

Bill No. 36 of 2005

THE PENSION FUND REGULATORY AND DEVELOPMENT
AUTHORITY BILL, 2005

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BILL

to provide for the establishment of an Authority to promote old age income security by establishing, developing and regulating pension funds, to protect the interests of subscribers to schemes of pension funds and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Pension Fund Regulatory and Development Authority Act, 2005.

(2) It extends to the whole of India.

(3) It shall be deemed to have come into force on the 29th day of December, 2004.

Short title,
extent and
commencement.

Definitions.

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

(a) “Authority” means the Pension Fund Regulatory and Development Authority established under sub-section (1) of section 3;

(b) “central recordkeeping agency” means an agency registered under section 24 to perform the functions of recordkeeping, accounting, administration and customer service for subscribers to schemes;

(c) “Chairperson” means the Chairperson of the Authority;

(d) “individual pension account” means an account of a subscriber, executed by a contract setting out the terms and conditions under the New Pension System;

(e) “intermediary” includes pension fund, central recordkeeping agency, pension fund adviser, retirement adviser, point of presence and such other person or entity connected with collection, management, recordkeeping and distribution of accumulations;

(f) “member” means a member of the Authority and includes its Chairperson;

(g) “New Pension System” means the contributory pension system referred to in section 20 whereby contributions from a subscriber are collected in an individual pension account using points of presence and a central recordkeeping agency and accumulated by pension funds for pay offs as specified by regulations;

(h) “notification” means a notification published in the Official Gazette;

(i) “pension fund” means an entity registered with the Authority under sub-section (3) of section 24 as a pension fund for receiving contributions, accumulating them and making payments to the subscriber in the manner specified by regulations;

(j) “Pension Regulatory and Development Fund” means the fund constituted under sub-section (1) of section 37;

(k) “point of presence” means an entity registered with the Authority under sub-section (3) of section 24 as a point of presence and capable of electronic connectivity with the central recordkeeping agency for the purposes of receiving and transmitting funds and instructions and pay out of funds;

(l) “prescribed” means prescribed by rules made under this Act;

(m) “regulated assets” means the assets and properties, both tangible and intangible, owned, leased or developed by and other rights belonging to, the central recordkeeping agency;

(n) “regulations” means regulations made by the Authority under this Act;

(o) “scheme” means a scheme of pension fund approved by the Authority under this Act;

(p) “Securities Appellate Tribunal” means a Securities Appellate Tribunal established under sub-section (1) of section 15K of the Securities and Exchange Board of India Act, 1992;

15 of 1992.

(q) “subscriber” includes a person who subscribes to a scheme of a pension fund;

(r) “Subscriber Education and Protection Fund” means the fund constituted under sub-section (1) of section 38;

(2) Words and expressions used and not defined in this Act, but defined in—

(i) the Insurance Act, 1938;

4 of 1938.

(ii) the Companies Act, 1956;

1 of 1956.

42 of 1956.

(iii) the Securities Contracts (Regulation) Act, 1956; and

15 of 1992.

(iv) the Securities and Exchange Board of India Act, 1992,

shall have the meanings respectively assigned to them under those Acts.

CHAPTER II

PENSION FUND REGULATORY AND DEVELOPMENT AUTHORITY

3. (1) With effect from such date as the Central Government may, by notification, appoint, there shall be established, for the purposes of this Act, an Authority to be called the Pension Fund Regulatory and Development Authority.

Establishment and incorporation of Authority.

(2) The Authority shall be a body corporate by the name aforesaid, having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to contract and shall, by the said name, sue or be sued.

2 of 1985.

(3) The head office of the Authority shall be in the National Capital Region referred to in clause (f) of section 2 of the National Capital Region Planning Board Act, 1985.

(4) The Authority may establish offices at other places in India.

4. The Authority shall consist of a Chairperson and not more than five members, of whom at least three shall be whole-time members, to be appointed by the Central Government from amongst persons of ability, integrity and standing and having experience and knowledge in economics, finance, law or administrative matters with at least one person from each discipline.

Composition of Authority.

5. (1) The Chairperson and every whole-time member shall hold office for a term of five years from the date on which he enters upon his office and shall be eligible for reappointment:

Term of office and conditions of service of Chairperson and members of Authority.

Provided that no person shall hold office as the Chairperson after he has attained the age of sixty-five years:

Provided further that no person shall hold office as a whole-time member after he has attained the age of sixty-two years.

(2) A part-time member shall hold office as such for a term not exceeding five years from the date on which he enters upon his office.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), a member may—

(a) relinquish his office, by giving in writing to the Central Government, a notice of not less than thirty days; or

(b) be removed from his office in accordance with the provisions of section 6.

6. (1) The Central Government may remove from office the Chairperson or any other member who—

Removal of members from office.

(a) is, or at any time has been adjudged as insolvent; or

(b) has become physically or mentally incapable of acting as a member; or

(c) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as a member; or

(e) has, in the opinion of the Central Government, so abused his position as to render his continuance in office detrimental to the public interest.

(2) No such Chairperson or other member shall be removed under clause (d) or clause (e) of sub-section (1) unless he has been given a reasonable opportunity of being heard in the matter.

Salary and allowances of Chairperson and members.

7. (1) The salary and allowances payable to, and other terms and conditions of service of, the members other than part-time members shall be such as may be prescribed.

(2) **The part-time members shall receive such allowances as may be prescribed.**

(3) **The salary, allowances and other conditions of service of a member shall not be varied to his disadvantage after his appointment.**

Bar on future employment of members.

8. The Chairperson and the whole-time members shall not, for a period of two years from the date on which they cease to hold office as such, except with the previous approval of the Central Government, accept—

(a) any employment either under the Central Government or under any State Government; or

(b) any appointment in any regulated entity in the pension sector.

Administrative powers of Chairperson.

9. The Chairperson shall have the powers of general superintendence and direction in respect of all administrative matters of the Authority.

Meetings of Authority.

10. (1) The Authority shall meet at such times and places and shall observe such rules of procedure in regard to the transaction of business at its meetings (including quorum at such meetings) as may be provided by regulations.

(2) The Chairperson or, if for any reason, he is unable to attend a meeting of the Authority, any other member chosen by the members present from amongst themselves at the meeting, shall preside at the meeting.

(3) All questions which come up before any meeting of the Authority shall be decided by a majority of votes by the members present and voting, and in the event of an equality of votes, the Chairperson or in his absence, the person presiding shall have a second or casting vote.

(4) If any member, who is a director of a company and who as such director, has any direct or indirect pecuniary interest in any matter coming up for consideration at a meeting of the Authority, he shall, as soon as possible after relevant circumstances have come to his knowledge, disclose the nature of his interest at such meeting and such disclosure shall be recorded in the proceedings of the Authority, and the member shall not take part in any deliberation or decision of the Authority with respect to that matter.

Vacancies etc., not to invalidate proceedings of Authority.

11. No act or proceeding of the Authority shall be invalid merely by reason of—

(a) any vacancy in, or any defect in the constitution of, the Authority; or

(b) any defect in the appointment of a person acting as a member of the Authority;

or

(c) any irregularity in the procedure of the Authority not affecting the merits of the case.

Officers and employees of Authority.

12. (1) The Authority may appoint such officers and other employees as it considers necessary for the efficient discharge of its functions under this Act.

(2) **The terms and other conditions of service of officers and other employees of the Authority appointed under sub-section (1) shall be such as may be determined by regulations.**

CHAPTER III

EXTENT AND APPLICATION

13. (1) This Act shall apply to—

Extent and
Application.

(a) the New Pension System;

(b) any other pension scheme not regulated by any other enactment.

(2) Every pension scheme referred to in clause (b) shall conform to the regulations made by the Authority within such time as may be specified in the regulations.

(3) Notwithstanding anything contained in sub-section (1), the provisions of this Act shall not apply to—

(a) the schemes or funds under—

46 of 1948.

(i) the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948;

19 of 1952.

(ii) the Employees' Provident Funds and Miscellaneous Provisions Act, 1952;

4 of 1966.

(iii) the Seamen's Provident Fund Act, 1966;

Assam Act X
of 1955.

(iv) the Assam Tea Plantations Provident Fund and Pension Fund Scheme Act, 1955; and

Jammu and
Kashmir Act
XV of 1961.

(v) the Jammu and Kashmir Employees' Provident Funds Act, 1961;

4 of 1938.

(b) contracts referred to in sub-section (11) of section 2 of the Insurance Act, 1938;

(c) any other pension scheme, which the Central Government may, by notification, exempt from the application of this Act;

61 of 1951.

(d) persons appointed before the 1st day of January, 2004 to public services in connection with the affairs of the Union, or to All-India Services constituted under section 2A of the All-India Services Act, 1951;

(e) persons appointed to public services in connection with the affairs of any State, or such Union territories as may be specified by notification by the Central Government.

(4) Notwithstanding anything contained in sub-section (3), any State Government or administrator of a Union territory may, by notification, extend the New Pension System to its employees.

(5) Any person governed under any of the schemes or funds referred to in sub-section (3) may, at his option, join the New Pension System.

CHAPTER IV

DUTIES, POWERS AND FUNCTIONS OF AUTHORITY

14. (1) Subject to the provisions of this Act and any other law for the time being in force, the Authority shall have the duty, to regulate, promote and ensure orderly growth of the New Pension System and pension schemes to which this Act applies and to protect the interests of subscribers of such System and schemes.

Duties, powers
and functions
of Authority.

(2) Without prejudice to the generality of the provisions contained in sub-section (1), the powers and functions of the Authority shall include—

(a) regulating the New Pension System and the pension schemes to which this Act applies;

(b) approving the schemes, the terms and conditions thereof and laying down norms for the management of the corpus of the pension funds, including investment

guidelines under such schemes;

(c) registering and regulating intermediaries;

(d) issuing to an intermediary, on application, a certificate of registration and renewing, modifying, withdrawing, suspending or cancelling such registration;

(e) protecting the interests of subscribers;

(f) establishing mechanism for redressal of grievances of subscribers to be determined by regulations;

(g) promoting professional organisations connected with the pension system;

(h) adjudication of disputes between intermediaries and between intermediaries and subscribers;

(i) collecting data and requiring the intermediaries to collect such data and undertaking and commissioning studies, research and projects;

(j) undertaking steps for educating subscribers and the general public on issues relating to pension, retirement savings and related issues and training of intermediaries;

(k) standardising dissemination of information about performance of pension funds and performance benchmarks;

(l) regulating the regulated assets;

(m) levying fees or other charges for carrying out the purposes of this Act;

(n) specifying by regulations the form and manner in which books of account shall be maintained and statement of accounts shall be rendered by intermediaries;

(o) calling for information from, undertaking inspection of, conducting inquiries and investigations including audit of, intermediaries and other entities or organisations connected with pension funds;

(p) exercising such other powers and functions as may be prescribed.

(3) Notwithstanding anything contained in any other law for the time being in force, while exercising the powers under clause (o) of sub-section (2), the Authority shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit, in respect of the following matters, namely:–

(i) the discovery and production of books of account and other documents, at such place and at such time as may be specified by the Authority;

(ii) summoning and enforcing the attendance of persons and examining them on oath;

(iii) inspection of any book, register and other document of any person or entity referred to in section 24, at any place;

(iv) issuing commissions for the examination of witnesses or documents;

(v) any other matter which may be prescribed.

(4) Without prejudice to the provisions contained in sub-sections (1), (2) and (3) and section 15, the Authority may, by order, for reasons to be recorded in writing, in the interests of subscribers, take any of the following measures, pending investigation or inquiry, namely:–

(i) restrain persons from participating in any scheme;

(ii) restrain any office bearer of an intermediary from acting as such;

(iii) impound and retain the proceeds under the scheme in respect of any activity which is under investigation;

(iv) attach, after passing an order, on an application made for approval, by the Judicial Magistrate of the first class having jurisdiction, for a period not exceeding one month, one or more bank account or accounts of any intermediary or any person associated with the scheme in any manner involved in violation of any of the provisions of this Act or the rules or the regulations made thereunder:

Provided that only the bank account or accounts or any transaction entered therein, relating to the proceeds actually involved in the violation of any of the provisions of this Act or the rules or the regulations made thereunder shall be allowed to be attached;

(v) direct any intermediary or any person associated with the scheme in any manner not to dispose of or alienate an asset forming part of any activity which is under investigation:

Provided that the Authority shall, either before or after, passing such orders, under this section, give to such intermediaries or persons concerned an opportunity of being heard.

15. Save as otherwise provided in section 14, if after making, or causing to be made, an inquiry, the Authority is satisfied that it is necessary—

Power to issue directions.

(i) in the interests of subscribers or orderly development of New Pension System or a pension scheme to which this Act applies; or

(ii) to prevent the affairs of any intermediary or other persons or entities referred to in section 24 being conducted in a manner detrimental to the interests of subscribers; or

(iii) to secure the proper management of any such intermediary or person or entity,

it may issue such directions to such intermediaries or entities or to any person or class of persons referred to in section 24, or associated with the pension fund, as it may deem fit:

Provided that the Authority shall, either before or after passing such orders, give an opportunity of hearing to such intermediaries, entities or persons concerned.

16. (1) Where the Authority has a reasonable ground to believe that—

Power of investigation.

(a) the activities of the pension fund are being conducted in a manner detrimental to the interest of the subscriber; or

(b) any intermediary or any person associated with the schemes of the pension fund has violated any of the provisions of this Act or the rules or the regulations made or directions issued by the Authority thereunder,

it may, at any time, by order in writing, direct any person (hereafter in this section referred to as the Investigating Authority) specified in the order to investigate the affairs of such intermediary or persons associated with the pension fund and to report thereon to the Authority.

(2) Without prejudice to the provisions of sections 235 to 241 of the Companies Act, 1956, it shall be the duty of every manager, managing director, officer and other employee of the company, in case of a company and every intermediary referred to in section 24 or every person associated with the pension fund to preserve and to produce to the Investigating Authority or any person authorised by him in this behalf, all the books, registers, other documents and record of, or relating to, the company or, as the case may be, of or relating to, the intermediary or such person, which are in their custody or power.

(3) The Investigating Authority may require any intermediary or any person associated with the pension fund in any manner to furnish such information to, or produce such books, or other documents, or record before him or any person authorised by him in this behalf as he may consider necessary if the furnishing of such information or the production of such books, or register, or other documents, or record is relevant or necessary for the purposes of its investigation.

(4) The Investigating Authority may keep in its custody any books, registers, other documents and record produced under sub-section (2) or sub-section (3) for six months and thereafter shall return the same to any intermediary or any person associated with the pension fund by whom or on whose behalf the books, registers, other documents and record are produced:

Provided that the Investigating Authority may call for any book, register, other documents and record if they are needed again:

Provided further that if the person on whose behalf the books, registers, other documents and record are produced requires certified copies of the books, registers, other documents or record produced before the Investigating Authority, it shall give certified copies of such books, registers, other documents or, as the case may be, record to such person or on whose behalf the books, registers, other documents and record were produced.

(5) Any person, directed to make an investigation under sub-section (1), may examine on oath any intermediary or any person associated with the pension fund in any manner, in relation to the affairs of his business and may administer an oath accordingly and for that purpose may require any of those persons to appear before him personally.

(6) Notes of any examination under sub-section (5) shall be taken down in writing and shall be read over to, or by, and signed by, the person examined, and may thereafter be used in evidence against him.

(7) If any person fails without reasonable cause or refuses—

(a) to produce to an Investigating Authority or any person authorised by him in this behalf any book, register, other document or record which it is his duty under sub-section (2) or sub-section (3) to furnish; or

(b) to furnish any information which it is his duty under sub-section (3) to furnish; or

(c) to appear before the Investigating Authority personally when required to do so under sub-section (5) or to answer any question which is put to him by the Investigating Authority in pursuance of that sub-section; or

(d) to sign the notes of any examination referred to in sub-section (6),

he shall be punishable with imprisonment for a term which may extend to one year, or with fine, which may extend to twenty-five crore rupees, or with both, and also with a further fine which may extend to ten lakh rupees for every day after the first day during which the failure or refusal continues.

Search and seizure.

17. (1) Where the Authority, in consequence of information in its possession, has reason to believe that—

(a) any person who has been required under sub-section (3) of section 16 to produce, or cause to be produced, any books, accounts or other documents in his custody or power has omitted or failed to produce, or cause to be produced, such books, accounts or other documents, or

(b) any person to whom a requisition to produce any books, accounts or other documents as aforesaid has been or might be issued will not, or would not, produce or cause to be produced, any books, accounts or other documents which will be useful for, or relevant to, an investigation under sub-section (1) of section 16, or

(c) a contravention of any provision of this Act has been committed or is likely to be committed by an intermediary, or

(d) any claim which is due to be settled by the intermediary, has been or is likely to be rejected or settled at a figure higher than a reasonable amount, or

(e) any claim which is due to be settled by an intermediary, has been or is likely to be rejected or settled at a figure lower than a reasonable amount, or

(f) any illegal fees and charges have been transacted or are likely to be transacted by an intermediary, or

(g) any books, accounts, papers, receipts, vouchers, survey reports or other documents, belonging to an intermediary are likely to be tampered with, falsified or manufactured,

it may authorise any officer of the Authority, not below the rank equivalent to that of a Gazetted Officer of the Government (hereafter referred to as the authorised officer), to—

(i) enter and search any building or place where he has reason to suspect that such books, accounts or other documents, or any books or papers relating to any claim, rebate or commission or any receipts, vouchers, reports or other documents are kept;

(ii) break open the lock of any box, locker, safe, almirah or other receptacle for exercising the powers conferred by clause (i) where the keys thereof are not available;

(iii) seize all or any such books, accounts or other documents, found as a result of such search;

(iv) place marks of identification on such books, accounts or other documents or make or cause to be made extracts or copies therefrom.

(2) The authorised officer may requisition the services of any police officer or of any officer of the Central Government, or of both, to assist him for all or any of the purposes specified in sub-section (1) and it shall be the duty of every such police officer or officer to comply with such requisition.

(3) The authorised officer may, where it is not practicable to seize any such book, account or other document, specified in sub-section (1), serve an order on the person who is in immediate possession or control thereof that he shall not remove, part with or otherwise deal with it except with the previous permission of such officer and such officer may take such steps as may be necessary for ensuring compliance with this sub-section.

(4) The authorised officer may, during the course of the search or seizure, examine on oath any person who is found to be in possession or control of any books, accounts or other documents, and any statement made by such person during such examination may thereafter be used in evidence in any proceeding under this Act.

(5) The books, accounts, papers, receipts, vouchers, reports, or other documents seized under sub-section (1) shall not be retained by the authorised officer for a period exceeding one hundred and eighty days from the date of the seizure unless the reasons for retaining the same are recorded by him in writing and the approval of the Authority for such retention is obtained:

Provided that the Authority shall not authorise the retention of the books, accounts, papers, receipts, vouchers, reports, or other documents for a period exceeding thirty days after all the proceedings under this Act, for which the books, accounts, papers, receipts, vouchers, reports, or other documents are relevant, are completed.

(6) The person from whose custody the books, accounts, papers, receipts, vouchers, reports, or other documents are seized under sub-section (1) may make copies thereof, or take extracts therefrom, in the presence of the authorised officer or any other person empowered by him in this behalf at such place and time as the authorised officer may appoint in this behalf.

(7) If a person legally entitled to the books, accounts, papers, receipts, vouchers, reports or other documents seized under sub-section (1) objects for any reason to the approval given by the Authority under sub-section (5), he may make an application to the Central Government

stating therein the reason for such objection and requesting for the return of the books, accounts, papers, receipts, vouchers, report or other documents.

(8) On receipt of the application under sub-section (7), the Central Government may, after giving the applicant an opportunity of being heard, pass such order as it thinks fit.

(9) The provisions of the Code of Criminal Procedure, 1973 relating to searches and seizures shall apply, so far as may be, to every search and seizure made under sub-section (1). 2 of 1974.

(10) The Central Government may, by notification, make rules in relation to any search or seizure under this section and in particular, and without prejudice to the generality of the foregoing power, such rules may provide for the procedure to be followed by the authorised officer,—

(i) for obtaining ingress into such building or place to be searched where free ingress thereto is not available;

(ii) for ensuring safe custody of any books, accounts, papers, receipts, vouchers, reports, or other documents seized under this section.

Power of Authority to ensure compliance.

18. If the Authority finds, after causing an inquiry to be made, that any person has violated, or is likely to violate, any provisions of this Act, or any rule or regulation made thereunder, the Authority may pass an order requiring such person to cease and desist from committing or causing such violation.

Management by Administrator.

19. (1) If at any time the Authority has reason to believe that the Central recordkeeping agency or pension fund is acting in a manner likely to be prejudicial to the interests of subscribers, it may, after giving the Central recordkeeping agency or pension fund, as the case may be, an opportunity of being heard, make a report thereon to the Central Government.

(2) If the Central Government, after considering the report made under sub-section (1) is of the opinion, that it is necessary or proper to do so, it may appoint an Administrator to manage the affairs of the central recordkeeping agency or pension fund, as the case may be, under the direction and control of the Authority, in such manner as may be specified by notification.

CHAPTER V

NEW PENSION SYSTEM

New Pension System.

20. The contributory pension system notified by the Government of India in the Ministry of Finance *vide* notification number F. No. 5/7/2003-ECB & PR, dated the 22nd December, 2003, as amended from time to time, and having the following basic features, shall form the New Pension System under this Act, namely:—

(a) every subscriber shall have an individual pension account;

(b) the functions of recordkeeping, accounting and switching of options by the subscriber shall be effected by the central recordkeeping agency;

(c) there shall be a choice of multiple pension funds and multiple schemes;

(d) there shall be portability of individual pension accounts in case of change of employment;

(e) collection and transmission of contributions and instructions shall be through points of presence to the central recordkeeping agency;

(f) there shall not be any implicit or explicit assurance of benefits except market based guarantee mechanism to be purchased by the subscriber;

(g) a subscriber shall not exit from the New Pension System except as specified by the Central Government by notification;

(h) at exit, the subscriber shall purchase an annuity from a life insurance company as specified under the New Pension System.

21. (1) The Authority shall, by granting a certificate of registration under sub-section (3) of section 24, appoint a central recordkeeping agency:

Central recordkeeping agency.

Provided that the Authority may, in public interest, appoint more than one central recordkeeping agency.

(2) The central recordkeeping agency shall be responsible for receiving funds and instructions from subscribers through the points of presence, transmitting such instructions and transferring such funds to pension funds, effecting switching instructions received from subscribers and discharging such other duties and functions, as may be assigned to it under the certificate of registration or as may be determined by regulations.

(3) All the assets and properties owned, leased or developed by the central recordkeeping agency, shall constitute regulated assets and upon expiry of certificate of registration or earlier revocation thereof, the Authority shall be entitled to appropriate and take over the regulated assets, either by itself or through an administrator or a person nominated by it in this behalf:

Provided that the central recordkeeping agency shall be entitled to be compensated the fair value, to be ascertained by the Authority, of such regulated assets as determined by regulations:

Provided further that where the earlier revocation of the certificate of registration is based on violation of the conditions in the certificate of registration or the provisions of this Act or regulations, unless otherwise determined by the Authority, the central recordkeeping agency shall not be entitled to claim any compensation in respect of such regulated assets.

22. (1) The Authority may, by granting a certificate of registration under sub-section (3) of section 24, permit one or more persons to act as a point of presence for the purpose of receiving contributions and instructions, transmitting them to the central recordkeeping agency and paying out benefits to subscribers in accordance with the regulations made by the Authority from time to time in this regard.

Point of presence.

(2) A point of presence shall function in accordance with the terms of its certificate of registration and the regulations made under this Act.

23. (1) The Authority may, by granting a certificate of registration under sub-section (3) of section 24, permit one or more persons to act as a pension fund for the purpose of receiving contributions, accumulating them and making payments to the subscriber in such manner as may be specified by regulations.

Pension funds.

(2) The number of pension funds shall be determined by regulations and the Authority may, in public interest, vary the number of pension funds.

(3) The pension fund shall function in accordance with the terms of its certificate of registration and the regulations made under this Act.

(4) The pension fund shall manage the schemes in accordance with the regulations.

CHAPTER VI

REGISTRATION OF INTERMEDIARIES

24. (1) No intermediary, including a pension fund or a point of presence to the extent regulated under this Act, shall commence any activity relating to a pension fund except under and in accordance with the conditions of a certificate of registration granted by the Authority in accordance with the provisions of this Act and the regulations:

Registration of central recordkeeping agency, pension fund, point of presence, etc.

Provided that any intermediary, including any point of presence, who may be associated with a pension scheme immediately before the establishment of the Authority for which no

registration certificate was necessary prior to such establishment, may continue to do so for a period of three months from such establishment or, if he has made an application for such registration within the said period of three months till the disposal of such application.

(2) Every application for grant of a certificate of registration under this Act shall be in such form and manner and shall be accompanied by such fees as may be determined by regulations.

(3) The Authority may, after considering the application and subject to such terms and conditions as it may specify, grant a certificate of registration as a central recordkeeping agency, point of presence, pension fund or such other intermediary, as the case may be.

(4) The Authority may, by order, suspend or cancel a certificate of registration granted under sub-section (3) in such manner as may be determined by regulations:

Provided that no order under this sub-section shall be made unless the person concerned has been given a reasonable opportunity of being heard.

CHAPTER VII

PENALTIES AND ADJUDICATION

Penalty for failure by an intermediary or any other person to comply with provisions of the Act, rules, regulations and directions.

25. (1) Any person, who is required under this Act or any rules or regulations made thereunder,—

(a) to obtain a certificate of registration from the Authority for carrying on any activity under this Act, carries on such activities without obtaining such certificate of registration, he shall be liable to a penalty of one lakh rupees for each day during which the failure continues or one crore rupees, whichever is less;

(b) to comply with the terms and conditions of a certificate of registration fails to do so, he shall be liable to a penalty of one lakh rupees for each day during which the failure continues or one crore rupees, whichever is less;

(c) to furnish any information, document, books, returns or report to the Authority, fails to furnish the same within the time specified by the Authority, he shall be liable to a penalty which may extend to one crore rupees or five times the amount of profits made or losses avoided, whichever is higher;

(d) to maintain books of account or records, fails to maintain the same, he shall be liable to a penalty of one lakh rupees for each day during which the failure continues or five times the amount of profits made or losses avoided, whichever is higher.

(2) If any person, who is required under this Act or any rules or regulations made thereunder, to enter into an agreement with his client, fails to enter into such agreement, he shall be liable to a penalty of one lakh rupees for each day during which the failure continues or five times the amount of profits made or losses avoided, whichever is higher.

(3) If any intermediary registered with the Authority, after having been called upon by the Authority, in writing, to redress the grievances of subscribers, fails to redress such grievances within the time stipulated by the Authority, he shall be liable to a penalty of not more than one crore rupees or five times the amount of profits made or losses avoided, whichever is higher.

(4) If any person, who is registered under this Act as an intermediary, fails to segregate moneys of the client or clients or uses the moneys of a client or clients for self or for any other client, he shall be liable to a penalty not exceeding one crore rupees or five times the amount of profits made or losses avoided, whichever is higher.

(5) Whoever fails to comply with any provision of this Act, the rules or the regulations made or the directions issued by the Authority under the provisions of this Act for which no separate penalty has been provided, he shall be liable to a penalty which may extend to one crore rupees or five times the amount of profits made or losses avoided, whichever is higher.

26. All sums realised by way of penalties under this Act shall be credited to the Subscriber Education and Protection Fund established under sub-section (1) of section 38. Crediting sums realised by way of penalties to Subscriber Education and Protection Fund.

27. (1) For the purposes of adjudging under section 25, the Authority shall appoint any of its officers not below the rank specified by regulations to be an adjudicating officer for holding an inquiry as determined by regulations, after giving the person concerned a reasonable opportunity of being heard for the purpose of imposing any penalty. Power to adjudicate.

(2) While holding an inquiry, the adjudicating officer shall have the power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which, in the opinion of the adjudicating officer, may be useful for or relevant to the subject matter of the inquiry and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of section 25, he may recommend such penalty as he thinks fit in accordance with the provisions of that section, to the member in charge of investigation and surveillance.

(3) The penalty shall be imposed by a member other than the member in charge of investigation and surveillance:

Provided that while adjudging the quantum of penalty under section 25, the member shall have due regard to the following factors, namely:—

- (a) amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
- (b) amount of loss caused to a subscriber or group of subscribers; and
- (c) the repetitive nature of the default.

28. (1) Any person aggrieved may apply to the Authority for an interim measure of protection in respect of any of the following matters, namely:— Attachment of assets and supersession of management of intermediary.

- (a) the detention, preservation, interim custody or sale of any asset or property which is regulated by the provisions of this Act;
- (b) securing any pension fund, monies and other assets and properties owned by or under the control of the pension fund;
- (c) interim injunction or appointment of an administrator; and
- (d) such other interim measures as may appear to the Authority to be just and necessary,

and the Authority shall have power to make such orders including an order for attachment of assets of the pension fund as it deems fit in this regard.

(2) Where, on a complaint received by the Authority or *suo motu*, the Authority, after conducting an inquiry, comes to a conclusion that the governing board or board of directors, by whatever name called, or the persons in control of any intermediary to the extent regulated under this Act are indulging in any activity which is in contravention of the provisions of this Act or regulations, it may supersede the governing board or board of directors or management of the intermediary in accordance with the provisions of the regulations.

29. (1) Without prejudice to any award of penalty by the member under this Act, if any person contravenes or attempts to contravene or abets the contravention of the provisions of this Act or of any rules or regulations made thereunder, he shall be punishable with imprisonment for a term which may extend to ten years, or with fine, which may extend to twenty-five crore rupees or with both. Offences.

(2) If any person fails to pay the penalty imposed by the member or fails to comply with any of the directions or orders issued by the member, he shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to ten years, or with fine, which may extend to twenty-five crore rupees, or with both.

Power to grant immunity.

30. (1) The Central Government may, on the recommendation by the Authority, if satisfied, that any person, who is alleged to have violated any of the provisions of this Act or the rules or the regulations made thereunder, has made a full and true disclosure in respect of alleged violation, grant to such person, subject to such conditions as it may think fit to impose, immunity from prosecution for any offence under this Act, or the rules or the regulations made thereunder and also from the imposition of any penalty under this Act with respect to the alleged violation:

Provided that no such immunity shall be granted by the Central Government in cases where the proceedings for the prosecution for any such offence have been instituted before the date of receipt of application for grant of such immunity:

Provided further that the recommendation of the Authority under this sub-section shall not be binding upon the Central Government.

(2) An immunity granted to a person under sub-section (1) may, at any time, be withdrawn by the Central Government, if it is satisfied that such person had, in the course of the proceedings, not complied with the condition on which the immunity was granted or had given false evidence, and thereupon such person may be tried for the offence with respect to which the immunity was granted or for any other offence of which he appears to have been guilty in connection with the contravention and shall also become liable to the imposition of any penalty under this Act to which such person would have been liable, had no such immunity been granted.

Exemption from tax on wealth, income, profits and gains.

31. Notwithstanding anything contained in—

(i) the Wealth Tax Act, 1957;

(ii) the Income-tax Act, 1961, or

(iii) any other enactment for the time being in force relating to tax on wealth, income, profits or gains,

the Authority shall not be liable to pay wealth-tax, income-tax or any other tax in respect of its wealth, income, profits or gains derived.

27 of 1957.

43 of 1961

Cognizance of offences by Court.

32. (1) No court shall take cognizance of any offence punishable under this Act or any rules or regulations made thereunder, save on a complaint made by the Authority.

(2) No court inferior to that of a Court of Session shall try any offence punishable under this Act.

Appeal to Securities Appellate Tribunal.

33. (1) Any person aggrieved by an order made by the Authority or by an adjudicating officer under this Act may prefer an appeal before the Securities Appellate Tribunal which shall have jurisdiction over the matter.

(2) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date of receipt of the order appealed against and it shall be in such form and manner and shall be accompanied by such fee as may be prescribed:

Provided that the Securities Appellate Tribunal may entertain an appeal after the expiry of the said period, if it is satisfied that there was sufficient cause for not preferring the appeal within that period.

(3) On receipt of an appeal under sub-section (1), the Securities Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(4) The Securities Appellate Tribunal shall send a copy of every order made by it to the Authority, the parties to the appeal and to the adjudicating officers concerned.

(5) The appeal filed before the Securities Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date on which the appeal is presented to it.

15 of 1992. (6) Without prejudice to the provisions of sections 15T and 15U of the Securities and Exchange Board of India Act, 1992, the Securities Appellate Tribunal shall deal with an appeal under this section in accordance with such procedure as may be prescribed.

34. No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an adjudicating officer appointed under this Act or a Securities Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act. Civil court not to have jurisdiction.

35. Any person aggrieved by any decision or order of the Securities Appellate Tribunal under this Act may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Securities Appellate Tribunal to him on any question of law arising out of such order: Appeal to Supreme Court.

Provided that the Supreme Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

CHAPTER VIII

FINANCE, ACCOUNTS AND AUDIT

36. The Central Government may, after due appropriation made by Parliament by law in this behalf, make to the Authority grants of such sums of money as that Government may think fit for being utilised for the purposes of this Act. Grants by Central Government.

37. (1) There shall be constituted a fund to be called the Pension Regulatory and Development Fund and there shall be credited thereto— Constitution of Pension Regulatory and Development Fund.

(a) all Government grants, fees and charges received by the Authority;

(b) all sums received by the Authority from such other source as may be decided upon by the Central Government.

(2) The Fund shall be applied for meeting—

- (a) the salaries, allowances and other remuneration of the Chairperson and other members and officers and other employees of the Authority;
- (b) other expenses of the Authority in connection with the discharge of its functions and for the purposes of this Act.

38. (1) The Authority shall establish a fund to be called the Subscriber Education and Protection Fund. Constitution of Subscriber Education and Protection Fund.

(2) There shall be credited to the Subscriber Education and Protection Fund the following amounts, namely:—

- (a) grants and donations given to the Subscriber Education and Protection Fund by the Central Government, State Governments, companies or any other institutions for the purposes of the Subscriber Education and Protection Fund;
- (b) the interest or other income received out of the investments made from the Subscriber Education and Protection Fund;
- (c) the sums realised by way of penalties by the Authority under section 26.

(3) The Subscriber Education and Protection Fund shall be administered and utilised by the Authority for protection of the interests of subscribers in accordance with regulations made for the purpose.

Accounts and
audit.

39. (1) The Authority shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the Authority shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Authority to the Comptroller and Auditor-General.

(3) The Comptroller and Auditor-General of India and any other person appointed by him in connection with the audit of the accounts of the Authority shall have the same rights, privileges and authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Authority.

(4) The accounts of the Authority as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf, together with the audit-report thereon, shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before each House of Parliament.

CHAPTER IX

MISCELLANEOUS

Power of Central
Government to
issue directions.

40. (1) Without prejudice to the foregoing provisions of this Act, the Authority shall, in exercise of its powers or the performance of its functions under this Act, be bound by such directions on questions of policy, other than those relating to technical and administrative matters, as the Central Government may give, in writing to it, from time to time:

Provided that the Authority shall, as far as practicable, be given an opportunity to express its views before any direction is given under this sub-section.

(2) The decision of the Central Government, whether a question is one of policy or not, shall be final.

Power of Central
Government to
supersede the
Authority.

41. (1) If at any time the Central Government is of the opinion that—

(a) on account of circumstances beyond the control of the Authority, it is unable to discharge the functions or perform the duties imposed on it by or under the provisions of this Act; or

(b) the Authority has persistently defaulted in complying with any direction issued by the Central Government that the Central Government is entitled to issue under this Act or in the discharge of the functions or performance of the duties imposed on it by or under the provisions of this Act and as a result of such default the financial position of the Authority or the administration of the Authority has deteriorated; or

(c) circumstances exist which render it necessary in the public interest so to do,

the Central Government may, by notification and for reasons to be specified therein, supersede the Authority for such period, not exceeding six months, as may be specified in the notification:

Provided that before issuing any such notification, the Central Government shall give a reasonable opportunity to the Authority to make representations against the proposed supersession and shall consider the representations, if any, of the Authority.

(2) Upon the publication of a notification under sub-section (1) superseding the Authority,—

(a) the Chairperson and other members shall, as from the date of supersession, vacate their offices as such;

(b) all the powers, functions and duties which may, by or under the provisions of this Act, be exercised or discharged by or on behalf of the Authority shall, until the Authority is reconstituted under sub-section (3), be exercised and discharged by the Central Government; and

(c) all properties owned or controlled by the Authority shall, until the Authority is reconstituted under sub-section (3), vest in the Central Government.

(3) On or before the expiration of the period of supersession specified in the notification issued under sub-section (1), the Central Government shall reconstitute the Authority.

(4) The Central Government shall, as soon as may be, cause a copy of the notification issued under sub-section (1) and a full report of any action taken by it, to be laid before each House of Parliament.

42. (1) The Authority shall furnish to the Central Government at such time and in such form and manner as may be prescribed, or as the Central Government may direct to furnish such returns, statements and other particulars in regard to any proposed or existing programme for the promotion and development of the pension industry as the Central Government may, from time to time, require.

Furnishing of returns, etc., to Central Government.

(2) Without prejudice to the provisions of sub-section (1), the Authority shall, within nine months after the close of each financial year, submit to the Central Government a report giving a true and full account of its activities including the activities for promotion and development of schemes of pension funds regulated under this Act during the previous financial year.

(3) Copies of the reports received under sub-section (2) shall be laid, as soon as may be, after they are received, before each House of Parliament.

43. The Chairperson and other members and officers and other employees of the Authority shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of section 21 of the Indian Penal Code.

Members, officers and employees of the Authority to be public servants.

45 of 1860.

44. No suit, prosecution or other legal proceedings shall lie against the Central Government or the Authority or any officer of Central Government or any member, officer or other employees of the Authority for anything which is in good faith done or intended to be done under this Act or the rules or regulations made thereunder.

Protection of action taken in good faith.

45. (1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Offences by companies.

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he has exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or

other officer shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section—

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

Power to make rules.

46. (1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the salary and allowances payable to and the other conditions of service of the Chairperson and whole-time members under sub-section (1) of section 7;

(b) the allowances payable to part-time members under sub-section (2) of section 7;

(c) the additional functions which may be performed by the Authority under clause (p) of sub-section (2) of section 14;

(d) any other matter in respect of which the Authority may exercise the powers of a civil court under clause (v) of sub-section (3) of section 14;

(e) the procedure to be followed by the authorised officer under sub-section (10) of section 17;

(f) the form and manner in which an appeal may be filed before the Securities Appellate Tribunal and the fee which shall accompany such appeal, under sub-section (2) of section 33;

(g) the procedure to be followed by the Securities Appellate Tribunal in dealing with an appeal, under sub-section (6) of section 33;

(h) the form in which annual statement of accounts shall be maintained by the Authority under sub-section (1) of section 39;

(i) the time within which and the form and manner in which returns and reports are to be made by the Authority to the Central Government under sub-section (1) of section 42;

(j) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made, by rules.

Power to make regulations.

47. (1) The Authority may, by notification, make regulations consistent with this Act and the rules made thereunder for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

(a) the time and places of meetings of the Authority and the procedure to be followed at such meetings (including the quorum at such meetings) under sub-section (1) of section 10;

(b) the terms and other conditions of service of the officers and other employees of the Authority under sub-section (2) of section 12;

(c) the regulations to be made by the Authority in respect of pension schemes referred to in clause (b) of sub-section (1) of section 13 and the time within which

such schemes should conform to the regulations, made under sub-section (2) of that section;

(d) the establishing of mechanisms for redressing grievances of subscribers under clause (f) of sub-section (2) of section 14;

(e) the form and manner in which books of account shall be maintained and statement of accounts shall be rendered by intermediaries under clause (n) of sub-section (2) of section 14;

(f) the duties and functions of central recordkeeping agency under sub-section (2) of section 21;

(g) the determination of compensation of fair value of the regulated assets payable to central recordkeeping agency under proviso to sub-section (3) of section 21;

(h) the manner of receiving contributions and instructions and transmitting them to the central recordkeeping agency and paying out the benefits to the subscribers, under sub-section (1), and the regulations governing functioning of points of presence under sub-section (2), of section 22;

(i) the manner in which a pension fund may receive contributions, accumulate them and make payments to the subscriber under sub-section (1), the number of pension funds under sub-section (2), the functioning of the pension fund under sub-section (3), and the manner of managing the schemes by the pension fund under sub-section (4), of section 23;

(j) the form and manner in which an application for grant of certificate of registration shall be made and the fee which shall accompany such application under sub-section (2) of section 24;

(k) the conditions subject to which a certificate of registration may be granted to an intermediary under sub-section (3) of section 24;

(l) the procedure and manner of suspension or cancellation of certificate of registration of intermediaries under sub-section (4) of section 24;

(m) the procedure for holding inquiry by an adjudicating officer under sub-section (1) of section 27;

(n) the supersession of the governing board or board of directors of the intermediary under sub-section (2) of section 28;

(o) the manner of administering and utilising the Subscriber Education and Protection Fund under sub-section (3) of section 38;

(p) delegation of powers and functions of the Authority to committees under sub-section (2) of section 50;

(q) any other matter which is required to be or may be specified by regulations or in respect of which provision is to be or may be made by regulations.

48. Every rule and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

Rules and regulations to be laid before Parliament.

Power to
remove
difficulties.

49. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty:

Provided that no order shall be made under this section after the expiry of five years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

Delegation of
powers.

50. (1) The Authority may, by general or special order in writing, delegate to any member, officer of the Authority or any other person subject to such conditions, if any, as may be specified in the order, such of its powers and functions under this Act (except the powers under section 47) as it may deem necessary.

(2) The Authority may, by a general or special order in writing, also form committees of the members and delegate to them the powers and functions of the Authority as may be specified by the regulations.

Application of
other laws not
barred.

51. The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

Savings.

52. Anything done or any action taken by the Central Government under the Resolution of the Government of India in the Ministry of Finance number F.No. 5/7/2003-ECB&PR, dated the 10th October, 2003 and notification number F. No. 5/7/2003-ECB & PR, dated the 22nd December, 2003, shall be deemed to have been done or taken under the corresponding provisions of this Act.

Repeal and
saving.

53. (1) The Pension Fund Regulatory and Development Authority Ordinance, 2004 is hereby repealed. Ord. 8 of 2004.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act.

STATEMENT OF OBJECTS AND REASONS

The Central Government operationalised the New Pension System (NPS) from 1st January, 2004 through a notification dated the 22nd December, 2003. The NPS is mandatory for new recruits to the Central Government services (except to the armed forces in the first stage).

2. An early legislative mandate was considered necessary as the NPS was already in place without the full architecture and a statutory regulatory mechanism. Contributions are not being invested as envisaged under the NPS and are being credited, in the interim, into the public account, earning an administered rate of return equal to the rate on the General Provident Fund. Further, more than 40,000 new Central Government employees are already mandatorily covered by the NPS since 1st January, 2004 and it became imperative to quickly replace the interim arrangements with proper infrastructure under a regulatory framework in order to avoid future complications.

3. Seven State Governments, namely, the Governments of Andhra Pradesh, Chhattisgarh, Himachal Pradesh, Jharkhand, Manipur, Rajasthan and Tamil Nadu have already notified and introduced defined contribution pension schemes and intend to join the NPS. Some of the other State Governments have also evinced interest in joining the NPS as and when its architecture and mechanism are ready. It is, therefore, crucial that the full architecture and regulatory mechanism are quickly put in place.

4. In view of the urgency of the matter, the Pension Fund Regulatory and Development Authority Ordinance, 2004 (Ord. 8 of 2004) was promulgated on the 29th December, 2004 to provide for the establishment of an Authority to promote old age income security by establishing, developing and regulating pension funds, to protect the interests of subscribers to schemes of pension funds and for matters connected therewith or incidental thereto.

5. The aforesaid Ordinance, *inter alia*, provides for—

(i) establishing a statutory regulatory body to be called the Pension Fund Regulatory and Development Authority (PFRDA) which will undertake promotional, developmental and regulatory functions in respect of pension funds;

(ii) empowering PFRDA to regulate the New Pension System, as amended from time to time by the Central Government;

(iii) empowering PFRDA to perform promotional, developmental and regulatory functions relating to pension funds (including authorising and regulating intermediaries) through regulations or guidelines, prescribing disclosure standards, protecting the interests of subscribers to schemes of pension funds;

(iv) authorising PFRDA to levy fees for services rendered, etc., to meet its expenses;

(v) empowering PFRDA to impose penalties for any violation of the provisions of the legislation.

6. The Bill seeks to replace the said Ordinance. The notes on clauses explain in detail the various provisions contained in the Bill.

NEW DELHI;
The 12th February, 2005.

P. CHIDAMBARAM

PRESIDENT'S RECOMMENDATION UNDER ARTICLES 117 AND 274 OF THE CONSTITUTION OF INDIA

[Copy of letter No. 5/52/2004-ECB&PR dated the 23rd February, 2005 from Shri P. Chidambaram, Minister of Finance to the Secretary-General, Lok Sabha]

The President, having been informed of the subject matter of the Pension Fund Regulatory and Development Authority Bill, 2005, has recommended, under clause (1) of article 117 and article 274 of the Constitution of India, the introduction of the Bill in Lok Sabha, and consideration of the Bill by Lok Sabha under clause (3) of article 117 of the Constitution.

Notes on clauses

Clause 1.— This clause gives the short title of the Bill, its extent and commencement. Sub-clause (3) provides that the proposed legislation shall be deemed to have come into force on the 29th December, 2004.

Clause 2.— This clause contains definitions of various expressions used in the Bill. The definitions of “Authority”, “central recordkeeping agency”, “intermediary”, “New Pension System”, “pension fund” and “point of presence” are some of them. An intermediary includes pension fund, central recordkeeping agency, pension fund adviser, retirement adviser, point of presence and such other person or entity connected with collection, management, record keeping and distribution of accumulations.

Clause 3.— This clause seeks to provide for the establishment and incorporation of an authority to be called the Pension Fund Regulatory and Development Authority. Sub-clause (3) provides that the head office of the Authority shall be in the National Capital Region. Sub-clause (4) empowers the Authority to establish offices at other places in India.

Clause 4.—This clause specifies the composition of the Authority. The Authority shall consist of a Chairperson and not more than five members of whom at least three shall be whole-time members to be appointed by the Central Government from amongst persons of ability, integrity and standing and having experience and knowledge in economics, finance, law or administrative matters with at least one member from each discipline.

Clause 5.—This clause contains provisions in respect of the term of office and conditions of service of the Chairperson and other members of the Authority. Sub-clause (1) provides that the Chairperson and every whole-time member will hold office for a term of five years or till attaining the age of sixty-five years in case of the Chairperson and sixty-two years in case of other members, whichever is earlier and they will be eligible for reappointment. Sub-clause (2) provides that part-time members shall be entitled to hold office as such for a term not exceeding five years. Sub-clause (3) provides that a member can relinquish his office by giving notice of at least thirty days in writing to the Central Government or he may be removed by the Central Government as per the provisions of clause 6.

Clause 6.—This clause lays down the various grounds on which the members of the authority can be removed from office. Sub-clause (1) empowers the Central Government to remove the Chairperson or any other member on grounds of insolvency, physical or mental incapacity, conviction of an offence involving moral turpitude, acquisition of financial or other interest prejudicial to his functions as a member or abuse of position. Sub-clause (2) provides that where the grounds for removal of the Chairperson or other member are acquisition of financial or other prejudicial interest or abuse of position, he shall not be removed unless he has been given a reasonable opportunity of being heard in the matter.

Clause 7.—This clause provides that the salary, allowances and other terms and conditions of service of the Chairperson and whole-time members and the allowances of part-time members shall be laid down by the Central Government, by rules and that they shall not be varied to their disadvantage after their appointment.

Clause 8.—This clause provides for bar on future employment of Chairperson and whole-time members under the Central Government or any State Government or in any regulated entity in the pension sector, for a period of two years from the date on which they cease to hold office, except with the prior approval of the Central Government.

Clause 9.—This clause provides that the Chairperson shall have the powers of general superintendence and directions in respect of all administrative matters of the Authority.

Clause 10.—This clause contains detailed provisions regarding conduct of meetings of the Authority. Sub-clause (1) empowers the Authority to frame regulations regarding rules of procedure for transaction of business at its meetings (including the quorum at such meetings) and the time and places of such meetings. Sub-clause (2) provides that the Chairperson will preside at the meetings of the Authority and in his absence, the members present may choose any other member from amongst themselves to preside over. Sub-clause (3) provides that the decisions at the meetings of the Authority will be taken by a majority of votes and the Chairperson or the member presiding over will have a second or casting vote. Sub-clause (4) provides that any member who is a director of a company will disclose any direct or indirect pecuniary interest in any matters to be discussed at a meeting of the Authority and will not take part in any related deliberations or decisions. Further, such disclosure is to be recorded in the proceedings of the meeting.

Clause 11.—This clause seeks to provide that mere existence of any vacancy or defect in the constitution of the Authority or any irregularity in procedure which does not affect the merits of the case will not invalidate any act or proceeding of the Authority.

Clause 12.—This clause empowers the Authority to appoint such officers and other employees as may be necessary for its efficient functioning under the proposed legislation. The Authority is also empowered to make regulations providing for laying down the detailed terms and other conditions of service of its officers and employees.

Clause 13.—This clause provides for the extent and application of the proposed legislation. The proposed legislation will apply to the New Pension System notified by the Government of India in the Ministry of Finance *vide* notification number 5/7/2003-ECB & PR dated 22nd December, 2003 and any other pension scheme not regulated by any other enactment. The Authority shall make regulations for these pension schemes and specify the time limit within which these schemes have to conform to such regulations. Sub-clause (3) specifically excludes from the provisions of the proposed legislation, the schemes or funds under the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948, the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, the Seamen's Provident Fund Act, 1966, the Assam Tea Plantations Provident Fund and Pension Fund Scheme Act, 1955, the Jammu and Kashmir Employees' Provident Funds Act, 1961, contracts referred to in sub-section (11) of section 2 of the Insurance Act, 1938, and any other pension scheme, which the Central Government may, by notification, exempt from the application of this the proposed legislation. Further the said sub-clause excludes from the purview of the proposed legislation, Central Government employees appointed before 1st January, 2004, persons appointed to All-India Services and to persons in public services appointed in connection with the affairs of any State, or such Union territories as may be specified by the Central Government by notification. Sub-clause (4), however, provides that any State Government may, by notification, extend the New Pension System to its employees. Sub-clause (5) enables any person specifically excluded under sub-clause (3) to voluntarily join the New Pension System.

Clause 14.—This clause contains provisions regarding the duties, powers and functions of the Authority. Sub-clause (1) provides that the Authority shall have the duty to regulate, promote and ensure the orderly growth of the New Pension System and pension schemes to which this Act applies and, to protect the interests of subscribers of such System and schemes. Sub-clause (2) specifies the powers and functions of the Authority. These, *inter alia*, include regulation of the New Pension System and the pension schemes to which the proposed legislation shall apply; approving schemes and their terms and conditions, laying down of norms for the management of the corpus of the pension funds including investment guidelines; registration and regulation of intermediaries; protection of the interests of subscribers to pension funds, establishment of a grievance redressal mechanism, adjudication of disputes between intermediaries and between intermediaries and subscribers and standardization of information dissemination regarding performance of pension funds and performance benchmarks. Sub-clause (3) empowers the Authority to exercise certain powers which are vested

in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of (i) the discovery and production of books of account and other documents, at places and times specified by the Authority; (ii) summoning and enforcing the attendance of persons and examining them on oath; (iii) inspection of any books, registers and other documents of intermediaries, at any place; (iv) issuing commissions for the examination of witnesses or documents; and (v) any other matter which may be specified by Central Government by rules. Sub-clause (4) provides that pending enquiry or investigation, the Authority may, by an order, for reasons to be recorded in writing, in the interests of subscribers (i) restrain persons from participating in any scheme; (ii) restrain any office bearer of an intermediary from acting as such; (iii) impound and retain the proceeds under the scheme in respect of any activity which is under investigation; (iv) attach bank accounts of any intermediary or any person associated with the scheme who is in any manner involved in violation of any of the provisions of the proposed legislation or the rules or regulations made thereunder. This can be done for a period not exceeding one month, with the approval of a Judicial Magistrate of the first class having jurisdiction. However, only the bank account or any transaction entered therein, relating to the proceeds actually involved in the violation of any of the provisions of the proposed legislation or the rules or regulations made thereunder can be attached. Further, the Authority can direct any intermediary or any person associated with the scheme in any manner not to dispose of or alienate an asset forming part of any activity which is under investigation. However, the Authority has to give such intermediaries or persons concerned an opportunity of being heard.

Clause 15.—This clause seeks to empower the Authority to issue directions to intermediaries or persons or entities associated with pension funds if it is satisfied, after an inquiry, that it is necessary to do so in the interests of subscribers or orderly development of New Pension System or a pension scheme to which the proposed legislation applies or to prevent the conduct of affairs of any such intermediary or other persons or entities in a manner detrimental to the interests of subscribers or to secure the proper management of any such intermediary or person or entity. However, before or after passing such orders, the Authority has to give an opportunity of hearing to such intermediaries, entities or persons concerned.

Clause 16.—This clause contains provisions relating to powers to investigation. Sub-clause (1) empowers the Authority to direct a person (Investigating Authority) to investigate and report on the affairs of intermediaries or persons associated with a pension fund if the Authority has a reasonable ground to believe that the activities of the pension fund are being conducted in a manner detrimental to the interests of subscribers or that any intermediary or any person associated with the schemes of the pension fund has violated any of the provisions of the proposed legislation or the rules, regulations made thereunder or directions issued by the Authority. Sub-clause (2) seeks to provide that without prejudice to the provisions of sections 235 to 241 of the Companies Act, 1956, in case of companies, every employee and every intermediary or every person associated with the pension fund has to preserve and produce all the books, registers and other documents of, or relating to the company, the intermediary or such person, which are in their custody or power, to the Investigating Authority or authorised person. Sub-clause (3) empowers the Investigating Authority to require any intermediary or person associated with the pension fund to furnish any material which is relevant or necessary for the purposes of its investigation. Sub-clause (4) provides that the Investigating Authority can keep such material in its custody for six months and thereafter it has to return the same. However, the Investigating Authority can call for the material if needed again. Further, if the person on whose behalf the material is produced requires certified copies of the same, then the Investigating Authority has to give certified copies. Sub-clause (5) empowers the Investigating Authority to examine on oath, any intermediary or any person associated with the pension fund in any manner, in relation to the affairs of his business. Sub-clause (6) of the proposed section requires that notes of any examination under have to be taken down in writing, read over to, or by, and signed by, the person examined, and may thereafter be used in evidence against him. Sub-clause (7) provides that

if any person fails without reasonable cause to produce any relevant material or information to the Investigating Authority or authorised person or to appear before the Investigating Authority personally when required to do so or to answer any question which is put to him by the Investigating Authority while under examination; or to sign the notes of any examination, then he will be punishable with imprisonment for a term which may extend to one year, or with fine, which may extend to twenty five crore rupees, or with both, and also with a further fine which may extend to ten lakh rupees for every day after the first day during which the failure or refusal continues.

Clause 17.—This clause contains provisions relating to powers of search and seizure of the Authority. Sub-clause (1) provides that if the Authority has information causing it to believe that any person, who is required to do so, does not or will not provide books, documents or other material relevant for an investigation; or that the provisions of this Act have been or may be contravened; or that any claim to be settled by the intermediary is likely to be rejected or settled at a figure higher or lower than a reasonable amount; or that any illegal fees and charges have been transacted or are likely to be transacted by an intermediary; or that relevant material are likely to be tampered with, falsified or manufactured, then the Authority can authorise any officer of the Authority, who is equivalent in rank to that of a Gazetted Officer of the Government, to enter and search any building or place where he suspects such books, documents and other material may be kept, seize all such material, place marks of identification on them, take extracts from them or make copies. Sub-clause (2) provides that the authorised officer may requisition the services of any police officer or of any officer of the Central Government, or of both, to assist him in the exercising the powers of search and seizure. Sub-clause (3) provides that if it is not practicable to seize any relevant book, document and other material, the authorised officer can serve an order on the person in immediate possession or control of the relevant book, document or other material, as the case may be, that he shall not remove, part with or otherwise deal with them except with the previous permission of such officer. Sub-clause (4) empowers the authorised officer to examine on oath any person who is found to be in possession or control of any books, accounts or other documents, and any statement made by such person during such examination may thereafter be used in evidence in any proceeding under the proposed legislation. Sub-clause (5) provides that the books, accounts, papers and other documents seized shall not be retained by the authorised officer for more than one hundred and eighty days from the date of the seizure unless he records the reasons in writing and obtains the approval of the Authority. However, the Authority cannot authorise the retention of the same for more than thirty days after all the related proceedings under the proposed legislation are completed. Sub-clause (6) provides that the person from whose custody the books, accounts and other documents are seized may make copies of the same and take extracts from them, in the presence of the authorised officer or any other person empowered by him. Sub-clause (7) provides that if a person legally entitled to the books, and other documents seized objects for any reason to the approval given by the Authority for retention of the same, he may make an application to the Central Government for their return. Sub-clause (8) provides that on receipt of the above application the Central Government may, after giving the applicant an opportunity of being heard, pass such order as it thinks fit. Sub-clause (9) provides that the provisions of the Code of Criminal Procedure, 1973 relating to searches and seizures shall apply to the extent possible, to every search and seizure. Sub-clause (10) empowers the Central Government to make rules in relation to search or seizure.

Clause 18.—This clause empowers the Authority to ensure compliance with the provisions of the proposed legislation. If the Authority finds, after causing an inquiry to be made, that any person has violated, or is likely to violate, any provisions of the proposed legislation, or the rules or regulations made thereunder, the Authority may pass an order requiring such person to cease and desist from committing or causing such violation.

Clause 19.—This clause contains provisions regarding management of central recordkeeping agency or pension funds by an Administrator to be appointed by the Central

Government. Sub-clause (1) provides that if at any time the Authority has reason to believe that the central recordkeeping agency or pension fund is acting in a manner likely to be prejudicial to the interests of subscribers, it may, after giving an opportunity to it of being heard, make a report to the Central Government. Sub-clause (2) provides that if the Central Government, after considering the above report considers that it is necessary or proper to do so, it may appoint an Administrator to manage the affairs of the central recordkeeping agency or pension fund, as the case may be, under the direction and control of the Authority, in a manner specified by notification.

Clause 20.—This clause describes the New Pension System as notified by the Government of India in the Ministry of Finance *vide* notification number F. No. 5/7/2003-ECB & PR dated the 22nd December, 2003, as amended from time to time. It also specifies the basic features of the New Pension System. These are— (a) every subscriber shall have an individual pension account; (b) the functions of recordkeeping, accounting and switching of options by the subscriber shall be effected by the central recordkeeping agency; (c) there shall be a choice of multiple pension funds and schemes; (d) individual pension accounts will be portable in case of change of employment; (e) collection and transmission of contributions and instructions shall be through points of presence to the central recordkeeping agency; (f) there shall not be any implicit or explicit assurance of benefits except market based guarantee mechanism to be purchased by the subscriber; (g) a subscriber shall not exit from the New Pension System except as specified by the Central Government by, notification; and (h) at exit, the subscriber shall purchase an annuity from a life insurance company as specified under the New Pension System.

Clause 21.—This clause contains provisions regarding the Central Recordkeeping Agency. Sub-clause (1) empowers the Authority to appoint a central recordkeeping agency by granting a certificate of registration. The Authority may, in public interest, appoint more than one central recordkeeping agency. Sub-clause (2) provides that the central recordkeeping agency shall be responsible for receiving funds and instructions from subscribers through the points of presence, transmitting such instructions and transferring such funds to pension funds, effecting switching instructions received from subscribers and discharging such other duties and functions, as may be assigned to it under the certificate of registration or as may be determined by regulations. Sub-clause (3) provides that all the assets and properties of the central recordkeeping agency are regulated assets. When the certificate of registration of the central recordkeeping agency expires or is revoked then the Authority can appropriate and take over the regulated assets. However, the central recordkeeping agency will be entitled to be compensated the fair value of the regulated assets, as determined by regulations, unless the revocation is on account of any violation of the conditions of the certificate of registration or the provisions of the proposed legislation or the regulations.

Clause 22.—This clause contains provisions regarding points of presence. Sub-clause (1) empowers the Authority to permit points of presence, by granting them registration certificates, to receive contributions and instructions, transmit them to the central recordkeeping agency and pay out benefits to subscribers in accordance with the regulations made by the Authority. Sub-clause (2) provides that a point of presence shall function in accordance with the terms of its registration certificate and regulations made under the proposed legislation.

Clause 23.—This clause contains provisions regarding pension funds. Sub-clause (1) provides that the Authority may, by granting registration certificates, permit persons to act as pension funds for the purpose of receiving contributions, accumulating them and making payments to the subscriber as specified by regulations. Sub-clause (2) provides that the number of pension funds shall be determined by regulations and the Authority may, in public interest, vary the number of pension funds. Sub-clause (3) provides that a pension fund shall function in accordance with the terms of its registration certificate and regulations made under the proposed legislation. Sub-clause (4) provides that the pension fund shall manage schemes in accordance with the regulations.

Clause 24.—This clause provides for the registration of intermediaries including central recordkeeping agency, pension funds and points of presence. Sub-clause (1) provides that no intermediary, to the extent regulated under the proposed legislation, can commence any activity relating to a pension fund except as provided in the registration certificate. Sub-clause (2) provides that every application for grant of a registration certificate under the proposed legislation shall be in the form and manner and accompanied by such fees as determined by the Authority by regulations made by it. Sub-clause (3) provides that the Authority may grant the registration certificate, after considering the application and subject to such terms and conditions as it may specify. Sub-clause (4) provides that the Authority may, by order, suspend or cancel a certificate of registration in a manner determined by regulations. However, it can only do so after giving a reasonable opportunity of being heard to the person concerned.

Clause 25.—This clause contains provisions regarding penalties for failure by an intermediary or any other person to comply with provisions of this proposed legislation, rules, regulations and other directions. Sub-clause (1) lays down certain penalties. If any person, who is required under the proposed legislation or rules or regulations made thereunder to obtain a certificate of registration from the Authority for carrying on any activity under the proposed legislation, carries on such activities without doing so, he shall be liable to a penalty of one lakh rupees for each day during which the failure continues or one crore rupees, whichever is less. Further, if any person who is required to comply with the terms and conditions of certificate of registration fails to do so, he shall be liable to a penalty of one lakh rupees for each day during which the failure continues or one crore rupees, whichever is less. If any person who is required to furnish any information, document, books, returns or report to the Authority, fails to furnish the same within the time specified by the Authority, he shall be liable to a penalty which may extend to one crore rupees or five times the amount of profits made or losses avoided, whichever is higher. If any person who is required to maintain books of accounts or records, fails to maintain the same, he shall be liable to a penalty of one lakh rupees for each day during which the failure continues or five times the amount of profits made or losses avoided, whichever is higher. Sub-clause (2) provides that if any person, who is required under the proposed legislation or the rules or regulations made thereunder, to enter into an agreement with his client, fails to do so, he shall be liable to a penalty of one lakh rupees for each day during which the failure continues or five times the amount of profits made or losses avoided, whichever is higher. Sub-clause (3) provides that if any intermediary registered with the Authority, after having been called upon by the Authority, in writing, to redress the grievances of subscribers, fails to do so within the time stipulated by the Authority, he shall be liable to a penalty of not more than one crore rupees or five times the amount of profits made or losses avoided, whichever is higher. Sub-clause (4) provides that if any person, who is registered under this Act as an intermediary, fails to segregate moneys of the client or clients or uses the moneys for self or for any other client, he shall be liable to a penalty not exceeding one crore rupees or five times the amount of profits made or losses avoided, whichever is higher. Sub-clause (5) provides that whoever fails to comply with any provision of this Act, rules, regulations or directions issued by the Authority for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees or five times the amount of profits made or losses avoided, whichever is higher.

Clause 26.—This clause provides that all sums realised by way of penalties under the proposed legislation shall be credited to the Subscriber Education and Protection Fund.

Clause 27.—This clause empowers the Authority to adjudicate on matters relating to penalties.

Sub-clause (1) provides that for the purposes of adjudging on penalties, the Authority shall appoint any of its officers not below the rank specified by regulations to be an adjudicating officer for holding an inquiry as determined by regulations, after giving the person concerned a reasonable opportunity of being heard for the purpose of imposing any

penalty. Sub-clause (2) provides the adjudicating officer with the power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any relevant document. If, on such inquiry, he is satisfied that the person has failed to comply with the matters referred to in the section on penalties, he may recommend a penalty to the member in charge of investigation and surveillance. Sub-clause (3) provides that the penalty shall be imposed by a member other than the member in charge of investigation and surveillance. Further, while adjudging the quantum of penalty the member has to take into account the amount of disproportionate gain or unfair advantage made as a result of the default the amount of loss caused to subscribers and the repetitive nature of the default.

Clause 28.—This clause provides for attachment of assets and supersession of management of intermediaries. Sub-clause (1) provides that on receiving an application from aggrieved persons for an interim measure of protection, the Authority can pass an order for the detention, preservation, interim custody or sale of any asset or property which is regulated by the provisions of the proposed legislation, securing any pension funds, monies and other assets and properties of the pension fund interim injunction or appointment of an administrator, the attachment of assets of the pension fund and such other interim measures as the Authority may consider it to be just and necessary. Sub-clause (2) provides that if on a complaint received by the Authority or *suo motu*, the Authority, after conducting an enquiry comes to a conclusion that the governing board or board of directors or the persons in control of any intermediary, to the extent regulated under the proposed legislation, are indulging in any activity which is in contravention of the provisions of the proposed legislation or the regulations made thereunder, it may supersede the governing board or board of directors or management of the intermediary in accordance with the provisions of the regulations.

Clause 29.—This clause deals with offences. Sub-clause (1) provides that if any person contravenes or attempts to contravene or abets the contravention of the provisions of the proposed legislation or the rules or regulations made thereunder, he shall be punishable with imprisonment for a term which may extend to ten years, or with fine, which may extend to twenty five crore rupees or with both. Sub-clause (2) provides that if any person fails to pay the penalty imposed by the member or fails to comply with any of the directions or orders issued by the member, he shall be punishable with imprisonment for a term of at least one month, which may extend to ten years, or with fine, which may extend to twenty-five crore rupees, or with both.

Clause 30.—This clause empowers the Central Government to grant immunity. Sub-clause (1) provides that the Central Government, on the recommendation of the Authority, may grant immunity from prosecution and from the imposition of penalties, to any person alleged to have violated any of the provisions of the proposed legislation or the rules or regulations made thereunder, if he makes a full and true disclosure regarding the violation. However, the recommendation of the Authority is not binding on Central Government, and moreover, if the prosecution proceedings were instituted before the application for immunity was received, then the Central Government cannot grant immunity. Sub-clause (2) empowers the Central Government to withdraw the immunity if it is satisfied that the person concerned had, during the proceedings, not complied with the condition on which the immunity was granted or had given false evidence.

Clause 31.—This clause seeks to exempt the Authority from tax on wealth, income, profits and gains.

Clause 32.—This clause provides for cognizance of offences by court. Sub-clause (1) provides that no court can take cognizance of any offence punishable under the proposed legislation or the rules or regulations made thereunder, except on a complaint made by the Authority. Sub-clause (2) provides that no court inferior to that of a Court of Session can try any offence punishable under the proposed legislation.

Clause 33.—This clause provides for appeal to the Securities Appellate Tribunal. Sub-clause (1) provides that any person aggrieved by an order made by the Authority or by an adjudicating officer may appeal before the Securities Appellate Tribunal. Sub-clause (2) provides that such appeals have to be filed within forty-five days from the date of receipt of the order appealed against and also empowers the Central Government to make rules regarding the form, manner and fees for such appeals. However, the Securities Appellate Tribunal may entertain an appeal after the expiry of the said period, if it is satisfied that there was sufficient cause for not filing it within that period. Sub-clause (3) provides that on receipt of an appeal, the Securities Appellate Tribunal may pass orders after giving the parties to the appeal an opportunity being heard. Sub-clause (4) provides that the Securities Appellate Tribunal has to send a copy of every order made by it to the Authority, the parties to the appeal and to the adjudicating officers concerned. Sub-clause (5) provides that the Securities Appellate Tribunal has to deal with an appeal filed before it as expeditiously as possible and endeavour to dispose of it finally within six months from the date on which it received the appeal. Sub-clause (6) provides empowers the Central Government to make rules regarding the procedure to be followed by the Securities Appellate Tribunal for dealing with an appeal.

Clause 34.—This clause lays down that no civil court can entertain any suit or proceeding in respect of any matter which an adjudicating officer appointed under the proposed legislation or a Securities Appellate Tribunal is empowered to determine under the proposed legislation. Further, no court or other authority shall be competent to grant an injunction in respect of any action taken or to be taken as empowered under the proposed legislation.

Clause 35.—This clause provides that any person aggrieved by any decision or order of the Securities Appellate Tribunal under the proposed legislation may file an appeal to the Supreme Court on any question of law arising out of such order. This has to be done within sixty days from the date of communication of the decision or order. However, the Supreme Court may allow an appeal to be filed within a further sixty days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within sixty days.

Clause 36.—This clause provides that the Central Government may sanction grants to the Authority after due appropriation made by Parliament, to be utilised for the purposes of the proposed legislation.

Clause 37.—This clause contains provisions regarding the Pension Regulatory and Development Fund. Sub-clause (1) provides for the constitution of the Fund into which all Government grants, fees and charges received by the Authority and all sums received by the Authority from other sources decided by the Central Government, will be credited. Sub-clause (2) provides that the Fund is to be used for meeting the salaries, allowances and other remuneration of the Chairperson and other members and officers and other employees of the Authority and other expenses of the Authority in connection with the discharge of its functions and for the purposes of the proposed legislation.

Clause 38.—This clause contains provisions regarding the Subscriber Education and Protection Fund. Sub-clause (1) provides for the establishment of the Subscriber Education and Protection Fund. Sub-clause (2) provides that all grants and donations given to the Fund by the Central Government, State Governments, companies or any other institutions for the purposes of the Fund, the interest or other income received out of the investments made from the Fund and penalties received by the Authority will be credited to the Fund. Sub-clause (3) provides that the Fund shall be administered and utilised by the Authority for protection of the interests of subscribers in accordance with regulations made for the purpose.

Clause 39.—This clause contains provisions regarding accounts and audit of the Authority. Sub-clause (1) provides that the Authority has to maintain proper accounts and other relevant records and prepare an annual statement of accounts according to rules made by the Central Government in consultation with the Comptroller and Auditor-General of India. Sub-clause (2) provides that the accounts of the Authority shall be audited by the

Comptroller and Auditor-General of India. Sub-clause (3) provides that the Comptroller and Auditor-General of India and any other person appointed by him of the Authority shall have the same rights, privileges and authority as the Comptroller and Auditor-General, generally has in connection with the audit of Government accounts and can demand the production of books, accounts and other documents and inspect any of the offices of the Authority. Sub-clause (4) provides that the audited accounts of the Authority have to be forwarded annually to the Central Government which then has to lay them before each House of Parliament.

Clause 40.—This clause empowers Central Government to issue directions on matters of policy. Sub-clause (1) provides that directions on matters of policy issued, in writing, by Central Government will be binding on the Authority. As far as practicable, Central Government should give the Authority an opportunity to express its views before giving any such direction. Sub-clause (2) provides that the decision of the Central Government, whether a question is one of policy or not, shall be final.

Clause 41.—This clause contains provisions regarding supersession of the Authority by Central Government. Sub-clause (1) empowers Central Government to supersede the Authority for a maximum period of six months by issuing a notification, specifying the reasons. However, before issuing any such notification, the Central Government has to give a reasonable opportunity to the Authority to make representations against the proposed supersession and consider any representations of the Authority. This step can be taken by Central Government if it is of the opinion that the Authority is unable to discharge its functions or perform its duties on account of circumstances beyond its control or if the Authority has persistently defaulted in complying with any direction issued by the Central Government or in the discharge of its functions or performance of its duties and as a result of such default, the financial position of the Authority or the administration of the Authority has deteriorated; or in public interest. Sub-clause (2) provides that when the notification superseding the Authority is published, the Chairperson and other members have to vacate their offices as from the date of supersession. Further, all the powers, functions and duties of the Authority shall be exercised and discharged by the Central Government and all properties owned or controlled by the Authority shall vest in the Central Government, until the Authority is reconstituted. Sub-clause (3) provides that the Central Government shall reconstitute the Authority on or before the expiration of the period of supersession specified in the notification. Sub-clause (4) provides that the Central Government shall, as soon as possible place a copy of the notification regarding supersession of the Authority and a full report of any action taken by it, before each House of Parliament.

Clause 42.—This clause contains provisions regarding furnishing of returns, etc., to Central Government. Sub-clause (1) provides that the Authority shall furnish to the Central Government returns, statements and other particulars in regard to any proposed or existing programme for the promotion and development of the pension industry as required by Central Government. The Central Government shall by rules, lay down the form and manner of making such returns, statements, etc. Sub-clause (2) provides that the Authority shall, within nine months after the close of each financial year, submit to the Central Government a report on its activities during the previous financial year, including the activities for promotion and development of schemes of pension funds regulated under the proposed legislation. Sub-clause (3) provides that copies of the reports shall be laid, as soon as possible, after they are received, before each House of Parliament.

Clause 43.—This clause provides that the Chairperson, other members, officers and other employees of the Authority shall be deemed to be public servants, when carrying out any of the provisions of the proposed legislation.

Clause 44.—This clause provides that prosecution or other legal proceedings can be taken against the Central Government or the Authority or any of their officers, etc., for anything done in good faith under the proposed legislation or the rules or regulations made thereunder.

Clause 45.—This clause contains provisions regarding offences by companies. Sub-clause (1) provides that if an offence under the proposed legislation has been committed by a company, then every person in charge of or responsible for the conduct of business of the company at the time the offence was committed shall be deemed to be guilty of the offence and can be proceeded against and punished accordingly. However, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence, then he shall not be liable to any punishment. Sub-clause (2), however, provides that if any offence under the proposed legislation has been committed by a company and it is proved that the offence has been committed with the consent or connivance of any officer of the company, then he shall also be deemed to be guilty of the offence and can be proceeded against and punished accordingly.

Clause 46.—This clause empowers the Central Government by notification in the Official Gazette to make rules for carrying out the provisions of the proposed legislation. Sub-clause (2) enumerates the various matters in respect of which Central Government may make rules. These, *inter alia*, include, the salary, allowances and the other conditions of service of the Chairperson, whole-time members and part-time members; functions which may be performed by the Authority in addition to those already mentioned in this Act; the procedure to be followed by the authorised officer for searches and seizures; the form, manner and the fee for appeals before the Securities Appellate Tribunal; the procedure to be followed by the Securities Appellate Tribunal in dealing with an appeal and; the form in which the Authority shall maintain an annual statement of accounts and provide returns and reports to the Central Government.

Clause 47.—This clause empowers the Authority to make, by notification in the Official Gazette regulations for carrying out the provisions of the proposed legislation. Such regulations should be consistent with the provisions of the proposed legislation and the rules made thereunder. Sub-clause (2) enumerates the various matters in respect of which the Authority can make regulations. These *inter alia*, include, the time, places and procedure for meetings (including the quorum at such meetings) of the Authority, the terms and other conditions of service of the officers and other employees of the Authority, regulations for pension schemes not regulated by any other enactment; mechanisms for redressing grievances of subscribers, the form and manner in which books of account shall be maintained and statement of accounts shall be rendered by intermediaries; the duties and functions of central recordkeeping agency, the determination of compensation of fair value of the regulated assets payable to central recordkeeping agency, regulations governing the functioning of pension funds and points of presence, the manner of managing schemes by pension funds, the form and manner of application for grant of registration certificate, conditions for grant of the certificate and the accompanying fee.

Clause 48.—This clause provides that every rule made by the Central Government and every regulation made by the Authority under the proposed legislation shall be laid before each House of Parliament.

Clause 49.—This clause seeks to empower the Central Government to remove difficulties. Sub-clause (1) provides that if any difficulty arises in giving effect to the provisions of the proposed legislation, the Central Government may make provisions, by order, published in the Official Gazette, for removing the difficulty. These orders must be consistent with the provisions of the proposed legislation. However, no order shall be made under this clause after the expiry of five years from the commencement of the proposed legislation. Sub-clause (2) provides that every order made under this clause shall be laid, as soon as may be after it is made, before each House of Parliament.

Clause 50.—This clause provides for delegation of powers by the Authority. Sub-clause (1) provides that the Authority may delegate its powers (other than the power to make regulations) and functions by general or special order in writing, to any member, officer of the Authority or any other person subject to conditions, if any, specified in the order. Sub-clause (2) provides that the Authority may, by a general or special order in writing, also form

committees of the members and delegate to them the powers and functions of the Authority as may be specified by the regulations.

Clause 51.—This clause provides that the provisions of the proposed legislation shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

Clause 52.—This clause is a savings clause providing that anything done or any action taken by the Central Government under the Resolution of the Government of India in the Ministry of Finance number F.No. 5/7/2003-ECB&PR dated the 10th October, 2003 and notification number F. No. 5/7/2003-ECB & PR dated the 22nd December, 2003, shall be deemed to have been done or taken under the corresponding provisions of the proposed legislation.

Clause 53.—This clause seeks to repeal the Pension Fund Regulatory and Development Authority Ordinance, 2004 (Ord. 8 of 2004). Sub-clause (2) saves all things done and all actions taken under the said Ordinance by deeming it to have been done or taken under the corresponding provisions of the proposed legislation.

FINANCIAL MEMORANDUM

Clause 3 of the Bill provides that the Central Government may, from such date as may be appointed by it, establish for the purposes of the proposed legislation an authority to be called the Pension Fund Regulatory and Development Authority. In terms of clause 7 of the Bill, the Central Government will prescribe the salary, allowances and other terms and conditions of service of the Chairperson and other members of the Authority. Clause 12 of the Bill provides that the Authority will appoint officers and other employees as it considers necessary for the efficient discharge of its functions under the proposed legislation and frame regulations regarding their terms and other conditions of service.

2. Clause 36 of the Bill provides that the Central Government may make grants to the Authority to be utilized for the purposes of the proposed legislation, after due appropriation made by Parliament by law.

3. Clause 37 of the Bill provides for the constitution of a fund to be called the Pension Regulatory and Development Fund into which all Government grants, fees and charges received by the Authority and all sums received by the Authority from other sources decided by the Central Government shall be credited. The Fund is to be used for meeting the salaries, allowances and other remuneration of the Chairperson, other members and officers and other employees of the Authority and other expenses of the Authority in connection with the discharge of its functions and for the purposes of the proposed legislation.

4. Clause 38 of the Bill provides for the establishment of a Subscriber Education and Protection Fund into which all grants and donations given to the Fund by the Central Government, State Governments, companies or any other institutions for the purposes of the Fund, the interest or other income received out of the investments made from the Fund and the amount by way of penalties received by the Authority will be credited. The Fund is to be administered and utilised by the Authority for the protection of the interests of subscribers in accordance with the regulations made by the Authority for the purpose.

5. It is estimated that there would be an expenditure of approximately eight crores of rupees in the first year of establishment of the Authority, including grants given to the Authority, to be borne by the Central Government, for the purposes mentioned in paragraphs 3 and 4 above. This would include non-recurring capital expenditure of three crores of rupees and a further recurring expenditure of five crores of rupees on salaries, rent for office accommodation, etc. Eventually, it is expected that major recurring expenses of the Authority would be funded out of the fees and charges as may be received by the Authority.

6. The Bill, if enacted and brought into operation, would not involve any other expenditure of a recurring or non-recurring nature.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 46 of the Bill empowers the Central Government to make, by notification in the Official Gazette, rules for carrying out the provisions of the proposed legislation. Sub-clause (2) enumerates the matters in respect of which such rules may be made. These matters, *inter alia*, include matters relating to the salary, allowances and other terms and conditions of service of the Chairperson and other members of the Pension Fund Regulatory and Development Authority, the powers and functions of the Authority in addition to those already specified in the Bill, the procedure and other matters related to the exercise of powers of search and seizure by the Authority, the form, manner and fee for filing an appeal before the Securities Appellate Tribunal and the procedure to be followed by the Securities Appellate Tribunal in dealing with appeals, the form in which the Authority shall maintain annual statement of accounts and the time within which and the form and manner in which returns and reports are to be made by the Authority to the Central Government.

2. Clause 47 of the Bill empowers the Pension Fund Regulatory and Development Authority to make, by notification in the Official Gazette, regulations for carrying out the provisions of the proposed legislation. Such regulations should be consistent with the provisions of the proposed legislation and the rules made thereunder. The matters in respect of which the Authority may make regulations, *inter alia*, include matters relating to the transaction of business of the Authority at its meetings (including the quorum at such meetings) and the time and places for such meetings, the terms and conditions of service of the officers and employees of the Authority, regulations for pension schemes not regulated by any other enactment, establishing a grievance redressal mechanism for subscribers, the form and manner of maintaining books and statement of accounts by intermediaries, the duties and functions of the central recordkeeping agency and the determination of compensation of fair value of the regulated assets payable to the central recordkeeping agency, the functioning of point of presence and the manner of receiving contributions and instructions and transmitting them to the central recordkeeping agency and paying out benefits to subscribers, the number of pension funds and the manner in which a pension fund may receive contributions, accumulate them and make payments to the subscribers and the manner of managing schemes by the pension funds, registration of intermediaries, the procedure for holding inquiry by adjudicating officers, matters relating to supercession of the governing board or board of directors of intermediaries, the manner of administering and utilising the Subscriber Education and Protection Fund and delegation of powers and functions to committees of members of the Authority.

3. The rules and regulations made under the proposed legislation shall be required to be laid before the Parliament.

4. The matters in respect of which rules or regulations may be made are matters of procedure and administrative detail and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

Memorandum explaining the modifications contained in the Bill to replace the Pension Fund Regulatory and Development Authority Ordinance, 2004

Apart from changes of a formal drafting nature, the Pension Fund Regulatory and Development Authority Bill, 2005 which seeks to repeal and replace the Pension Fund Regulatory and Development Authority Ordinance, 2004 closely follows the said Ordinance with slight modifications as explained below:—

(1) Sub-clause (2) of clause 2 of the Bill has been modified rearranging the various Central Acts mentioned therein.

(2) Clause 10 of the Bill corresponds to section 10 of the Ordinance. Sub-section (5) of section 10 of the Ordinance has been omitted as the provisions of the same are contained in sub-section (1) thereof. Consequential modifications have been made in sub-clause (2) of clause 47 of the Bill.

(3) Sub-clause (3) of clause 13 of the Bill has been revised rearranging the enactments mentioned therein. Sub-clause (4) of clause 13 has been modified so as to make the intention more clear.

(4) Sub-clauses (6) and (7) of clause 16 of the Bill correspond to sub-sections (7) and (6) respectively of section 16 of the Ordinance. The re-arrangement of provisions has been made for clarity and elegance.

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to provide for the establishment of an Authority to promote old age income security by establishing, developing and regulating pension funds, to protect the interests of subscribers to schemes of pension funds and for matters connected therewith or incidental thereto.

(Shri P. Chidambaram, Minister of Finance)