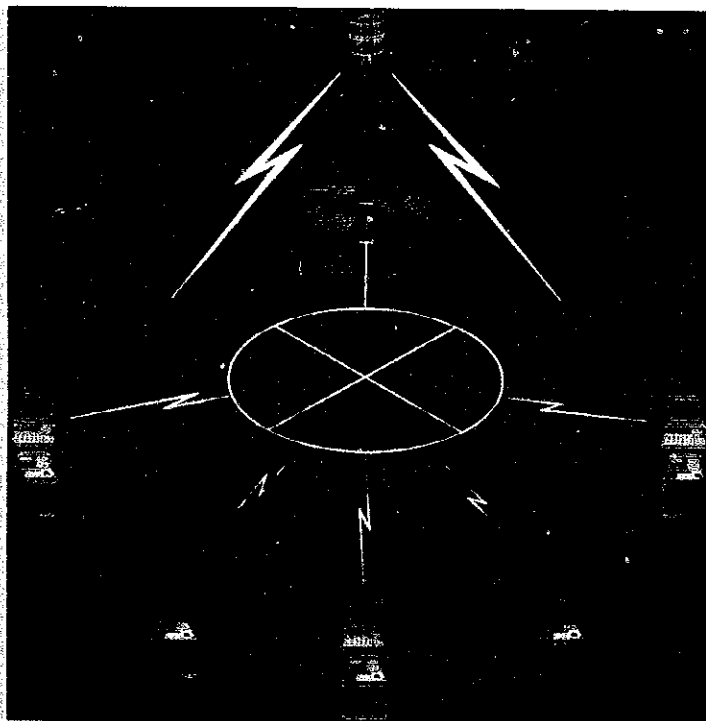


STUDY ON IMPROVEMENT
OF
PAYMENT SYSTEM
IN
THE KYRGYZ REPUBLIC

(Annex)



FEBRUARY, 1995

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1 Som = 10.0 Yen

**JAPAN INTERNATIONAL COOPERATION AGENCY (JICA)
NATIONAL BANK OF KYRGYZSTAN**

**STUDY ON
IMPROVEMENT
OF
PAYMENT SYSTEM
IN
THE KYRGYZ REPUBLIC
(Annex)**

FEBRUARY 1995

**UNICO INTERNATIONAL CORPORATION
SAKURA INSTITUTE OF RESEARCH**

国際協力事業団

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ANNEX

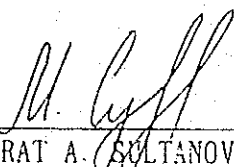
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ANNEX 1 SCOPE OF WORK

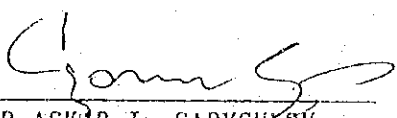
SCOPE OF WORK
FOR
THE STUDY
ON
IMPROVEMENT OF THE PAYMENT SYSTEM
IN
THE REPUBLIC OF KYRGYZSTAN
AGREED UPON BETWEEN
NATIONAL BANK OF KYRGYZSTAN
AND
JAPAN INTERNATIONAL COOPERATION AGENCY

BISHKEK
AUGUST 3, 1993


MR. MARAT A. SULTANOV
DEPUTY CHAIRMAN,
NATIONAL BANK OF KYRGYZSTAN


MR. KENJI IWAGUCHI
LEADER,
PREPARATORY STUDY TEAM,
JAPAN INTERNATIONAL
COOPERATION AGENCY

WITNESSED BY


MR. ASKAR I. SARYGULOV
VICE CHAIRMAN,
STATE COMMISSION
ON FOREIGN INVESTMENTS
AND ECONOMIC ASSISTANCE

I. INTRODUCTION

In response to the request of the Government of the Republic of Kyrgyzstan (hereinafter referred to as "Kyrgyzstan"), the Government of Japan decided to conduct the Study on Improvement of the Payment System in the Republic of Kyrgyzstan (hereinafter referred to as "the Study") in accordance with the relevant laws and regulations in force in Japan.

Accordingly, the Japan International Cooperation Agency (hereinafter referred to as "JICA"), the official agency responsible for the implementation of the technical cooperation programmes of the Government of Japan, will undertake the Study in close cooperation with the authorities concerned of the Government of Kyrgyzstan.

The present document sets forth the scope of work with regard to the Study.

II. OBJECTIVES OF THE STUDY

The objectives of the Study are :

- (1) to establish development strategy for the monetary system in order to contribute to shifting to the market economy system and vitalization of economic activities; and
- (2) to formulate an improvement plan for the payment system by introduction of a computer network system.

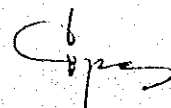
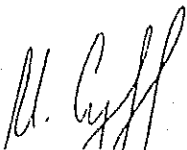
III. OBJECTIVE BANKS

The study shall cover the National Bank of Kyrgyzstan (hereinafter referred to as "NBK") and all commercial banks including the Savings Bank.

IV. SCOPE OF THE STUDY

In order to achieve the objectives mentioned above, the Study shall cover the following items.

1. Collection and review of existing data and information
 - (1) National and regional development policies and plans
 - (2) Socio-economic indices
 - (3) Previous studies and reports relevant to the Study
 - (4) Financial data such as the national government budget, taxes, interests



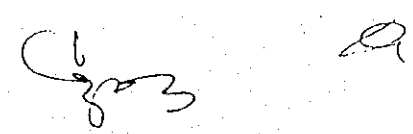
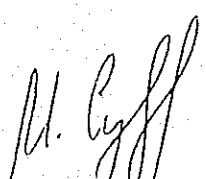
- (5) Money market information including monetary policy, foreign exchange market, new currency "Som", banking business management
 - (6) Engineering data on existing computer system and telecommunications
 - (7) Other data necessary for the Study
2. Analysis of present condition
 - (1) Socio-economic conditions
 - (2) Present financial structure
 - (3) Existing payment system including facilities, operation, and management organization
 - (4) National telecommunication facilities, capacity and operation
 3. Establishment of development strategy for the monetary system aiming at the year 2000 as a target year
 - (1) Formulation of future socio-economic framework
 - (2) Forecast of future financial transaction volume
 - (3) Establishment of development strategy for the monetary system
 4. Formulation of an improvement plan for the payment system
 - (1) Establishment of basic policy for improvement of the payment system
 - (2) Preliminary design of a computer network system for the payment system
 - (3) Formulation of introduction, maintenance and operation plan of the computer network system
 - (4) Cost estimation for introduction, maintenance and operation for the computer network system
 - (5) Economic and financial analysis
 - (6) Formulation of project implementation programme
 - (7) Recommendation on organization and operation for the payment system
 - (8) Project evaluation
 - (9) Conclusion and recommendation

V. STUDY SCHEDULE

The Study will be carried out in accordance with the attached tentative work schedule.

VI. REPORTS

JICA shall prepare and submit the following reports in English to the Government of Kyrgyzstan.



1. Inception Report
Thirty (30) copies at the commencement of the Study in Kyrgyzstan.
2. Progress Report
Thirty (30) copies within four (4) months after the commencement of the Study.
3. Interim Report
Thirty (30) copies within eight (8) months after the commencement of the Study.
4. Draft Final Report
Thirty (30) copies within twelve (12) months after the commencement of the Study.
5. Final Report
Fifty (50) copies within two (2) months after the receipt of the written comments on the Draft Final Report from the Government of Kyrgyzstan, while these comments are expected to be delivered to JICA within one (1) month after submission of the Draft Final Report.

VII. UNDERTAKING OF THE GOVERNMENT OF THE REPUBLIC OF KYRGYZSTAN

1. To facilitate smooth conduct of the study, the Government of Kyrgyzstan shall take necessary measures;
 - (1) to secure the safety of the Japanese study team,
 - (2) to permit the members of the Japanese study team to enter, leave and sojourn in Kyrgyzstan for the duration of their assignment therein, and exempt them from foreign registration requirements and consular fees,
 - (3) to exempt the members of the Japanese study team from taxes, duties, fees and other charges on equipment, machinery and other materials brought into Kyrgyzstan for the conduct of the Study,
 - (4) to exempt the members of the Japanese study team from income tax and charges of any kind imposed on or in connection with any emoluments or allowances paid to the members of the Japanese study team for their services in connection with the implementation of the Study,
 - (5) to provide necessary facilities to the Japanese study team for remittance as well as utilization of the funds introduced into Kyrgyzstan from Japan in connection with the implementation of the Study,

M. Gyll

[Signature]

[Signature]

- (6) to secure permission for entry into private properties or restricted areas for the implementation of the Study,
 - (7) to secure permission for the Japanese study team to take all data and documents including maps, photographs related to the Study out of Kyrgyzstan to Japan, and
 - (8) to provide medical services as needed. Its expenses will be chargeable on the members of the Japanese study team.
2. The Government of Kyrgyzstan shall bear claims, if any arises, against the members of the Japanese study team resulting from, occurring in the course of, or otherwise connected with, the discharge of their duties in the implementation of the Study, except when such claims arise from gross negligence or willfull misconduct on the part of the members of the Japanese study team.
 3. NBK shall act as a counterpart agency to the Japanese study team and also as a coordinating body in relation with other governmental and non-governmental organizations concerned for the smooth implementation of the Study.
 4. NBK shall, at its own expense, provide the Japanese study team with the followings, in cooperation with other organizations concerned;
 - (1) available data and information related to the Study.
 - (2) counterpart personnel.
 - (3) suitable office space with necessary equipment in Bishkek city.
 - (4) credentials or identification cards.
 - (5) appropriate number of vehicles with drivers.

VIII. UNDERTAKING OF JICA

For the implementation of the Study, JICA shall take the following measures;

- (1) to dispatch, at its own expense, the Japanese study team to Kyrgyzstan.
- (2) to pursue technology transfer to the Kyrgyzstan counterpart personnel in the course of the Study.

IX. OTHERS

JICA and NBK, shall consult with each other in respect of any matter that may arise from or in connection with the Study.

TENTATIVE STUDY SCHEDULE

MONTH	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
DESCRIPTION															
WORK IN KYRGYZSTAN															
WORK IN JAPAN															
REPORT PRESENTATION	△ IC/R			△ P/R				△ IT/R				△ DF/R			△ F/R

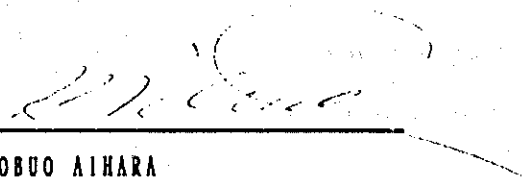
Note: IC/R : Inception Report P/R : Progress Report
 IT/R : Interim Report DF/R : Draft Final Report
 F/R : Final Report

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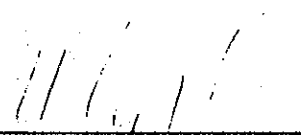
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ANNEX 2 MINUTES OF MEETINGS
(Inception Report & 1st Workshop)

MINUTES OF MEETING
ON THE INCEPTION REPORT
AND THE FIRST WORKSHOP
FOR
THE STUDY ON IMPROVEMENT
OF THE PAYMENT SYSTEM
IN THE KYRGYZ REPUBLIC
BETWEEN
NATIONAL BANK OF KYRGYZSTAN
AND
JAPAN INTERNATIONAL COOPERATION AGENCY



NOBUO AIHARA
Leader
Japan International
Cooperation Agency
Study Mission



MARAT A. SULTANOV
Deputy Chairman
National Bank of
Kyrgyzstan.

JANUARY 19, 1994

AT BISHKEK, KYRGYZ

1. The meeting was attended by:

(1) Kyrgyz Republic

1) National Bank of Kyrgyzstan (NBK)

Mr. M.A.SULTANOV Deputy Chairman

Mr. U.SARBANOV and other members of NBK

2) State Commission on Foreign Investments and Economic Assistance (GOSCOMINVEST)

Mr. A.I.SARYGULOV Vice Chairman

3) Ministry of Economy and Finance

Ms. D.ALYMKULOVA Chief Specialist

(2) JICA Mission

1) Advisors and a JICA Representative

Mr. Y.ORITANI Bank of Japan

Mr. K.OHASHI Bank of Japan

Mr. Y.SEKIGUCHI Representative of JICA

2) The Study Team

Mr. N.AIHARA (Team Leader)

Mr. Y.IWAMARU (Sub-leader)

Mr. T.HAYASE

Mr. T.TANI

Mr. H.SATO

Mr. T.ARAGAKI

Mr. S.ARAKI

Mr. J.YOSHIDA

Ms. S.KOHARA (Interpretation)

Mr. Y.OZAWA (Interpretation)

2. Address by Mr. Sultanov

Mr. Sultanov expressed his appreciation to JICA, JICA Mission and all other parties concerned for cooperation in the Study on Improvement of Payment System in Kyrgyz Republic and offered to extend every help and assistance possible to JICA Mission

3. Address by Mr. Sarygulov

Mr. Sarygulov welcomed JICA Mission, thanking them and JICA for their cooperation. He assured that help and assistance shall be provided to JICA Mission by NBK who is the counterpart of this Project.

4. Address by Ms. Alymkulova

Ms. Alymkulova thanked Japanese Government, JICA and JICA Mission for their cooperation.

5. Appreciation by Mr. Sekiguchi

Mr. Sekiguchi of JICA expressed his appreciation for a warm welcome of the Kyrgyz parties and asked for their cooperation to JICA Mission.

6. NBK and JICA Mission (the parties) have hereby confirmed the following issues discussed on the Inception Report, which have been lodged with NBK by JICA Mission, at the meeting held on January 13, 1994 at the office of NBK in Bishkek.

(1) The Outline of the Study

After having introduced members of the Mission individually, JICA Mission explained the outline of the study including its objectives, study methods and schedule basing upon the Inception Report, which in principle have met with an agreement of NBK.

(2) Supporting Facilities by NBK

In accordance with undertaking of NBK as stipulated in the Scope of Work previously signed between the representatives of the both governments, (1) office space with necessary equipment in Bishkek city is provided and (2) assignment of counterpart personnel is made, for which JICA Mission expressed sincere appreciation to NBK.

As for arrangements and/or appointments for the organizations visits by the member of JICA Mission as mentioned in the Inception Report, it is confirmed by NBK that necessary help and assistance shall be extended through the counterpart or directly by NBK.

It is further confirmed by NBK that available data and information related to the Study will be provided with by NBK and/or the appropriate institutions as the case may be.

(3) Steering Committee

In keeping with agreement reached at the meeting on the aforementioned Scope of Work, a steering committee will be officially organized in due course consisting of the following organizations under the chairman-ship of NBK for the smooth implementation of the Study:

- a) NBK
- b) State Commission of Foreign Investments and Economic Assistance
- c) Ministry of Finance
- d) Ministry of Communications

(4) The first Workshop

The first Workshop was held as planned on January 18 and 19, 1994 at NBK under the subject of "The outline of Present Financial and Payment System in Japan".

About 50 people participated in the Workshop from NBK, commercial banks and so on.

It was expressed by the participants that the Workshop has proved to be quite useful and successful to enlighten knowledge of participants who are concerned with financial system and computerization of banking business in the Kyrgyz.

(5) Counterpart Training in Japan

NBK requested that Kyrgyz counterpart personnel would take advantage of training in Japan related to the Study to promote an effective technology transfer.

JICA Mission explained that first of all, acceptance of Kyrgyz trainee in Japan is subject to the approval of JICA beforehand due to Japanese Governmental regulations. GOSCOMINVEST has to go through some formalities, filing its application to Japanese Embassy in Moscow. JICA Mission offered to NBK and GOSCOMINVEST that the Mission will be pleased to help NBK in the procedural matters, as here is no Japanese Embassy office in the Kyrgyz for the moment and suggested that its application be better submitted at the earliest convenience due to the budgetary reason in Japanese side. The Kyrgyz side appreciated the Mission offer.

7. Selection of Type of Personal Computers to be used on the occasion of Computer Network Demonstration during the Third Field Survey

JICA Mission is told by JICA, Tokyo that JICA is prepared to provide the Mission with five personal computers to be used on the occasion of small scale demonstration of the proposed computer network payment system during the third field survey of JICA Mission, scheduled in the coming October - November.

JICA Mission would like to make recommendation on what type of personal computers be provided with to JICA upon result of the first field survey and also upon consultation with NBK.

The parties agreed that the matter should be taken up at the Progress Report meeting which will be held around the latter part of February 1994.

Bishkek, January 19, 1994

ANNEX 3 MINUTES OF MEETINGS (Progress Report)

MINUTES OF MEETING
ON THE PROGRESS REPORT

FOR

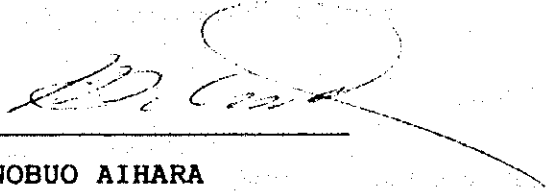
THE STUDY ON IMPROVEMENT
OF THE PAYMENT SYSTEM
IN THE KYRGYZ REPUBLIC

BETWEEN

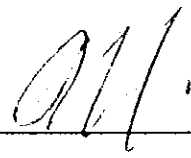
NATIONAL BANK OF KYRGYZSTAN

AND

JAPAN INTERNATIONAL COOPERATION AGENCY



NOBUO AIHARA
Leader
Japan International
Cooperation Agency
Study Mission



ABDYMANAPOV Emil S.
Deputy Chairman
National Bank
of Kyrgyzstan

MARCH 1, 1994
AT BISHKEK, KYRGYZSTAN

1. The meeting was held concurrently with the Steering Committee Meeting and attended by:

(1) The Steering Committee

- | | |
|---------------------------|--|
| 1) Mr. E. S. Abdymanapov | Concurrently Chairman
of the Committee
Deputy Chairman of NBK |
| 2) Mr. A. I. SARYGULOV | Vice Chairman of the
Committee
Vice Chairman of GOSKO-
MINVEST |
| 3) Mr. A. T. Tumanbaev | Member of the Committee
Deputy Minister of
Ministry of Finance |
| 4) Mr. Shambetaliev Marat | Chief Engineer
Ministry of Communication
(On behalf of Mr. A. T.
Tagaev, Member of the
Committee and First
Deputy Minister of Mini-
stry of Communication) |

(2) National Bank of Kyrgyzstan (NBK)

Mr. U. SARBANOV and other members of NBK

(3) JICA Mission

1) The Study Mission

Mr. N. AIHARA	Team Leader
Mr. Y. IWAMARU	Sub-Leader
Mr. Y. NAKAZAWA	Member
Mr. T. TANI	Member
Mr. H. SATO	Member
Mr. T. ARAGAKI	Member

Mr. S. ARAKI	Member
Mr. J. YOSHIDA	Member
Ms. S. KOHARA	Interpretation
Mr. Y. OZAWA	Interpretation

2. JICA Mission expressed their hearty appreciation to NBK and all the attendants of the meeting for their most cordial collaboration extended to them in the course of the Study Work in Kyrgyzstan. The members of the Steering Committee, NBK and JICA Mission (the parties) have hereby confirmed the following issues discussed on the Progress Report, which have been lodged with NBK by JICA Mission, at the meeting held on February 28, 1994.

(1) The Outline of the Progress Report

JICA Mission explained the outline of the Progress Report including background and objectives of the Study, the First Workshop, and the present situation of macro-economy, the financial system and the payment system, and study items to be surveyed during the Second Study Mission. Findings on major issues in the area of macro-economy, financial system, and payment system are specifically reported by JICA Mission.

(2) Overall schedule of the Second Field Survey

(2)-1. The Second Field Survey

The parties mutually agreed that Second Field Survey will be taken place from the middle part of June to the middle part of August, 1994.

(2)-2. The Second Workshop

The Second Workshop will be held in the middle part of July, 1994 at NBK under the subject of "The Present Conditions and Future Image of the Financial System and Payment System in Kyrgyz".

(2)-3. Interim Report Discussion

The Interim Report will be presented to NBK in the middle part of July, 1994. The meeting will be held around the

middle/latter part of July to have discussion on the Interim Report.

(3) Counterpart Training in Japan

NBK is preparing an application to send their trainees to Japan which shall be formulated officially by Goskominvest and lodged with JICA, Tokyo through the Japanese Embassy in Moscow. JICA Mission offered their help and assistance in the formulation of Application Forms.

NBK expressed their desire that Japanese Government would accept four trainees separated into two groups viz. two trainees for the study of the computer system and payment system, and two trainees for the study of financial system both in Japan.

JICA Mission replied that it is for the Japanese Government to decide in this matter. However, JICA Mission offered to convey their desire to the Japanese Government.

(4) Selection of type of personal computers to be used on the occasion of computer network demonstration during the Third Field Survey

The Study Mission recommended type of personal computers and its basic configurations of hardware and software which run on interconnected mode, Local Area Network (LAN), to NBK. These computers and peripheral equipment which consists from five personal computers, one printer, five sets of un-hazardous power supply (UPS), power transformers, and sets of software including operating systems and application software packages. These equipment and sets of software should be IBM compatible and to be purchased in Japan. Maintenance and support services can be available in Bishkek.

**ANNEX 4 MINUTES OF MEETINGS
(Interim Report) & (Memorandum)**

MINUTES OF MEETING

ON THE INTERIM REPORT

FOR

THE STUDY ON IMPROVEMENT

OF THE PAYMENT SYSTEM


IN THE KYRGYZ REPUBLIC

BETWEEN

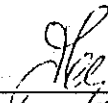
NATIONAL BANK OF KYRGYZSTAN

AND

JAPAN INTERNATIONAL COOPERATION AGENCY



NOBUO AIHARA
Leader
Japan International
Cooperation Agency
Study Team



Zhamilya S. Esenalieva
Deputy Chairman
National Bank of
Kyrgyzstan

August 2, 1994

AT BISHKEK, KYRGYZ

1. The meetings were held concurrently with the Steering Committee Meeting and attended by:

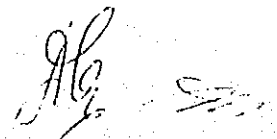
(1) The Steering Committee

- | | |
|-----------------------------------|--|
| 1) Ms. Z. S. Esenalieva | Concurrently Chairman of the Committee
Deputy Chairman of NBK |
| 2) Ms. T. S. TOPCHVBEKOVNA | Chief Specialist, Aid Coordination Unit
Goskominvest
On behalf of Mr. A. I. Sarygulov
Vice Chairman of the Committee
Goskominvest |
| 3) Mr. Balbakov B. Shatanbekovich | Director, Development and Implementation
Department, Ministry of Communication
On behalf of Mr. A. T. Tagaev
Member of the Committee
First Deputy Minister Communication |
| 4) Mr. E. A. Kumazanovich | Head, National Economic Department
Ministry of Finance
On behalf of Mr. A. T. Tumanbaev
Member of the Committee
Deputy Minister of Ministry of Finance |
| 5) Ms. Akaaja A. Rosa | Director, Accounting Division
National Bank of Kyrgyzstan |

(2) National Bank of Kyrgyzstan (NBK)

- | | | |
|------------------------------|-------------|----------------------------|
| 1) Mr. Bakir K. Abdybekovich | Counterpart | Leading Economist |
| 2) Ms. Aida K. Myrzakulovna | Counterpart | Leading Economist |
| 3) Mr. Kaip K. Kulenbekov | Counterpart | Economist |
| 4) Mr. Aleksandr Tsybizov | Counterpart | Chief of Division |
| 5) Ms. Aigul Chichiyan | Counterpart | Expert of Technical
Aid |

and other members of NBK



(3) JICA Team

1) The Study Team

Mr. N. Aihara	(Team Leader)
Mr. Y. Iwamaru	(Sub-Leader)
Mr. S. Araki	
Mr. T. Hayase	
Mr. T. Tani	
Mr. H. Sato	
Mr. T. Aragaki	
Mr. J. Yoshida	
Ms. S. Kohara	(Interpretation)
Mr. Y. Ozawa	(Interpretation)

2) Advisors and a JICA Representative

Professor T. Kaneda	Advisor, Professor of Suzuka International University
Mr. Y. Oritani	Advisor, Bank of Japan
Mr. K. Ohashi	Advisor, Bank of Japan
Mr. Y. Sekiguchi	Representative of JICA

2. JICA Team expressed their hearty appreciation to NBK and all the attendants of the meeting for their most cordial collaboration extended to them in the course of the Study Work in Kyrgyz. The members of the Steering Committee, NBK and JICA Team (the parties) have hereby confirmed the following issues discussed on the Interim Report, which have been lodged with NBK by JICA Team at the meeting held on August 1, 1994.

(1) As chairman of the Steering Committee, Ms. Z. S. Esenalieva delivered an opening address, expressing appreciation to JICA Team and NBK counterpart for their joint study work. Ms. Esenalieva introduced personally all the members of the Steering Committee presented, and added her hope that this project would be realized successfully.

(2) Outline of the Interim Report

JICA Team explained the outline of the Interim Report composing of

- 1) major issues in the area of macro-economy, financial system and payment system in the Kyrgyz Republic,
- 2) forecast of socio-economic framework in the year of 2000,
- 3) forecast of kinds and volumes of financial transactions and payment transactions in the year of 2000,
- 4) the development strategy of the financial system and its future framework,
- 5) the development strategy of the payment system and its basic plan for the computerized network payment system up to the selection of the optimum system,
- 6) general description of the model inter-bank transaction system and Demonstration Program to be displayed at the second seminar.

The contents of the Interim Report have met, in principle, with the agreement of the Steering Committee members, with the following comments:

- 1) Ms. Esenalieva, Chairman of the committee, repeated her thanks to JICA Team for their laborious study work and added that the Interim Report was found satisfactory at this stage by the NBK specialists and further discussion, if found necessary, will be made during the Team's stay in Bishkek. She also commented that the new start of Clearing House, which is presently being projected would give a good foundation for this Payment System Project.
- 2) Ms. Topchvbekovna of Goskominvest mentioned that it is first time for her to be present at this Steering Committee and found the meeting significant.
- 3) Mr. Kumazanovich of Ministry of Finance commented that the meeting proved to be very interesting and fruitful.
- 4) Mr. Shatanbekovich of Ministry of Communication commented that the payment system has a close relation with telecommunication and the Ministry would like to help the Study, keeping contact with the Study Team. He added that digitalization of telecommunication system is now under way between the Ministry and World Bank and the relating tender documentation will be ready until the coming September. He assured that the digitalization would provide a great help for the furtherance of the

Payment System.

- 5) Mr. Sekiguchi, representative of JICA, expressed his appreciation to the members for their attendance to this meeting. He emphasized that this study is a joint work between Kyrgyz and Japan and shall be proceeded jointly, basing upon the entire consensus of all parties, represented at this Steering Committee.

(3) The succeeding Study Work in Japan

Upon returning to Japan from this second field survey in the Kyrgyz Republic, JICA Study Team continue the Study work in Japan, which covers mainly the followings in addition to supplementation of the subjects formerly studied:

- 1) Basing upon the optimum system plan agreed in this second field survey, preliminary design including hardware, software and network of the computer payment system is to be formulated.
- 2) Plans for introduction, operation, maintenance, support and administration of the computer network payment system, including training program of the required system engineers and specialists are to be formulated.
- 3) Preliminary cost estimation for the aforementioned project is to be formulated.
- 4) Economic and financial analysis of the resultant impact to be produced by the implementation of the project shall be made.
- 5) The overall implementation program of the project shall be formulated.
- 6) Recommendation shall be made on the organizational setup for management and administration of the proposed payment system.
- 7) Overall evaluation on this Study on Improvement of the Payment System in the Kyrgyz Republic shall be conducted and the measures required to be taken by the Kyrgyz Government and NBK for the implementation of the proposed Improvement Plan of the Payment System are to be recommended by JICA Study Team.

(4) The schedule of the Third Field Survey

1) The Third Field Survey

The Third Field Survey will be taken place from the beginning part of November to the middle part of November, 1994.

2) The Second Seminar

The Second Seminar will be held in the beginning/middle part of November, 1994 at NBK under the subject of "The Implementation Plan of the Payment System in Kyrgyz and its Realization". Concurrently, the model computer network system will be demonstrated by JICA Team together with NBK counterparts with 5 personal computers which will be brought in from Japan by JICA Team.

3) Draft Final Report Discussion

The Draft Final Report will be forwarded to NBK by DHL mail in the middle part of October, 1994. The Steering Committee and presentation meeting will be held around the beginning/middle part of November to have discussion on the Draft Final Report.

(5) Presentation of the Final Report

Having taken into consideration comments and opinions raised by the Steering Committee and NBK on Draft Final Report, Final Report for the Study on Improvement of the Payment System in the Kyrgyz Republic shall be prepared by JICA Study Team and is to be submitted to NBK and JICA in January, 1995.

Annex I

MEMORANDUM

FOR

THE STUDY ON IMPROVEMENT

OF THE PAYMENT SYSTEM

IN THE KYRGYZ REPUBLIC

BETWEEN

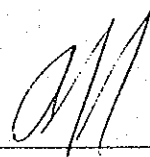
NATIONAL BANK OF KYRGYZSTAN

AND

JAPAN INTERNATIONAL COOPERATION AGENCY



NOBUO AIHARA
Leader
Japan International
Cooperation Agency
Study Team



EMIL S. ABDUMANOPOV
Deputy Chairman
National Bank of
Kyrgyzstan

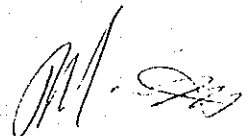
August 19, 1994

AT BISHKEK, KYRGYZ

1. After the presentation meeting was held on August 1, 1994, concurrently with the Steering Committee on the Interim Report prepared by the Study Team, JICA Study Team continued their succeeding study work on Improvement of the Payment System in the Kyrgyz Republic. A copy of the Minutes of the Meeting is attached hereto in Annex I for our both reference.
2. Immediately after the presentation meeting on the aforementioned the Interim Report, two days seminar was held at NBK under the title of "Current Situation and Future Status of Financial System and Payment System in the Kyrgyz Republic" on August 3 and 4, 1994.
 - (1) The Seminar was honored by the opening address delivered by Deputy Chairman of National Bank of Kyrgyzstan, Ms. Zhamilya S. Esenalieva.
 - (2) The Seminar was attended by about 50 specialists and economists from NBK, government institutions and commercial banks.
 - (3) Agenda and subject of speeches delivered at the Seminar were mentioned together with each speaker's name in the front page of Textbook, which were prepared by the Study Team and distributed among the participants. Active Q & A were exchanged, brief contents of which are mentioned in Annex II.

All participants recognized that the Seminar was quite successful and useful for the Study on Improvement of the Payment System in Kyrgyz.

3. The Study Team, dividing them into two groups, visited Jalal-abad, Osh, Karakol and Naryn in order to make on-the-spot-survey, calling at offices of NBK branches, commercial banks and Computer Center locating there.
4. The Study work continued thereafter with the close cooperation of NBK counterparts and both parties agreed, in principle, upon the direction of the succeeding Study work of JICA Study Team as per Annex III attached hereto.
5. Both parties further agreed that the Third Field Survey of JICA Team is scheduled to be conducted from 8th to 18th of November this year as per Annex IV.
 - (1) Steering Committee and the presentation meeting is to be held on 10th Thursday

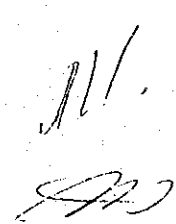


and 11th Friday of November 1994, on the Draft Final Report for the Study on Improvement of the Payment System in the Kyrgyz Republic, which is to be prepared and submitted to NBK well in advance by the JICA Study Team.

- (2) Seminar will be held on 14th Monday and 15th Tuesday, November 1994, after the presentation meeting on the Draft Final Report, in the same way as in the previous Seminar. Concurrently at the Seminar, the model computer network payment system will be demonstrated by JICA Study Team and NBK counterparts with 5 personal computers which will be brought in by JICA Team.

It is noted that should there be any change in the schedule of the Third Field Survey upon consultation with JICA in Tokyo, NBK will be informed of the change well in advance by JICA Study Team through telefax.

JICA Team expressed their most hearty appreciation to all the persons concerned for their most cordial help and cooperations extended to them in the course of their study work in the Kyrgyz Republic.

Handwritten signature and initials in the bottom right corner of the page.

Annex II

- Questions and Answers -

Question

Volume of payment transactions in the year 2000 are projected based on the Scenario B of macro-economy which are assumed that the Kyrgyz economy will grow rapidly. How those number of projected volume of payment transactions will vary in case the Kyrgyz economy will not grow as expected?

Answer

Two scenario in macro-economy in the Report were based on reviewing at realistic facts (Scenario A) and prospected facts (Scenario B). The projected volume of transaction in the report was based on Scenario B. From the computer payment systems point of view, the systems are considered as to match and satisfy the projected volume of transactions which are analyzed in Scenario B. The Study Team will continuously analyze the volume of payment transactions not only based on Scenario B but also on basis of Scenario A. Both Scenario A and B will be continuously analyzed and the result will be reflected to the Draft Final Report by the Study Team.

Question

What is the difference between gross settlement and net settlement?

Answer

The actual difference between above two are clearly identified in the Report. However, those who would like to have further information, please ask Study Team members during the stay in Bishkek for another three weeks.

Question

Is the establishment plan of the Kyrgyz Bank for Reconstruction and Development which was announced in July 9, 1994 pertinent by looking at current economic conditions of Kyrgyz?

Answers

1. Basically the Study Team think it as pertinent because it is necessary to install policy finance in the conditions of absolute scarcity of private savings.
2. It causes the confusion of both monetary and fiscal policy if the government capital and ODA funds are distributed through the central bank (NBK), and be apprehended of re-issue problems of the "special purpose credit" if distributed through the commercial banks.
3. Private savings should be refluxed to the investment through the commercial banks. It should be avoided for any government agencies to absorb and re-distribute private savings.

Question

Why overdraft is restrained if the payment systems are well established?

Answers

1. So called "overdraft" in Kyrgyz is the over-due which is caused mainly from the special purpose credit, and the lending system based on the government fund should be re-considered.
2. "Overdraft" is usually defined as a temporary deficit which occurs during the payment in correspondent account in the central bank.
3. The payment system which is a basic infrastructure of inter-bank market, should be well established, whereby loan and credit between financial surplus banks and financial deficit banks will be activated, enabling to restrain the "overdraft".

Questions

- What is the reason why real GDP growth rate will turn to plus from 1996 in Plan A?
- It was explained that agriculture could be the main sector in the year of 2000 and export could increase. Is the increase of the export related to the growth of agricultural sector?
- It is very doubtful whether unemployment rate will be zero (0) in the year of 2000.
- Tourism is considered to further develop till the year of 2000. Which industry sector

is Tourism classified in?

- Why international balance of payment as of the year 2000 are forecasted to be plus in Plan A and minus in Plan B?

Answers

Answers and comments to the above questions are already indicated in the Report and the Speaker replied all questions and comments in line of the contents of the Interim Report.

Question

How the JICA project and Clearing House Plan will be further proceeded?

Answer

After the completion of the report and based on the mutual agreement between the two countries, Kyrgyz and Japan, the implementation plan will be tendered. However, if the project implementation will be done by only the Kyrgyz side, the sponsors are not necessary.

Question

It is explained that improvement of the payment systems will restore the national economy. Please explain the reason.

Answers

Although its mechanism is rather complicated, to explain in a word, improvement of the payment systems will make people work harder and activate economic activities.

Annex III

1. Macro-economy

Regarding forecast on Socio-economic framework in 2000

Kyrgyz Government (State Economic Committee) has drawn up and made public "Economic Forecast up to 2000" at the beginning of July, 1994. The Study Team, therefore, should like to revise their forecast on socio-economic framework for the target year of 2000 in some parts taking the government's forecast into consideration, in addition to some modifications based on the latest figures on macro-economic statistics.

2. Payment Systems

The Study Team discussed with NBK regarding the cost for overall payment systems development and its yearly running cost for management/operation. It was emphasized that NBK should take a leading role at least at the initial stage in the organization for management/operation of the systems.

Annex IV. Schedule for Third Field Survey to be conducted by JICA Study Team

1994			
Middle part of Oct.		Draft Final Report(DFR) will be sent through DHL to NBK.	
Latter part of Oct.		NBK receive DFR. Invitation letters for Steering Committee and Seminar shall be sent by NBK.	
1.	Nov. 6	Sun.	JICA Mission leave Japan
2.	Nov. 7	Mon.	
3.	Nov. 8	Tue.	JICA Mission arrive Bishkek
4.	Nov. 9	Wed.	Preparation of the meeting and the seminar
5.	Nov. 10	Thu.	Steering Committee will be held on DFR
6.	Nov. 11	Fri.	Presentation Meeting on DFR with NBK Counterpart
7.	Nov. 12	Sat.	
8.	Nov. 13	Sun.	
9.	Nov. 14	Mon.	Seminar
10.	Nov. 15	Tue.	Demonstration of model computer network payment system
11.	Nov. 16	Wed.	Signing of the Minutes of Meeting
12.	Nov. 17	Thu.	JICA Mission leave Bishkek
13.	Nov. 18	Fri.	<input type="checkbox"/> JICA Mission arrive Tokyo
14.	Nov. 19	Sat.	

ANNEX 5 MINUTES OF MEETINGS (Draft Final Report)

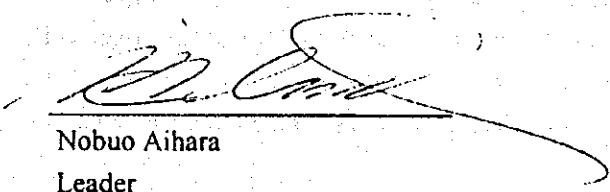
MINUTES OF MEETING
ON THE DRAFT FINAL REPORT
FOR
THE STUDY ON IMPROVEMENT
OF THE PAYMENT SYSTEM
IN THE KYRGYZ REPUBLIC

BETWEEN

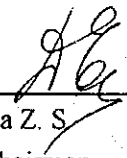
NATIONAL BANK OF KYRGYZSTAN

AND

JAPAN INTERNATIONAL COOPERATION AGENCY



Nobuo Aihara
Leader
Japan International
Cooperation Agency
Study Team

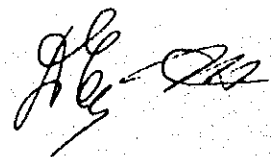


Esenalieva Z. S.
Deputy Chairman
National Bank of
Kyrgyzstan

November 16, 1994
AT BISHKEK, KYRGYZ

In accordance with the Scope of Work (S/W) signed on August 3, 1993, for the Study on Improvement of the Payment System in the Kyrgyz Republic (the Study) between National Bank of Kyrgyzstan (NBK) and Japan International Cooperation Agency (JICA), JICA dispatched the Study Team from November 8 to November 18, 1994, for the presentation and discussion of the Draft Final Report of the Study.

1. The Study Team submitted, in accordance with S/W, 30 (thirty) copies of the Draft Final Report of the Study to NBK, and the latter acknowledged receipt of the Report.
2. The Study Team made presentation of the Draft Final Report to the Steering Committee on November 11, 1994. Attendants of the meeting are listed in ANNEX 1. Subsequently, discussions were held between Steering Committee members and the Study Team, salient features of which are summarized as follows:
 - 1) The contents of the Draft Final Report were found, in principle, satisfactory by the committee members.
 - 2) Official comments and opinions on the Draft Final Report in written form shall be informed to JICA by NBK within one month from the date of submission of the Report. Having taken into consideration such comments and opinions, the Final Report for the Study shall be prepared.
 - 3) It was further agreed that the Final Report, once officially accepted by the both governments, may be placed open to the public by both governments in Kyrgyz and Japan.
 - 4) Regarding the five personal computers together with peripheral equipment as mentioned in ANNEX 2, which the Study Team has brought in from Japan to be used in model demonstration of computer network payment system in the 2nd Seminar, NBK expressed their desire that those were handed over to NBK by JICA at the end of the Study.
3. The Second Seminar was held on November 14 and 15, 1994 at NBK under the subject of "The Improvement Plan of the Payment System in Kyrgyz and its Implementation". Concurrently, the model computer network system was demonstrated by the Study Team together with NBK counterparts.



ANNEX I LIST OF THE ATTENDANTS

(1) The Steering Committee

- 1) Ms. Esenalieva Z. S. Concurrently Chairman of the Committee
Deputy Chairman of NBK
- 2) Ms. Alybaeva G. B. Vice General Director
Goskominvest
On behalf of Mr. Sarygulov A. I.
Concurrently Vice Chairman of the
Committee
Vice Chairman of Goskominvest
- 3) Ms. Davydova V. G. Member of the Committee
Deputy Minister of Ministry of
Communication
- 4) Mr. Kuvatov O. K. Director of Ministry of Communication
- 5) Mr. Khasanov R. F. Member of the Committee
Deputy Minister of Ministry of Finance
- 6) Ms. Akuaja A. Rosa Director, Accounting Division
NBK

(2) National Bank of Kyrgyzstan (NBK)

- 1) Mr. Bakir K. Abdybekovich Counterpart Leading Economist
 - 2) Ms. Aida K. Myrzakulovna Counterpart Leading Economist
 - 3) Mr. Aleksandr Tsybizov Counterpart Chief of Division
 - 4) Ms. Aigul Chichiyan Counterpart Expert of Technical Aid
- and other members of NBK

(3) JICA Team

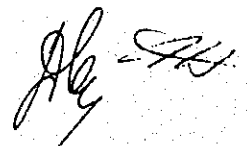
1) The Study Team

- Mr. N. Aihara (Team Leader)
Mr. Y. Iwamaru (Sub-Leader)
Mr. T. Tani (Payment System Design)

Mr. H. Sato (Payment System Design)
Mr. T. Aragaki (Telecommunication System)
Mr. J. Yoshida (Payment System Organization and Operation)
Ms. S. Kohara (Interpretation)
Mr. Y. Ozawa (Interpretation)

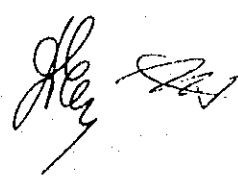
2) Advisors and a JICA Representative

Mr. Y. Oritani Advisor, Bank of Japan
Mr. T. Nakamura Advisor, Bank of Japan
Mr. A. Hanatani Representative of JICA



ANNEX 2 List of Personal Computers and their Peripheral Equipment

1.	IBM PS/VP MODEL 6482LV1(CPU)	5 SET
2.	IBM PS/VP MODEL 6482LV1(MONITOR)	5 SET
3.	FBK-SSU302010MT22(UPS)	1 SET
4.	QMS HAMMERHEAD 860(PRINTER)	1 SET
5.	LAN SYSTEM	1 SET
6.	SOFTWARE	
	- NOVEL NETWARE	1 SET
	- MS EXCEL	5 SET
	- VISUAL C++	1 SET
7.	OTHERS	
	- CABLES	1 SET
	- MANUALS	18 SET
	- E-1500(TRANSFORMER)	1 SET
	- FLOPPY DISKETTES	200 PCS
	- PLUG ADAPTER	5 PCS



**ANNEX 6 ORDINANCE RELATED TO CLEARING HOUSE
IN THE KYRGYZ REPUBLIC CONCERNING
CLEARING OPERATIONS**

Ordinance Related to Clearinghouse in the Kyrgyz Republic and Regulations Concerning Clearing Operations

The clearinghouse provides services related to the exchange of documents for payment among members and the settlement at accounts established for the exchange purpose. The clearinghouse is operated according to its articles of association and regulations that are summarized as follows.

1. Definition

- Council (board):
Council of Clearinghouse Founders
- Business days:
As set forth by the council. If the days on which the National Bank of the Kyrgyz Republics conduct clearing operations are deemed to be business days.
- Clearinghouse:
An organization under the control of the Association of Commercial Banks in the Kyrgyz Republic
- Central bank:
National Bank of the Kyrgyz Republic
- Documents:
Documentary order of payment which definition is set forth in the central bank's directive related to clearing operation.
- Members:
Banks participating in the clearinghouse
- Receiving members:
Clearinghouse members receiving documents through the clearinghouse

- Sending members:

Clearinghouse members sending documents through the clearinghouse

2. Responsibilities of Sending Members

2-1 Authentication of Documents

Every document is required to bear a stamp indicating the name of the sending organization.

2-2 Classification of Documents

The documents are classified according to the area or the receiving member within each area by using special envelopes. Envelopes used within each area are marked with a red stripe and those sent outside the area a green stripe. Each envelope contains a list of documents included therein, which specifies the total amount ordered to pay. The total amount of payment and the number of documents contained should also be indicated on the envelope. Note that these data should be certified by a chief accountant or other person in charge of accounting, by affixing a seal of the sending member.

2-3 Participation in Regular Clearing Operation

The authenticated envelopes and lists are brought to local clearing centers by noon on the subsequent business day. The sending members are required to participate in regular clearing operations according to special regulations set forth below.

2-3-1 Transfer of Document Envelopes to Local Clearing Centers

The envelopes containing the documents are sent with lists to local clearing centers by noon on the subsequent business day. On each envelope, the total amount of payment in local currency and the number of documents are specified.

2-3-2 Clearing Based on Special Contract

Any clearinghouse members may, for the purpose of saving time and cost, make a special arrangement on the direct exchange of documents between their branches, not through their local clearing center, provided that the sending member prepares and supplies a report specifying the amount transacted by the documents and bears an appropriate marking required for the exchange of payment documents. Then, each report must be sent to the local clearing center by noon on the subsequent business day.

2-3-3 Acceptance of Debit Balance

Each sending member accepts a debit balance resulted from clearing operations.

2-3-4 Record Keeping

The sending members are required to retain all records on document envelopes sent for one year, after which they are not obliged to investigate such record, negotiate with customers, or make correction in relation thereto.

3. Responsibilities of Receiving Members

The clearinghouse members are required to examine all the documents sent to the clearinghouse, including those subject to overdue clearing. The documents are deemed to be delivered when transmitted from a local clearing center to its member.

Principal responsibilities of the receiving members are summarized as follows.

3-1 Settlement According to Documents or Returning of Documents

The documents are deemed to be owned by respective sending members until final settlement. The receiving members are required to retain the documents until they receive payment therefor.

3-2 Regulations Related to Account Settlement for Documents with Error

3-2-1

The receiving member, who receives a documentary order of payment that is incorrectly classified, an envelope that contains documents less than or more than specified, a document containing incorrect data or miscalculation, or an envelope that lacks a detailed list of documents, is required to report it to its local clearing center by noon on the subsequent business day and make necessary preparation to return it to the sending member. Such documents must be classified according to the area or the sending member within each area. Those sent within the same area are marked with a red stripe and those sent outside the area a green stripe. Each envelope must contain a detailed list specifying the total amount indicated on documents contained. On each envelop, the following data should be indicated:

- The name of the sender of documents returned
- Date of receiving
- Date of returning
- Number of documents
- Total amount of payment indicated on documents in the envelope

The envelope should be certified by an official stamp of the receiving member and a signature of a chief accountant or a person in charge.

3-2-2

A local clearing center which receives envelopes containing documents with error is required to calculate, at a clearing session on the current day, the amount payable under the order thereof as funds to be transferred to the sending members.

3-2-3

If a receiving member fails to return a document with error to its local clearing center by noon on the subsequent business day when the document is received, the

clearinghouse will impose penalty on the member according to a special arrangement made under resolution of the council.

3-3 Record Keeping

The receiving member is required to keep relevant records for one year. (See 2-3-4)

4. Relationship with the Central Bank

The central bank is required to ensure that final settlement of payments is made through accounts of banks which are members of the clearinghouse, according to this ordinance. It also provides a place for clearing operations. In essence, the central bank should comply with the following regulations.

4-1 Settlement

The central bank settles inter-bank transactions on each business day by debiting or crediting to accounts held by the clearinghouse member banks at the central bank. It transfers funds only when an account of a paying bank has a sufficient balance, if not, it follows the procedures specified in Item 5.

4-2 Liability

Unless the central bank conducts clearing operation incorrectly or untimely, it will not be liable for any loss incurred by a clearinghouse member in connection with performance of this ordinance. All the requests for clearing are reviewed and corrected, as required, by the clearinghouse members.

4-3 Existing Operating Regulations and Procedures

Any provisions in this regulation shall not prevent the central bank from operating in accordance with its own regulations and procedures.

5. General Regulations for Participants in the Clearing System

Participants in the clearing system are the clearinghouse member banks, local clearing centers, and the central bank. All of them act in a concerted manner and comply with the following regulations.

5-1 Clearing Session and Its Result

The sending members are required to submit the envelopes containing the documents and lists to local clearing centers by noon on each business day. At each clearing center, positions of members are finalized by 1:00 p.m. on each day. All the local clearing centers are required to transmit their final data by telex to the clearinghouse by 1:30 p.m. on the same day. Then, financial positions of all the members are determined at the clearinghouse at 2:00 p.m. At the same time, the clearinghouse inquires about balances of correspondent accounts of the members at the central bank. By 2:00 p.m., the clearinghouse notifies all the members of their final positions as a result of the clearing session held on that day, as well as outstanding balances of their accounts at the central bank. The members are required to send their response as to whether their positions and balances notified by the clearinghouse are correct, by 3:00 p.m. on the same day. At 3:00 p.m., the clearinghouse confirms the result of the clearing session.

5-2 Inter-bank Credit

Any member bank which position is found to be negative at a clearing session requests a financial institution having a correspondent account at the central bank to extend loans covering the negative position. The lending procedure and transfer of funds through correspondent accounts at the central bank must be completed by 4:00 p.m. on the same day. The center bank must take necessary action to have such transfer completed on time.

5-3 Selling of Assets for Settlement

If any member bank is unable to clear its negative position through inter-bank credit by the specified time, the clearinghouse member banks are required to propose the bank to sell its assets in order to complete fund transfer through the correspondent accounts for clearance. Again, the center bank must take necessary action to have such transfer completed on time.

5-4 Intermediary Indemnification

If any member bank is unable to clear its negative position through the methods specified in 5-2 or 5-3, the clearinghouse council may decide to effectuate a compulsory mechanism to make intermediary indemnification in order to collect necessary funds by 4:00 p.m. on the same day. Accordingly, all the member banks having creditor balances at their correspondent banks after the clearing session on that day are required to grant inter-bank credit to cover the overdraft by the said member in proportion to the amount of each balance.

The inter-bank credit is granted until the next business day and its procedure must be completed at the central bank by 4:30 p.m. The center bank also takes necessary action to have such transfer completed on time.

5-5 Lombard Loans by the Central Bank

For a negative position that cannot be cleared through any of the methods set forth in 5-2, 5-3 or 5-4, the member banks request the central bank at 4:30 p.m. to obtain overnight Lombard loans under terms set forth by the central bank. The central bank may, at its discretion, decide to grant or reject such loans. If the central bank accepts the loan application, it must take necessary action to have loan proceeds transferred on time.

5-6 Freezing the Result of Clearing Session

If a negative position cannot be cleared through any of the methods in 5-2, 5-3, 5-4 or 5-5, the clearinghouse council will, jointly with the central bank, decide to freeze the clearing session and postpone the final settlement until the next business day. Then,

the result of the clearing session for all the members on the day will be carried over to a clearing session on the next business day.

5-7 Final Settlement

Once all the requirements for final settlement are satisfied at a clearing session, and all the member banks have outstanding balances at their correspondent banks, the central bank checks the result of the clearing session and settle all the transactions by 5:00 p.m. on the same day. Then the clearinghouse notifies all the member banks of completion of the clearing session.

6. Relationship between Participants in the Clearing System

6-1 Governing Law

Clearing operations executed under this ordinance are governed by laws of the Kyrgyz Republic, unless otherwise specified in the central bank's regulations and directives related to clearing procedures.

6-2 Indemnity and Penalty

The method of compensation for damage incurred in violation of this ordinance, and a penalty imposed by the clearinghouse under a resolution of the clearinghouse council are fixed by a special arrangement between the member banks and the clearinghouse. Otherwise, the method of indemnity may be set forth by law.

6-3 Documentation and Forms

Standard forms of documents, papers, and mails transmitted among the clearinghouse, the member banks, and the central bank are decided and authenticated by the clearinghouse.

**ANNEX 7 ARTICLES OF ASSOCIATION RASHOTONAYA
PARATA**

Articles of Association Rashotonaya Parata

Registered

Under decision of Administrator, Public Administration and Local Bureau

City of Bishkek

_____, 1993

No.

Administrator _____ (Signature, official stamp)

Endorsed

President

Central Bank of the Kyrgyz Republic

K. Nanaev _____ (Signature, official stamp)

Article of Association of Limited Liability Company

Inter-bank Settlement Organization, Rashotonaya Parata

Approved

General Meeting of Promoters

Minutes of Meeting No.1, dated May 6, 1993

in Bishkek

Articles of Association of Limited Liability Company

Inter-bank Settlement Organization, Rashotonaya Parata

1. This limited liability company, Inter-bank Settlement Organization, Rashotonaya Parata (referred to as the "MRP") has been established by incorporating capital contributions of its promoters under a resolution of the general meeting of promoters (minutes of meeting No.1, dated May 6, 1993). The promoters of the MRP are legal entities designated in the promoters' agreement.

1.2 The MRP is established for the following purposes:

- To streamline payment transaction services, particularly by introducing modern information and bank business processing technologies into daily banking

practices and procedures:

- To develop a close linkage among banks in the republic by using modern computing technologies and automated inter bank communication technologies;
- To establish a correspondent banking system;
- To minimize time required for payment transactions by using the correspondent banking system;
- To ensure the optimum use of liquid assets of the promoters; and
- To establish and upgrade an inter-bank communication system;

1.3 For the purpose of achieving the purposes set forth herein, the MRP will perform the following services;

- To settle transactions among correspondent banks through the correspondent banking system within the extent of overdraft set forth in advance;
- To assure hardware support for banks; and
- To assure information and computer software related support for banks.

1.4 The MRP's activities shall conform to the following laws of the Kyrgyz Republic:

- Law for Banks and Banking Activities in the Kyrgyz Republic;
- Law for the Central Bank of the Kyrgyz Republic;
- Law for Businesses in the Kyrgyz Republic; and
- Law for Non-Nationalization, Privatization, and General Principles of Business Activities in the Kyrgyz Republic.

In addition, the MRP shall conduct its activities according to approvals and permits of the Central Bank of Kyrgyzstan, other applicable ordinances, and this Articles of Association.

1.5 The MRP is a legal entity which is fully self-supporting and self-financing under an independent accounting system, has the capacity and authority to conclude any agreement with a third party on its behalf, has the right to own or hold property as well as personal security, assumes any obligations and duties, and is capable of acting as a plaintiff or a defendant in any court including an arbitration court. The MRP maintains its own accounts for settlement of

transactions and owns the common seal and official stamp bearing its name. The MRP is authorized to establish branch offices in and outside the republic.

1.6 The principal office of the MRP is situated at 187, Toktogul Street, City of Bishkek, the Kyrgyz Republic.

1.7 The MRP's period of activity is not specifically limited.

1.8 The MRP obtains the status of legal entity upon registration with the government.

1.9 The MRP shall act according to the principle of collective ownership.

1.10 The Kyrgyz government will not assume any obligation of the MRP, nor the MRP will assume the government's obligation.

2. Share Capital and Distribution of Profits

2.1 The promoters of the MRP establish share capital of 60,000 Som through their contributions. The amount and method of contribution by each promoter are specified in the promoters' agreement. The promoters may make their contributions in cash or in kind, including buildings and equipment, other physical properties, and securities.

2.2 The share capital is divided into 5,000 shares having an equal per value, each of which represents one voting right.

2.3 Additional contribution to the MRP's share capital will be made according to the rules set forth by the promoters' council.

2.4 The MRP's property consists of fundamental funds and liquid assets.

2.5 The MRP has the following sources of assets formation:

- Contribution in cash or kind by the promoters
- Revenues earned from rendering services

- Other sources of income not prohibited in any of the applicable laws

2.6 The MRP's property is the jointly owned and divisible property of promoters. Profits earned by the MRP, after paying taxes and budgetary disbursements, may be disposed at discretion of the MRP. The MRP will allocate its disposable profits to various funds according to standards established under a resolution of the general meeting of promoters.

2.7 Any fund established from net profits of the MRP shall be used in accordance with regulations approved by the general meeting of promoters.

3. MRP's Activities

3.1 The MRP will conduct economic activities as directed in the Articles of Association.

3.2 The MRP will plan the following activities, at its own discretion, concerning services to assure timely settlement of inter-bank transactions:

- Settlement of correspondent bank transactions within the extent of overdraft granted to each bank;
- Information and computer software related services;
- To establish an integrated group of experts for joint implementation of various tasks required to develop techniques to automate banking services and computer software programs under unified standards and methods, which should accompany sound financing from the MRP's common fund and other pooled financial sources, provided that the Central Bank of Kyrgyzstan and other banks who are interested in the MRP's activities may participate in formation of the common fund;
- To introduce latest computing technologies, and to promote qualitative improvement and quantitative expansion of information and computing services provided to banks within the republic on a commercial basis;
- To accept the MRP's payment slips electronically via a communication channel;
- To input payment slips stored in magnetic media from an automated facility (the use of hard copy is allowed according to the regulations related to non-cash payment transactions in the republic);

- To check and control bank-payer and bank-receiver??? slips stored in the MRP's database;
- To check if a bank-payer account has the amount to cover the payment declared;
- To open and induce accounts of the MRP's customers through domestic and foreign transfer channels;
- To send initial and final payment slips and assort them for shipment (addressing);
- To send payment slips against accounts of the MRP's customers, offset mutual payments, and prepare summary reports:
- To convert local currency into foreign currencies, and vice versa;
- To produce electronic printouts of slips related to customer accounts;
- To prepare the statement of receipts and disbursements at the end of each business day; and
- To send slips related to customer accounts and other reports (through electronic communication channels, magnetic medium, or in the form of hard copy), provided that such service is provided according to the MRP's service standards, only for the MRP's customers and correspondent banks.

3.3 The MRP renders its services to banks, businesses, and other organizations which are not promoters of the MRP on an onerous contract basis.

3.4 The nature and type of information classified as trade secret and its safeguarding regulations are set forth by the general meeting of promoters.

3.5 The MRP shall be liable for its activity and outcome on the basis of its entire property, which may be subject to compulsory execution under the applicable law.

3.6 The MRP will not assume an obligation of its promoters. The promoters shall be liable for the MRP's obligation to an extent up to the amount of contribution made.

3.7 The MRP may, for the purpose of promoting its own business and assuring its operation on a self-supporting basis, acquire buildings, facilities and equipment, conclude sales, lease and other types of contracts, participate in bidding, public auction, and trade show, and publish documents and materials advertising itself, providing general information, and explaining methodology and others.

3.8 The MRP will conduct social activities according to the applicable law.

4. Operation and Management

4.1 The general meeting of promoters is the highest management organ of the MRP.

4.2 The promoters of the MRP participate in action of the general meeting directly or through their agents, who may be appointed on a permanent basis or for a specific period of time, provided that such appointment shall be made by issuing a letter of attorney. The promoter has the right to replace its agent who attends the general meeting, provided that it shall notify so to other promoters in advance.

4.3 The promoter is entitled to the number of voting rights proportional to its share of capital.

4.4 The voting right of the legal entities constituting the general meeting shall be free from any restriction. Notwithstanding the above, if the general meeting decides on any matter directly affecting the interest of a promoter(s), particularly the possible dismissal from the MRP, the affected promoter(s) or its agent will not cast vote.

4.5 The general meeting is authorized to take any of the following actions:

- a) To determine basic policy of the MRP, and to approve the MRP's basic business plan and the report on its implementation results;**
- b) To amend or add any provisions of this Articles of Association;**
- c) To appoint and dismiss any member of the executive office, the audit committee, and the board of directors;**
- d) To approve annual activity reports of the MRP (including the approval of the audit committee's report and conclusion, the approval of a profit distribution plan, and the determination of a loss compensation method);**
- e) To establish the amount and form of additional contribution by the promoters, as well as the method of payment;**
- f) To approve the establishment or suspension of branch offices, and regulations (Articles of Association) related thereto;**
- g) To adopt a resolution to acquire a share(s) of a promoter by the MRP;**
- h) To submit a resolution to examine responsibility of any of the MRP's executive**

- officers related to financial matters;
- i) To approve internal reports and other documents of the MRP;
 - j) To approve the valuation of non-monetary contributions to the MRP's share capital;
 - k) To dismiss any member of the MRP;
 - l) To adopt a resolution to suspend the MRP's activity, to appoint the liquidation committee, and to approve the result of liquidation; and
 - m) To increase or decrease the MRP's share capital.

4.6 A resolution related to any matters listed in a), b), k), l) or m) above shall be decided by a majority vote of two thirds or more of the promoters, provided that all of the promoters shall attend the meeting to decide on such resolution. A resolution related to any other matters shall be decided by a majority vote with two thirds or more of promoters present. A split vote shall be decided by the chairman of the meeting.

4.7 The promoter has the right to demand deliberation on any matter at the general meeting, provided that the matter shall be raised at least 25 days before the meeting.

4.8 The general meeting shall be convened at least once a year. In addition, the extraordinary general meeting may be convened as required for the general interest of the MRP. The general meeting may be convened by the effective office or under request of the audit committee. The promoter who holds voting rights equivalent to 20% or more of the total is entitled to request convocation of an extraordinary general meeting at any time and for any reason.

4.9 The MRP's activities between two general meetings is supervised by the promoters' council, which members are appointed from the promoters at the general meeting with a specific term set forth by the general meeting, provided that the members shall include the MRP's director who has the right to participate in discussion. The number of council members shall be odd.

4.10 The council will be convened from time to time by a chairman, who is elected from the council members.

4.11 The council may, within the scope of authority vested by the Articles of

Association, decide on the following matters related to the MRP's activity:

- To approve proceedings and voting procedures at the general meeting of promoters; and - To prepare draft documents, and to evaluate agenda at the general meeting in advance.

4.12 The general meeting may, under its resolution, delegate some of its authorities and functions to the council.

4.13 The decision of the council will be made by a majority vote.

4.14 The MRP conducts its day-to-day operations under supervision and direction of the board of directors. The MRP meeting will appoint the director in accordance with the regulations related to the board of directors, who shall direct and supervise the board of directors.

4.15 The board of directors will supervise and direct the MRP's operations, deal with all the matters related to day-to-day operation according to the regulations related to the board of directors, ensure that decisions made by the general meeting and the council are implemented, and will be liable for the outcome of the MRP's activity.

4.16 The director is authorized to act on the behalf of the MRP, without a power of attorney, manage the MRP's property, open bank accounts, perform other duties and functions, and shall comply with the regulations related to the board of directors.

5. Bookkeeping, Reporting and Supervision of the MRP's Activity

5.1 The MRP shall perform bookkeeping and distribute documents according to the applicable law of the republic.

5.2 General results of the MRP's activities shall be reflected in monthly and annual balance sheets, profit and loss statements, and annual reports.

5.3 An annual financial report and profit and loss statement shall be submitted to the general meeting for approval.

- 5.4 The MRP's fiscal year starts on January 1 and ends on December 31.
- 5.5 The MRP's finance and operation shall be supervised by the audit committee.
- 5.6 The audit committee consists of 3 persons appointed by the general meeting, who shall not be the member of the promoters' council or the board directors, nor any person who is employed by the MRP on a regular basis. A chairman will be elected from the committee members.
- 5.7 The audit committee shall monitor the MRP's compliance with laws and regulations governing the MRP's activity, and examine the MRP's internal audit and procedures as well as the status of its property.
- 5.8 The audit shall be conducted according to a plan approved by the audit committee, as commissioned by the general meeting, or upon the request of promoters who hold voting rights equivalent to 50% or more of the total. Based on the result of the audit, the audit committee may convene an extraordinary general meeting of promoters, a meeting of the promoters' council, or the board or directors.
- 5.9 At the time of auditing, the MRP's board of directors shall submit all necessary books, records and documents to the audit committee for its control.
- 5.10 The audit committee shall submit to the general meeting and the council an audit report including recommendations to correct problems, and shall submit the result of evaluation on a balance sheet and profit and loss statement which are submitted for approval, concerning their consistency with the MRP's business activity.
- 5.11 The audit and inspection on the MRP's activity shall be performed by the following organizations:
- Audit department: in accordance with the applicable law and within the authority given by the Articles of Association
 - The Central Bank: under the Law for the Central Bank of the Kyrgyz Republic
 - Tax authority: covering issues related to taxation

6. Dissolution and Reorganization of the MRP

6.1 The MRP's activity may be terminated by dissolution or reorganization.

6.2 The MRP will terminate its activity for either of the following reasons:

- Under a resolution of the general meeting of promoters**
- Any cause specified in the applicable law**

6.3 If the MRP is reorganized, rights and duties related thereto shall be transferred to its successor.

6.4 The MRP may be dissolved by the liquidation committee established by an organization which adopts a resolution to dissolve.

6.5 All the authority and power related to the management of the MRP are transferred to the liquidation committee upon its establishment. The committee shall promptly publicize the dissolution, appraise the MRP property, identify debtors and creditors, pay off all the debts or establish measures to repay debts, and prepare a liquidation balance sheet and submit it to the MRP's supreme management organ.

6.6 The MRP's property and financial assets remained after repayment of debts, settlement of budgetary receipts and disbursements, and payment of wages, shall be distributed to the promoters according to each share of capital.

6.7 The MRP is deemed to be dissolved and to terminate its activity when its dissolution is recorded on the government's register.

6.8 The liquidation committee shall be liable for damage and loss incurred by the MRP, any of the promoters or a third party.

S. Dzhunushalieva (Signature)

Chairman

Promoters' Council

**ANNEX 8 LEGISLATION TRENDS IN ELECTRONIC
FUNDS TRANSFER**

Legislation Trends in Electronic Funds Transfer

1. **Need for EFT Legislation**
2. **U.S. Trends**
 - 2-1 **Efforts to Develop the Uniform New Payments Code**
 - 2-2 **Enactment of Federal EFT Act**
 - 2-3 **Enactment of Part 4A of Uniform Commercial Code (UCC4A)**
3. **U.K. Trends**
 - 3-1 **Establishment of Review Committee on Banking Service**
 - 3-2 **Voluntary Standards of Banking Practice**
4. **Trends at the UN (UNCITRAL)**
5. **Japanese Trends**
 - 5-1 **Framework for Development of the EFT Act**
 - 5-2 **Basic Positions in EFT Legislation**
 - 5-3 **Major Issues Considered in the EFT Legislation Process**
 - (1) **Scope of legislation**
 - (2) **Rights and obligations of parties: effective time of contract**
 - (3) **Withdrawal of payment instruction: Defective indication of intention, and incompetence**
 - (4) **Unauthorized transaction**
 - (5) **Liabilities of parties for damage due to accident, obstacle, etc.**
 - (6) **Electronic record and burden of proof**
 - (7) **Consumer protection**

1. Need for EFT Legislation

Remarkable advancements of communications network and information processing technology have driven the streamlining of banking service and the offering of new services that accompany rapid automation and computerization of bank business. The move enables the processing of information in an electronic form, and more and more transactions are effected in the form of electronic funds transfer (EFT).

The processing of work related to electronic funds transfer, unlike conventional methods, is often done in part by customers who operate various types of machine. At the same time, the intangible nature of electronic processing creates various issues. For instance, how should a payment instruction be processed if an accident or an obstacle occurs in the EFT system?

In Japan, the Committee on Financial System Research, upon inquiry from the Minister of Finance, published an interim report on "Electronic Funds Transfer" through its Subcommittee on Electronic Banking in 1988, which describes the need for considering the establishment of EFT legislation as follows.

<Major reasons for necessitating us to consider the establishment of legislation related to EFT>

- 1) Increased adoption of electronic processing as the method of payment urges resolution of various legal issues which have been somewhat left behind.
- 2) Evolution of the funds transfer method with increasing complexity as a result of the use of electronics is blurring the boundary of customers' right and responsibility, and inevitably places many parties involved in electronic funds transfer in a position with much legal uncertainty.
- 3) The EFT involves a risk of creating a very large damage due to the breakdown of computer and/or communication systems, crimes using them, and negligence of a party involved, incomparable with traditional paper transactions.
- 4) The EFT serves as a single system that interconnects individual transactions through information and communication technologies which operate in an integrated manner. For this reason, overall consideration of electronic funds transfer, including legal relations among parties who are not in direct contractual

relationship, is called for from the viewpoint of how demarcation of responsibilities should be established to ensure smooth operation the entire system.

At the first step of such consideration, notable trends in various countries who are advanced in establishment of EFT legislation are analyzed in the following sections.

2. U.S. Trends

2-1 Efforts to Develop the Uniform New Payments Code

In the United States, the Uniform Commercial Code (UCC) of 1952, established as a model law for states, has been adopted as laws in most of states. The UCC incorporates laws related to drafts and checks in Part 3. In addition, Part 4 sets forth provisions related to bank deposits and collections, including general rules for bank transaction. Since these laws were originally intended for documentary securities such as drafts and checks, their applicability to electronic funds transfer is an important legal issue. At the same time, various incidents have led to increasing demand for new legislation, voiced from financial institutions and their customers under the recognition that the UCC could not deal with all issues related to the electronic payments system and its operation.

In 1974, under the leadership of National Conference of Commissioners on Uniform State Laws which is responsible for control of uniform state laws, efforts were started to develop the general commercial code covering all the payment instruments except for cash, including EFT, credit cards, drafts, and checks, both wholesale and retail. The draft Uniform New Payments Code was announced in 1983, but it was never made into law due to strong oppositions which are summarized as follows:

- 1) The draft code attempts to cover too many areas and limits effectiveness of each payment instrument; and
- 2) The draft code becomes very complex and infeasible by trying to accommodate all types of payment transactions .

2-2 Enactment of the Federal EFT Act

In parallel to the move toward establishing the Uniform New Payments Code, attempts to make laws promoting the orderly development of the electronic funds transfer system were vigorously made at a federal level. In 1976, the Congress adopted the establishment of the National Commission of Electronic Funds Transfers. In 1977,

the commission announced final recommendations emphasizing the need for legislation to clearly define consumer's rights and obligations under the EFT service. In 1978, the Congress enacted the Electronic Funds Transfer Act (the federal EFT act) for consumer protection and added it to the Consumer Credit Protection Act as Part 9. Then in 1980, the federal EFT act came into force.

The federal EFT act is the world first EFT law covering the retail area and states its objective as "providing a fundamental framework for establishing rights, obligations, and responsibilities of participants in the EFT system, with a principal purpose of setting forth rights of consumers."

Notably, the act sets forth the so-called "50-dollar rule" which draws the line at liability of financial institutions and consumers for unauthorized transaction by a third party, which is summarized as follows:

- 1) If a consumer notifies his financial institution loss or theft of his credit card or other EFT instruments within 2 business days after such loss or theft has become known to him, the consumer's liability is limited to 50 dollars.
- 2) If the consumer fails to notify so within the above period, his liability for EFT transactions incurred before the notification is still limited to 500 dollars, provided that, if the consumer fails to notify unauthorized transactions recorded in a regular report sent by the financial institution within 60 days after receipt of the said report, he must assume unlimited liability for every unauthorized transaction incurred after the lapse of the 60-day period.

In essence, this rule is said to be based on the following considerations:

- A. Making the consumers liable for unauthorized transactions up to 50 dollars encourages them to keep good custody of their cards and passwords, and to promptly notify loss or theft to financial institutions.
- B. Making the banks liable for unauthorized transactions in excess of consumer's liability give incentive for them to develop a safer EFT system.
- C. If the liable amount is determined according to the degree of negligence on the consumer's side, financial institutions are likely to face the wave of law suits if

negligence and its criteria are not clearly defined. In this case, consumers will not be reimbursed during the law suit.

The 50-dollar rule is unique in setting forth the liable amount based on the lapse of time from discovery of loss or theft to notification, or from the sending of the regular report to notification, without questioning the degree of negligence on the consumer side.

The federal EFT act recognizes disclosure from financial institutions to consumers as an essential element of the law. In particular, the act requires financial institutions to disclose, prior to the consumer's signing of the EFT service contract or the provision of the first EFT service through the consumer's account, terms and conditions of the transaction intended by the contract or the service, including the following items, in the form of instruction which is suitable for storage and is understandable by the consumer:

<Disclosures Required by the Federal EFT Act>

- 1) Liability of consumer for unauthorized EFT
- 2) Address and telephone of the office to which unauthorized transaction is notified
- 3) Business hours of the financial institution
- 4) Limits for funds transfer in terms of frequency and amount, and type and nature of EFT
- 5) User charge
- 6) Right to receive the EFT record
- 7) Procedures to suspend payment of authorized EFT
- 8) Liability of financial institution for failure to comply with instruction (funds transfer and suspension)
- 9) Disclosure of account information to a third party
- 10) Procedures to correct errors

2-3 Enactment of Part 4A of the Uniform Commercial Code (UCC4A)

As mentioned in 2-1, the Uniform New Payments Code has ended in an unsuccessful attempt. In the meantime, there was strong demand for legislation governing bulk wire transfer that is made through the Clearing House Interbank Payments System – the New York Clearing House's arm to settle interbank payments –

because its operating regulations and contract are not clear about the rights and obligations of parties concerned. In response, an attempt to develop a systematic code regulating contractual relations among parties in the inter-business wholesale payments network covering bulk funds transfer between corporations and financial institutions was resumed.

In 1985, the committee on amendment of the law related to electronic payment was established under the National Conference of Commissioners on Uniform State Laws, and started the legislation process to amend the law by adding a new part (Part 4A) to the Uniform Commercial Code.

In 1989, Part 4A was adopted by the National Conference of Commissioners on Uniform State Laws, which recommended all the states to adopt it as state law. So far, it has been adopted by major states including New York and California, while a few more years are expected until it is passed by all the states. There are several decisions which cite the intent of the law.

Furthermore, the New York Clearing House Association designates the state law incorporating Part 4A as the governing law for the system. The Federal Reserve Board adopted Part 4A in 1991 as the rule regulating liability related to funds transfer via Fedwire.

Characteristically, wholesale funds transfer takes place between corporations and financial institutions, involving large amounts and effected at a very high speed and at a low cost. In consideration to these factors, Part 4A sets forth one of its major objectives to determine the sharing of risk (loss) among parties concerned, which is summarized as follows:

<General Outline of Part 4A of the Uniform Commercial Code (UCC4A)>

- 1) Contractual relations involving rights and obligations are established only when a bank receiving a payment instruction accepts it. (no relations prior to acceptance)
- 2) As for the bearing of damage due to an unauthorized transaction, if a bank maintains and operates commercially reasonable security procedures related to authentication of payment instructions, the customer will be liable for the unauthorized transaction.
- 3) The range of damage due to the delay in funds transfer is limited to the funds

transfer cost, incidental expenses incurred by inadequate execution, and their interest, and excludes liability for damage or loss incurred as a result of damage (consequential damage).

- 4) If remittance is not completed, the sending bank is liable, in principle, for reimbursing the transferred fund to its client to request the said transfer, with interest. (called the money-back-guarantee)

3. U.K. Trends

3-1 Establishment of the Review Committee on Banking Service

In the U.K., laws related to funds transfer include protection of consumers in the areas of drafts, checks and credit cards, which are provided for in separate laws. The legal structure fails to take care of EFT fully, and various legal issues have surfaced to raise voice demanding new legislation.

In 1987, the U.K. government established, jointly with the Bank of England, the Review Committee on Banking Service ("Jack Committee") to discuss a wide range of issues related to banking service, including issues originated in introduction of electronics into banking service, and legal issues accompanying international transactions. In 1989, the Jack Committee published a report entitled "Banking Service: Law and Practice Report by the Review Committee" which revealed the basic concept of EFT regulation. The report recommends urgent legislation from the viewpoint of fair share of liabilities and obligations of EFT providers, while recommending banks to develop voluntary code of conduct emphasizing consumer protection by showing various models.

In 1990, the U.K. government published the White Paper on Banking Service, which stated the government's view on the Jack Committee report, as follows:

<The U.K. Government's View on the Jack Committee Report>

While development of EFT has brought many benefits to consumers, in order to maximize its value, various issues must be resolved in a way to gain confidence of consumers. At the same time, we must avoid to impose undue restriction and control that may hinder the future growth. The government believes that legislation within a limited scope will be useful.

Notably, the government's view sets forth the following policies:

- 1) The government intends to promote legislation to provide all types of payment cards with protection similar to that stipulated in Articles 83 and 84 of the

Consumer Confidence Act of 1974, under which consumers are held liable for damage that has incurred until the fact of loss or theft of credit cards are notified, or 50 pounds, whichever is smaller.

- 2) The government intends to promote legislation to make banks compensate consumers for damage or loss due to failure of consumer-operated EFT equipment, rather than allowing banks to incorporate exclusion into the agreement.

In response, the banking industry has so far expressed the following oppositions:

- 1) Consumers are protected by series of laws and there is no need for new legislation.
- 2) Such protection may be sufficiently dealt with by the banking service agreement or the interbank arrangement, which would allow the industry to respond to technological advancements and changes in a flexible manner.

It is expected that further discussions will be required before legislation.

3-2 Voluntary Standards of Banking Practice

Model voluntary standards of banking practice proposed by the Jack Committee as a desirable basis of governing banking service and activity include the following recommendations related to EFT. The banking industry has reportedly accepted the policy to develop their own standards.

<Major Actions Recommended in Model Standards of Banking Practices
(Related to EFT)>

- 1) Introduction of an advanced system that is technologically feasible at present
- 2) Liability of banks for provision of personal identification number (PIN) and cards, with a reasonable care being required on the customer side
- 3) Protection of privacy
- 4) Protection of PIN's secrecy during entry
- 5) Introduction of new system-based countermeasures against unauthorized use of ATMs, particularly the monitoring of behavior pattern

4. Trends at the UN (UNCITRAL)

The UN has been discussing legal issues related to EFT in international commerce and trade. The United Nations Commission on International Trade Law, directly reporting to the General Assembly, examined funds transfer and remittance transactions using an electronic medium, from legal point of view, and published "Legal Guide on Electronic Funds Transfers" in 1981. The legal guide identifies various issues to be resolved in future.

Then, UNCITRAL decided to develop model rules for EFT and entrusted it to the Working Group on Internationally Negotiable Securities. The working group narrowed the scope to remittance, while adding paper-based remittance, and completed a final draft of the model law in 1990. It was discussed by the general meeting of UNCITRAL in 1991, and after some revisions, it was adopted by the 1992 general meeting.

The model law incorporates the basic concept of UCC4A in many respects, which are summarized as follows:

(1) Money-back-guarantee

If remittance is not completed, the sending bank, regardless of absence of willingness or negligence, becomes liable for reimbursing the remitted fund with interest to the customer requesting the remittance. This exists as a mandatory clause which may not be amended or changed under an agreement between related parties.

(2) Liability limited to interest for arrears

If remittance is delayed, the bank responsible for the delay is only liable for the interest on the amount instructed to be paid, as accrued during the period of delay ("interest for arrears"), unless the delay has been caused by willingness or negligence on the bank's side, and the bank is thus relieved of liability for damage caused by the original damage ("consequential damage").

(3) Security procedures for bearing of damage due to unauthorized transaction

The model law stipulates that the bank's customer is liable for an unauthorized payment instruction, provided that the bank has approved the payment instruction which has been sent by electronic message, after confirming its authenticity in accordance with security procedures agreed with the customer in advance.

The model law, unlike the treaty, is drafted and adopted as a guideline for national legislation authorities, leaving its legislation to discretion of each national government.

5. Trends in Japan

5-1 Framework for Development of the EFT Act

In Japan, discussion on EFT legislation has been led by the Committee on Financial System Research under the Ministry of Finance. In 1988, the Subcommittee on Electronic Banking published an interim report on "Electronic Funds Transfer" which describes the current status of EFT legislation in Japan as follows:

"So far, no law specifically covering EFT has been enacted. In fact, there is no comprehensive law defining and regulating funds transfer transaction, be it paper or EFT, and the Civil Code and other laws are applied case by case. There is no case law based on relevant decisions, both in number and area, and many legal issues have still to be resolved. As a result, legal disputes related to paper-based funds transfer and EFT have been left to banking service and other relevant agreements in many cases."

In this recognition, the subcommittee pointed out that Japan should promptly initiate the process of enacting EFT legislation. As the first step of such process, the subcommittee emphasized the importance of stepwise considerations of major issues summarized below. In 1988, the subcommittee organized an informal meeting on legislation to discuss on these issues:

<Major Issues Proposed for Consideration by the Subcommittee on Electronic Banking>

- 1) How are present laws applicable to paper-based funds transfer and EFT?
- 2) Should legislation be considered for both paper-based funds transfer and EFT? Is it feasible or appropriate to make them into a unified law?
- 3) Is it appropriate to enact the law which separately treats retail transactions from wholesale ones?
- 4) What is the scope of EFT to be covered by legislation?
- 5) What legal considerations are required from the viewpoint of administrative law, in addition to the standpoint of private law.

5-2 Basic Positions in EFT Legislation

In Japan, discussions on EFT legislation are advanced by taking into account foreign developments, namely UNCITRAL's model law, the U.S. federal EFT act, and Part 4A of the Uniform Commercial Act (UCC4A). Through extensive discussions, 3 positions backed by corresponding objectives have surfaced as basic concept governing the direction of the legislation, which are summarized as follows.

(1) Consumer interest

This is a pro-consumer position that EFT legislation should be developed for the interest of consumers, i.e., how convenience of consumers can be improved through EFT legislation. It is somewhat related to the position "to maintain the financial order" as later discussed, consumer protection should be one of major objectives of EFT legislation. An important requirement for promoting consumer interest is the disclosure of terms and conditions of EFT service in advance, such as user charges and acceptance hours, in the language understandable to general consumers, as seen in the federal EFT act.

(2) Harmonization with International Rules

This position values integrity and consistency with EFT laws in other countries. The position agrees with the international movement in which UNCITRAL has been discussing legal issues related to EFT in the context of international transaction as part of efforts to establish internationally acceptable rules.

Nevertheless, some aspects of the UNCITRAL model law, such as the money-back-guarantee clause, are not adaptable to Japan as viewed from the current business practice and custom. In any case, the spirit of developing globally applicable and unified rules has to be followed and needs to be taken into account by harmonizing the Japanese EFT act with the model law as close as possible. Such efforts include consideration of major moves and trends in the EC.

(3) Maintenance of the financial order

This position calls forth that EFT legislation be developed for the interest of consumer protection while securing sound management of financial institutions. It therefore emphasizes fairness to be secured when imposing obligations on all the parties to EFT transactions.

For instance, advocates of this position demand responsibility of each party and effective time of contract between parties to be clearly defined in order to ensure smooth solution when non-arrival or delayed remittance occurs. Also they want procedures to resolve a dispute related errors, such as unauthorized or incorrect funds transfer in the EFT system, to be written into statute. Also, some point out that the burden of proof on the customer's side should be reduced since the bank virtually monopolizes documentary evidence.

5-3 Major Issues Considered in the EFT Legislation Process

(1) Scope of coverage by EFT legislation

1) Range of EFT transactions to be covered

For instance, it is important to clarify whether a partial EFT, e.g., a request for remittance is made in writing at a sending bank and an instruction to transfer is made through an electronic medium, is included in EFT transaction. What about an EFT to withdraw own deposit, without funds transfer to the receiver's account?

For the same reason demanding EFT legislation, some believe that paper-based transactions should preferably be included in EFT transactions. As for repayment of deposit, opinions are divided into two; paper-based transactions should be included in EFT; or they can be dealt with under existing banking service agreements.

2) Geographical scope

In Japan, some advocate inclusion of international transactions for the interest of

ensuring harmonization with foreign systems, while others oppose the idea in consideration to country risk and varying levels of foreign banks' ability to handle EFT.

The existing EFT act in the U.S. covers domestic transactions only.

3) Treatment of Retail and Wholesale Transactions

In the U.S., it was agreed that these transactions could not be governed under the same rule. As a result, two separate laws – the federal EFT act covering retail transactions and UCC4A covering wholesale transactions – have been enacted.

In Japan, discussion has not progressed much in this area.

(2) Contractual relations among parties: effective time of contract

The EFT process takes place instantly from the start of the client's transaction and the end of processing. From the legal viewpoint, however, the process is considered to be divided into series of activities in a certain order. This argument leads to the need for clarification of contractual relations among parties involved, i.e., rights and obligations related performance of the EFT contract, at each stage of the process.

At present, majority of opinions view remittance – a basic form of EFT – entrustment contract, to which the Civil Code is applicable. Many court decisions support this position, and some believe that EFT remittance can be interpreted within the existing laws. On the other hand, there are opinions that contractual relations should be clearly defined to establish a detailed and rational rule for effective time of contract, e.g., freedom to reject by the sending bank.

Finally, some think that it is difficult to regulate diverse electronic banking (EB) services in a uniform manner, and they consider effective time of contract to be established for each type of EB service as realistic solution.

The model law defines effective time of contract as the time when the receiving bank accepts a payment instruction.

(3) Withdrawal of payment instruction: defective indication of intention and incompetence

Since EFT transactions are effected by the aid of electronic equipment, without face-to-face communication and transaction, some argue that legal issues related to defective instruction, such as defective indication of intention and incompetence, need to be addressed in EFT legislation. In particular, it is important to define the effectiveness of an EFT transaction based on defective instruction, and its legal impacts on a third party.

As for defective indication of intent, there are opinions that the bank should be relieved of liability where it acts in good faith without negligence, as seen in the case of check transactions, for the following reasons:

- 1) Errors in EFT transaction are often caused by reasons attributable to the client instructing payment.
- 2) In the EFT which is not based on face-to-face communication, it is difficult for financial institutions to check whether the indication of intention is defective.
- 3) In the EFT process, prompt transfer of funds is essential.

On the other hand, as perceived by customers, relieving the bank from liability for reasons of bona-fide and no negligence, regardless of whether there is negligence on the customer side, treats the customer unfairly. As for incompetence, since the bank has no way to find out when the customer become incompetent after he has signed the contract, major opinions seem to incline toward relieving the bank if no negligence is involved.

Finally, as for relations with a third party who is not a party to the EFT contract (such as a creditor distraining the payee's assets), the case is more complicated. For instance, when the creditor attempts to distrain funds which have been credited to the payee's account by the receiving bank, some believe that the payor may not be able to claim against such attempt by canceling journal entry of the funds transfer on the ground that the transfer has been based on a payment instruction which has been void from the beginning.

In practice, cancellation of remittance upon the customer's request after the

instruction of remittance has been made – generally referred to as "carry-back" – is customarily done in the Japanese banking industry for a long period of time. The sending bank accepts such request until the remitted fund is credited to the payee's account (before deposit is made), or even accepts after the entry to the payee's account if it is accepted by him.

(4) Unauthorized transaction

1) Relations with existing banking service agreement

It is important to clarify in what circumstance the bank who has initiated EFT transaction under instruction of an unauthorized period is relieved of liability.

In document-based transactions, a person requesting ordinary repayment of deposit under a set of conditions is deemed to be an authorized person, for the interest of safety and promptness in bank transaction, so that the bank is relieved of liability in accordance with applicable provisions of the Civil Code. On the other hand, some point out that EFT requires a different method of validating personal identify and different requirements for duty of care, and the principle applied to documentary transactions may not be applied to EFT as it is.

On the other hand, some argue that the intent of the Civil Code lies in avoidance of impeded safety in business transaction and consumer protection, so that appropriate provisions in the code should be applied directly or analogically to EFT transactions even if they are promptly executed in bulk. Finally, there is a position that it is difficult to give relief to the bank under the Civil Code by assuming that electronic authentication in the EFT process is equivalent to the collation and validation of the passbook and the stamp by human eyes. Instead, special clauses should be provided for in the bank service agreement to specify conditions under which the bank may be relieved of liability. Others believe that a more safe EFT system using the most advanced level of technology available at present.

The model law requires certification "through the security procedures reasonably acceptable in actual transaction" to serve as an authorized payment transaction binding upon the sender.

2) About the "50-dollar" rule

Looking at liability of parties for an unauthorized transaction, a major issue is whether Japan should introduce a clear rule drawing the line at liability of banks and customers, like the "50-dollar rule" in the U.S. federal EFT act that does not concern about negligence on the customer side. While the 50-dollar rule has positive impacts from the viewpoint of consumer protection, we should not forget that it has been introduced in the U.S. partly due to the need for reducing the cost of law suit arising from unauthorized transactions, which should be carefully taken into account when considering the similar rule for Japan.

The model law does not have provisions related to consumer protection. On the other hand, the U.K. government has revealed the view that the new legislation should extend consumer protection similar to "50-pound rule" covering credit cards into all types of payment cards.

(5) Liabilities of parties for damage due to an accident, obstacle, and the like

1) Sending bank

Liability of the sending bank may be viewed in two ways. First of all, the sending bank is responsible for sending an accurate payment instruction to the receiving bank, and it is not liable for any accident or obstacle that occurs after transmission. Some think that the sending bank is relieved of liability so far as it satisfies the duty of care or the duty to report the result of transmission. (transmission-based liability)

On the other hand, others argue that the sending bank should be held responsible until the remittance instruction is accurately transmitted to the receiving bank (reception-based liability), or it is responsible for the entire process of remittance transactions (network-based liability). These arguments are based on the recognition that a person who requests remittance is not fully protected under the existing legal system, since he cannot claim contractual liability for default, which does not extend to the accident or obstacle occurred on the way from the sending bank to the receiving bank. He can only recover damage by claiming tort liability.

The model law requires the sending bank to reimburse the sender the remitted fund plus interest if remittance is not completed (money-back-guarantee). In Japan, many seem to feel negative about such clause which would impose excess liability on the banking industry.

2) Liability of communication service provider

Since liability of communication service providers for damage incurred by failure to provide service is usually limited to a certain extent under their service agreement, financial institutions have to assume comprehensive liability, and the question is its scope and extent.

Some argue that liability of communication service providers is often limited by government policy, as reflected in legislation, which makes it difficult to spread controllable risk among parties in a fair manner. In any case, damage due to breakdown or failure in the communication service should be dealt with by introducing a certain form of compensation system, such as the money-back guarantee in the model law, which can then be reflected in insurance or remittance fee to relieve the burden on financial institutions.

3) Range of compensation

Remittance transactions may be considered as a means of payment based on a causal relationship between the sender and the recipient, which does not concern with a financial institution who handle the request for remittance. In this context, the financial institution is liable only for interest on the remitted amount, but not for consequential damage.

The model law also limits liability of the bank responsible for the delay in remittance to the interest for arrears unless the bank has intentionally delayed the transaction, thus excluding consequential damage. Also, many find that EFT transactions – lacking face-to-face communication – rarely make consequential damage foreseeable, so that any trouble in EFT can be resolved under provisions of the Civil Code.

On the other hand, Japanese case law takes a view that the range of compensation

is governed by presence of foreseeability and thus should not be limited to the interest for arrears if foreseeability is found.

(6) Electronic record and burden of proof

In the EFT process, financial institutions do not receive voucher for transaction from customers, and do not deliver documents evidencing the contents of transactions. Record in an electronic medium is only one evidence of each transaction. This means, EFT legislation should address important issues in this regard, such as probative value, burden of proof, and delivery of transaction record.

When a customer intends to prove negligence or default of a financial institution who fails to transfer funds as requested, uneven availability of evidence, i.e., important records are all held by the financial institution, becomes an issue and makes it difficult to establish who is actually responsible for negligence made within the EFT network. In this connection, some point out the need for defining the scope of liability for customers to be directly assumed by financial institutions, and the level of burden of proof imposed on the customer to reflect actual court decisions and public opinion, or the shift of burden of proof to the bank which would naturally require careful consideration.

There are opinions that the burden of proof can be reduced by improving rules for storage and delivery of transaction record.

The model law does not have provisions addressing this issue. The U.S. federal EFT act requires financial institutions to bear the burden of proof for the interest of consumer protection.

(7) Consumer protection

Some urge EFT legislation in Japan to incorporate disclosure of terms and conditions of EFT transaction, prior authorization procedures, and error solving procedures, as seen in the U.S. federal EFT act, for the purpose of clearly defining rights, obligations, and responsibilities of consumers participating in the EFT system.

On the other hand, some think that items serving as warning and public education

may be dealt with in the form of EFT service contract delivered to consumers.

The model law specifically states that it does not mention issues related to consumer protection. This means, any national law covering consumer protection may prevail.

Reference: White Paper for Financial Information Systems in Japan 1994, edited by The Financial Information Systems Center in Japan.