

## Issues for Consideration: The Specified Bank Notes (Cessation of Liabilities) Ordinance, 2016

The Specified Bank Notes (Cessation of Liabilities) Ordinance, 2016 was promulgated on December 30, 2016. Earlier on November 8, 2016, currency notes of Rs 500 and Rs 1,000 were demonetised through a notification.<sup>1</sup> A Bill to replace the Ordinance was introduced in Lok Sabha on February 3, 2017. The provisions of the Bill and the Ordinance are identical.

### Specified Bank Notes (Cessation of Liabilities) Ordinance, 2016

- The Ordinance provides that the specified bank notes (old Rs 500 and Rs 1,000) will cease to be liabilities of the Reserve Bank of India (RBI) from December 31, 2016 onwards.<sup>2</sup> Further, these notes will no longer be guaranteed by the central government.
- These notes were demonetised on November 8, 2016 through a notification issued under the RBI Act, 1934. The notification had allowed these notes to be deposited in banks or post offices by December 30, 2016.
- **Grace period:** The central government will specify a grace period after December 31, 2016 during which the following persons may deposit the specified notes with the RBI: (i) an Indian citizen who makes a declaration that he was outside India between November 9, 2016 to December 30, 2016, or (ii) any other class of persons specified by the central government. Any such persons depositing old notes will be required to make declarations or statements as specified by the RBI.
- The government has notified March 31, 2017 as the grace period for resident Indians and June 30, 2017 for non-residents Indian citizens who were out of the country from November 9 to December 30, 2016.
- **Verification of claims:** The RBI will verify if the reasons for delay in depositing the specified bank notes are genuine. If satisfied with the reasons, it will credit these notes to the person's Know Your Customer (KYC) compliant account.
- Any person aggrieved by the RBI's refusal to credit notes to their account may approach the RBI central board within 14 days.
- **Punishment for false declaration:** Any person wilfully making a false declaration will be punishable with a fine: (i) which may extend to Rs 50,000, or (ii) five times the value of notes deposited, whichever is higher.
- **Prohibitions related to specified notes:** A person will be prohibited from holding, transferring or receiving the specified bank notes from December 31, 2016 onwards. It exempts persons from this prohibition if: (i) a person holds up to 10 old notes (irrespective of denomination), (ii) a person holds up to 25 notes for the purposes of study, research or numismatics (collection or study of coins or notes), or (iii) a person holds notes on the direction of a court. In addition, the RBI or any person authorised by it, are also exempted from this prohibition.
- **Punishment for holding specified bank notes:** Any person holding the specified bank notes, except in the circumstances mentioned above, will be punishable with a fine: (i) which may extend to Rs 10,000, or (ii) five times the value of notes possessed, whichever is higher.
- **Offences by companies:** If a person acting on behalf of a company commits an offence under the Ordinance, the company would also be held liable for such an offence.
- **Authority for imposing fines:** Any fine for contravening provisions of the Ordinance will be imposed by the Court of a Magistrate of the First Class or the Court of a Metropolitan Magistrate.

### Issues for consideration

#### A. Expropriation of Property

[Clauses 3 and 4] On November 8, 2016 old currency notes of Rs 500 and Rs 1,000 were demonetised through a notification, implying that they ceased to be legal tender. The notification allowed people to either exchange notes over the counter or deposit them in their bank accounts by December 30, 2016.<sup>1</sup> Further, the notification also specified that after December 30, 2016, any person unable to exchange or deposit old notes would be allowed to do so at specified RBI offices. Subsequent notifications changed certain details to implement demonetisation.

However, the Ordinance promulgated on December 30, 2016 does not provide a facility to deposit old notes with the RBI except in two cases: (i) an Indian citizen who makes a declaration that he was outside India

between November 9, 2016 to December 30, 2016, and (ii) any other class of persons specified by the central government.<sup>2</sup> Subsequent notifications of the government allow only Indian citizens who were abroad to deposit old notes. In addition, the RBI has permitted foreign tourists to exchange Rs 5,000 per week.<sup>6</sup> No other person can exchange or deposit old notes after December 30, 2016.

The question is whether this violates Article 300A of the Constitution, which states that no person will be deprived of his property, except by law. Though this Ordinance is a “law”, the question is whether its provisions meet the standards of due process and are not arbitrary. That is, whether given that earlier notifications had indicated that a facility for exchanging or depositing old notes would be provided after December 30, 2016, not providing such facility would be an arbitrary action which violates due process. A few examples will be useful to examine this question.

*Case 1: A person unable to deposit notes due to poor health*

A person may have been unable to deposit old currency notes owing to various reasons such as poor health, old age or disability till the deadline of December 30, 2016. Note that the November 8, 2016 notification had specified that a person unable to deposit or exchange notes by December 30, 2016 would be given an opportunity at specified RBI offices after that date.\* The Ordinance of December 30, 2016 and subsequent notification under it do not provide any such facility.

*Case 2: A person without a bank account*

A person without a bank account may have held over Rs 4,500 in old currency notes. The notification (and future modifications) allowed a person to exchange up to Rs 4,500 over the counter once till November 24, 2016.<sup>17</sup> Such a person would have to incur a monetary loss above this value, given his inability to deposit old currency notes in a bank account.

*Case 3: Indian citizens not in India during the grace period*

There may be resident Indians who left India before the old notes were demonetised on November 8, 2016 and return after the grace period for residents ends on March 31, 2017. Such people may not have an opportunity to deposit their old notes, and as a result suffer a monetary loss.

*Case 4: Indian citizens living abroad*

There may be Indians working or studying abroad holding old currency notes.<sup>†</sup> The government has notified the last date (grace period) for depositing old notes for these non-resident Indians as June 30, 2017.<sup>3</sup> However, in some cases, these people may not visit India between November 8, 2016 and June 30, 2017. In such a scenario, these people may have to incur a monetary loss.

*Case 5: Non-Resident Indian with currency left behind in India*

A Non-Resident Indian may hold old currency notes in the country (For example, a person may have left cash behind in their house). The RBI guidelines specify that such a person would only be allowed to deposit old currency notes declared by him at the Customs counter at the time of his arrival into the country.<sup>4,5</sup> Such a person would not be allowed to deposit any old notes left behind in India.

*Case 6: Foreign nationals entering India before demonetisation*

Foreign tourists in the country may have held old currency notes before demonetisation on November 8, 2016. Under the notification such tourists can only exchange old currency notes of up to Rs 5,000 per week till January 31, 2017.<sup>6</sup> Given such foreigners may not have bank accounts in India, they may also suffer a monetary loss for whatever amount could not be exchanged within the period they were in India. For example, a person who had Rs 10,000 and left India on November 13, 2016 would not have been able to get the value of notes they had, over Rs 5,000.

Further, Indian currency notes are used as legal tender in neighbouring countries such as Nepal and Bhutan. The Ordinance allows Indian citizens to deposit old notes for an extended period under certain conditions. However, it does not make any provisions for foreigners to deposit or exchange old notes held by them. Note that such foreign nationals who are not resident in India would not have bank accounts in India.

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\* Section 2 (ix) of the notification issued on November 8, 2016 (No. S. O. 3407 (E)) states that any person who is unable to exchange or deposit the specified bank notes in their bank accounts on or before the 30th December, 2016, shall be given an opportunity to do so at specified offices of the Reserve Bank or such other facility until a later date as may be specified by it.

<sup>†</sup> FEMA regulations permit up to Rs 25,000 to be carried in cash outside India. For details, see Notification No. FEMA 6 (R) /RB-2015, <https://rbidocs.rbi.org.in/rdocs/notification/PDFs/FM6R4D8778085BCA47BC959C2D16CC2479B8.PDF>.

## B. Provisions regarding holding of old notes

[Clause 7] Under the Ordinance, any person holding more than 10 old currency notes will be punishable with a fine: (i) which may extend to Rs 10,000, or (ii) five times the value of notes possessed, whichever is higher, with immediate effect. In this context, there may be two issues to consider: (i) the absence of window before declaring a penalty for holding old currency notes, and (ii) the purpose behind punishing a person to hold old currency notes.

**No window to deposit old notes before imposing penalty:** The notification allowed old currency notes to be deposited till December 30, 2016 and specified that people unable to deposit them till this date would be given an opportunity later. The Ordinance which came into force on December 31, 2016 made it an offence to hold old currency notes and imposed a penalty. This overnight change did not provide a window for a person holding the notes on that day to exchange or deposit them. Therefore, not only did the holder lose the monetary value of the notes but also he would be deemed to have committed an offence. This implies that a person who had the notes did not have an opportunity to avoid committing an offence and attracting a penalty.

**Unclear purpose behind penalty on possessing old notes:** The purpose and the objective behind imposing a penalty for the possession of old currency notes is unclear. One may draw a comparison between holding an invalid currency note, and an expired cheque since both these instruments are meant to complete transactions. Currently, a cheque becomes invalid three months after being issued. However, holding multiple expired cheques does not attract a penalty.

### Timeline of Events

**Table 1: Timeline of events**

Date	Provisions
	<b>2016</b>
Nov 8	<ul style="list-style-type: none"> <li>▪ Old currency notes of Rs 500 and Rs 1,000 demonetised. Exchange of up to Rs 4,000 in old notes allowed. Any amount above Rs 4,000 to be deposited in the bank account.<sup>1</sup></li> <li>▪ Cash withdrawals over the counter restricted to Rs 10,000 per day, with a limit of Rs 20,000 per week. Withdrawals at ATMs restricted to Rs 2,000 per day. ATM withdrawal limit to be increased to Rs 4,000 from November 19.</li> <li>▪ Use of old currency notes allowed till November 11 for transactions including: (i) payments at government hospitals, (ii) payments to purchase tickets for railway, government buses and airlines, (iii) purchase at consumer cooperative stores and milk booths, (iv) payment at petrol pumps, (v) payment at crematoria and burial grounds, and (vi) exchange at international airports and for foreign tourists up to Rs 5,000.<sup>7</sup></li> </ul>
Nov 9	<ul style="list-style-type: none"> <li>▪ Use of old currency notes extended to transactions including: (i) payments at State and National Highways, (ii) purchase of LPG gas cylinders, (iii) purchase of tickets for suburban and metro rail services, and (iv) purchase of tickets at Archaeological Survey of India monuments.<sup>8</sup></li> </ul>
Nov 10	<ul style="list-style-type: none"> <li>▪ Use of old currency notes extended to: (i) payments related to fees, taxes or penalties due to central or state governments including municipal and local bodies, and (ii) payments for utility charges including electricity and water.<sup>9</sup></li> </ul>
Nov 11	<ul style="list-style-type: none"> <li>▪ Use of old currency note for specified transactions extended till November 14.<sup>10</sup></li> </ul>
Nov 13	<ul style="list-style-type: none"> <li>▪ Limit to exchange old currency notes increased from Rs 4,000 to Rs 4,500. Both, the daily and weekly limit for over the counter withdrawals increased to Rs 24,000.<sup>11</sup></li> </ul>
Nov 14	<ul style="list-style-type: none"> <li>▪ Use of old currency notes for specified transactions extended till November 24, 2016.<sup>12</sup></li> </ul>
Nov 15	<ul style="list-style-type: none"> <li>▪ Banks asked to use indelible ink on the finger of customers exchanging old currency notes.<sup>13</sup></li> </ul>
Nov 17	<ul style="list-style-type: none"> <li>▪ Limit to exchange old currency notes reduced from Rs 4,500 to Rs 2,000.<sup>14</sup></li> <li>▪ Farmers allowed to withdraw Rs 25,000 per week; Withdrawal of Rs 2,50,000 allowed for marriage expenses.<sup>15</sup></li> </ul>
Nov 20	<ul style="list-style-type: none"> <li>▪ Farmers allowed to purchase seeds using old currency notes of Rs 500.<sup>16</sup></li> </ul>
Nov 24	<ul style="list-style-type: none"> <li>▪ Exchange of old currency notes stopped.<sup>17</sup></li> <li>▪ Use of old currency notes for specified transactions extended till December 15, 2016. Use of such notes extended to transactions including: (i) payment of fees of up to Rs 2,000 per student in government schools, (ii) payment for pre-paid mobile top-up of up to Rs 500. Only the use of old Rs 500 note allowed for these and previously exempted transactions.<sup>18</sup></li> <li>▪ Use of old currency notes for certain transactions such as exchange at international airports and for tourists stopped.<sup>18</sup></li> </ul>
Nov 26	<ul style="list-style-type: none"> <li>▪ RBI increases Cash Reserve Ratio (CRR) for deposits received between September 16 and November 11 to 100%.<sup>19</sup></li> </ul>
Nov 29	<ul style="list-style-type: none"> <li>▪ Taxation Laws (Second Amendment) Bill, 2016 passed in Lok Sabha as Money Bill. The Bill introduces the <i>Pradhan Mantri Garib Kalyan Yojana, 2016</i> under which a person may declare undisclosed income. On this income, 49.9% of tax and penalties will be levied, and a further 25% will be locked in an interest free deposit for four years. The Bill also increases the tax and penalty on possession of undisclosed income found during searches by tax authorities.<sup>20</sup></li> </ul>
Nov 30	<ul style="list-style-type: none"> <li>▪ Withdrawals from Jan Dhan Accounts restricted to Rs 10,000 per month for Know Your Customer (KYC) compliant accounts. For non-KYC compliant accounts, withdrawal restricted to Rs 5,000.<sup>21</sup></li> <li>▪ Use of old notes at petrol pumps permitted only till December 2.<sup>22</sup></li> </ul>

Dec 7	<ul style="list-style-type: none"> <li>Use of old currency notes to purchase tickets for railways, buses, airlines, suburban and metro rail stopped with effect from December 10.<sup>23</sup></li> <li>Requirement to hold 100% CRR for deposits received between September 16 and November 11 withdrawn.<sup>24</sup></li> </ul>
Dec 16	<ul style="list-style-type: none"> <li><i>Pradhan Mantri Garib Kalyan Yojana, 2016</i> notified.<sup>25</sup></li> </ul>
Dec 17	<ul style="list-style-type: none"> <li>Deposit of old notes over Rs 5,000 to be subject to conditions specified by RBI. Any amount exceeding Rs 5,000 to be deposited in an account only once till December 30. There will be no limits on old currency notes being deposited for the <i>Pradhan Mantri Garib Kalyan Yojana, 2016</i>.<sup>26</sup></li> </ul>
Dec 19	<ul style="list-style-type: none"> <li>Deposits of notes over Rs 5,000 will be allowed only once for KYC compliant accounts. This will be done after questioning the person in the presence of two officials. For non-KYC compliant accounts, the deposit will be restricted to Rs 50,000 subject to conditions.<sup>27</sup></li> </ul>
Dec 21	<ul style="list-style-type: none"> <li>RBI removes restrictions: (i) on the number of times old notes can be deposited, and (ii) related questioning imposed on December 19, 2016 for KYC compliant accounts.<sup>28</sup></li> </ul>
Dec 30	<ul style="list-style-type: none"> <li>Deadline for depositing old notes in banks and post offices ends.<sup>29</sup></li> <li>The Specified Bank Notes (Cessation of Liabilities) Ordinance, 2016 promulgated.<sup>30</sup> It provides that the old notes would cease to be liabilities of the RBI, and would no longer be guaranteed by the central government. It also prohibits any person from holding more than a specified number of old notes.</li> </ul>
<b>2017</b>	
Jan 16	<ul style="list-style-type: none"> <li>Daily ATM withdrawal limit increased from Rs 4,500 to Rs 10,000; Weekly withdrawal limit for current account increased from Rs 50,000 to Rs 1,00,000.<sup>31</sup></li> </ul>
Jan 30	<ul style="list-style-type: none"> <li>Limits on cash withdrawals from ATMs and current accounts withdrawn.<sup>32</sup></li> </ul>

<sup>1</sup> S. O. 3407 (E), Gazette of India, Ministry of Finance, November 8, 2016, <http://finmin.nic.in/172521.pdf>.

<sup>2</sup> The Specified Bank Notes (Cessation of Liabilities) Ordinance, 2016, <http://www.prsindia.org/uploads/media/Ordinances/Specified%20Bank%20Notes%20%28Cessation%20of%20Liabilities%29%20Ordinance,%202016.pdf>.

<sup>3</sup> S. O. 4251 (E), Gazette of India, Ministry of Finance, December 30, 2016, <http://dea.gov.in/sites/default/files/24Notification%2030.12.2016.pdf>.

<sup>4</sup> Facility for exchange of Specified Bank Notes (SBNs) during Grace Period – Verification of KYC and Account details, Reserve Bank of India, December 31, 2016, <https://www.rbi.org.in/SCRIPTS/NotificationUser.aspx?Id=10808&Mode=0>.

<sup>5</sup> Declaration form to be filled up by NRIs for depositing Specified Bank Notes (SBNs) on arrival-reg., Central Board of Excise and Customs, December 31, 2016, <http://www.cbec.gov.in/resources/htdocs/cbec/customs/cs-circulars/cs-circulars-2016/circ60-2016cs.pdf;jsessionid=47DD663A1E56825610044B7B58F53895>.

<sup>6</sup> Exchange facility to foreign citizens, January 3, 2017, <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10815&Mode=0>.

<sup>7</sup> S. O. 3408 (E), Gazette of India, Ministry of Finance, November 8, 2016, <http://finmin.nic.in/172522.pdf>.

<sup>8</sup> S. O. 3416 (E), Gazette of India, Ministry of Finance, November 9, 2016, <http://finmin.nic.in/172544.pdf>.

<sup>9</sup> S. O. 3429 (E), Gazette of India, Ministry of Finance, November 10, 2016, <http://finmin.nic.in/172564.pdf>.

<sup>10</sup> S. O. 3445 (E), Gazette of India, Ministry of Finance, November 11, 2016, <http://finmin.nic.in/172583.pdf>.

<sup>11</sup> S. O. 3446 (E), Gazette of India, Ministry of Finance, November 13, 2016, <http://finmin.nic.in/172602.pdf>.

<sup>12</sup> S. O. 3448 (E), Gazette of India, Ministry of Finance, November 14, 2016, <http://finmin.nic.in/172604.pdf>.

<sup>13</sup> SOP for putting Indelible Ink on the Finger of the Customers coming to a Bank Branch for SBNs, Reserve Bank of India, November 15, 2016, <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10713&Mode=0>.

<sup>14</sup> S. O. 3479 (E), Gazette of India, Ministry of Finance, November 17, 2016, <http://finmin.nic.in/172638.pdf>.

<sup>15</sup> S. O. 3480 (E), Gazette of India, Ministry of Finance, November 17, 2016, <http://finmin.nic.in/172639.pdf>; Revisions for Farmers/Traders registered with APMC/Mandis, Reserve Bank of India, November 21, 2016, <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10730&Mode=0>.

<sup>16</sup> S. O. 3490 (E), Gazette of India, Ministry of Finance, November 20, 2016, <http://finmin.nic.in/172686.pdf>.

<sup>17</sup> S. O. 3543 (E), Gazette of India, Ministry of Finance, November 24, 2016, <http://finmin.nic.in/172740.pdf>.

<sup>18</sup> S. O. 3544 (E), Gazette of India, Ministry of Finance, November 24, 2016, <http://finmin.nic.in/172741.pdf>.

<sup>19</sup> Reserve Bank of India Act, 1934 – Section 42(1A) Requirement for maintaining additional CRR, Reserve Bank of India, November 26, 2016, <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10744&Mode=0>.

<sup>20</sup> The Taxation Laws (Second Amendment) Act, 2016, <http://www.incometaxindia.gov.in/Documents/PM%20Garib%20Kalyan%20Yojna/Taxation-Laws-Second-Amendment-Act-2016.pdf>; Taxation Laws (Second Amendment) Bill, 2016, <http://www.prsindia.org/billtrack/the-taxation-laws-second-amendment-bill-2016-4482/>.

<sup>21</sup> Accounts under PMJDY – Precautions, Reserve Bank of India, November 29, 2016, <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10755&Mode=0>.

<sup>22</sup> S. O. 3598 (E), Gazette of India, Ministry of Finance, November 30, 2016, <http://finmin.nic.in/3598.pdf>.

<sup>23</sup> S. O. 3678 (E), Gazette of India, Ministry of Finance, December 7, 2016, <http://finmin.nic.in/172963.pdf>.

<sup>24</sup> Reserve Bank of India Act, 1934 – Section 42(1A) Withdrawal of the Incremental CRR, Reserve Bank of India, December 7, 2016, <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10768&Mode=0>.

<sup>25</sup> S. O. 4058 (E), Gazette of India, Ministry of Finance, December 16, 2016, <http://dea.gov.in/sites/default/files/Notification1152016.pdf>.

<sup>26</sup> S. O. 4086 (E), Gazette of India, Ministry of Finance, December 17, 2016, <http://finmin.nic.in/4086.pdf>.

<sup>27</sup> Withdrawal of Legal Tender Character of existing ₹ 500/- and ₹ 1000/- Bank Notes (Specified Bank Notes) - Deposit of Specified Bank Notes (SBNs) into bank accounts, Notification, Reserve Bank of India, December 19, 2016, <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10784&Mode=0>.

<sup>28</sup> Withdrawal of Legal Tender Character of existing ₹ 500/- and ₹ 1000/- Bank Notes (Specified Bank Notes) - Deposit of Specified Bank Notes (SBNs) into bank accounts- Modification, Notification, Reserve Bank of India, December 21, 2016, <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10790&Mode=0>.

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<sup>29</sup> Closure of the scheme of exchange of Specified Bank Notes (SBNs) at banks on December 30th 2016- Accounting, Reserve Bank of India, December 30, 2016, <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10804&Mode=0>.

<sup>30</sup> The Specified Bank Notes (Cessation of Liabilities) Ordinance, 2016, [http://www.prsindia.org/uploads/media/Ordinances/Specified%20Bank%20Notes%20\(Cessation%20of%20Liabilities\)%20Ordinance,%202016.pdf](http://www.prsindia.org/uploads/media/Ordinances/Specified%20Bank%20Notes%20(Cessation%20of%20Liabilities)%20Ordinance,%202016.pdf).

<sup>31</sup> Enhancement of withdrawal limits from ATMs and Current Accounts, Notifications, Reserve Bank of India, January 16, 2017, <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10826&Mode=0>.

<sup>32</sup> Limits on Cash withdrawals from Bank accounts and ATMs - Restoration of status quo ante, Reserve Bank of India, January 30, 2017, <https://rbi.org.in/Scripts/NotificationUser.aspx?Id=10840&Mode=0>.

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