> <p>It is quite possible that many of the entities listed in Section 2(e) may not be providing any “micro financial services” and, therefore, such entities cannot be taken as MFOs. If they are already providing “thrift services” or if any of them want to provide “thrift services”, they need not possess a certificate of registration under Section 10, since they are not MFOs. Only MFOs (i.e. the entities that are providing “micro financial services”) can apply for registration under Section 9.</p>
<p>.....</p> <p>(m) words and expressions used herein and not defined but defined in the Reserve Bank of India Act 1934, the Banking Regulation Act 1949 and the National Bank for Agriculture and Rural</p>	<p>.....</p> <p>There are quite a few words and expressions that have been used, but not defined, in this Bill, nor are they defined in the RBI Act 1934, in the BR Act 1949 and in the Nabard Act 1981. The Nabard Act [Section 2(x)] advises us</p>

<p>Development Act 1981 shall have the meanings respectively assigned to them in those Acts.</p>	<p>to go to the BR Act and the RBI Act; the BR Act [Section 5(o)] advises us to go the Companies Act 1956; the RBI Act is silent.</p>
<p style="text-align: center;">Chapter II Micro Finance Development Council</p> <p>3. Constitution of Micro Finance Development Council: The Central Government may, by notification, constitute a Council to be known as the Micro Finance Development Council, to advise the National Bank on formulation of policies, schemes and other measures required in the interest of orderly growth and development of the micro finance sector.</p>	<p>The so-called “Micro Finance Development Council (MFDC)” is merely an appendage of the Nabard, the proposed micro finance regulator. On and off, at the instance of the Nabard, it plays the role of an adviser and nothing more.</p> <p>The proposed Council is only a glorified version of an existing Council that is supposed to have been guiding and rendering advice to the GoI, the RBI and the Nabard on various aspects relating to micro financial sector. This information is given in a recent article in a business newspaper. It seems that the existing Council is established through an administrative order.</p>
<p>4. Composition of Micro Finance Development Council: The Micro Finance Development Council shall consist of the following members, namely: (a) a person of eminence, with experience in banking, rural credit</p>	<p>One will be naturally interested to know the composition of the existing Council. It is learnt from the news item that it is a non-functioning Council. It consists of:</p>

<p>and micro finance, to be nominated by the Central Government – the Chairperson;</p> <p>(b) two officers, not below the rank of a Joint Secretary to the Government of India, one each to be nominated by the Ministry of Finance and the Ministry of Rural Development – Member;</p> <p>(c) an officer, not below the rank of an Executive Director of the Reserve Bank of India, to be nominated by it – Member;</p> <p>(d) one of the directors, referred to in clause (b) sub-section (1) of section 6 of the National Bank of Agriculture and Rural Development Act, 1981, to be nominated by the National Bank – Member;</p> <p>(e) an officer, not below the rank of an Executive Director of the Small Industries Development Bank of India established under the Small Industries Development Bank of India Act, 1989, to be nominated by it – Member;</p> <p>(f) an officer, not below the rank of an Executive Director of the National Bank dealing with micro finance, to be nominated by it – Member;</p> <p>(g) an officer, not below the rank of an Executive Director of the National Housing Bank established under the National Housing Bank Act 1987, to be nominated by it – Member;</p> <p>(h) not more than six persons, of whom at least two shall be women, to be nominated by the Central Government in consultation with the National Bank from amongst persons with experience in</p>	<ol style="list-style-type: none"> 1. Shri Vijay Mahajan, Chairman, BASIX, Hyderabad, Andhra Pradesh 2. Shri AP Fernandez, Executive Director, MYRADA, Bangalore, Karnataka; 3. Shri MP Vasimalai, Executive Director, Dhan Foundation, Madurai, Tamil Nadu; 4. Shri Mathew Titus, Executive Director, Sa-Dhan, New Delhi; 5. Smt Rosemary Sebastian, General Manager, RBI; 6. Shri Anup Bannerji, Deputy Managing Director, State Bank of India; 7. Shri Nachiket Mor, Deputy Managing Director, ICICI Bank. <p>The names of the representatives of the Gol and the Nabard are not given.</p> <p>It will be interesting to know how this Council has been functioning and what has been its contribution to the promotion and development of micro financial sector since it was formed. It will also be interesting to know whether the MoF, the RBI and the Nabard have consulted this Council in respect of the Bill under consideration.</p>
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<p>banking, rural credit and micro finance or the representatives of micro finance organisations or scheduled banks or any other institutions providing thrift services or micro finance services – Members.</p>	
<p>5. Functions of Micro Finance Development Council: The Micro Finance Development Council shall advise the National Bank in matters relating to micro finance or on such other matters as may be referred to the Micro Finance Development Council by the National Bank.</p>	<p>The Union Ministry of Finance claims that it had consulted the Union Ministry of Rural Development, the Union Ministry of Women Welfare, the RBI and the Nabard, before giving the final shape to the MF Bill. It will be interesting to know whether the Nabard thought it advisable to seek the advice of the existing MFDC. If the answer is “yes”, what might have been the advice of the existing Council that comprises the captains of the micro finance industry in India?</p>
<p>6. Tenure and allowances of members of Development Council: A member of the Micro Finance Development Council shall hold office for such term not exceeding five years, as the Central Government may fix, and receive such fees and allowances as may be specified by regulations for attending the meetings of the Micro Finance Development Council.</p>	<p>-----</p>
<p>7. Meetings of Micro Finance Development Council: The Micro Finance Development Council shall meet at such times and places and shall observe such rules of procedure in regard to the</p>	<p>The regulations will be formulated and reformulated by the Nabard.</p>

<p>transaction of business at its meetings, as may be specified by regulations.</p>	
<p style="text-align: center;">Chapter III</p> <p style="text-align: center;">Registration of Micro Finance Organisations</p> <p>8. Prohibition to commence or carry on business of offering thrift services to eligible clients in certain cases:</p> <p>Notwithstanding anything contained in the Reserve Bank of India Act 1934 and the Banking Regulation Act 1949 and save as otherwise provided in this Act, no micro finance organisation shall commence or carry on the business of offering thrift services to eligible clients without obtaining a certificate of registration from the National Bank under this Act.</p>	<p>In this chapter, one can see a part of real nature of the proposed legislation. There will be at least four categories of “micro finance organisations”.</p> <p><i>First category:</i> “Micro finance organisations” (the entities that provide “micro financial services” to “eligible clients”, which are already providing or which intend to provide “thrift services” to “eligible clients”, have to get a certificate of registration from the Nabard under Section 10.</p> <p><i>Second category:</i> “Micro finance organisations”, which mobilise funds through begging, borrowing, cheating, stealing, etc and use such funds for providing “micro finance services” [along with several self-serving services], to “eligible clients” need not get a certificate of registration from the Nabard under Section 10, if they choose not to offer “thrift services” to “eligible clients”. However, they have to file specified returns with the Nabard under Section 18.</p> <p><i>Third category:</i> The entities (societies, private trusts, public trusts, cooperatives, etc) that are listed in Section 2(e) can offer “micro financial services” as well as “thrift services” to persons other than “eligible clients”,</p>

	<p>without obtaining a certificate of registration from the Nabard under Section 10. They need not file any return with the Nabard under Section 18. The proposed legislation does not classify them as MFOs.</p> <p><i>Fourth category:</i> The entities that are listed in Section 2(e) can extend financial assistance to the “eligible clients” beyond the limits imposed in Section 2(f) and, therefore, not classified as MFOs. These entities, even though they are providing financial services and thrift services to the “eligible clients”, will not come under the purview of the proposed regulation.</p> <p>Thus, (1) all regulatory provisions in the Bill will be applicable to the certified MFOs, (2) only some regulatory provisions will be applicable to the uncertified MFOs, and (3) no regulations will be applicable to certain entities even though they happen to be in the business of financial services, including micro financial services and thrift services.</p>
<p>9. Application for registration:</p> <p>(1) Every micro finance organisation, which intends to commence the business of offering thrift services to eligible clients, shall make an application for registration to the National Bank in such form and manner along with such fee as may be specified by regulations.</p>	<p>A society, a private trust, a public trust, or a cooperative that is in the business of offering macro and/or “micro financial services” to persons who are not “eligible clients” need not make an application for registration as and when it intends to commence the business of offering “thrift services” to persons who are not “eligible clients”.</p> <p>It may very well be surmised that the above mentioned entities need not obtain a certificate of registration from the Nabard under Section 10 nor file a return with the Nabard under Section 18 as long as they are in the business</p>

	<p>of offering “micro financial services” and/or “thrift services” to persons other than “eligible clients” and as long as they are in the business of offering to “eligible clients” financial services that exceed the limits imposed under the definitions of expressions “micro financial services” and “thrift services”.</p> <p>Several societies, private trusts, public trusts, cooperatives, etc can continue or commence the business of offering “financial services” and “thrift services” to the public at large, without being regulated under the proposed legislation. Could we say that the business of these entities would amount to doing “banking” without obtaining a “banking licence” from the RBI under the provisions of the Banking Regulation Act 1949?</p>
<p>.....</p> <p>(2) If any micro finance organisation, in existence on the commencement of this Act and offering thrift services, intends to continue to do so, it shall before the expiry of six months from such commencement, apply in writing to the National Bank for obtaining a certificate of registration under this Act:</p>	<p>.....</p> <p>Here, we have a tacit admission by the Union Ministry of Finance, the RBI and the Nabard that there are societies, private trusts, public trusts, etc which have been offering not only “micro financial services (i.e. mainly credit services)” but also “thrift services (i.e. saving and deposit services)” to the public at large. To be precise, these entities have been and continue to be in the business of banking without obtaining a “banking licence’ from the competent authority (i.e. the RBI) and without their “banking business” being regulated. The Banking Regulation Act 1949 defines “banking” as “.....”</p> <p>The issue under discussion goes beyond the definition of “banking”. In fact, the lawmakers should ask:</p> <p>1 When and how did these entities enter into the business of banking?</p>

	<ol style="list-style-type: none"> 2 Do the conceptual, constitutional and statutory provisions allow these entities to do business of banking? 3 How a statute (the proposed legislation) can over-ride constitutional provisions? 4 Are the words and expressions “society”, “private trust”, “public trust”, “cooperative”, “trade union”, “partnership firm”, etc used in the Constitution, without any reference to their concepts? 5 Are these words and expressions used in the Constitution casually?
<p>.....</p> <p>Provided that, in the case of a micro finance organisation in existence on the commencement of this Act, nothing in sections 8 and 9 shall be deemed to prohibit such micro finance organisation from carrying on the business of a micro finance organisation, until it is granted a certificate of registration or is by notice in writing informed by the National Bank that a certificate of registration cannot be granted to it.</p>	<p>.....</p> <p>This proviso is <i>copied</i> from the Banking Regulation Act 1949 and <i>pasted</i> in this Bill. Similar <i>facility</i> was given to cooperatives that had been sucked in to provide banking services to members and non-members when the Banking Regulation Act 1949 was made applicable to cooperative banks with effect from 1st March 1966 i.e. 41 years ago. Cooperative banks [around 1100 primary urban cooperative banks (UCBs), around 350 district central cooperative banks (DCCBs), and 20 state apex cooperative banks (SCBs)] submitted, in 1966 itself, applications to the RBI for issuance of banking licences. On 1st April 2007, out of more than 1500 applicant-banks, there are more than 500 UCBs, 300 DCCBs and 17 SCBs whose applications are still pending with the RBI. However, these so-called <i>cooperative banks</i> continue to do banking business without possessing a banking licence that is supposed to be issued by the RBI. Has the RBI rejected the applications? No, it has not; they are lying in the shelves of the RBI offices for 41 years.</p>

<p>10. Grant of certificate:</p> <p>(1) The National Bank may, for the purpose of considering the application of a micro finance organisation for grant of a certificate of registration to the business of offering thrift services to eligible clients, require to be satisfied, by an inspection of records or books of such micro finance organisation or otherwise that the following conditions are fulfilled, namely:</p> <hr/> <p>(a) that the general character of the management or the proposed management of the applicant micro finance organisation shall not be prejudicial to the interest of members of the group or eligible clients;</p> <hr/> <p>(b) that the grant of certificate of registration to the applicant micro finance organisation is for promotion and development of micro finance sector;</p> <hr/> <p>(c) the net owned funds of the micro finance organisation are at least Rs 5 lakhs, which have been created out of promoter's contributions or grants or donations received by the micro finance organisation;</p>	<p>-----</p> <hr/> <p>A person will be called an “eligible client” only when that person is a member of a “group”. Therefore, the expression “members of the group or eligible clients” sounds strange.</p> <hr/> <p>-----</p> <hr/> <p>Get a grant and/or donation of Rs 5 lakhs from the Micro Finance Development and Equity Fund (MFDEF), constituted and managed by the Nabard under Section 22, apply for registration under Section 9, and obtain certificate under Section 10. Once a certificate of registration is obtained, an</p>
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	MFO can start mobilising thrift from “eligible clients”. Why should an MFO mobilise “thrift” from “eligible clients” only; why not from other individuals and institutions!
<p>.....</p> <p>(d) the micro finance organisation is in existence for at least three years on the day such micro finance organisation makes an application for grant of a certificate of registration;</p> <p>.....</p>	<p>.....</p> <p>-----</p>
<p>.....</p> <p>(e) any other condition, which may be specified by regulations made by the National Bank.</p> <p>.....</p>	<p>.....</p> <p>-----</p>
<p>.....</p> <p>(2) The National Bank may, after being satisfied that the conditions as referred to in sub-section (1) are fulfilled, grant a certificate of registration to the applicant micro finance organisation to commence or carry on the business of offering thrift services to eligible clients subject to such conditions which it may consider fit to impose:</p> <p>Provided that no application shall be rejected unless the applicant has been given an opportunity of being heard.</p>	<p>.....</p> <p>-----</p>

11. Power of National Bank to cancel certificate of registration:

- (1) The National Bank may cancel a certificate of registration granted to a micro finance organisation under sub-section (2) of section 10, if such micro finance organisation:
 - (i) ceases to carry on the business of offering thrift services to eligible clients; or
 - (ii) has failed to comply with any of the conditions subject to which the certificate of registration has been granted to it; or
 - (iii) fails
 - (a) to comply with any direction issued by the National Bank under the provisions of this Act;
 - (b) to submit or offer for inspection its books of account and other relevant documents, which so demanded by the officers, persons or agency referred to in sub-section (1) of section 21.
- (2) Before cancelling the certificate of registration granted to a micro finance organisation under this section, the National Bank shall grant time to such micro finance organisation on such terms and conditions as the National Bank may deem appropriate for taking necessary steps to comply with such directions or fulfillment of such conditions, within in the time granted by the National Bank: Provided that if the National Bank is of the opinion that the delay

<p>in cancelling the certificate of registration of such micro finance organisation shall be prejudicial or detrimental to the public interest or banking policy or credit system or micro financial sector or eligible clients or an individual under any of the sub-clauses (i) to (vi) of clause (b) of section 2, the National Bank may cancel the certificate of registration without granting time.</p>	
<p>12. Power to prohibit acceptance of thrift:</p> <p>If any micro finance organisation violates any provisions of this Act or fails to comply with any direction given or order issued by the National Bank under this Act, the National Bank may prohibit the micro finance organisation from accepting any thrift subject to such conditions as the National Bank deems fit.</p> <p>Provided that, before passing any such order, the micro finance organisation shall be given a reasonable opportunity of being heard.</p>	<p>Only such organisations that provide "financial assistance" to "eligible clients" will be called "micro finance organisations". They file returns with Nabard under Section 18. When an MFO provides "thrift services" to "eligible clients", it obtains registration certificate from Nabard. An organisation that does not provide "financial assistance" but does provide "thrift services" is not an MFO. Nabard cannot prohibit such organisation from accepting thrift.</p>
<p>13. Appeal against certain cases:</p> <p>(1) A micro finance organisation aggrieved by the order of rejection of an application for grant of certificate of registration under section 10 or cancellation of certificate of registration under section 11 or an order prohibiting from acceptance of thrift under section 12 or an order for winding up of the micro finance organisation under sub section (3) of section 21 may prefer an</p>	<p>Section 21(3) does not speak of "winding up of a micro finance organisation". For that matter, no other provision of this Bill speaks of some one issuing "an order for winding up of the micro finance organisation". In the absence of such order, how an appeal arises against a non-existent order!</p>

<p>appeal to the Central Government or such other authority, as the Central Government may by notification specify, within a period of 60 days from the date on which such order of rejection or cancellation or prohibition from acceptance of thrift or of winding up of the micro finance organisation, as the case may be, is communicated to the micro finance organisation.</p> <p>.....</p> <p>(2) The decision of the Central Government or the authority referred to in sub-section (1), where an appeal has been preferred to it under sub-section (1), shall be final.</p>	<p>.....</p> <p>-----</p>
<p style="text-align: center;">Chapter IV</p> <p style="text-align: center;">Reserve, Accounts, Audit and Returns</p> <p>14. Obligation to create Reserve Fund:</p> <p>(1) Every micro finance organisation registered with National Bank under this Act for offering thrift services to members of groups through the group mechanism shall create a reserve fund and transfer therein a sum, not less than fifteen per cent of its net profit or surplus realized out of thrift services and micro finance services every year as disclosed in the profit and loss account or income and expenditure account before any dividend is declared or surplus is utilized for any other purpose.</p> <p>(2) No appropriation of any sum from the reserve fund shall be made by the micro finance organisation except for the purpose,</p>	<p>-----</p> <p>-----</p>

<p>as may be specified by the National Bank from time to time, and every such appropriation shall be reported to the National Bank within twenty-one days from the date of such appropriation.</p> <p>(3) The National Bank may, in the public interest or in the interest of the members contributing thrift, direct any micro finance organisation or any class of micro finance organisations providing thrift services to invest the whole or part of such reserve fund in such unencumbered securities as it may, by regulation, specify.</p>	<p>-----</p>
<p>15. Accounts and balance sheet:</p> <p>At the close of the financial year, every micro finance organisation providing thrift services in respect of thrift services and all other services transacted by it, shall prepare with reference to that year, a balance sheet and profit and loss account or an income and expenditure account as on the last working day of the financial year, in such forms as may be specified by regulations made by the National Bank.</p>	<p>-----</p>
<p>16. Audit:</p> <p>The balance sheet and profit and loss account or an income and expenditure amount prepared in accordance with section 15 shall be audited by a person duly qualified under any law for the time being in force to be an auditor of companies formed and registered under the</p>	<p>-----</p>

<p>Companies Act 1956 or an auditor appointed by the Registrar of Cooperative Societies of the state.</p>	
<p>17. Special audit:</p> <p>(1) Without prejudice to anything contained in the Companies Act 1956 or any other law for the time being in force, where the National Bank is of the opinion that it is necessary in the public interest or for the purpose of proper assessment of the records and books of account of the micro finance organisation accepting thrift or in the interest of its clients so to do, it may direct</p> <p>.....</p> <p>(a) the auditor of micro finance organisation accepting thrift to audit the accounts of the micro finance organisation in relation to any transaction or class of transactions, or for such period or periods as may be specified in the order, and the auditor shall comply with such directions and make a report of the audit with such information as it may be asked to report by the National Bank to it and forward a copy thereof to the micro finance organisation;</p> <p>.....</p> <p>(b) such micro finance organisation to appoint auditors, with the prior approval of the National Bank, for such period and subject to such conditions as the National Bank may specify from time to time.</p>	<p>In what way the Companies Act 1956 is relevant here!</p> <p>.....</p> <p>-----</p> <p>.....</p> <p>-----</p>

<p>(2) The auditor shall have the powers of, exercise the functions vested in, and discharge the duties and be subject to the liabilities and penalties imposed on auditors of companies by section 227 of the Companies Act 1956 and auditors, if any, appointed by the law establishing, constituting or forming the banking company under the Banking Regulation Act 1949.</p> <p>(3) The expenses of, or incidental to, audit specified in the order made by the National Bank under clause (a) of sub-section (1) shall be borne by the micro finance organisation concerned.</p>	<p>-----</p> <p>-----</p>
<p>18. Returns to be filed by Micro Finance Organisations:</p> <p>Save as otherwise provided in this Act, every micro finance organisation, whether engaged in providing thrift services or not at the commencement of this Act, shall within ninety days from the date of commencement of this Act, file with the National Bank a return containing particulars of its activities in such form and manner and thereafter at such intervals as may be specified by regulations, duly certified by a chartered accountant or a company secretary or an auditor appointed by the Registrar of Cooperative Societies of the state.</p>	<p>-----</p>

Chapter V

Functions and Powers of National Bank in relation to Thrift Services and Micro Finance Services

19. Functions and powers of National Bank:

- (1) Without prejudice to the provisions of National Bank for Agriculture and Rural Development Act 1981 and subject to the provisions of this Act, it shall be the duty of the National Bank to promote and ensure orderly growth of the micro financial sector by such measures as it may think fit. -----
- (2) Without prejudice to the generality of the foregoing provisions contained in sub-section (1), the measures may provide for -----
 - (a) formulating and facilitating formulation of appropriate policy for the orderly growth of the micro financial sector so as to ensure greater transparency, effective management, good governance and to facilitate the flow of thrift services and micro finance services in the most efficient manner; -----
 - (b) setting or facilitating the setting of sector related benchmarks and performance standards pertaining to methods of operation, method of recovery, management and governance including model codes for conduct of business for micro finance organisations engaged in providing of thrift services and micro finance services; -----

(c) facilitating the development of credit rating norms or rating norms for other purposes for micro finance organisations;	-----
(d) specifying the form and manner of books of account to be maintained by micro finance organisations (other than those accepting thrift services);	-----
(e) specifying the form and manner of accounting of business operations of micro finance organisations and auditing standards relating thereto;	-----
(f) calling for information and data for the purposes of this Act from micro finance organisations for maintaining an appropriate data base in the public domain relating to micro finance sector and disseminating the same through a national dissemination network;	-----
(g) facilitating institutional development of all entities, including groups, engaged in the provision of thrift services and micro finance services through training and capacity building measures;	-----
(h) promoting customer education of all entities engaged in providing thrift services and micro finance services for greater awareness and for economic empowerment of micro finance clients;	-----
(i) supporting sector related research, field research, documentation and dissemination thereof;	-----
(j) coordinating with other agencies for orderly growth and	-----

<p>development of entities in the micro financial sector;</p> <p>(k) documenting and disseminating information relating to fair practices with a view to ensuring provision of thrift services and micro finance services at an affordable cost to eligible clients;</p> <p>(l) perform such other function as may be prescribed.</p>	<p>-----</p> <p>-----</p>
<p>20. Power to issue directions to micro finance organisations accepting thrift:</p> <p>(1) Where the National Bank is satisfied that, in the public interest or in the interest of the policy relating to micro finance organisations or to prevent the affairs of any micro finance organisation accepting thrift being conducted in a manner detrimental to the interests of the eligible clients thereof or in a manner prejudicial to the interest of the micro finance organisation or to secure the proper management of micro finance organisation, it is necessary to issue directions to such micro finance organisations generally or to any such micro finance organisation in particular, it may from time to time issue such directions as it deems fit, and the micro finance organisations or the micro finance organisation, as the case may be, shall be bound to comply with such directions.</p>	<p>-----</p>

<p>(2) The National Bank may, on representation made to it or on its own motion, modify or cancel any direction issued under subsection (1) and in so modifying or cancelling any direction may impose such conditions as it thinks fit, subject to which such modification or cancellation shall have effect.</p>	
<p>21. Inspection:</p> <p>(1) The National Bank may, at any time, cause inspection to be made of any micro finance organisation, whether accepting thrift or not, and its books of accounts by an inspecting authority approved by it in such manner and on such terms and conditions as may be specified by it and such inspecting authority shall submit a report to the National Bank in respect of inspection made by it.</p> <p>(2) A copy of the report of the inspection shall be furnished to the micro finance organisation if</p> <p>(a) the micro finance organisation makes a request for the same; or</p> <p>(b) if any action is contemplated against the micro finance organisation on the basis of such report.</p> <p>(3) If the National Bank, after considering the report, is of the view that the affairs of any micro finance organisation are being conducted to the detriment of its eligible clients, it may after</p>	<p>-----</p> <p>-----</p> <p>-----</p> <p>-----</p> <p>-----</p>

<p>giving such opportunity to the micro finance organisation to make a representation in connection with the report, take such action as it deems appropriate including winding up the micro finance operations of the organisation in accordance with the procedure which may be specified by regulations made by the National Bank.</p>	
<p style="text-align: center;">Chapter VI</p> <p style="text-align: center;">Constitution of Micro Finance Development and Equity Fund</p> <p>22. Grants by Central Government:</p> <p>The Central Government may, after due appropriation made by Parliament by law in this behalf, make to the National Bank, grants of such sums of money as the Government may think fit for being utilised for the purposes of this Act.</p>	<p>-----</p>
<p>23. Micro Finance Development and Equity Fund:</p> <p>(1) The National Bank shall constitute a fund to be called the Micro Finance Development and Equity Fund (hereafter called as “the Fund”) and there shall be credited thereto</p> <p>(a) all government grants received and fees payable under this Act;</p> <p>(b) all sums that may be raised by the National Bank from donors, governments, other entities, and public for the purpose of this Act;</p>	<p>-----</p> <p>-----</p> <p>-----</p>

<p>(c) any interest or other income received out of investments made from the Fund under clause (c) of sub-section (3);</p> <p>(d) the balance outstanding in the Micro Finance Development and Equity Fund maintained by the National Bank, before the commencement of this Act, shall, after such commencement, stand transferred to the Fund.</p> <p>(2) The Fund shall be managed by the Board of Directors of the National Bank in the manner as may be specified by regulations made by it.</p>	<p>-----</p> <p>-----</p> <p>-----</p>
<p>(3) The Fund shall be applied</p> <p>(a) to provide loan, refinance, grant, seed capital or any other financial assistance to any micro finance organisation or any other agency which the National Bank may specify in accordance with the regulations made by the National Bank;</p>	<p>-----</p> <p>It is widely recognised and strictly practiced rule that no regulatory authority should have any financial or non-financial stakes in the entities that are being regulated by that authority. A regulatory authority should confine itself to regulatory functions. When a regulatory authority is vested with functions that go beyond regulation, it will be harmful not only to the regulatory authority and to the entities that are being regulated but also to the real stakeholders, i.e. the users of the services provided by the regulated entities.</p> <p>-----</p>
<p>(b) to give grants or loans for training and capacity building of organisations engaged in micro finance services and personnel engaged in promoting and providing micro finance services and meeting other expenditure related to such training and capacity building on such terms and</p>	<p>-----</p>

<p>conditions as may be specified by regulations made by the National Bank;</p>	
<p>(c) to invest in equity or any other form of capital or quasi-equity of a micro finance organisation on such terms and conditions as may be specified by regulations made by the National Bank;</p>	<p>Investment in equity will be followed by a deep desire for higher and higher returns on the equity. No regulatory authority is expected to invest in the organisations that are to be regulated by that authority.</p>
<p>(d) to meet the expenses in relation to collection, analysis, and dissemination of information relating to micro finance, conduct of such research, experiments or studies as may be necessary and to design, promote, and propagate such practices as may be considered conducive to the growth of micro finance sector;</p>	<p>-----</p>
<p>(e) to meet any other expenses as may be required for the promotion of micro finance sector by National Bank under the regulations made by the National Bank under this Act;</p>	<p>-----</p>
<p>(f) to meet any other expenses (except salaries, allowances and other remuneration of officers and other employees of the National Bank) of the National Bank in connection with discharge of its functions as may be specified by the regulations made under this Act.</p>	<p>-----</p>

Chapter VII
Redressal Mechanism

24. Settlement of disputes through Micro Finance Ombudsman

(1) The National Bank may, in consultation with the Micro Finance Development Council, if deemed necessary, appoint as many micro finance ombudsmen as it may deem fit in accordance with a scheme framed under this section for the purpose of redressal of grievances between eligible clients and micro finance organisations, with powers to issue directions to the micro finance organisations.

- (2) Any such scheme of micro finance ombudsman may provide for the following:
- (a) appointment, terms of office, conditions of service, location of office of the ombudsman;
 - (b) nature of grievances and complaints that may be entertained by the ombudsman and the procedures for redressal of grievances and complaints;
 - (c) any other matter that may be necessary for effective functioning of micro finance ombudsman.

One mistake is already committed by the RBI; it has been appointing Banking Ombudsmen in various parts of the country, providing employment opportunities to the retired and serving officers of the RBI, the Nabard, etc. The RBI is unable to shed its false image of being “the bank of the bankers”, “the apex bank”, “the lender of the last resort”, etc. The RBI is the regulator of banks and their activities. It has no business to appoint Banking Ombudsmen.

Conceptually, an ombudsman is appointed by the management of a service provider to address the grievances or complaints of service users. It is for the management of each individual bank to appoint an ombudsman or a number of ombudsmen, depending on the need, to address the grievances or complaints of the bank’s clients against the bank as a corporate body and/or against officers and employees of that bank who are Incharge of providing services to the clients. It is purely an internal affair of corporate bodies, particularly those that provide services to public.

	<p>Chapter VII of the Bill deals with the appointment of micro finance ombudsmen in various parts of the country by the Nabard. It must be realised that the regulator (the proposed Nabard or any one else) has no business in respect of ombudsman. Section 24(1), very foolishly, states that the appointment of micro finance ombudsman is for “the purpose of redressal of grievances between eligible clients and micro finance organisations.” Micro finance ombudsman is not expected to be appointed by a regulator. It is for the management of a micro finance organisation to appoint an ombudsman or not. It is not for the micro finance ombudsman to address grievances of the micro finance organisation that made the appointment. The institution of ombudsman came into existence to enable a service provider to know whether its service users are satisfied with its services. When a service user is not satisfied with any service of the service provider, the service provider, in its own interest, is giving opportunity to the dissatisfied service user to bring the grievance to the notice of a designated officer (i.e. ombudsman) so that the service provider take necessary and appropriate action to rectify its mistake and keep its service users satisfied with its services. We are very good at putting a concept into perverse use.</p>
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Chapter VIII
Offences and Penalties

25. Penalties for making wilfully false statement:

- (1) Whoever, in any application, declaration, return, statement, information or particulars made, required or furnished by or under or for the purposes of any provision of this Act, or any order, rule, regulation or direction made or given thereunder, wilfully makes a statement which is false in any material particulars knowing it to be false or wilfully omits to make a material statement, shall be punishable with imprisonment for a term which may extend to two years and shall also be liable to fine.
- (2) If any other provision of this Act is contravened or if any default is made in complying with any other requirement of this Act or of any order, rules or regulations or direction given or notification issued or condition imposed thereunder, any person guilty of such contravention or default shall be punishable with fine which may extend to twenty thousand rupees and where, a contravention or default is a continuing one, with a further fine, which may extend to one thousand rupees for everyday after the first, during which the contravention or default continues and with imprisonment for a term not exceeding two years or with both.

<p>26. Penalties for contravention of section 12 or orders of micro finance ombudsman:</p> <p>(1) Whoever knowingly fails to comply with the provisions of section 12 or fails to comply with any order of the micro finance ombudsman or of the orders made by the Central Government or other specified authority under section 13 of this Act shall be punishable with imprisonment which may extend to three years and shall also be liable to fine of not less than five hundred rupees for every day during which such non-compliance continues.</p> <p>(2) Every offence connected with or arising out of acceptance of or repayment thereof shall be cognisable offence under the Code of Criminal Procedure 1973.</p>	<p>-----</p> <p>-----</p>
<p>27. Offences by micro finance organisations:</p> <p>(1) Where an offence under this Act is committed, the person who was in charge of and was responsible to the micro finance organisation for the conduct of business of the micro finance organisation, as well as the micro finance organisation itself, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:</p> <p>Provided that, nothing contained in this sub-section shall render any such person liable to punishment if he proves that the</p>	<p>-----</p>

<p>contravention or default was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.</p> <p>(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a micro finance organisation and it is proved that the same was committed with the consent or connivance of, or is attributable to any neglect on the part of, any person who is or was a director, trustee, member of the managing committee, manager, secretary or other officer or employee of the micro finance organisation when the offence is or was committed, such person shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.</p> <p>Explanation: For the purpose of this section, any offence punishable under this Act shall be deemed to have been committed at the place where the registered office or principal office of the micro finance organisation is situated.</p>	<p>-----</p>
<p>28. Cognisance of offences by courts:</p> <p>(1) No court shall take cognisance of any offence punishable under Act or any rules or regulations made thereunder, save on a complaint made by any officer of the National Bank or any other</p>	<p>-----</p>

<p>person authorised by the National Bank.</p> <p>(2) No court inferior to that of Metropolitan Magistrate or a Judicial Magistrate of the First Class shall try any offence punishable under this Act.</p>	<p>-----</p>
<p style="text-align: center;">Chapter IX</p> <p style="text-align: center;">Miscellaneous Provisions</p> <p>29. First charge over assets in favour of members:</p> <p>In the event of a micro finance organisation making any default in repayment of thrift to any of its members or eligible clients who had made a contribution to thrift, all members or eligible clients of such micro finance organisation shall have a first charge over the specified unencumbered securities referred to in sub-section (3) of section 14.</p>	<p>-----</p>
<p>30. Central Government's power to call for information:</p> <p>The Central Government may, in consultation with the National Bank from time to time, require the furnishing of such returns, statements and such other particulars in regard to micro finance organisations in such form and in such manner as the Central Government may specify, and the micro finance organisations shall furnish to the Central Government such returns, statements and particulars.</p>	<p>-----</p>

<p>31. Power to exempt:</p> <p>(1) The Central Government on being satisfied that, in the public interest or in the interest of the micro finance organisation, it is necessary so to do, may by an order in writing declare that any or all of the provisions of this Act, shall not apply to a micro finance organisation or a class of micro finance organisations, or to any class of micro finance organisations either generally or for such period as may be specified in the order, subject to such conditions, limitations or restrictions as it may think fit to impose.</p>	<p>-----</p>
<p>32. Provisions of this Act to override other laws:</p> <p>The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.</p>	<p>-----</p>
<p>33. Power to make rules:</p> <p>(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.</p> <p>(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:</p> <p>(a) the area of agricultural land to be owned by farmers under</p>	<p>-----</p> <p>-----</p> <p>-----</p>

<p>sub-clause (i) of clause (b) of section 2;</p> <p>(b) such other categories of individuals under clause (vi) of clause (b) of section 2;</p> <p>(c) such other amounts and other purposes under item (C) of sub-clause (i) of clause (f) of section 2;</p> <p>(d) the amount and the terms and conditions under sub-clause (l) of section 2;</p> <p>(e) such other function as may be performed by the National Bank under clause (l) of sub-section (2) section 19;</p> <p>(f) any other matter which is required to be, or may be, prescribed.</p>	<p>-----</p> <p>-----</p> <p>-----</p> <p>-----</p> <p>-----</p>
<p>34. Power to make regulations:</p> <p>(1) The National Bank, with the previous approval the Central Government may, by notification in the Official Gazette, make regulations consistent with this Act and the rules made thereunder to carry out the purposes of this Act.</p> <p>(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:</p> <p>(a) the fees and allowances payable to a member of the Micro Finance Development Council under section 6;</p> <p>(b) the times and places at which the Micro Finance Development Council shall meet and observe such rules of</p>	<p>-----</p> <p>-----</p> <p>-----</p> <p>-----</p>

<p>procedure in regard to the transaction of business at its meetings under section 7;</p> <p>(c) the form and manner in which every micro finance organisation shall make an application for registration and the fee payable to the National Bank under sub-section (1) of section 9;</p> <p>(d) any other condition for grant of a certificate of registration under clause (e) of sub-section (1) of section 10;</p> <p>(e) the unencumbered securities for the purpose of investment under sub- section (3) of section 14;</p> <p>(f) the form in which the balance sheet and profit and loss account or an income and expenditure account shall be prepared under section 15;</p> <p>(g) the form and the manner of return may be filed by the National Bank under section 18;</p> <p>(h) the procedure for winding up of the operations of the micro finance organisation under sub-section (3) of section 21;</p> <p>(i) the manner of management of Micro Finance Development Fund by the Board of Directors of the National Bank under sub section (2) of section 23;</p> <p>(j) the terms and conditions on which the loans, refinance, grants, seed capital or any other financial assistance will be provided under clause (a) of sub-section (3) of section 23;</p>	<p>-----</p> <p>-----</p> <p>-----</p> <p>-----</p> <p>-----</p> <p>-----</p> <p>-----</p> <p>-----</p> <p>-----</p>
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<p>(k) the terms and conditions on which the grants or loans shall be given by the National Bank under clause (b) of sub-section (3) of section 23;</p> <p>(l) the terms and conditions on which the investment in equity or any other form of capital or quasi-equity of a micro finance organisation shall be made under clause (c) of sub-section (3) of section 23;</p> <p>(m) the other expenses (except salaries, allowances and other remuneration of officers and other employees of the National Bank) of the National Banks that shall be met in connection with discharge of its functions under clause (f) of sub section (3) of section 23;</p> <p>(n) such other matters for which the National Bank may consider it expedient or necessary to provide for by way of regulations.</p>	<p>-----</p> <p>-----</p> <p>-----</p> <p>-----</p>
<p>35. Rules and regulations to be laid before Parliament:</p> <p>Every rule made by the Central Government and every regulation made by the National Bank under this Act and any order of exemptions made under section 31 shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised of one session or in two or more successive sessions, and if, before the expiry of the</p>	<p>-----</p>

<p>session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.</p>	
<p>36. Application of other laws not barred: The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.</p>	<p>-----</p>
<p>37. Power to remove difficulties:</p> <p>(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient, for removing the difficulty: Provided that no such order shall be made after the expiry of a period of two years from the date of commencement of this Act.</p> <p>(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.</p>	<p>-----</p> <p>-----</p>

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