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STANDING COMMITTEE ON FINANCE

FOURTEENTH LOK SABHA

MINISTRY OF FINANCE  
(DEPARTMENT OF ECONOMIC AFFAIRS)

THE PENSION FUND REGULATORY AND DEVELOPMENT  
AUTHORITY BILL, 2005

TWENTY FIRST REPORT



LOK SABHA SECRETARIAT  
NEW DELHI

July, 2005/Asadha, 1927 (Saka)

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**AUTHORITY BILL, 2005**

Presented to Lok Sabha on 26 July, 2005  
Laid in Rajya Sabha on 26 July, 2005



**LOK SABHA SECRETARIAT**  
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AUTHORITY BILL, 2005

**COMPOSITION OF STANDING COMMITTEE ON  
FINANCE – 2004-2005**

**Maj. Gen (Retd.) B.C. Khanduri - Chairman**

**MEMBERS**

**LOK SABHA**

2. Shri Jaswant Singh Bishnoi
3. Shri Gurudas Dasgupta
4. Shri Bhartruhari Mahtab
5. Shri Shyama Charan Gupta
6. Shri Gurudas Kamat
7. Shri A. Krishnaswamy
8. Shri Bir Singh Mahato
9. Dr. Rajesh Kumar Mishra
10. Shri Madhusudan Mistry
11. Shri Rupchand Pal
12. Shri Danve Raosaheb Patil
13. Shri Shriniwas D. Patil
14. Shri K.S. Rao
15. Shri Jyotiraditya Madhavrao Scindia
16. Shri Lakshman Seth
17. Shri G.M. Siddeshwara
18. Shri Ajit Singh
19. Shri M.A. Kharabela Swain
20. Shri Vijoy Krishna
21. Shri Magunta Sreenivasulu Reddy

**RAJYA SABHA**

22. Shri Murli Deora
23. Shri R.P. Goenka
24. Shri Jairam Ramesh
25. Shri M. Venkaiah Naidu
26. Shri Yashwant Sinha
27. Shri Chittabrata Majumdar



28. Shri S.P.M. Syed Khan
29. Shri Amar Singh
30. Shri C. Ramachandraiah
31. Shri Mangani Lal Mandal

**SECRETARIAT**

1. Shri John Joseph, Secretary
2. Smt (Dr.) P.K. Sandhu, Additional Secretary
3. Shri R.K. Jain, Deputy Secretary
4. Shri T.G. Chandrasekhar, Under Secretary

## Introduction

I, Chairman of the Standing Committee on Finance having been authorised to submit the Report on their behalf present this Twenty First Report on the Pension Fund Regulatory Development Authority Bill, 2005.

2. The Pension Fund Regulatory and Development Authority Bill, 2005, introduced in Lok Sabha on 21<sup>st</sup> March, 2005, was referred to the Committee on 24<sup>th</sup> March, 2005 for examination and report thereon, by the Hon'ble Speaker, Lok Sabha under Rule 331 E of the Rules of Procedure and Conduct of Business in Lok Sabha.

3. The Committee obtained written information on various provisions contained in the aforesaid Bill from Ministry of Finance, Department of Economic Affairs, who also briefed them at their sitting held on 17<sup>th</sup> May, 2005.

4. Written views/memoranda were received from (i) the Chambers of Commerce viz., Federation of Indian Chambers of Commerce and Industry (FICCI), Confederation of Indian Industry (CII), PHD Chambers of Commerce and Industry (ii) National Trade Unions viz., Centre of Indian Trade Unions (CITU), Hind Mazdoor Sabha (HMS), Bharatiya Mazdoor Sangh (BMS), Indian National Trade Union

Congress (INTUC), All India Trade Union Congress (AITUC), (iii) Employees Unions and Associations viz., Confederation of Central Government Employees and Workers, New Delhi, National Federation of Postal Employees, New Delhi, All India State Government Employees' Federation (AISGEF), Calcutta, Punjab Subordinate Service Federation, Chandigarh, The Telengana Non-Gazetted Officers', Central Union, Hyderabad, State Co-ordination Committee of West Bengal Government Employees' Associations and Unions, Kolkata, Maharashtra State Zilla Parishad Employees' Confederation, Nagpur, Jharkhand State Non-Gazetted Employees Federation, Ranchi, Akhila Karnataka State Government Employees Federation (R), Bangalore, Orissa State Government Employees Co-ordination Committee, Bhubaneswar, Income Tax Employees Federation, New Delhi; (iv) Shri Mahila Sewa Sahakari Bank Ltd, Ahmedabad, (v) Dr. Kirit Parikh, Member Planning Commission, New Delhi, (vi) Shri B.K. Bhattacharya, Chairman, High Level Expert Group on New Pension System, New Delhi, (vii) Shri N. Rangachary, Former Chairman, Insurance Regulatory and Development Authority, (viii) Shri Anand Bordia, Former Member (Finance), NHAI, and (ix) Shri Gautam Bhardwaj, Director, Invest India Economic Federation, New Delhi.

5. The Committee, at their sitting held on 18 May, 2005 heard the views of the representatives of (i) Indian National Trade Union Congress (INTUC), (ii) Hind Mazdoor Sabha (HMS), (iii) All India Trade Union Congress (AITUC) and (iv) Bharatiya Mazdoor Sangh (BMS).

6. In their sitting held on 19 May, 2005 (i) Dr. Kirit Parikh, Member, Planning Commission, (ii) Shri Gautam Bhardwaj, Director, Invest India Economic Foundation, (iii) Shri N. Rangachary, Former Chairman, Insurance Regulatory and Development Authority and (iv) Dr. S.A. Dave, Chairman, Project OASIS Expert Committee for Divising a Pension System for India and Chairman, Centre for Monitoring the Indian Economy presented their views before the Committee.

7. On 1 June, 2005, the Committee heard the views of the representatives of (i) Centre of Indian Trade Unions (CITU) and (ii) All India State Government Employees' Federation; and on 2 June, 2005, the Committee heard the views of (i) Shri B.K. Bhattacharya, Chairman High Level Expert Group on New Pension System and (ii) Shri Anand Bordia, Former Member (Finance) National Highway Authority of India (NHAI).

8. At their sitting held on 13 June, 2005 the Committee heard the views of the representatives of (i) Federation of Indian Chambers of

Commerce and Industry (FICCI) (ii) Confederation of Indian Industry (CII), and (iii) Confederation of Central Government Employees and Workers.

9. The Committee again took oral evidence of the Ministry of Finance, Department of Economic Affairs on 14 June, 2005.

10. Members gave their suggestions for incorporation in the draft report on the aforementioned Bill at the sitting of the Committee held on 22 June, 2005.

11. The Draft Report was circulated to Members on 2 July, 2005.

12. The Committee considered and adopted the draft report at their sitting held on 5 July, 2005.

13. The Committee wish to express their thanks to the officers of the Ministry of Finance, Department of Economic Affairs, representatives of the Chambers of Commerce, National Trade Unions, Employees Unions and Associations and other individuals for their co-operation in placing before them their considered views and perceptions on the provisions of the Bill and for furnishing written notes and information that the Committee had desired in connection with the examination of the Bill.

14. For facility of reference, recommendations/observations of the Committee have been printed in thick type.

NEW DELHI;  
KHANDURI),  
22 July, 2005  
*Chairman,*  
31 Asadha Sravana,1927(Saka)

(MAJ. GEN. (RETD.) B.C.

**Standing Committee on Finance**

# REPORT

## Background

Escalating costs of the pension system has compelled the Government to have a re-look at the formal programmes that provide social security to employees. An added, if not more important factor that has given an impetus to the pension reform process in the country is the need to extend old age income security coverage to a wider section of the populace, the demographic composition of which is rapidly changing. As is the case with most other developing countries, India does not have a universal social security system to protect the elderly against economic deprivation. The pension policy adopted and followed in the country largely hinges on financing through employer and employee participation. As a result, the coverage of pension programmes and schemes is largely restricted to the organized sector workers and a vast majority of the workforce in the unorganized sector is devoid of access to formal channels of old age economic support.

2. India does not have a tax financed universal social security system. It is a well known fact that the poverty alleviation and social welfare programmes of the Government are not commensurate with the country's needs, which are indeed immense. In case of need, old people generally rely on immediate family members and private charities. With the breaking-up of

the joint family system, it has become inevitable that people plan for their old age financial security while they are young and working.

3. On the pension expenditure of the Central Government, as informed by the Ministry, of the total estimated expenditure of Rs. 27,817 crore for the year 2005-06, the pension expenditure on Defence services totals to Rs. 12,452 crore. Details of the pension expenditure for different sectors/services of the Government for the years 2001-02 to 2005-06 are as shown below:

Year	Civil	Telecom	Railways	Defence	Posts	Total
2001-02 (R)	4170	703	5590 (actuals)	10488	875	21826
2002-03 (R)	4170	840	5940 (actuals)	10092	1060	22102
2003-04 (R)	4400	1011	6100	11000	1118	23629
2004-05 (R)	5250	1200	6540	11922	1242	26154
2005-06 (B)	5925	1200	6940	12452	1300	27817

4. The pension expenditure of the Central and State Governments taken together, as furnished by the Ministry show that the expenditure for the year 2004-05 totals to Rs. 65,524 crore. The year-wise break-up of pension



payments of the Central and State Governments for the years 1990-91 to 2005-06 is shown in the table below:

Year	Pension Payments (Rs In crore)	
	States	Centre
1990-91	3131	3272
1991-92	3716	3748
1992-93	4379	4585
1993-94	5107	5206
1994-95	6146	5734
1995-96	7813	6928
1996-97	9827	8252
1997-98	11599	11376
1998-99	16166	15346
1999-00	22679	19446
2000-01	25453	21117
2001-02	28196	21826
2002-03	31005	22102
2003-04 (RE)	35279	23629
2004-05	38370 (BE)	26154 (RE)
2005-06	N.A.	27817 (BE)

#### PENSION PROGRAMMES AND SCHEMES – SCOPE AND COVERAGE

5. The pension programmes and schemes currently in operation in the country and the scope of their coverage, as depicted by the Ministry of Finance in a presentation made before the Committee are as follows:

Mandatory Schemes	Voluntary Schemes
Civil Services Pension Schemes (Pay-as-you-go) (120 Lakhs)	Personal pension plans from annuity providers (8 lakhs)
Employees' Provident Fund (400 lakhs)	Superannuation plans offered by life insurance companies ( 8 Lakhs)
Employees' Pension Scheme (280 lakhs)	Public Provident Fund (35 lakhs)
Special Provident Funds (21 lakhs)	

6. The limitations of the formal pension schemes, as highlighted by the representatives of Ministry of Finance include, inadequate coverage; lack of individual choice and portability; lack of multiple pension providers; funding gaps as in the case of the publicly managed Employees Pension Scheme (EPS); and fiscal stress of Civil Services Pension Schemes.

7. The EPS, which is managed by a Board of Trustees and under which subscribers are offered defined benefits upto a maximum of 50 percent of the average of the last 12 months wages devoid of any worry of investment risk, administrative costs and other kinds of risk associated with pension fund

management, has, as informed by the Ministry of Finance, ‘an unfunded gap of over Rs. 19,000 crore as per the latest actuarial.’

8. On the extent of coverage of the formal sector pension schemes per-se, the Joint Secretary, Ministry of Finance stated during evidence:

“Presently, the coverage of the formal pension system is, through EPF we are covering around ten per cent; and State and Central Government employees are 2.8 per cent. 87.2 per cent of the workers are today not covered.”

9. Implementation of the recommendations of the Fifth Central Pay Commission on Pension related issues contributed immensely to the burgeoning pension expenditure of the Central and State Governments.

### **Unsustainability of the Existing Pension System**

10. As regards the mounting expenditure of the Central and State Governments on pension payments, the Secretary, Economic Affairs informed:

“In absolute numbers, the pension expenditure of the Central Government was Rs. 5206 crore in 1993-94. In 2004-05, it has gone upto Rs. 26,154 crore for the Central Government. The compounded growth of this is around 21 percent and pension expenditure as a proportion of tax revenue has gone up from 9.7 percent in 1993-94 to

12.6 percent in 2004-05. For the State Governments, the pension expenditure in 1993-04 was around Rs. 5107 crore and that has gone up to Rs. 38,370 crore in 2004-05. The compounded growth has been around 27 per cent. That proportion has gone up from 5.4 percent in 1990-91 to 10 percent of State tax revenues in 2000-01.”

11. During the briefing by the Ministry of Finance, the Joint Secretary while explaining the unsustainability of the present pension scheme stated as under:

“The Compounded Annual Growth Rate (of pension liability) for Central Government employees is 21 per cent and for the State Government employees it is 27 per cent. So, this liability is rising and it is quite expected because if the number of workers who are going to live longer, naturally this is going to create more and more burden. In fact, the dependency ratio for the Central Government employees is now as high as 85 per cent. That means for every 100 active workers, we have 85 pensioners. What are the lessons are we learning from the existing pension provisions? We would imagine that good pension system should be sustainable over a period of time. That means it should be fiscally sustainable, and administratively easy to implement. It should result in meaningful retirement outcomes and adequate pension for workers. It should be equitable and pro-labour and should not exclude any

worker from saving for retirement. We would like to highlight here one of the guiding principles behind the new pension system and the PFRDA Bill has been to provide an architecture so that we can cover un-organised sector which is not covered today.”

12. On the rationale for undertaking pension sector reforms by switching over to the New Pension System viz. contributory pension system for new recruits to Central Services joining service from 1 January, 2004 onwards and the move to constitute the PFRDA as a statutory body to regulate and promote growth of pension schemes and funds, the Joint Secretary, Ministry of Finance stated that the broad kind of fiscal pressure that had come up had induced the move to set up expert groups and attempt to find a solution to the problem that would only ‘get worse in the years to come’. In this regard, he further elaborated:

“Now the solution or the attempt to find a solution is really to start a unique system of pension, that is, in the best circumstances, financial self-sustaining, cost efficient and also capable of serving both organized and unorganized labour and also allowing full portability. The last point is very important. In the current system, the pensions of those people who are either in the Government or in the organized sector who do have a pension, are not portable. When you leave the Government before you

serve the requisite number of years, then you do not get any pension. Similarly, in the organized sector also, pensions are not portable. Whereas with the change in the employment system that is taking place now and in the future, we ought to have a pension system where pensions are portable. What has been happening in most of the developed countries in particular is, they increase the retirement age so that people work longer. So, the portion of the pensioners to the proportion of the working people does not go up as much as it would be otherwise. In some countries, there has been a defined contribution system and some countries have actually reduced the benefits. About 31 countries in the last decade or so have done it which is not a very pleasant thing to do frankly speaking. In some countries, there has been a systemic pension reforms from a defined benefit to a defined contribution system and this has happened in about 18 countries in the last decade or so. Now, we are lucky to a certain extent that our stage of demography is such that the working population is relatively young. Compared to the world standard, the projections of the next 20 years are such that, in some sense, we will have the best situation in the world in terms of the proportion of working population to the older population. So, this is a very good time for us to be starting a system of pension reforms.”

## **PENSION REFORM MEASURES**

13. The Secretary, Economic Affairs briefly recapitulated the pension reform measures undertaken in the preceding years which led to the switch over to the Contributory Pension System viz., New Pension System to the new entrants to the Central Services appointed from 1<sup>st</sup> January 2004 and the introduction of the PFRDA Bill, 2004 seeking to set up a statutory Authority inter alia for managing the New Pension System. The Pension reform measures undertaken in the previous years, as pointed out by the Finance Secretary included setting up of the OASIS (Old Age Social and Income Security) project by the Ministry of Social Justice and Empowerment in 1998 for devising a pension scheme for the unorganized sector; the budget announcements of the Hon'ble Finance Minister in 2001-2002 inter alia requiring the IRDA to study the various aspects in the area of system of pension to the unorganized sector and constituting a High Level Expert Committee to review the existing pension system for Central Government Employees; submission of the related reports viz. IRDA report in 2001 and the report of the High Level Expert Group in 2002; and presentation of the Report of the 'Group' to Study the pension liabilities of the State Governments in 2003."

## (II) REPORTS OF EXPERT GROUPS AND COMMITTEES ON PENSION REFORM MEASURES

14. Major among the reports that have examined old age income and financial security encompassing the workforce at large – both in the Government and other sectors and were considered by the Government are:

- (i). Project OASIS Committee Report, December 29, 1999 (OASIS Report);
- (ii) Pension Reforms in the Unorganized Sector – a Report prepared by the Insurance Regulatory and Development Authority, October 2001;
- (iii) Report of the High Level Expert Group on New Pension System, Government of India, February 2002; and
- (iv) Report of the Group to study the pension liabilities of the State Governments (RBI Oct., 2003)

15. The Group to Study the pension liabilities of the State Governments (serial no. iv) was set up by the RBI under the Chairmanship of Shri B.K. Bhattacharya as a sequel to the decision taken in the Eleventh Conference of State Finance Secretaries held during January, 2003. The Study Group was given the specific task of studying the pension liabilities of the State Governments and making suitable recommendations.



16. The major observations of these reports, and the recommendations made in the direction of pension reforms, as observed by the Committee, are delineated below:-

**(i) OASIS (Old Age Social and Income Security) Project Report**

17. The report of OASIS (Old Age Social and Income Security) project - which was commissioned by the Ministry of Social Justice and Empowerment under the Chairmanship of Shri S.A.Dave for 'Devising a Pension System in India' - was submitted in January, 2000. The prime focus of the OASIS Committee has been on the great mass of individuals who are working outside the pension provisions that presently exist in the unorganized sector. The OASIS report - on the basis of which the PFRDA Bill, 2005 is observed to be significantly drawn - recommended a pension scheme based on Individual Retirement Accounts to be opened anywhere in India at the price of modest contributions through the working career of the worker. Banks, Post Offices etc., could serve as Points of Presence (POPs) where the accounts could be opened or contributions deposited. Their interconnectivity could ensure portability as the worker moves from one place/employment to another. The report recommended for creation of a depository for centralized record keeping, management of funds by 'Fund Managers' and provision of

benefit after the age of 60 by annuity providers. A Central Regulatory Authority, namely, India Pension Authority was recommended.

18. As per the report, a minimum contribution of Rs. 500 per annum was expected to have an accumulation of around Rs. 2 lakhs at the age of 60 years, of which, Rs. 1 lakh was to be used for buying an annuity, beyond which one would be free to deploy.

**(ii) IRDA Report**

19. The IRDA Committee's recommendations for reforms in the non-governmental/unorganized sector are as follows:

- Establish a system based on privately managed, individual funded defined-contribution accounts. Freedom to invest in equities must be ensured and such a facility leads to a tremendous enhancement over a long period of time, to the returns. Lump sum payments and/or annuity on retirement would be actuarially determined based on funds available.
- For the new pension system to be functional, there should be a “critical mass” by way of subscribers.
- Privatize assets management functions of EPFO and exempt provident funds (managed by the trustees appointed by the employers and employees) and allow private insurance firms to provide annuities.

- For persons not covered by any scheme, allow a limited number of private asset managers to operate, each offering three investment portfolio options. Participants would have choice among fund managers selected through a competitive bidding process by regulatory authorities.
- Employers' and fund managers' responsibility to participants would be that of 'principal and agent' and fiduciary in nature. Fund managers would work for a fee with no performance guarantee. However, it is hoped that with expert managerial skill and wider investment choice, participants would be better off than at present, through publicly managed funds.
- Government would need to provide tax subsidy to encourage acceptance of privately managed funds.
- Government should allow facilitated access to the system through its postal and banking network throughout the country to keep the administrative cost low.
- To supervise and regulate the system, an independent regulatory authority called the Indian Pensions Authority should be set up.

### (III) REPORT OF THE HIGH LEVEL EXPERT GROUP ON NEW PENSION SYSTEM

20. As a sequel to the announcement made by the Finance Minister in the Union Budget (2001-02), *inter-alia* for reviewing the existing pension system and to provide a roadmap for the steps to be taken by the government for switching over to a new pension programme based on defined contributions, a High Level Expert Group under the chairmanship of Shri B.K. Bhattacharya was constituted.

21. The recommendations of the High Level Expert Group on the Pension Policy of Central Government Employees included:

(a) An unfunded defined benefit, pay-as-you-go scheme (PAYG), or a pure defined contribution scheme was not considered suitable for government employees; instead the Committee recommended a hybrid defined benefit/defined contribution scheme. It envisaged a two-tier scheme. In the first tier, there is a mandatory contribution of 10 per cent each by employer and employee. The accumulated funds would be used to pay pension in annuity form. The second tier is to promote personal savings and there is no limit for employee's contribution but employer's contribution would be matching and limited to 5 per cent. Accumulated funds can be withdrawn in lump sum or converted into annuity at the time of retirement. These payments

would be tax exempt and portable if an employee changes job before retirement.

(b) Funds collected in the first tier would be deposited in a separate fund and would be invested in both debt and equity. Some funds can be earmarked for active fund management including for short term trading for better returns. However, irrespective of fund performance, government would remain liable for pension to its employees based on predetermined benefit formula.

(c) Contributions obtained in the second tier will have a separate institutional structure and the employees would have a choice of funds (income based funds with predominant investment in government securities, balanced funds with equal investment in government securities and market equity and growth funds with pre-dominant investment in market based equity) to invest in. Employees may decide to continue, quit, or swap among funds while in service. Government will not guarantee any specific rate of return.

(d) The new schemes would be applicable to new employees only.

#### (IV) REPORT OF THE GROUP TO STUDY THE PENSION LIABILITIES OF THE STATE GOVERNMENTS

22. On the growing liabilities of State Governments on account of the existing defined benefit pension system, the report of the Study Group observed:

“During the period 1980-2002, pension payments of the State Governments have sharply risen at a annual compound rate of 23.6 per cent from Rs. 268 crore in 1979-80 to Rs. 28,197 crore in 2001-02. State-wise trends show that the growth rates varied widely across the States. Pension payments as percentage of total revenue receipts of the States rose from 2.1 per cent in 1980-81 to 11.0 per cent in 2001-02; during the same period, the ratio of pension payments to States' own revenue receipts rose at a faster rate from 3.4 per cent to 17.2 per cent.

The rapid increase in States' pension outgo could be attributable to a number of factors which, *inter alia*, include expansion in the number of State Government employees during the earlier decades; extension of pension facilities to employees of various non-Government institutions (Grant-in-Aid Institutions and Local Bodies etc.); impact of various pay revisions; introduction of wage indexation, and significant improvement in life expectancy .”

23. The Study Group Report recommended for introduction of contributory pension scheme/s for the new employees of the State Governments in place of the existing non-contributory defined benefit pension scheme.

#### **NEW PENSION SYSTEM**

24. The salient features of the New Pension System viz., Defined Contributing Pension System introduced for new entrants to Central Government Service vide Ministry of Finance notification No- 5/7/2003 CB&PR dated 22<sup>nd</sup> December, 2003 are delineated as under:

1. The System is applicable to all new entrants to Central Government service, except to Armed Forces in the first instance,, joining Government service on or after 01.01.2004.
2. The system works on defined contribution basis and has have two tiers – Tier-I and II. Contributions to Tier I is mandatory for all government servants joining government service on or after 01.01.2004, whereas Tier II is optional and at the discretion of Government servants.
3. In Tier I, Government servants make a contribution of 10% of the basic pay plus DA, which will be deducted from the salary bills

every month by the PAO concerned. The Government is to make an equal matching contribution.

4. Tier I contributions (and the investment returns) are kept in a non-withdrawable Pension Tier I Account. Tier II contributions are kept in a separate account that will be withdrawable at the option of the government servant. Government will not make any contribution to Tier II account.
5. The existing provisions of Defined Benefit Pension and GPF are not available to new government servants joining Government service on or after 01.01.2004.
6. In order to implement the scheme, there will be a Central Record Keeping agency and several Pension fund Managers to offer three categories of Schemes to Government servants viz. options A,B and C based on the ratio of investment in fixed income instruments and equities.
7. At exit from Tier I of the Pension System at the age of 60 it would be mandatory for a government servant to invest 40 percent of pension wealth to purchase an annuity (from an IRDA regulated Life Insurance Company), which will provide for pension for the lifetime of the employee and his dependent parents/spouse. In the



case of government servants who leave the Scheme before attaining the age of 60, the mandatory annuitisation would be 80% of the pension wealth.

25. As the New Pension System was put in place without the full architecture and a statutorily regulated mechanism, the Government promulgated an ordinance viz. the Pension Fund Regulatory and Development Authority Ordinance, 2004 (Ord 8 of 2004) on the 29<sup>th</sup> December, 2004, which lapsed. In the interim to the setting up of ‘proper infrastructure under a regulatory framework’, contributions under the NPS are being credited in the public account, earning an administered rate of return equal to the rate on the General Provident Fund. The Pension Fund Regulatory and Development Authority Bill, 2005 was introduced in the Lok Sabha on 21<sup>st</sup> March, 2005 and referred to the Standing Committee on Finance on 24<sup>th</sup> March, 2005. The Bill seeks 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.”

## INTERNATIONAL EXPERIENCE ON PENSION REFORMS:

26. The literature and research papers furnished to the Committee by Ministry of Finance *inter-alia* reveal that in the context of growing pension liabilities, several reforming countries (in terms of pension reforms) have initiated modifications in the civil service pension schemes. Many countries have taken measures to reduce the pension liabilities by introducing higher retirement ages and or longer service periods; changing post retirement indexation policy; lowering rates of benefit accruals etc. In Europe, with the possible exception of U.K and Netherlands, almost all countries face pension crisis in terms of under funding of the system. In order to address the problems on account of rising pensions liability which are mostly based on defined benefit, there are two options, which are being exercised internationally to bring in reforms in the pension system viz. parametric (minor) reforms and systemic (major) reforms. While major reforms include mainly moving from pay-as you-go (PAYG) i.e., defined benefit to defined contribution etc., the minor reforms are related to changing contribution structure, benefit structure and administration etc.

27. Some of the countries which have gone in for major pension reforms (systemic) are Chile, Sweden, Poland, Mexico, Australia, Hungary, Kazakstan ( moved from PAYG to defined contribution). Indonesia and

Nigeria have moved from provident fund system to PAYG. The privatization of the pension reforms in Chile by Pinochet in 1981 is an oft-cited case. In the category of minor reforms, New Zealand, Ireland, Italy etc. have changed the eligibility criteria in terms of changing the retirement age whereas Brazil, Latvia, Greece etc. have changed eligibility criteria in terms of changing the service years. Other minor reforms of changing the contribution structure has been carried out in Japan, Malaysia, Taiwan, Korea, Bulgaria, Sudan etc.

28. The cross country experience on approaches to social security as depicted in the Report of the Group to study the pension liabilities of the State Governments is summarised below:

1. A large majority of countries provide old-age benefits through a **defined benefit social security system** based on principles of social insurance. Most of the countries of the OECD have such programmes.
2. An increasing number of countries provide benefits through a mandatory individual account **defined contribution programme**. A number of countries in Latin America adopted these programmes during the 1990s.

3. A number of countries which were formerly British colonies have provident funds. These provident funds are national mandatory savings plans that generally pay benefits in a single payment, known as lump sum benefits.
4. **Notional account plans** are relatively new and recently adopted by Sweden and Poland, where each worker has an individual account but the accounts are not funded. The return that is credited to each worker's account takes into consideration current and prospective demographic and productivity change.
5. Some countries give workers the option of contributing to a state-run plan or contributing to a private sector managed plan. This approach is often called **contracting out**, and is used by the United Kingdom, Japan and some countries in Latin America.
6. Some countries **mandate employer-provided pension plans**, an approach used by Australia and Switzerland. These mandated plans can either be defined benefit or defined contribution plans. In Switzerland, cash balance plans are commonly used, which are a hybrid plan combining features of both defined benefit and defined contribution plans.

7. Some countries have **quasi-mandating of employer-provided plans**, where the mandate is not a legal requirement imposed by the State but is the result of a contractual agreement between labour unions and employers that covers most workers in the country. The Netherlands and Sweden are examples of this approach.

Countries, such as Sweden and Poland, combine two or sometimes three of these approaches.

29. The ‘pension model’ adopted in Chile figured with prominence in the Committee’s deliberations. An excerpt on the fundamental characteristics of the Chilean system from the Chapter on ‘Civil Services Pension Reform : Cross - Country Experience’ of the report of the ‘Group to study the Pension liabilities of the State Governments’ is reproduced below:

“The pension reform of 1980s in Chile created a new system known as the 'AFP system *Administradoras de Fondos de Pensiones* (Pension Fund Management Companies) which completely replaced its Government run PAYG social security system with an investment-based private system of individual retirement accounts. The new pension system also gives the workers, covered by the scheme, the

right to choose between different pension providers and between different forms of payout after their retirement.

The most fundamental characteristics of the Chilean system are: (i) contributions are capitalised in individual (personal) accounts (the rate of contribution is defined in the law as a proportion of the wage), (ii) the value of old age pension depends on the balance accumulated in the personal account of each worker, (iii) disability and survivorship pensions are "defined benefits" with a value proportional to the taxable wage of the member, (iv) the worker is free to choose among different registered, single-purpose, pension management institutions (the AFPs), (v) AFPs are private and competitive firms whose purpose is to invest the funds in the capital market on behalf of its members, (vi) at retirement, the worker can choose among three different ways in which he can receive the pension, (vii) and the State plays mainly a "subsidiary role", manifested in its responsibility to regulate and supervise the system, finance minimum pensions, and provide certain guarantees."

30. On the Chilean Pension reform process in particular, an article furnished to the Committee by the Ministry of Finance on the Pension

reforms processes in the Latin American countries inter alia reveals as follows:

“The new model of pension provision has, offered a viable alternative to the failing pay-as-you-go, public schemes that had become prevalent around the world over the last century. In its short history in Latin America, comprising 55 years of cumulative experience, millions of workers have opened accounts in specialized firms under strict supervision, acquired property rights and a greater degree of control over their retirement income. In general, they have enjoyed good rates of return, more flexibility in terms of benefits and better service in the new system.”

31. The early years of the Chilean Pension Reform experience were characterized by a portfolio highly concentrated in government bonds and the system had to survive a major banking crisis and economic recession. The impact on capital markets in particular could, therefore, only be felt once sufficient funds had accumulated and parallel reforms took place. Investment rules were gradually relaxed and improvements made, which culminated in the introduction of more investment choices through the ‘multifondos’ scheme (multifunds managed by AFP – Pension Fund Management Companies).

32. The ‘Chilean reform system’ has received many criticisms, mainly on account of high administrative costs, lack of portfolio choice, and the high number of switchovers from one fund to another, inability to provide enough incentives to cover low-income employees, etc. The literature made available to the Committee on the Chilean Pension System also *inter-alia* indicates that contrary to claims made, private individual accounts had proven to be more expensive to manage than collective claims, when administrative costs were discounted, privately held and administered pension funds in Chile showed an average annual real return of 5.1 per cent between 1982 and 1998, and, high fees and commissions –charged at a flat rate on all accounts – had proven to be highly regressive; instead of competition, monopolization of pension fund administrators had taken place; and expansion of coverage remained on unfulfilled promise.

33. The Ministry of Finance, in a written submission *inter-alia*, informed that ‘pension’ has not been defined in the PFRDA Bill, 2005 as the intended scope and applicability of the Bill is confined to the New Pension System (NPS) and any other scheme not regulated by any other enactment. On other hand, the Bill defines the ‘New Pension System’ and ‘Pension funds’ as the regulator will have powers to regulate pension funds under the Act.



34. As per Article 366 (17) of the Constitution of India, pension means a pension, whether contributory or not, of any kind whatsoever payable to or in respect of any person, and includes retired pay so payable, a gratuity so payable and any sums so payable by way of the return, with or without interest thereon or any other addition thereto, of subscriptions to a provident fund.

*35. The Fifth Central Pay Commission had, in considering the Overall Strategy on Retirement Benefits, observed that 'pension is an area where clarity of vision is often obscured by ill conceived notions'. The Commission drew reference to the judgment of the Supreme Court of India in D.S. Nakara and other vs. Union of India (AIR 1983, SC130).*

*VIEWS/MEMORANDA SUBMITTED IN RESPECT OF THE PFRDA BILL, 2005*

36. The Committee have, apart from taking evidence of the representatives of Ministry of Finance, Chairman, PFRDA and Chairman IRDA, with a view to seek clarifications on various aspects of the 'New Pension System' viz. Contributory pension system and the provisions of PFRDA Bill, 2005, sought memoranda and had personal hearings of a cross-section of experts and representatives of employees associations, trade unions and individuals.

37. Though the memoranda submitted and in the course of personal hearings, the trade and employees unions have been vehement in opposing the pension reform processes and the setting up of PFRDA as a statutory regulatory body. Most of them have contended that the ‘contributory pension scheme’ and the provisions of the PFRDA Bill seek to deprive government employees of their old age security guarantee by way of statutory pension, which is considered the best of social security measures. Their main contentions for opposing the Bill have been on account of: not having had consultations with the trade and employees unions; not defining ‘pension’ and guaranteeing a ‘minimum pension’ in the Bill; the new pension scheme envisaged being retrograde, insecure and tending to render the retirees dependent on the market forces; and contributing 10 per cent of the monthly wage Bill by employees being an additional burden, particularly for the lower wage group. It has also been pointed out to the Committee that the government’s move amounted to doing it away with the existing social security net provided for the care of retired government personnel. In support of their claim, they relied heavily on the observations of Supreme Court of India and Fifth Central Pay commission. The Supreme Court in D.S. Nakara Vs. Union of India (AIR 1983, SC 130) observed as follows :

“A pension scheme consistent with available resources must provide that the pensioner would be able to live;

- (i) free from want, with decency, independence and self-respect; and
- (ii) at a standard equivalent at the pre-retirement level.”

38. The Court had, in delivering the judgment held that ‘pension is neither a bounty nor a matter of grace depending upon the sweet will of the employer. It is not an ex-gratia payment, but a payment for past services rendered. It is a social welfare measure, rendering socio-economic justice to those who in the heyday of their life ceaselessly toiled for the employer on an assurance that in their old age, they would not be left in the lurch.’

39. On the basis of the observations of the Apex Court in the ‘Nakara Case’, the Fifth Central Pay Commission observed that ‘pension is not in the nature of alms being doled out to beggars. The senior citizens need to be treated with dignity and courtesy befitting their age. Pension is their statutory, inalienable, legally enforceable right and it has been earned by the sweat of their brow. As such it should be fixed, revised, modified and changed in ways not entirely dissimilar to the salaries granted to serving employees.’

40. The Chambers of Commerce as well as most of the Experts have, on the other hand, supported the pension reform measures and establishment

of Pension Fund Regulatory and Development Authority. It has been contended that the defined benefit pension scheme for Civil Servants was beginning to consume an alarming proportion of Central and State Government revenues and was therefore becoming unsustainable, EPFO Members received poor returns on their contributions and on the other end of the spectrum, social assistance schemes did not reach many of the poorest. Therefore, there is an urgent need for pension reforms. It has also been contended in a Joint note submitted to the Committee by CII and FICCI that there ‘clearly exists an important strata of working population which is capable of and is willing to contribute to their pension’ but is not able to do so due to lack of opportunities. Setting up of PFRDA would provide them with necessary confidence and motivation to save for their old age security and retirement.

41. The views expressed by the representatives of Chambers of Commerce etc. on the specific provisions of the Bill *inter-alia* centered on:

- (i) Guidelines and providing clarity on pre-requisites, constitution, capital requirements, number, eligibility norms, selection process, functioning, charges, investment norms etc. of ‘pension fund managers’ who have to function under the regulatory aegis of PFRDA.

- (ii) Ensuring a level playing field for insurance and pension sectors.
- (iii) Constitution of an Advisory Committee for the PFRDA as in the case with IRDA

42. A case was also made out by Shri N. Rangachary, Former Chairman, IRDA that instead of constituting the PFRDA, the IRDA could take up the role of regulating the pension sector.

43. On this issue, the Chairman, IRDA however, stated:

“we do find that the regulatory aspects are different. So far as insurance is concerned, because in insurance we are looking at the risk factors whereas in the case of pension we are looking at the growth in the fund. So, we have the situation where pension regulator and insurance regulator are independent in different countries very often you will find that the total amount of accumulations in the pension fund are much higher than the accumulations that are taking place in the insurance sector in the rest of the world. So, if that is the kind of potential that we have today it is quite obvious that we should have pension regulator who is going to concentrate on the development of this sector which is at a very nascent stage on the other hand, so far as insurance is concerned, it is also at a very nascent stage and the insurance regulatory authority is also being given the responsibility of

developing insurance sector. So, there is certain amount of pension that has to be paid for the development of insurance to increase the density and penetration of insurance into the rural areas. So, the insurance regulatory authority has already got this responsibility of popularising insurance. It is perhaps obvious that we should have pension regulatory who will take up independently the regulation of the pension.”

44. The Committee, *inter-alia* sought to know from the Government whether :

- i) the employees covered or subscribers of the NPS could be guaranteed a minimum pension amounting to atleast 50 percent of the last pay, as provided for under the prevailing pension rules or the EPF;
- ii) the Government would actually be able to reap the benefit of consolidating or lessening the fiscal stress on pension payments as the Defence services were left out of the NPS, and the Government had to , in addition to meeting the liability on pension payments of retired and serving employees, also make a matching 10 percent contribution in the case of the new recruits covered under the NPS; and

iii) the projected or potential pension market of the ‘unorganised sector’ justified the setting up of PFRDA as a statutory body.

45. On the issue of benefits to the subscribers in regard to which, Clause 20 (f) of the PFRDA Bill specifically states that there shall not be any implicit or explicit assurance of benefits except market based guarantee mechanism to be purchased by the subscriber, the Finance Secretary stated:

“It is true that there is no guarantee in the system and in that sense there would be uncertainty in the peoples’ mind about what they would get. There are two responses to that question. One is the market development. The market itself could provide certain instruments for providing guarantee. But there will be a cost attached to that. I am not in a position to say what that cost might be. Market itself could generate options where people could buy such guarantees. Secondly, once again, the system gets into operation presumably people would be provided calculations of the kind we are providing to the Committee now in terms of what would be the pension – given different assumptions – available at the end of 35 years. That kind of information would hopefully help the employees in feeling more secured. But as an employer, I can certainly feel this kind of an uncertainty that any employer would feel until the information is

available and also whatever guarantee is available in the market. But as of now, there is clearly no intention to provide a guarantee on the pension under this system.”

46. The Committee was informed by the Chairman, PFRDA that the Government had an open mind on providing for a ‘pension scheme’ or ‘option’ under the NPS involving 100 percent investment in Government securities.

47. On the question of the haste in introducing the Bill the Chairman, PFRDA had informed the Ministry as follows:

“Finally, if you permit me to say what are the consequences of not passing the Bill. There is a demand for pension, for generating retirement income in the market. The demand has come out from the survey which was conducted on behalf of the Finance Ministry which said 20 million people are willing to join the new pension system when they were told about the aspects of the new pension system including that there are no assured returns. In due course of time that is five or ten years down the line, another 20 million will join this scheme. Assuming there is demand for the scheme – which the survey brings out – the market forces are going to meet this demand in whatever manner



they can. If they meet this demand would the Standing Committee like that they should be under an unregulated environment or they should be under a regulated environment?”

48. On the question of providing minimum guarantee to the subscribers in the Bill, the Chairman PFRDA had inter-alia in his reply stated as under:

“PFRDA has an open mind on it. But if I add one more aspect to it, Sir, a suggestion was made why limit the number of Pension Fund Managers.... It is only that the Government has envisaged that there may be six. I had mentioned there could be much more than that. Greater the competition, some Pension Fund Managers on their own will provide some element of guarantee.”

49. On the issue of likely terminal benefits that may accrue (accumulations/replacement rates) for employees compulsorily covered under the ‘defined contribution’ or New Pension System, the Ministry furnished to the Committee certain illustrative projections/calculations, for six kinds of asset allocations or investment options. The calculations, which were worked out on the basis of some common

assumptions, and the projections of accumulation/replacement rates, as furnished, is shown at Annexure-I.

50. It is seen from the calculations furnished by the Ministry that in the case of an asset allocation involving 100 percent investment in Government securities – which presumes a pessimistic asset return assumption of 1.5 percent per year for Government bonds, 3 percent for corporate bonds and 5 percent for equities – the terminal replacement rates for different categories of employees (Group A, B, C and D) range between 43% to 49%. On the other hand, in the case of an asset allocation at the other end of the spectrum which involves 100 percent investment in equities, the replacement rate for different categories of employees is projected to be in the range of 80 to 95%.

51. On whether there was any actuarial basis for establishing that the ‘new pension system’ was beneficial to the Government in terms of lessening the fiscal stress on pension outgo and the time period by when a positive gain could be witnessed in this regard, the Ministry cited the findings of the report of the High Level Expert Group (HLEG), which inter alia examined the issue of the budgetary impact

of introducing the alternate pension system recommended by it. As per the HLEG report:

“the positive gain of a switchover to a DC scheme would be witnessed from the year 2038-39. The saving to the Government increases steadily from this stage onwards and within a decade after this point of time, Government saves approximately Rs. 14,000 crore per annum by undertaking reform, which increases to about Rs. 40,000 crores per annum in another decade. “

52. The High Level Expert Group (HLEG) had commissioned the National Institute of Finance and Policy for examining the ‘Government liability on pension’. The tabulated findings on the year-wise budgetary impact on account of switching over to the ‘defined contribution system’ to the new recruits, as furnished to the Committee, is shown at Annexure II. The Ministry have also informed the Committee that the projections made were on the conservative side and that the ‘savings for Government on account of pension payments could occur at an earlier date than envisaged by the HLEG’.

53. On the ‘pension market’ in the unorganised sector, or the workforce presently not covered under any pension scheme’, the Joint Secretary, Ministry of Finance stated during evidence:

“Today the requirement is that we should have an infrastructure whereby the fund and the instrument of various people in the unorganised sector can be transferred to a Central Record Keeping Agency and then from there it can be sent to where they are. This infrastructure will provide the backbone for any future scheme to provide social security to the unorganised workers and the low paid workers. Tomorrow even if the Government can provide for a sum of Rs. 5,000 crore for this purpose, the delivery mechanism will come in the way. This infrastructure with this new pension system is providing the backbone on which we can ride.”

54. As per the estimates furnished by the Ministry, the projected growth of the pension market under the NPS for the Central Government employees would total to Rs. 3645 crore in ten years from now. A Joint Note furnished to the Committee by FICCI and CII indicates that the market size for pension funds in the uncovered sector of the workforce would encompass 34.5 million people involving a corpus of Rs. 28,770.2 Crore.

55. On the specifications and modalities of selection and registration of pension funds, the Ministry have informed that:

“It is proposed that the requirements for qualifications as pension fund managers including pre-requisites relating to capital structure, basic qualifications etc, would be spelt out by PFRDA under regulations to be framed under the proposed legislation”.

56. On the issue of permitting FDI in the Pension Sector, while the Chairman, PFRDA stated that ‘it cannot be anymore different from what it is in the insurance sector, which is 26 percent today’, the Secretary, Economic Affairs informed that the Government was yet to decide on the matter.

57. The Committee, having considered the diverse views expressed and the clarifications given by the Ministry of Finance are of the opinion that the reform process in the pension sector involving the setting up of the PFRDA as a statutory regulatory body for managing the NPS is an urgent necessity mainly on account of burgeoning fiscal stress of pension payments on the Central and State revenues and the need to provide a viable alternative to the populace at large to save for old age income security. This, the Committee feel, notwithstanding the fact that the positive affect of lessening the fiscal stress on the Central revenues on account of the switchover to the New Pension System is to be witnessed probably only

from the year 2038. The Committee would, however, also hasten to add that the apprehensions expressed by the concerned sections on the new contributory pension system are born out of genuine concerns. The Committee feel that such apprehensions can be minimised, if not totally eliminated, if proper safeguards are introduced in the larger interest of the subscribers- both the Government employees who are compulsorily covered under the scheme as well as the others. After having considered the PFRDA Bill clause wise, the Committee approve the same for enactment subject to the modifications/amendments/ recommendations as detailed in the subsequent paragraphs of the report.

#### **Clause 4 - Composition of Authority**

58. Clause 4 reads as under:

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.

59. The above provision conveys that the Authority shall include two part-time members. Yet the qualifications required to be met for selection of part-time members in terms of expertise and knowledge in specified fields have not been provided in the clause. With a view to provide clarity, the Committee recommend that the clause be rephrased to clearly depict the composition of the authority viz. (a) a Chairperson; (b) not more than three whole time members; and (c) not more than two part-time members. The Committee further desire that selection of both whole-time and part-time members of the Authority should be confined to professionals having experience in economics or finance or law only. The Committee are

also of the opinion that if the Central Government so desire, one of the part time members in the Authority could be their nominee.

#### **Clause 14 - Duties, Powers and Functions of Authority**

60. Clause 14 reads as under:

(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.

(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 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 canceling such registration;

(e) protecting the interests of subscribers;

(f) establishing mechanism for redressing 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 bench marks;

(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(5 of 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 books, registers and other documents 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, either 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.

61. With specific reference to subscribers interests, the Committee note that the various duties and functions of the Pension Fund Regulatory Authority as listed in clause 14 are confined to establishing a mechanism for redressing grievances of subscribers' which are to be determined by regulations; and the power to take penal or remedial measures against the intermediaries, if needed, in the interests of the subscribers protecting the interests of the subscribers has been listed in the clause - which is a very general term - as one among the duties and functions of the authority.

62. In view of the fact that vast powers are going to be bestowed on the PFRDA, which include, issuing of certificates of registration to pension funds and other intermediaries; promoting efficiency in the development and functioning of pension funds and schemes; approving and regulating pension

schemes; and adjudication of disputes, the Committee are of the view that with specific reference to matters relating to protection of subscribers' interests, the following aspects should *inter-alia* be inserted in clause 14:

- Ensuring safety of the subscribers' contributions to various pension schemes and funds under the New Pension System;
- Ensuring payment of benefits or returns in accordance with guarantees, if any, attached to the pension schemes or investment options chosen; and
- Ensuring that the intermediation and other operational costs under the New Pension System do not have an adverse bearing on the returns to the subscribers.

### **Clause 20 - New Pension System**

63. Clause 20 reads as under:

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 Bill, 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 fund managers 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.

(i) Enlarging of basic features of New Pension System

69. The Committee, in the course of deliberations on the provisions of clause 20 of the Bill viz., New Pension System *inter-alia* noted that while the notification of the Ministry of Finance dated 22 December, 2003 clearly

differentiated between the non-withdrawable Tier-I account which is mandatory for all new recruits to the Central Government Services from 1 January, 2004 and the voluntary Tier-II withdrawable account, the same has not been depicted in the basic features of the New Pension System as shown under the clause.

64. As per the Government notification, the optional or voluntary Tier-II withdrawable account – to which the Government would not make any contribution – has been designed on account of discontinuation of the GPF subscription to the new recruits.

65. The Committee note that the differentiation between the compulsory Tier I account from which withdrawals are not permissible, and the voluntary Tier II account, which has been designed in lieu of discontinuation of the GPF Subscription for the new recruits for enabling withdrawals when needed, has not been included as a part of the basic features of the New Pension System listed in Clause 20. The Committee are of the opinion that the differentiation between the two types of accounts needs to be included as a part of the basic or essential features of the New Pension System in Clause 20 itself.

66. The Committee are also of the opinion that while the principal notification No. F. No. 5/7/2003-ECB & PR dated the 22nd December,

2003 relating to the New Pension System may have to be amended from time to time owing to operational or other reasons, the basic or essential features of the 'pension system' should not be permitted to be alterable.

67. The New Pension System provides for a 'non withdrawable' and compulsory Tier I account and a voluntary Tier II account, for a Government servant. Anyone who wants a 'withdrawable' facility has to opt for Tier II also. The Committee are of the view that this would be an additional burden particularly to Group 'D' employees. The Committee, therefore, desire that even in the case of Tier I account, an element of flexibility should be provided under the New Pension System to enable subscribers to withdraw moneys to meet unforeseen and urgent expenses. For instance, the subscribers could be allowed to take one repayable advance from their accounts after completion of 15 years of service and also permanently withdraw upto 50% of his contribution after completion of a minimum of 25 years of service to meet expenses on exigencies, which should be appropriately listed by regulations.

(ii) Benefits to subscribers

68. A major source of apprehension for the employees, as witnessed during the deliberations of the Committee is the fact that as per



clause 20 (f), the returns of the subscribers would be solely based on market performance and guarantees. Thus it has been contended that the scheme seeks to deprive Government employees of their old age social security guarantee by way of statutory pension which is considered the best of social security measure.

69. The Committee was informed by the Chairman, PFRDA that the Government had an open mind on providing for a 'pension scheme' or 'option' under the New Pension System involving 100 percent investment in Government securities.

70. On the question of guaranteeing returns or benefits to the subscribers, the Chairman, PFRDA stated as under:

“Greater the competition, some Pension Managers on their own will provide some element of guarantee.

We were discussing among ourselves a little while ago that there is a pension fund which has already been introduced yesterday. Dr. Ajay Shah has mentioned you about the Benchmark Mutual Fund, which has already introduced an element of guarantee in the scheme. Greater the competition, guarantees will automatically come in the system. If the market forces are allowed to play, guarantees will automatically come in the form of either the principal that is guaranteed or the nominal returns are guaranteed. That will automatically come. But we are open to the idea of the Standing Committee that this could be built in to the system of selection of the Pension Fund Managers. Upfront they

will come with guarantee, we will obviously prefer the PFM which provides an element of guarantee.”

71. Asked about the details of the reported proposal to introduce the Unorganized Sector Workers Bill which inter alia include issues relating to pension, the Ministry in a written reply submitted:

“The Unorganised Sector Workers Bill is intended to be a comprehensive legislation regulate the employment and conditions of service of unorganized sector and to provide for their safety, social security, health and welfare. As part of the comprehensive legislation, it has been proposed to frame a pension scheme for unorganized sector workers registered with the workers’ facilitation center to provide for pension. It is further proposed that Central Government would also contribute at the rate of not exceeding 2.5% of the monthly wages of registered workers. This will go into a pension fund.”

72. On the issue of ‘pension coverage’ of the unorganized sector workers, as proposed in the Bill the Ministry stated as under:

“The Unorganized Sector Workers Bill and the PFRDA Bill are complementary and not contradictory to each other. Instead of having a separate pension scheme for unorganized sector workers, they could be accommodated under the New Pension System (New Pension System) when its full architecture is in place. Going by past experience of providing Government funded old age pension to selected categories of senior citizens, the delivery mechanism has proven to be the single most bottleneck. New Pension System and PFRDA will provide the backbone and infrastructure on which any

such employer/employee/Government funded initiative can be effectively implemented.”

73. The Committee note that a major cause of concern for the employees is the fact that unlike the present pension system which guarantees a monthly retirement income of 50% of the average of the last ten months pay, devoid of any risk, the New Pension System leaves the likely retirement benefits of the subscribers to be determined by the market. The Committee’s attempt to address this issue *inter alia* evoked the response that the Government was open to the ideas of permitting or giving preference to such pension fund managers also who guarantee returns to operate in the market; and making available to the subscribers the option of 100% investment of pension funds in Government securities.

74. The Committee recommend that the option of 100% investment of the pension funds in Government Securities be made available to the subscribers and this aspect be indicated in clear terms in Clause 20 (c) of the PFRDA Bill.

75. The projections of likely returns or benefits that may accrue to the subscribers under different possible investment options as furnished by

the Ministry reveal that returns from an investment option involving equities would amount to much more than the returns on investments in Government Securities. Even in the case of pessimistic asset return assumptions, the returns to an employee are expected to be more beneficial than the present pension scheme of Central Government employees which provides for a monthly pension amounting to 50% of the average of the pay drawn in the last ten months of service and the facility of commutation. However, with the specific intention of minimizing, if not totally eliminating the apprehensions or fears expressed about market based returns, the Committee recommend that in the matter of selection of pension fund managers preference be given to such companies which offer guarantees on returns. At the same time, it needs to be ensured that the subscribers have sufficient options of choosing funds/schemes that may fetch high returns on the basis of market performance.

76. As regards the coverage of the unorganised sector, the Committee note that the New Pension System only offers an option to the workforce to join. The Committee desire that the Government must bring forward a comprehensive legislation in order to cater to the social security of the unorganised sector inclusive of pension coverage of the workforce simultaneous to the setting up of PFRDA as a statutory body.

## Clause 23 - Pension Funds

77. Clause 23 reads as under:

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.

(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.

78. On the issue of 'pension funds' under the New Pension System the Joint Secretary stated as under during the course of evidence:

“.... There will be multiple pension funds, one of which has to be in the public sector. There can be more than one. It is one of the decisions of the Government that at least one of them must be in the public sector.”

79. The Committee note that in terms of the provisions of Clause 23, the PFRDA is entitled to grant a certificate of registration to one or more pension funds for the purpose of receiving contributions, accumulating them and making payments to the subscribers. As informed to the Committee, the Government have decided that one such pension fund would be from the public sector. The Committee, therefore, recommend that this aspect about one of the pension funds being from the public sector be specified in clear terms in Clause 23 of the PFRDA Bill which would be in the interest of subscribers

#### **Clause 24 - Registration of Intermediaries**

80. Clause 24 reads as under:

Registration of Central Record Keeping agency, Pension Fund, Point of Presence etc. :

(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 provisions of this Act and the regulations:

Provided that any intermediary, including any point of presence, who may be associated with a scheme of pension fund 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 record keeping 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.

81. Questioned whether it was not essential to specify the pre-requisites for selection of the intermediaries viz. Pension Fund Mangers,

Central Record Keeping Agency, points of presence in the Bill itself, the Ministry, in a written reply stated as follows:

“Pension being a new area, the requirements for setting up intermediaries under NPS have to evolve over time based on experience. Accordingly, these will be provided in the regulations by the regulator, which are also subject to Parliamentary scrutiny. Discussion papers on pension funds and CRA were drafted and widely circulated for public comments, which have been received and will be carefully considered before a final view is taken on regulations.”

82. *With specific reference to the financial and experience criteria for selection of Pension Fund Managers and the issue of permitting FDI in the sector, which have not been spelt out in the Bill, the Ministry, in a written reply, elaborated as follows:*

*“The requirements for qualifications of pension fund managers (PFMs) would be spelt out in the regulations. However, there is one difference in so far a capital requirements for insurance companies vis-à-vis PFMs are concerned. In the former case, pooled investment by Insurance Companies is done through the Balance sheet of the companies. Whereas in the later case PFMs would be managing the individual retirement accounts not through their own balance sheet, some thing like an Asset Management Company. So capital requirement would be different and need not be too much emphasised. When registering the PFMs, the PFRDA would keep this international experience in view that in the initial phases of development of the*



*market, there would be place for only a finite number of players. As mentioned above, pre-requisites relating to capital structure, basic rules and regulations/qualifications etc. will be provided in the regulations to be framed by PFRDA which will be subject to parliamentary scrutiny.”*

83. On the likely method of selection of Pension Fund Managers, the Ministry stated:

“There are 2 options: either the eligibility criteria can be prescribed and any PF which fulfils those criteria can be registered as a pension fund or they can be selected on the basis of bidding on costs and fees and technical qualifications. The mode of selection will be decided by PFRDA but international experience shows that even where there were a large number of PFMs, eventually, the number reduces through consolidation.”

84. The representatives of confederations of trade and industry have been of the opinion that there should be sufficient clarity on the financial and experience criteria for selection of Pension Fund Managers.

85. The Committee are of the opinion that as in the case of the insurance sector, the pre-requisites relating to capital structure and experience criteria for selection of Pension Fund Managers need to be spelt out in clear terms in the PFRDA Bill itself. The Committee are also of the opinion that the criteria for selection of other intermediaries who would

become operative under the New Pension System viz. Central Record Keeping Agency etc. also need to be specified in the Bill.

86. The Committee note that unlike the case of the insurance sector, the permissibility or otherwise of FDI in the pension sector - to be promoted and regulated under the aegis of PFRDA – as well as limitations or restrictions on deployment of pension funds outside the country have not been specified. The Committee understand that the Government are yet to decide on the matter. The Committee are of the considered opinion that any decision relating to permitting FDI in the pension sector should be implemented only by way of bringing forward suitable amendment in the present legislation. They are further of the view that the decisions relating to permitting FDI in the pension sector and deployment of pension funds outside the Country, should, in no way be in variance with the related provisions applicable to the insurance sector.

**Clause - 28 Attachment of Assets and Supersession of Management of Intermediary:**

87. Clause 28 reads as under:

(1) Any person aggrieved may apply to the Authority for an interim measure or protection in respect of any of the following matters, namely:-

(a) the detention, preservation, interim custody or sale of any asset or property which is regulated by the provisions of this Ordinance;

(b) securing any pension funds, 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 moto, the Authority, after conducting an enquiry 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 Bill are indulging in any activity which is in contravention of the provisions of this Bill 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.

88. A view point expressed before the Committee has been that an alternate governing body or an interim authority should be established in the event of supersession of an intermediary in terms of Clause 28 (2).

89. The Committee note that under clause 28, the Authority is to be vested with the power of superseding the governing board or board of directors or management of an intermediary *inter-alia* in the event of coming to the conclusion that the intermediary was indulging in any activity which is in contravention of the provisions of this Bill or regulations. The Committee, however, find that no mention under this Clause has been made with regard to the appointment of an Administrator in the event of dissolution of the Board. The Committee desire that clause 28 be suitably amended for enabling the appointment of an Administrator.

#### **Clause 47 - Power to Make Regulations**

90. Clause 47 reads as under:

(1) The Authority may, by notification, make regulations consistent with this Bill and the rules made thereunder to carry out the provision of this Bill.

(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 times 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 Subscribers 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.

91. The Committee note that the power of the Authority to make regulations encompasses a very wide range of areas, which include, granting of certificates of registration to intermediaries subject to the conditions as may be specified; suspension or cancellation of such certificates of registration; manner of receiving contributions and accumulating them by pension funds; procedure for holding an enquiry by and adjudicating officer; and establishing mechanism for redressing grievances of subscribers.

92. The Insurance Regulatory and Development Authority Act, 1999 – on the basis of which the PFRDA Bill, 2005, is modeled - provides for constitution of an Advisory Committee consisting of not more than 25 members to represent the interests of commerce, industry etc., to advise the authority on matters relating to regulations. The Committee have received suggestions that a similar committee or a board should be constituted for

advising the Pension Fund Regulatory and Development Authority on various matters.

93. On this specific issue the Ministry have informed that Clause 50 of the Bill provides, inter alia, that the Authority may form committees of the members and delegate to them the powers and functions of the Authority as may be specified by the regulations. It has also been informed that ‘the subscribers’ representatives could be invited to join these committees.’

94. The Committee are of the opinion that constitution of an Advisory Committee, as provided in the case of IRDA would be beneficial in enabling the authority in making regulations under section 47. Moreover, as admitted by the Ministry, the Pension sector or market is in a very nascent stage of development and firming up of regulatory aspects would be witnessed in course of time. The Committee, therefore, recommend that a Pension Fund Advisory Committee on lines similar to that of IRDA may be set up, with the representatives of the employees and subscribers co-opted into it. This would enable in safeguarding the interests of the subscribers and help the authority in discharging the multifarious functions of regulating the pension funds and schemes.

95. The Committee are also of the view that the initial or broad contours of the regulations governing the implementation of the New



Pension System under the infrastructure of PFRDA should be framed and made clear in the public domain prior to the enactment of the PFRDA Bill.

### **Clause 50 - Delegation of Powers**

96. Clause 50 reads as under:

(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 Bill (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.

97. The Committee note that Clause 50 empowers the PFRDA to constitute special committees to whom powers and functions of the Authority could be delegated. With a view to protect the interests of the subscribers the Committee recommend that the representatives of the employees associations and subscribers should be co-opted in the special committees to be set up by the Authority.

NEW DELHI;  
KHANDURI),

22 July, 2005

31 Asadha, 1927 (Saka)

(MAJ. GEN. (RETD.) B.C.

**Chairman,**

**Standing Committee on Finance.**

**Projections of terminal accumulations/replacement rates under NPS**

Outcomes under a defined contribution pension system depend upon future returns on asset classes, which are inherently unpredictable. In order to obtain some intuition into the kinds of outcomes which could come about, this note shows some illustrative calculations. It was made using technical assistance from Invest India Economic Foundation.

2. It must be strongly emphasised that the calculations here are not certainties and there are inherent year-to-year fluctuations in all investments. However, to the extent that these conservative average values are considered plausible, these calculations are illustrative about what might come about for participants of the New Pension System.

3. The PFRDA Bill proposes that the PFRDA will define investment regulations for the pension fund managers (PFMs). This will require detailed analysis and decision-making. In this document, a range of 6 kinds of asset allocations is analysed. This is not to suggest that a decision has been taken on any of these 6, but instead to illustrate the implications of a comprehensive range of investment choices, ranging from 100% government bonds to 100% equity.

4. In order to simulate future outcomes, it is necessary to make many specific assumptions. The common assumptions made are:

- (i) All calculations are made in 2005 rupees. This removes inflation from the picture. Hence, we think of asset returns in real terms.
- (ii) It is assumed that an employee of the government lives through his entire life at the various levels of wage, for various levels of seniority, prevalent as of 2005. It is assumed that employees get all increments and promotions as per the normal procedures. It is assumed that apart from these increments/promotions, there are no other wage increases in the future.
- (iii) The person is assumed to join government service at age 24. To the extent that some people join government before 24, their accumulation would be significantly higher owing to the power of compounding.
- (iv) Total fees and expenses incurred by the participant are assumed to be 50 basis points on assets per year. This reflects the grand total payments to PFRDA, CRA, POPs and PFMs.
- (v) For the uncovered sector calculation, it is assumed that a person starts contributing Rs.300 per month at age 24. The contribution is assumed to grow at 4% per year in real terms till age 60, reflecting 2% for accumulation of experience, and 2% for the growth of the economy. For the uncovered sector, a bigger level of total fees and expenses of 100 basis points on assets per year is assumed, reflecting the higher costs of delivering services to this class of participants.
- (vi) The present price of an annuity product from LIC is assumed, which is Rs.4,692 of a lumpsum payment for an annuity of Rs.1 per day. For the purpose of pension calculation, it is assumed that all pension wealth is annuitised.

(vii) Each of the simulation results shown here focuses on one asset allocation. We assume that a person embarks upon one asset allocation at age 24 and stays in the identical asset allocation until age 60. This is obviously an artificial assumption. The advice given by financial planners to individuals consists of seeking higher returns when young and shifting to safer investments beyond age 50. However, for the purpose of this document, each investment style is analysed in isolation, assuming a person stays with the investment style for life. This helps us to understand the consequences of a given asset allocation.

5. In the tables ahead, results are shown for three sets of assumptions about future asset returns in real terms:

	RESULTS I	RESULTS II	RESULTS III
GOI Bonds	1.5%	2%	2.5%
Corporate bonds	3%	4%	4.5%
Equity	5%	6%	6.5%

6. CPI inflation today is at roughly 4%. This implies that an assumption of (say) 2% real returns on government bonds is equivalent to a 6% nominal return on government bonds.

7. Results for Group A, B, C and D in the civil service, and one example of calculation for the uncovered sector, are shown ahead. In most of the cases, the projected pension proves to be equal or above 50% of the last wage. The weakest value seen in the table is 43.2% which occurs for Group B under a pure GOI bond investment under the "RESULTS I" assumptions. In the case of the uncovered sector, the weakest pension found is Rs.2129 per month, which occurs under the "RESULTS I" assumptions using pure GOI bond investment.

#### RESULTS I

8. The first set of results makes the most pessimistic asset return assumptions: 1.5% per year for government bonds, 3% per year for corporate bonds and 5% per year for equities.

#### Pure GOI bonds

	Terminal Pension Wealth (Rs)	Replacement Rate (%)
Group-A	3190314	45
Group-B	2435679	43
Group-C	1016617	44
Group-D	744203	49

**OASIS Style A: 60% Government Securities, 30% Corporate Bonds, 10% Equity**

	Terminal Pension Wealth (Rs)	Replacement Rate (%)
Group-A	3625766	51
Group-B	2772826	49
Group-C	1160967	51
Group-D	855458	56

**OASIS Style B: 40% Government Securities, 35% Corporate Bonds, 25% Equity**

	Terminal Pension Wealth (Rs)	Replacement Rate (%)
Group-A	4006269	57
Group-B	3067839	54
Group-C	1287768	56
Group-D	953560	63

**OASIS Style C: 20% Government Securities, 30% Corporate Bonds, 50% Equity**

	Terminal Pension Wealth (Rs)	Replacement Rate (%)
Group-A	4601108	65
Group-B	3529642	63
Group-C	1487053	65
Group-D	1108312	73

**50% Corporate Bonds, 50% Equity**

	Terminal Pension Wealth (Rs)	Replacement Rate (%)
Group-A	4856909	69
Group-B	3728423	66
Group-C	1573102	68
Group-D	1175314	78

**Pure Equity (100%)**

	Terminal Pension Wealth (Rs)	Replacement Rate (%)
Group-A	5830484	83
Group-B	4492034	80
Group-C	1904939	83
Group-D	1434524	95

Uncovered Sector

	Monthly Pension (Rs)	Wealth at age 60 (Rs)
Pure GOI Bonds	2129	328448
OASIS Style- A	2395	369425
OASIS Style B	2626	405063
OASIS Style-C	2985	460523
50% GOI Bonds, 50% Corporate Bonds	3140	484294
100% Equity	3728	575152

RESULTS II

9. The second set of results makes the pessimistic asset return assumptions: 2% per year for government bonds, 4% per year for corporate bonds and 6% per year for equities.

Pure GOI Bonds

	Terminal Pension Wealth (Rs)	Replacement Rate (%)
Group-A	3455645	49
Group-B	2641045	47
Group-C	1104470	48
Group-D	811854	54

OASIS Style A: 60% Government Securities, 30% Corporate Bonds, 10% Equity

	Terminal Pension Wealth (Rs)	Replacement Rate (%)
Group-A	4075310	58
Group-B	3121404	55
Group-C	1310835	57
Group-D	971439	64

OASIS Style B: 40% Government Securities, 35% Corporate Bonds, 25% Equity

	Terminal Pension Wealth (Rs)	Replacement Rate (%)
Group-A	4499183	65
Group-B	3528146	62
Group-C	1486406	65
Group-D	1107809	73

OASIS Style C: 20% Government Securities, 30% Corporate Bonds, 50% Equity

	Terminal Pension Wealth (Rs)	Replacement Rate (%)
Group-A	5409687	77
Group-B	4158306	74
Group-C	1759678	77
Group-D	1320908	87

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**OASIS Style A: 60% Government Securities, 30% Corporate Bonds, 10% Equity**

	Terminal Pension Wealth (Rs)	Replacement Rate (%)
Group-A	3625766	51
Group-B	2772826	49
Group-C	1160967	51
Group-D	855458	56

**OASIS Style B: 40% Government Securities, 35% Corporate Bonds, 25% Equity**

	Terminal Pension Wealth (Rs)	Replacement Rate (%)
Group-A	4006269	57
Group-B	3067839	54
Group-C	1287768	56
Group-D	953560	63

**OASIS Style C: 20% Government Securities, 30% Corporate Bonds, 50% Equity**

	Terminal Pension Wealth (Rs)	Replacement Rate (%)
Group-A	4601108	65
Group-B	3529642	63
Group-C	1487053	65
Group-D	1108312	73

**50% Corporate Bonds, 50% Equity**

	Terminal Pension Wealth (Rs)	Replacement Rate (%)
Group-A	4856909	69
Group-B	3728423	66
Group-C	1573102	68
Group-D	1175314	78

**Pure Equity (100%)**

	Terminal Pension Wealth (Rs)	Replacement Rate (%)
Group-A	5838484	83
Group-B	4492034	80
Group-C	1904939	83
Group-D	1434524	95

**Uncovered Sector**

	Monthly Pension (Rs)	Wealth at age 60 (Rs)
Pure GOI Bonds	2129	328448
OASIS Style- A	2395	369425
OASIS-Style B	2626	405063
OASIS Style-C	2985	460523
50% GOI Bonds, 50% Corporate Bonds	3140	484294
100% Equity	3728	575152

**RESULTS II**

9. The second set of results makes the pessimistic asset return assumptions: 2% per year for government bonds, 4% per year for corporate bonds and 6% per year for equities.

**Pure GOI Bonds**

	Terminal Pension Wealth (Rs)	Replacement Rate (%)
Group-A	3455645	49
Group-B	2641045	47
Group-C	1104470	48
Group-D	811854	54

**OASIS Style A: 60% Government Securities, 30% Corporate Bonds, 10% Equity**

	Terminal Pension Wealth (Rs)	Replacement Rate (%)
Group-A	4675310	58
Group-B	3121404	55
Group-C	1310835	57
Group-D	971439	64

**OASIS Style B: 40% Government Securities, 35% Corporate Bonds, 25% Equity**

	Terminal Pension Wealth (Rs)	Replacement Rate (%)
Group-A	4499183	65
Group-B	3528146	62
Group-C	1486406	65
Group-D	1107809	73

**OASIS Style C: 20% Government Securities, 30% Corporate Bonds, 50% Equity**

	Terminal Pension Wealth (Rs)	Replacement Rate (%)
Group-A	5409687	77
Group-B	4158306	74
Group-C	1759678	77
Group-D	1320908	87

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Total Government Liability on Pensions					
Year	Budgetary Provisions Under the New Scheme	Budgetary Provision Under Old Scheme (Discontinued for New Entrants)	Total Government Liability (Old and New Pension Scheme)	No Reform Pension Liability	Net Saving Col 5 - Col 4
1	2	3	4	5	6
2001-02	0	22272	22272	22272	0
2002-03	47	23432	23480	23432	-48
2003-04	99	24625	24723	24625	-98
2004-05	155	25850	26005	25850	-155
2005-06	215	27109	27324	27109	-215
2006-07	281	28402	28682	28402	-280
2007-08	376	29730	30106	29730	-376
2008-09	478	31094	31572	31094	-478
2009-10	587	32495	33082	32495	-587
2010-11	704	33932	34636	33932	-704
2011-12	829	35408	36236	35408	-828
2012-13	990	36922	37912	36922	-990
2013-14	1161	38476	39637	38476	-1161
2014-15	1343	40070	41413	40070	-1343
2015-16	1535	41705	43240	41705	-1535
2016-17	1739	43382	45121	43382	-1739
2017-18	1955	45253	47207	45253	-1954
2018-19	2182	47180	49362	47180	-2182
2019-20	2421	49167	51588	49167	-2421
2020-21	2673	51214	53887	51214	-2673
2021-22	2938	53322	56260	53322	-2938
2022-23	3216	55493	58710	55822	-2888
2023-24	3507	57730	61237	58400	-2837
2024-25	3810	60033	63843	61058	-2785
2025-26	4126	62405	66530	63798	-2732
2026-27	4454	60792	65246	62567	-2679
2027-28	4750	61388	66137	63559	-2578
2028-29	5055	62032	67087	64611	-2476
2029-30	5373	62724	68096	65725	-2371
2030-31	5701	63466	69167	66903	-2264

Year	Budgetary Provisions Under the New Scheme	Budgetary Provision Under Old Scheme (Discontinued for New Entrants)	Total Government Liability (Old and New Pension Scheme)	No Reform Pension Liability	Net Saving Col 5 - Col 4
1	2	3	4	5	6
2031-32	6041	64260	70302	68146	-2156
2032-33	6393	65108	71501	69456	-2045
2033-34	6758	66009	72767	70833	-1934
2034-35	7134	66967	74102	72280	-1822
2035-36	7433	59604	67037	65419	-1618
2036-37	7694	55883	63577	62214	-1363
2037-38	7958	52306	60264	59668	-596
2038-39	8226	48728	56955	57151	196
2039-40	8497	45151	53649	54663	1014
2040-41	8772	41574	50346	52203	1857
2041-42	9050	37996	47046	49773	2727
2042-43	9329	34419	43748	47914	4166
2043-44	9608	30842	40449	46098	5649
2044-45	9887	27264	37152	44328	7176
2045-46	10167	23687	33854	42602	8748
2046-47	10446	20110	30556	40921	10365
2047-48	10722	16533	27255	39369	12114
2048-49	10997	12955	23952	37865	13913
2049-50	11271	9378	20649	36407	15758
2050-51	11543	7718	19260	36913	17653
2051-52	11812	7016	18828	38426	19598
2052-53	12080	6314	18394	39985	21591
2053-54	12344	5613	17957	41591	23634
2054-55	12606	4911	17517	43244	25727
2055-56	12864	4210	17073	44944	27871
2056-57	13118	3508	16626	46691	30065
2057-58	13368	2806	16174	48486	32312
2058-59	13613	2105	15718	50327	34609
2059-60	13854	1403	15257	52215	36958
2060-61	14089	702	14790	54151	39361
2061-62	14318	0	14318	56133	41815
2062-63	14541	0	14541	58864	44323

Year	Budgetary Provisions Under the New Scheme	Budgetary Provision Under Old Scheme (Discontinued for New Entrants)	Total Government Liability (Old and New Pension Scheme)	No Reform Pension Liability	Net Saving Col 5 - Col 4
1	2	3	4	5	6
2063-64	14758	0	14758	61643	46885
2064-65	14967	0	14967	64468	49501
2065-66	15169	0	15169	67340	52171
2066-67	15363	0	15363	70259	54896
2067-68	15549	0	15549	73226	57677
2068-69	15726	0	15726	76239	60513
2069-70	15893	0	15893	79299	63406
2070-71	16057	0	16057	80886	64829
2071-72	16220	0	16220	81720	65500
2072-73	16384	0	16384	82553	66169
2073-74	16548	0	16548	83387	66839
2074-75	16712	0	16712	84221	67509
2075-76	16876	0	16876	85055	68179
2076-77	17040	0	17040	85889	68849
2077-78	17203	0	17203	86723	69520
2078-79	17367	0	17367	87557	70190
2079-80	17531	0	17531	88391	70860
2080-81	17695	0	17695	89224	71529
2081-82	17859	0	17859	90058	72199

Source: National Institute of Public Finance & Policy

#### Basic Assumptions

- 1 Emoluments consist of basic pay and dearness allowance.
- 2 Average emoluments for existing pensioners would be higher than average emoluments for existing employees.
- 3 Ratio between average emoluments of pensioners to average emoluments is assumed to be 1.3, 1.4, 1.5 and 1.6 respectively for groups A, B, C and D.
- 4 For new employees, basic pay is assumed to rise by 2.25% per annum for all Groups and DA by a flat rate of 5% per annum.

## NOTE OF DISSENT

Shri Gurudas Das Gupta, MP

At the outset, I would like to make it clear that this Bill is nothing but a fraud on the Central Government employees, unorganised workers and a large number of State Government employees, holding out a false promise to deliver benefit to the unorganised working masses. I suggest that the Committee should reject this Bill outright and send back this PFRDA Bill to Parliament with the advice that it should be withdrawn forthwith. Though I am of the firm opinion that the Bill should be rejected by the Committee in toto, yet I give the reasons for my saying so as under:

1. The concerns expressed by a large number of employees' unions called by the Committee have not been reflected in the report. The trade unions had vehemently opposed the Bill on the premise that by virtue of this Bill, the Government was trying to escape from its responsibility of providing social security to its employees/elderly people. This is clearly a case of abdication by the Government of its responsibility in a welfare state. The plea of unsustainability of the present pension system advanced in detail by the Government is totally unconvincing. There have been no concrete actuarial calculations done. The scheme is going on well and total expenditure incurred on the scheme is less than 1 per cent of GDP. How can we digest this plea of unsustainability? In fact, in the garb of unsustainability, the Government is shielding the tax evaders in a big way. Given by the vast potential for tax collections in our country, it has become quite clear that if the revenue is collected honestly, there is a scope for its collections to rise in manifold. The fact of the matter is that big fish is allowed to be un-trapped and the poor man's social security is being taken away in the name of unsustainability. The argument of unsustainability is based on the ground that the revenue of the State is not likely to increase much as such is not sustainable. This is a devil's argument. With the growth of economy and implementation of a proper tax policy, rich must pay for the development and welfare of the people, the pension is bound to be sustainable. In England when such a crisis had developed, Government had raised a pension protection fund to continue the system. The strategy of the present Government is to abolish the scheme with a false argument. In fact, tax-GDP ratio is constant in India over a decade. India is one of the least taxed countries in the



world. Government has no political will to improve the tax-GDP ratio therefore the dubious talk of unsustainability of the age old pension system is being raised to dupe the people. Even if the premise of unsustainability is accepted, the Government will not gain anything till the year 2038 or 2040 as it has to pay the employees who retire under the existing scheme till the year 2038 besides contributing for the new recruits who have joined services after 1.1.2004. How will the Government manage the huge expenditure, we do not understand. The adverse age ratio of employees is being raised to support the concept of unsustainability. With the passage of time, maybe, in 10 or 15 years, additional manpower will have to be inducted to replenish the natural wastage and the anomaly in the scheme arising out of adverse age ratio will be corrected.

2. There is no mention in the report about definition of term 'Pension'. In any enactment, the term has to be defined on which the entire system rests. But here we do not find any reference. The recommendations of the Fifth Pay Commission and judgement of hon'ble Supreme Court in D.S. Nakara case has totally been ignored in this report. According to the hon'ble Supreme Court, pension is a fundamental right enforceable right by law. I think it is a vital lapse.

3. We have persistingly been told by the Government and supporters of this Bill that the Model of this Bill is based on Chilean Model adopted by the country way back in 1981. It has come to the notice of the Committee by way of material furnished that Chilean model is a failure and pension fund managers there are finding it difficult to pay to the employees meaning thereby the employees would not be getting as such of the amount they were entitled for under the old scheme. I apprehend that the same drama would be enacted in this country when the maturity period draws closer. The PFMs particularly foreigners may flee from the country and the poor employees etc. would be left in lurch. The safeguards suggested are nothing but a farce. In the initial years, entire investment only may be in only Government securities, guaranteed returns and public sector fund managers could be the best option so as to leave no scope for investment in capital market. **But these qualitative changes cannot be brought in the Bill as it is against basic structure of the Bill whose sole aim is to channelise the funds to stock market to boost the sensex.**

4. No FDI may be allowed in this sector. Poor man's savings cannot be permitted to be used by foreigners for their advantage.
5. Existence of over-bearing regulatory mechanisms in the Bill vests extraordinary powers in PFRDA which should be curbed and the basic provisions should not be left to be made/covered by the way of regulations. Instead, they should be incorporated in the Bill itself.
6. The concern for the unorganised labour is sham mockery. Even if the Government contributing to the tune of 2.5 per cent of wages will not attract this sector in a big way. This is nothing. As the wages of unorganised workers are abysmally low, the nominal Government contribution for the unorganised sector will not result in huge gains to the poor employees. Why a casual labour of factory/contract/casual worker would be attracted to this scheme to get 2.5 per cent contribution by the Government is a matter of doubt? If this Government is serious about the unorganised sector the contribution should be raised much higher, singularly State funded. A separate law to address the needs of unorganised sector should be made.
7. The flexibility provided in the report for withdrawal of availing of an advance NPS is not sufficient. The facility on the lines of GPF subscription should be provided in the report.
8. If the Government is hopeful that the employees under NPS will be at an advantageous position as compared to the existing system, why it is shy of giving guarantee? I would emphasise that the Bill should clearly state that the Government is giving guarantee of minimum returns for all without additional payment.

In the end I strongly emphasise that the old system should continue and the retrograde Bill withdrawn at the earliest. I am against this Bill lock, stock and barrel. The question of any amendments does not arise. At least I cannot be associated with any move which aims to destroy the very fabric of social security to be provided by the Government harming the interests of workforce in the country. The Bill even with the amendments shall put the last nail on the social security, whatever available in the country at the moment.

Sd/-

(Gurudas Das Gupta)

## NOTE OF DISSENT

Shri A. Krishnaswamy, MP

In view of the interests of workers in the organised and unorganised sectors being at stake, the Pension Fund Regulatory and Development Authority Bill, 2005, in its present form is opposed.

The Bill has far reaching implications and bearing on the working class whose contributions are going to be managed by the proposed Authority through intermediaries. Government being a welfare State, social security should be provided by the Government by contributing more from the GDP into pension fund and workers' should not be left to the vagaries and uncertainties of market conditions. Pension is a fundamental right enforceable by law, as ruled by the Supreme Court. As the wages of workers in the unorganised sector are low and their working conditions are poor, the Government contribution should be significant to bridge the gap between the haves and have-nots.

The composition of Authority should be broad-based so as to include representatives of workers, both organised and unorganised. The Government should guarantee minimum return, for which adequate budget provisions should be made by the Government.

Hence the Bill requires wholesale, comprehensive revision incorporating all the points made by the various trade union representatives.

Sd/-

(A. KRISHNASWAMY, MP)

## IDENTICAL NOTE OF DISSENT

Submitted by S/Shri Rupchand Pal,  
Laxman Seth, Bir Singh Mahato,  
MPs

The Pension Fund Regulatory & Development Authority (PFRDA) Bill – 2005 was referred to the Standing Committee on Finance for scrutiny and recommendation.

But unfortunately there was an element of “fate accompli” in the exercise. This becomes obvious if we look at the first sentence of Statement of Objects and Reasons of the Pension Fund Regulatory and Development Authority Bill, 2005.

Statement of Objects and Reasons says “The Central Govt. operationalised the New Pension System (NPS) from 1<sup>st</sup> January, 2004” through a notification dated 22<sup>nd</sup> December, 2003. The NPS is mandatory for new Central Government services (except to the Armed Forces in the first stage) and “an early legislative mandate was considered necessary as the NPS was already in place without the full architecture and statutory regulatory mechanism”.

It suggests that NPS was already in place and the Standing Committee on Finance was to consider the full architecture and a statutory regulatory mechanism as the already set-up mechanism was non statutory.

There was so much urgency of the matter that the Government promulgated Pension Fund Regulatory and Development Ordinance 2004 on 29 December, 2004 to provide for establishment of an Authority.

The very methodology adopted by the Govt. deprived the Parliamentary Standing Committee on Finance the opportunity to examine freely and in detail the merits and demerits of the already introduced New Pension Scheme.



It was also very unfortunate that the Government refrained from discussing such an important issue with the representatives of their own employees who were to be directly affected as a result of this new arrangement.

Besides the above inadequacies, I am constrained to submit the following Note of Dissent in respect of the Draft Report on Pension Fund Regulatory and Development Authority Bill, 2005 as presented for consideration and adoption on 5<sup>th</sup> July, 2005 in the meeting of the Standing Committee on Finance on the following grounds :-

(a) To say the least, the Draft Report lacks coherence and suffers from inherent contradictions and casualness in understanding the problems and the issues involved.

(b) My first observation pertaining to the 'Background' (Page 1) of the Draft Report is that it should be well understood that while the Statement of Objects and Reasons clearly spells out the goal of setting up of the Authority, the Background dwells on the concern of the Government for the unorganized sector.

The Draft Report says – “a vast majority of the work force in the unorganized sector is devoid of access to formal channels of old age economic support”. (Part I of the Draft Report). It admits that “India does not have a tax financed social security system” (Para 2 of the Draft Report).

In such a backdrop what can be the immediate need ? Of course, the country need to have a Comprehensive National Social Security Policy covering all sectors of workers including those in the agricultural and unorganized sectors, and setting up of a National Social Security Authority to evolve, administer and monitor appropriate schemes catering to various social security needs.

But unfortunately the Government tried to find a solution by “starting a system of Pension Reforms” which is a move in the wrong direction.

No one can dispute such concern for the people attaining old age or the senior citizens; as also the people in the unorganized sector. We shall be

the first to welcome a Comprehensive National Social Security Scheme to be adequately funded by the Union Govt. to take care of the wide sections of the population, be it in the unorganized sector, agricultural workers or the elderly people who need income support along with various social security measures.

But the concern for the unorganized sector and wide section of the population was a camouflage or the cover up of the Governments' move to dismantle the existing pension system for the Government's own employees and withdrawal of the responsibilities of supporting its own employees after the retirement.

(c) This is a retrograde step and in a Welfare State disowning this responsibility is unacceptable; hence my objection and my Note of Dissent because the Draft Report has miserably failed to underscore this aspect of Government's responsibility and the proposed withdrawal of its obligation to its own employees by converting the present 'defined benefit scheme' to 'defined contribution scheme' in respect of the pension.

(d) Draft Report mentions in details the views and reports of various expert groups and committees. But unfortunately the provisions of the present Bill is not in conformity with any of the recommendations of these Committees. Draft Report has ignored this aspect.

(e) The present move of the Government is not be seen in isolation from its agenda of economic reforms. The original idea of pension reforms was mooted by international organisations like the World Bank which was later on followed up by the Govt. bodies pursuing the neo liberal reforms process.

In fact, the neo liberal regime practically want opening up of the pension fund to the private operators (Fund Managers) including foreign fund managers. And this is a move which is sought to be resisted the world over even in the developed countries.

(f) The international experience about privatization of pension fund and allowing control of private managers on pension fund are having disastrous consequences as can be seen from international experience including the experience in Chile on whose model the present legislation has been based. No other country including OECD countries has made the individual retirement account based on defined contribution benefit scheme mandatory.

(g) The most important point to be noted and which has been ignored in the Draft Report is that neither the Government of India in immediate future nor the employees concerned are going to be benefited by the present legislation. The benefit that will accrue as a result of this Pension Reforms will be the private operators who will be free to loot the hard earned savings of thousands of our Government employees.

As because the present legislation excludes the Defence Forces (and of course the para-military forces) which constitute about two-third of the total pension obligation of the Union Government. It is not going to be benefited or relieved of the financial stress in immediate future.

(h) Pension has been held to be a statutory, inalienable and legally enforceable right on the strength of Supreme Court Judgment as referred to in Para 38 of the Draft. Draft has failed to take note of the above Supreme Court Judgment.

(i) According to an estimate, the Government's obligation will go on increasing till 2038 when there may be a situation of neutralisation. Meanwhile the employees hard earned savings will be left to the mercy of new fund managers who will benefit by the high cost of services and also various other dubious ways while the employees' future in their old age will be left to the vagaries of the market.

(j) Section 20 (f) in the New Pension System as mentioned in the Bill clearly says "There shall not be any implicit or explicit assurance of benefit except market based guarantee mechanism to be purchased by the subscriber".

This means the fate of the employees in their old age will be determined by the vagaries of the market and in the Indian situation there is the recent UTI experience which can be reminder to what it can be like.

(k) The Draft Report in para 79 mentions on the one hand that "the new pension system leaves the likely return benefits of the subscribers to be determined by the market but in the same breathe the Committee in its Draft Report recommends that the availability of default (option) involving 100% investment of the funds in Government securities as a choice to the subscribers should be specifically mentioned in clause 20C.

But the interest in respect of Government securities is also determined by market and that can never reach a level by which a monthly retirement income of 50% of the average of final wage can be made available. That means even in the case of availability of 100% default option, investment of fund in Government securities, the retirement benefit will be too meagre and will hardly provide the required income security even at the existing level.

(l) Had Pension Fund arranged to be deposited in some scheme like Senior Citizens Scheme or Monthly Income Scheme (Postal) with better interest rate, then the retirees could be provided support to protect their savings and having minimum income to the level of 50 per cent of the average final wages. But this has not been proposed. Hence my Note of Dissent.

(m) The major plunk of the argument for introduction of this Pension Reforms Bill is unsustainability of the existing pension scheme and growing burden as a result of demographic changes. But the Government's argument is based on flimsy grounds. Firstly, there is a considerable decline (after the adoption of the Gitakrishnan Committee Report) in the overall salary obligation of the Government. Secondly, the Government has never tried seriously to address the issue of evasion of tax and full compliance of tax by the richer and very rich sections of the society and the corporate sector to mobilise more resources (the number of billioniers in the country are increasing at a faster rate than many industrial countries of the world since the reform process was initiated.

(n) Here it may be mentioned that Government has not cared to accept the core recommendation of the Bhattacharya Committee set up by the Government itself; what can be more unfortunate than this.

(o) While submitting my Note of Dissent once again I would earnestly request the Government to desist from pushing forward such an anti-employee Bill rather Government should discuss the matter with all concerned trade unions and taking the views of others including the views of some of the supporting parties of the Government.

(p) As regards, the concern of the Government for the unorganized sector, I would urge upon the Government to expedite the introduction of a bill covering national comprehensive National Social Security Scheme for the unorganized sector, elderly citizens and others. We are told that one Committee is working towards that end, the same may be expedited.

(q) As regards other issues as mentioned in the Bill about the composition of the Regulatory Authority, the relationship between the Pension Fund Regulatory Authority (PFR&A) and Insurance Regulatory and Development Authority (IRDA), the details regarding scope of withdrawal by the employees from pension fund, central record keeping, cost of services, criteria for selection of fund managers, their investment pattern, FDI, initial set of regulations should be given along with consideration of the Bill and such issues which are not at all relevant in the present context as the proposed goal of the Bill is itself unacceptable to me.

(r) So I submit my Note of Dissent which may be incorporated in the Report being submitted by the Finance Standing Committee to Parliament.

Sd/-  
(Shri Rupchand Pal, MP)

Sd/-  
(Shri Laxman Seth, MP)

Sd/-  
(Shri Bir Singh Mahato, MP)

## NOTE OF DISSENT

**Sh. Chittabrata Muzumdar, MP**

1. The Pension Fund Regulatory and Development Authority (PFRDA) Bill – 2005 was referred to the Standing Committee on Finance for scrutiny and recommendation.
2. Unfortunately there is an element of 'fait accompli' in this exercise. This becomes obvious if we look at the first sentence of Statement of Objects and Reasons of the Pension Fund Regulatory and Development Authority Bill, 2005.
3. The Statement of Objects and Reasons says: "The Central Government operationalised the New Pension System (NPS) from 1<sup>st</sup> January, 2004 through a notification dated 22<sup>nd</sup> December, 2003". The NPS is mandatory for new recruits to the Central Government services (except to the Armed Forces in the first stage)" and "an early legislative mandate was considered necessary as the NPS was already in place without the full architecture and statutory regulatory mechanism".
4. It is thus evident that NPS was already in place and the Standing Committee on Finance was to consider the full architecture and a statutory regulatory mechanism, as the already set-up mechanism was non statutory.
5. The matter was considered to be so urgent that the Government promulgated the Pension Fund Regulatory and Development Authority Ordinance 2004 on 29 December, 2004 to provide for establishment of an Authority.
6. The very methodology adopted by the Government deprived the Parliamentary Standing Committee on Finance the opportunity to examine freely and in detail the merits and demerits of the already introduced New Pension System.
7. It is also very unfortunate that the Government refrained from discussing such an important issue with the representatives either of the Central trade union organisations or of their own employees, who were to be directly affected as a result of this new arrangement.
8. Besides the above inadequacies, I am constrained to submit this Note of Dissent to the Draft Report on Pension Fund Regulatory and Development Authority Bill, 2005, as presented for consideration and adoption on 5<sup>th</sup> July, 2005 in the meeting of the Standing Committee on Finance, on the following grounds:-

- NOTE OF DISSENT
- a) To say the least, the Draft Report lacks coherence and suffers from inherent contradictions and casualness in understanding the problems and the issues involved.
  - b) My first observation pertaining to the 'Background' (PAGE 1) of the Draft Report is that while the Statement of Objects and Reasons has clearly spelt out the aim of setting up of the Authority as "to provide an infrastructure under a regulatory framework to the New Pension System (NPS)", the Background dwells on the concern of the Government for the unorganised sector. This is a diversionary exercise.
  - c) The Draft Report says – "a vast majority of the work force in the unorganised sector is devoid of access to formal channels of old age economic support". (Para 1 of the Draft Report). It admits that "India does not have a tax financed social security system" (Para 2 of the Draft Report).
  - d) In such a backdrop what can be the immediate need? Of course, the country needs a Comprehensive National Social Security Policy covering all sectors of workers including those in the agricultural and unorganised sectors, and setting up of a National Social Security Authority to evolve, administer and monitor appropriate schemes catering to various social security needs of all these workers.
  - e) But unfortunately the Government has attempted to find a solution by "starting a system of Pension Reforms", which is a move in the wrong direction.
  - f) No one can dispute such concern for the people attaining old age or the senior citizens; as also the people in the unorganised sector. I shall be the first to welcome a Comprehensive National Social Security Scheme to be adequately funded by the Central Government to take care of the large sections of the population, be it in the unorganised sector, agricultural workers or the elderly people, who need income support, along with various social security measures.
  - g) But the concern for the unorganised sector and large sections of the population was a camouflage or a cover up for the Government's move to dismantle the existing pension system for the Government's own employees and withdrawal of the responsibilities of supporting its own employees after their retirement.

- h) This is a retrograde step and in a Welfare state disowning this responsibility is unacceptable.
- i) The New Pension System and the PFRDA Bill are founded on the following concepts:
- Changeover from defined benefit (DB) to defined contribution (DC) concept
  - Privatisation of pension
  - Diversion of pension funds to corporate debt and stock markets
  - Permitting FDI in pension sector

These concepts are alien to a welfare state and cannot form the basis of a *mandatory* pension scheme.

The recommendation as contained in Paragraph 57 of the Draft Report has failed to underscore these aspects and the Government's withdrawal from its obligation towards its own employees.

- j) The Draft Report has noted in detail the views and reports of various expert groups and committees. But unfortunately the provisions of the present Bill is not in conformity with any of the recommendations of these Committees. Draft Report has ignored this aspect.
- k) The present move of the Government is not to be seen in isolation from its agenda of economic reforms. The original idea of pension reforms was mooted by international organisations like the World Bank, which was later on followed up by the Government bodies pursuing the neo liberal reforms process.
- l) In fact, the neo liberal regime practically wants opening up of the pension funds to the private operators (Fund Managers) including foreign fund managers. And this is a move, which is sought to be resisted the world over even in the developed countries.
- m) Privatisation of pension funds and allowing control of private managers over pension funds are having disastrous consequences as can be seen from international experience, including that in Chile, on whose model the present legislation has been based. **No other country, including the OECD countries, has made the individual retirement account**



**based on defined contribution concept the mandatory first tier of Social Security.**

- n) The most important point to be noted and which has been ignored in the Draft Report is that neither the Government of India in the immediate future nor the employees concerned are going to be benefited by the present legislation. The benefit that will accrue as a result of this Pension Reform will only be to the private operators who will be free to loot the hard earned savings of thousands of our Government employees.
- o) As the present legislation excludes the defence forces (and of course the para-military forces), which constitute about two-third of the total pension obligation of the Central Government, it will not result in any benefit or relief in matters of fiscal strain to the Government in the immediate future.
- p) Pension has been held to be a statutory, inalienable and legally enforceable right on the strength of Supreme Court Judgement as referred to in Para 38 of the Draft Report. The Draft Report has failed to take note of the above Supreme Court Judgement.
- q) According to an estimate, the Government's obligation will go on increasing till 2038 and only thereafter there may be a situation of neutralisation. Meanwhile, the employees' hard earned savings will be left to the mercy of new fund managers, who will benefit by the high cost of services and also various other dubious ways. And the employees' future in their old age will be left to the vagaries of the market.
- r) Section 20 (f) of the Bill clearly states: "There shall not be any implicit or explicit assurance of benefits except market based guarantee mechanism to be purchased by the subscriber".
- s) This means the fate of the employees in their old age will be determined by the vagaries of the market. In India itself, the situation created by the recent UTI experience, which can be a dark reminder of what can befall on the employees.
- t) The Draft Report in para 79 mentions on the one hand that "the new pension system leaves the likely return benefits of the subscribers to be determined by the market" but on the other hand recommends, in the same breathe, that the availability of default (option) involving 100% investment of the funds in

Government securities as a choice to the subscribers should be specifically mentioned in clause 20C.

- u) But the interest in respect of Government securities is also constantly depressed by the Government lowering the administered rate of interest and the coupon rate of government bonds such that it can never reach a level by which a monthly retirement income of 50% of the average of final wages can be made available as pension. That means even in the case of 100% investment of the funds in Government securities, the retirement benefits will be too meagre and will hardly provide the required income security even at the existing level.
- v) The major plank of the argument for introduction of this Pension reforms Bill is unsustainability of the existing pension scheme and growing burden on the Government as a result of the demographic changes. But the Government's argument is based on flimsy grounds. Firstly, there is a considerable decline (after the adoption of the Geeta Krishnan Committee Report) in the overall salary obligations of the Government. Secondly, the Government has never tried seriously to address the issue of evasion of tax and full compliance of tax by the richer and affluent sections of the society and the corporate sector to mobilise more resources (The number of billionaires in the country are increasing at a faster rate than many industrial countries of the world since the reform process was initiated).
- w) Here it may be mentioned that the Government has not cared to accept the core recommendation of the Bhattacharya Committee set up by the Government itself; what can be more unfortunate than this?
- x) While submitting this Note of Dissent, I once again earnestly suggest to the Government to desist from pushing forward such an anti-employee Bill. Rather, the Government should discuss the matter with all concerned trade unions and taking their views evolve a comprehensive policy and framework to implement the same.
- y) As regards, the concern of the Government for the unorganised sector, I only urge the Government to expedite the introduction of a bill to introduce a comprehensive national Social Security Scheme for the unorganised sector, elderly citizens and others. I understand that the Ministry of Labour, has already circulated a draft Unorganised Sector Workers Bill to the central trade unions and submitted the same for examination by the National

Commission for Enterprises in the Unorganised Sector. Even that draft Bill suffers from various infirmities and inadequacies, which have to be addressed by factoring in the unanimous inputs jointly furnished by the central trade unions. I urge that this process may be expedited.

- z) As regards other issues as mentioned in the Bill, about the composition of the Regulatory Authority, the relationship between the Pension Fund Regulatory and Development Authority (PFRDA) and Insurance Regulatory and Development Authority (IRDA), the details regarding scope of withdrawal by the employees from pension fund, central record keeping cost of services, criteria for selection of fund managers, their investment patten, FDI, initial set of regulations should be given along with consideration of the Bill and such issues, are not at all relevant in the present ocontext as the proposed goal of the Bill is itself unacceptable to me.

Sd/-  
(CHITTABRATA MAJUMDAR)

# MINUTES OF THE TWENTY SEVENTH SITTING OF STANDING COMMITTEE ON FINANCE

The Committee sat on Tuesday, 17<sup>th</sup> May 2005 from 1500 to 1815 hours.

## PRESENT

Maj. Gen (Retd.) B.C. Khanduri - Chairman

## MEMBERS

### LOK SABHA

2. Shri Jaswant Singh Bishnoi
3. Shri Gurudas Dasgupta
4. Shri Bhartruhari Mahtab
5. Shri A. Krishnaswamy
6. Dr. Rajesh Kumar Mishra
7. Shri Madhusudan Mistry
8. Shri Shriniwas D. Patil
9. Shri K.S. Rao
10. Shri M.A. Kharabela Swain

### RAJYA SABHA

11. Shri Jairam Ramesh
12. Shri Chittabrata Mazumdar
13. Shri C. Ramachandraiah
14. Shri Mangani Lal Mandal

### SECRETARIAT

1. Shri P.D.T. Achary - Secretary
2. Dr. (Smt.) P.K. Sandhu - Joint Secretary

## WITNESSES

MINISTRY OF FINANCE

1. Dr. Rakesh Mohan, Secretary, (Economic Affairs)
2. Shri Dharendra Swarup, Chairperson, PFRDA
3. Shri Ashok Chawla, Additional Secretary (Economic Affairs)
4. Shri U.K. Sinha, Joint Secretary (CM), (Economic Affairs)
5. Dr. Ajay Shah, Consultant, (Economic Affairs)

2. At the outset, Chairman welcomed the representatives of Ministry of Finance (Deptt. of Economic Affairs) to the sitting of the Committee and invited their attention to Direction 55 of the directions by the Speaker.

3. Thereafter, the representatives of the Ministry of Finance (Deptt. of Economic Affairs) briefed the Committee on the provisions of the Pension Fund Regulatory and Development Authority Bill, 2005.

4. After the briefing, Members sought clarifications on various provisions of the Bill. Thereafter, the Chairman asked the officials of the Ministry to furnish written information/replies to the queries raised by the Members in respect of which information was not readily available with them.

5. The briefing was concluded.

6. A verbatim record of the proceedings has been kept.

The witnesses then withdrew.

**MINUTES OF THE TWENTY EIGHTH SITTING OF STANDING COMMITTEE ON  
FINANCE**

The Committee sat on Wednesday, 18<sup>th</sup> May 2005 from 1100 to 1300  
hours and again from 1500 to 1630 hours.

**PRESENT**

**Maj. Gen (Retd.) B.C. Khanduri - Chairman**

**MEMBERS**

**LOK SABHA**

2. Shri Jaswant Singh Bishnoi
3. Shri Gurudas Dasgupta
4. Shri Bhartruhari Mahtab
5. Shri A. Krishnaswamy
6. Shri Bir Singh Mahato
7. Shri K.S. Rao
8. Shri M.A. Kharabela Swain

**RAJYA SABHA**

9. Shri Chittabrata Majumdar
10. Shri S.P.M. Syed Khan
11. Shri Amar Singh
12. Shri C. Ramachandraiah
13. Shri Mangani Lal Mandal

**SECRETARIAT**

- |                        |   |                  |
|------------------------|---|------------------|
| 1. Shri. P.D.T. Achary | - | Secretary        |
| 2. Shri R.K. Jain      | - | Deputy Secretary |

**WITNESSES**

Part I

AT 1100 HOURS

**INDIAN NATIONAL TRADE UNION CONGRESS (INTUC)**

1. Shri M. Raghavaiah, Vice-President, INTUC

**HIND MAZDOOR SABHA (HMS)**

1. Shri Umraomal Purohit, General Secretary
2. Shri A.D. Nagpal, Secretary

*Part II*

AT 1500 HOURS

**ALL INDIA TRADE UNION CONGRESS (AITUC)**

Shri G.L. Dhar, Secretary  
Shri D.L. Sachdeva, Secretary  
Shri S.N. Thakur, Secretary

**BHARATIYA MAZDOOR SANGH (BMS)**

Shri Girish Awasthi, President (BMS)  
Shri P.J. Soundrajan, Secretary (Kendriya Karamchari Sangh)

**Part I**

2. At the outset, the Chairman welcomed representatives of Indian National Trade Union (INTUC) and Hind Mazdoor Sabha (HMS) to the sitting of the Committee and invited their attention to Direction 55 of the Directions by the Speaker, Lok Sabha.

3. The Committee then heard the views of representatives of Indian National Trade Union Congress (INTUC) and Hind Mazdoor Sabha (HMS) on the provisions of the Pension Fund Regulatory and Development Authority Bill, 2005. Thereafter, the Members sought clarifications and the Chairman

asked the representatives to furnish written information/replies to the queries raised by the Members in respect of which information was not readily available with them.

4. The evidence was concluded.
5. A verbatim record of the proceedings has been kept.

The witnesses then withdrew.

## **Part II**

2. The Chairman welcomed representatives of All India Trade Union Congress (AITUC) and Bhartiya Mazdoor Sangh (BMS) to the sitting of the Committee and invited their attention to Direction 55 of the Directions by the Speaker, Lok Sabha.

3. The Committee then heard the views of representatives of All India Trade Union Congress (AITUC) and Bhartiya Mazdoor Sangh (BMS) on the provisions of the Pension Fund Regulatory and Development Authority Bill, 2005. Thereafter, the Members sought clarifications and the Chairman asked the representatives to furnish written information/replies to the queries raised by the Members in respect of which information was not readily available with them.

4. The evidence was concluded.
5. A verbatim record of the proceedings has been kept.

The witnesses withdrew.



# MINUTES OF THE TWENTY NINTH SITTING OF STANDING COMMITTEE ON FINANCE

The Committee sat on Thursday, 19<sup>th</sup> May 2005 from 1100 to 1330 hours and again from 1500 to 1730 hours.

## PRESENT

**Maj. Gen (Retd.) B.C. Khanduri - Chairman**

## MEMBERS

### LOK SABHA

2. Shri Jaswant Singh Bishnoi
3. Shri Gurudas Dasgupta
4. Shri Bhartruhari Mahtab
5. Shri Bir Singh Mahato
6. Shri Madhusudan Mistry
7. Shri K.S. Rao
8. Shri Jyotiraditya Madhavrao Scindia
9. Shri Ajit Singh
10. Shri M.A. Kharabela Swain
11. Shri Magunta Sreenivasulu Reddy

### RAJYA SABHA

12. Shri Jairam Ramesh
13. Shri M. Venkaiah Naidu
14. Shri Chittabrata Mazumdar
15. Shri Mangani Lal Mandal

### SECRETARIAT

- |                           |   |                  |
|---------------------------|---|------------------|
| 1. Shri P.D.T. Achary     | - | Secretary        |
| 2. Dr. (Smt.) P.K. Sandhu | - | Joint Secretary  |
| 3. Shri R.K. Jain         | - | Deputy Secretary |

## WITNESSES

**Part I**

1100 HOURS

Shri Kirit Parikh, Member, Planning Commission

Shri Gautam Bhardwaj, Director, Invest India Economic Foundation

**Part II**

*1500 HOURS*

Shri N. Rangachary, Former Chairman, Insurance Regulatory and Development Authority (IRDA)

2. Dr. S.A. Dave, Chairman, Centre for Monitoring the Indian Economy (CMIE)

**Part I**

2. At the outset, the Chairman welcomed Shri Kirit Parikh and Shri Gautam Bhardwaj to the sitting of the Committee and invited their attention to Direction 55 of the Directions by the Speaker, Lok Sabha.

3. The Committee then heard the views of Shri Kirit Parikh and Shri Gautam Bhardwaj on the provisions of the Pension Fund Regulatory and Development Authority Bill, 2005. Thereafter, the Members sought clarifications and the Chairman asked the representatives to furnish written information/replies to the queries raised by the Members in respect of which information was not readily available with them.

4. The evidence was concluded.

5. A verbatim record of the proceedings has been kept.

The witnesses then withdrew.

## **Part II**

2. The Chairman welcomed Shri N. Rangachary and Dr. S.A. Dave to the sitting of the Committee and invited their attention to Direction 55 of the Directions by the Speaker, Lok Sabha.

3. The Committee then heard the views of Shri N. Rangachary and Dr. S.A. Dave on the provisions of the Pension Fund Regulatory and Development Authority Bill, 2005. Thereafter, the Members sought clarifications and the Chairman asked the representatives to furnish written information/replies to the queries raised by the Members in respect of which information was not readily available with them.

4. The evidence was concluded.

5. A verbatim record of the proceedings has been kept.

The witnesses then withdrew.

# MINUTES OF THE THIRTIETH SITTING OF STANDING COMMITTEE ON FINANCE

The Committee sat on Wednesday, 1<sup>st</sup> June 2005 from 1100 to 1330 hours.

## PRESENT

**Maj. Gen (Retd.) B.C. Khanduri - Chairman**

## MEMBERS

### LOK SABHA

Shri Bhartruhari Mahtab  
Shri Bir Singh Mahato  
Shri Rupchand Pal  
Shri K.S. Rao  
Shri Jyotiraditya Madhavrao Scindia  
Shri Lakshman Seth  
Shri M.A. Kharabela Swain  
Shri Vijoy Krishna

### RAJYA SABHA

Shri Murli Deora  
Shri Jairam Ramesh  
Shri Yashwant Sinha  
Shri Chittabrata Mazumdar  
Shri Mangani Lal Mandal

### SECRETARIAT

1. Shri P.D.T. Achary - Secretary
2. Shri R.K. Jain - Deputy Secretary
3. Shri T.G. Chandrasekhar - Under Secretary

## WITNESSES

**CENTRE OF INDIAN TRADE UNIONS (CITU)**

**Shri W.R. Varada Rajan, Secretary**

**ALL INDIA STATE GOVERNMENT EMPLOYEES' FEDERATION**

1. Shri R.G. Karnik, Chairman
2. Shri Ajoy Mukherjee, Vice President
3. Shri Sukomal Sen, General Secretary
4. Shri Lallan Pandey, Secretary
5. Shri R. Muthusundaram, Secretary

2. The Chairman welcomed representatives of Centre of Indian Trade Unions (CITU) and All India State Government Employees' Federation to the sitting of the Committee and invited their attention to Direction 55 of the Directions by the Speaker, Lok Sabha.

3. The Committee then heard the views of representatives of Centre of Indian Trade Unions (CITU) and All India State Government Employees' Federation on the provisions of the Pension Fund Regulatory and Development Authority Bill, 2005. Thereafter, the Members sought clarifications and the Chairman asked the representatives to furnish written information/replies to the queries raised by the Members in respect of which information was not readily available with them.

4. The evidence was concluded.
5. A verbatim record of the proceedings has been kept.

The witnesses then withdrew.

# MINUTES OF THE THIRTY FIRST SITTING OF STANDING COMMITTEE ON FINANCE

The Committee sat on Thursday, 2<sup>nd</sup> June 2005 from 1100 to 1330 hours.

## PRESENT

Maj. Gen (Retd.) B.C. Khanduri - Chairman

## MEMBERS

### LOK SABHA

2. Shri Gurudas Dasgupta
- Shri Bhartruhari Mahtab
- Shri Shyama Charan Gupta
- Shri Bir Singh Mahato
- Shri Madhusudan Mistry
- Shri Rupchand Pal
- Shri Shrinivas D. Patil
- Shri K.S. Rao
- Shri Jyotiraditya Madhavrao Scindia
- Shri Lakshman Seth
- Shri M.A. Kharabela Swain
- Shri Magunta Sreenivasulu Reddy

### RAJYA SABHA

- Shri Murli Deora  
Shri Jairam Ramesh  
Shri Yashwant Sinha  
Shri Chittabrata Mazumdar

### SECRETARIAT

1. Shri P.D.T. Achary - Secretary
2. Dr. (Smt.) P.K. Sandhu - Joint Secretary
3. Shri R.K. Jain - Deputy Secretary
4. Shri T.G. Chandrasekhar - Under Secretary

## WITNESSES

1. Shri B.K. Bhattacharya, Chairman,  
**High Level Expert Group on Pension**
2. Shri Anand Bordia, Former Member (Finance),  
National Highway Authority of India (NHAI)

2. At the outset, the Chairman welcomed Shri B.K. Bhattacharya and Shri Anand Bordia to the sitting of the Committee and invited their attention to Direction 55 of the Directions by the Speaker, Lok Sabha.

3. The Committee then heard the views of Shri B.K. Bhattacharya and Shri Anand Bordia on the provisions of the Pension Fund Regulatory and Development Authority Bill, 2005. Thereafter, the Members sought clarifications and the Chairman asked the representatives to furnish written information/replies to the queries raised by the Members in respect of which information was not readily available with them.

4. The evidence was concluded.
5. A verbatim record of the proceedings has been kept.

The witnesses then withdrew.

# MINUTES OF THE THIRTY SECOND SITTING OF STANDING COMMITTEE ON FINANCE

The Committee sat on Monday, 13<sup>th</sup> June 2005 from 1030 to 1330 hours and again from 1500 to 1700 hours.

## PRESENT

**Maj. Gen (Retd.) B.C. Khanduri - Chairman**

## MEMBERS

### LOK SABHA

2. Shri Jaswant Singh Bishnoi
- Shri Gurudas Dasgupta
- Shri Bhartruhari Mahtab
- Shri Bir Singh Mahato
- Shri Rupchand Pal
- Shri G.M. Siddeshwara
- Shri M.A. Kharabela Swain
- Shri Vijoy Krishna

### RAJYA SABHA

- Shri R.P. Goenka  
Shri Yashwant Sinha  
Shri Chittabrata Majumdar  
Shri C. Ramachandraiah  
Shri Mangani Lal Mandal

### SECRETARIAT

1. Shri P.D.T. Achary - Secretary
2. Dr. (Smt.) P.K. Sandhu - Joint Secretary
3. Shri R.K. Jain - Deputy Secretary
4. Shri T.G. Chandrasekhar - Under Secretary

## WITNESSES

**Part I**

*At 1030 hours*



## **FEDERATION OF INDIAN CHAMBERS OF COMMERCE AND INDUSTRY (FICCI)**

1. Shri A.K. Shukla, Current -in-Charge- Chairman, LIC of India
2. Ms. Shikha Sharma, CEO, ICICI Pru Life Insurance Co. Ltd. and Co-Chairman, FICCI's Insurance and Pension Committee
3. Shri N.N. Joshi, Chief Representative, ING Insurance International and Advisor, FICCI's Insurance and Pensions Committee
  
4. Shri S.V. Mony, Vice Chairman, AMP Sanmar
5. Shri Sanjay Parikh, Head Product Management, Birla Sunlife Insurance Co. Ltd.
6. Shri Anil Jhala, CFO, Birla Sunlife Insurance Co. Ltd.
7. Shri Mahim Bisht, VP-Business Development, Principal Financial Group
8. Shri S.P. Subhedar, Sr. Advisor, Prudential Corporation Asia Ltd.
9. Shri Vivek Bharti, Advisor, FICCI

## **CONFEDERATION OF INDIAN INDUSTRY (CII)**

1. Dr. Rajiv Kumar, Chief Economist, CII
2. Shri Vikram Badshah, Senior Consultant, CII
3. Shri Ashvin Parekh, Partner Deloitte Touche Tohmatsu Pvt. Ltd.
4. Shri Dennis Pedini, CEO, Max New York Life Insurance
5. Shri Anil Mehta, Director, Business Group, Max New York Life Insurance

6. Shri N.B. Mathur, Advisor, CII

**Part II**

*At 1500 hours*

**CONFEDERATION OF CENTRAL GOVERNMENT EMPLOYEES & WORKERS**

1. Shri C.C. Pillai, Chairman
2. Shri V. Bhattacharya, Vice Chairman
3. Shri S.K. Vyas, Secretary General
4. Shri A.B. Sen, Finance Secretary

**Part I**

2. At the outset, the Chairman welcomed the representatives of Federation of Indian Chambers of Commerce and Industry (FICCI) and Confederation of Indian Industry (CII) to the sitting of the Committee and invited their attention to Direction 55 of the Directions by the Speaker, Lok Sabha.

3. The Committee then heard the views of the representatives of FICCI and CII on the provisions of the Pension Fund Regulatory and Development Authority Bill, 2005. Thereafter, the Members sought clarifications and the Chairman asked the representatives to furnish written information/replies to the queries raised by the Members in respect of which information was not readily available with them.

4. The evidence was concluded.
5. A verbatim record of the proceedings has been kept.

The witnesses then withdrew.

## Part II

2. The Chairman welcomed the representatives of Confederation of Central Government Employees and Workers to the sitting of the Committee and invited their attention to Direction 55 of the Directions by the Speaker, Lok Sabha.

3. The Committee then heard the views of the representatives of Central Government Employees and Workers on the provisions of the Pension Fund Regulatory and Development Authority Bill, 2005. Thereafter, the Members sought clarifications and the Chairman asked the representatives to furnish written information/replies to the queries raised by the Members in respect of which information was not readily available with them.

4. The evidence was concluded.

5. A verbatim record of the proceedings has been kept.

The witnesses then withdrew.

# MINUTES OF THE THIRTY THIRD SITTING OF STANDING COMMITTEE ON FINANCE

The Committee sat on Tuesday, 14<sup>th</sup> June 2005 from 1030 to 1330 hours

## PRESENT

**Maj. Gen (Retd.) B.C. Khanduri - Chairman**

## MEMBERS

### LOK SABHA

2. Shri Jaswant Singh Bishnoi
  3. Shri Bhartruhari Mahtab
- Shri A. Krishnaswamy  
Shri Bir Singh Mahato  
Shri Madhusudan Mistry  
Shri Rupchand Pal  
Shri Shriniwas D. Patil  
Shri K.S. Rao  
Shri G.M. Siddeshwara  
Shri M.A. Kharabela Swain

### RAJYA SABHA

Shri Yashwant Sinha  
Shri Chittabrata Majumdar  
Shri C. Ramachandraiah

### SECRETARIAT

1. Shri P.D.T. Achary - Secretary
2. Shri T.G. Chandrasekhar - Under Secretary

## WITNESSES

## MINISTRY OF FINANCE

Dr. Rakesh Mohan, Secretary (Eco. Affairs)

Shri Dharendra Swarup, Chairperson, PFRDA

3. Shri C.S. Rao, Chairman, Insurance Regulatory and Development Authority (IRDA)
4. Shri Ashok Chawla, Addl. Secretary (Eco. Affairs)
5. Shri U.K. Sinha, Joint Secretary (Capital Markets), Eco. Affairs
6. Dr. Ajay Shah, Consultant, Economic Affairs

2. At the outset, the Chairman welcomed the Members and representatives of Ministry of Finance to the sitting of the Committee and invited their attention to Direction 55 of the Directions by the Speaker, Lok Sabha.

3. The Committee then took oral evidence of representatives of Ministry of Finance on the Pension Fund Regulatory and Development Authority Bill, 2005.

4. Thereafter, Members sought clarifications on various provisions of the Bill. Then the Chairman asked the officials of the Ministry to furnish written information/replies to the queries raised by the Members in respect of which information was not readily available with them.

5. The evidence was concluded.

6. A verbatim record of the proceedings has been kept.

The witnesses then withdrew.

# MINUTES OF THE THIRTY FOURTH SITTING OF STANDING COMMITTEE ON FINANCE

The Committee sat on Wednesday, 22<sup>nd</sup> June, 2005 from 1030 to 1315 hours

## PRESENT

Maj. Gen (Retd.) B.C. Khanduri - Chairman

## MEMBERS

### LOK SABHA

2. Shri Gurudas Dasgupta
  3. Shri Bhartruhari Mahtab
  4. Shri Gurudas Kamat,
  5. Shri A. Krishnaswamy
  6. Shri Bir Singh Mahato
  7. Dr. Rajesh Kumar Mahato
  8. Shri Madhusudan Mistry
  9. Shri Rupchand Pal
  10. Shri Danve Raosaheb Patil
  11. Shri Shriniwas D. Patil
  12. Shri K.S. Rao
  13. Shri Jyotiradiya Madhavarao Scindia
  14. Shri Lakshman Seth
- Shri Ajit Singh  
Shri M.A. Kharabela Swain

### RAJYA SABHA

Shri Murli Deora  
Shri R.P. Goenka  
Shri Jairam Ramesh  
Shri M. Venkaiah Naidu  
Shri Yashwant Sinha  
Shri Chittabrata Majumdar

Shri C. Ramachandraiah  
Shri Mangani Lal Mandal

SECRETARIAT

1. Shri P.D.T. Achary - Secretary
2. Dr. (Smt) P.K. Sandhu - Joint Secretary
3. Shri R.K Jain - Deputy Secretary

2. The Chairman invited suggestions from Members for incorporation in the draft report of the Committee on the Pension Fund Regulatory and Development Authority Bill, 2005. After Members gave their views/suggestions, the Chairman informed the Members that they could also submit their suggestions/recommendations in writing.
3. A verbatim record of the proceedings has been kept.

The Committee then adjourned.

# Minutes of the Thirty-Sixth sitting of Standing Committee on Finance

The Committee sat on Tuesday, 5<sup>th</sup> July, 2005 from 1030 to 1230 hours

## PRESENT

Maj. Gen (Retd.) B.C. Khanduri – Chairman

## MEMBERS

### LOK SABHA

2. Shri Jaswant Singh Bishnoi  
Shri Gurudas Dasgupta  
Shri Bhartruhari Mahtab  
Shri Gurudas Kamat  
Shri A. Krishnaswamy  
Shri Bir Singh Mahato  
Shri Madhusudan Mistry  
Shri Rupchand Pal  
Shri K.S. Rao  
Shri Jyotiraditya Madhavrao Scindia  
Shri Lakshman Seth  
Shri M.A. Kharabela Swain

### RAJYA SABHA

- Shri Murli Deora  
Shri R.P. Goenka  
Shri Jairam Ramesh  
Shri Yashwant Sinha  
Shri Chittabrata Majumdar  
Shri C. Ramachandraiah  
Shri Mangani Lal Mandal

### SECRETARIAT

1. Dr. (Smt.) P.K. Sandhu - Additional Secretary
2. Shri R.K. Jain - Deputy Secretary



3. Shri T.G. Chandrasekhar - Under Secretary

2. At the outset, the Chairman welcomed the Members and requested the Members to give their suggestions on the recommendations contained in the draft report on the Pension Fund Regulatory and Development Authority Bill, 2005.

3. The Committee then took up for consideration the draft report on the Pension Fund Regulatory and Development Authority Bill, 2005. The Committee after deliberation adopted the same with modifications/amendments as shown in the Annexure.

4. As some Members did not agree to some of the recommendations contained in the draft report, they desired to submit notes of dissent. The Chairman informed them that they could send their notes of dissent by 12 July, 2005.

5. The Committee, thereafter, authorized the Chairman to finalise the report in the light of the amendments/suggestions received from the Members and also to make consequential verbal changes and present the same to Hon'ble Speaker/both Houses of the Parliament.

*(The Committee then adjourned)*

## ANNEXURE

[MODIFICATIONS/AMENDMENTS MADE BY STANDING COMMITTEE ON FINANCE IN THEIR DRAFT REPORT ON THE PENSION FUND REGULATORY AND DEVELOPMENT AUTHORITY BILL, 2005 AT THEIR SITTING HELD ON 5 JULY, 2005]

\* \* \* \*

Page No. 33,  
For Para No. 57

*Substitute New Para* “The Committee, having considered the diverse views expressed and the clarifications given by the Ministry of Finance are of the opinion that the reform process in the pension sector involving the setting up of the PFRDA as a statutory regulatory body for managing the NPS is an urgent necessity mainly on account of burgeoning fiscal stress of pension payments on the Central and State revenues and the need to provide a viable alternative to the populace at large to save for old age income security. This, the Committee feel, notwithstanding the fact that the positive affect of lessening the fiscal stress on the Central revenues on account of the switchover to the New Pension System is to be witnessed probably only from the year 2038. The Committee would, however, also hasten to add that the apprehensions expressed by the concerned sections on the new contributory pension system are born out of genuine concerns. The Committee feel that such apprehensions can be minimised, if not totally eliminated, if proper safeguards are introduced in the larger interest of the subscribers- both the Government employees who are compulsorily covered under the scheme as well as the others. After having considered the PFRDA Bill clause wise, the Committee approve the same for enactment subject to the modifications/amendments/recommendations as detailed in the subsequent

paragraphs of the report.”

Page 34, Para 59  
Line 4 from bottom

*For* “The Committee further desire that selection of both whole-time and part-time members of the Authority should be confined to professionals having experience in economics, finance and law only.”

*Substitute* “The Committee further desire that selection of both whole-time and part-time members of the Authority should be confined to professionals having experience in economics or finance or law only. The Committee are also of the opinion that if the Central Government so desire, one of the part time members in the Authority could be their nominee.”

*Delete* Para Nos. 60 to 64 and renumber subsequent Paras accordingly

Page Nos. 49 to 52, For Para Nos. 79 to 83

Substitute New Para Nos. 73 to 76 “73. The Committee note that a major cause of concern for the employees is the fact that unlike the present pension system which guarantees a monthly retirement income of 50% of the average of the last ten months pay, devoid of any risk, the New Pension System leaves the likely retirement benefits of the subscribers to be determined by the market. The Committee’s attempt to address this issue *inter alia* evoked the response that the Government was open to the ideas of permitting or giving preference to such pension fund managers also who guarantee returns to operate in the market; and making

available to the subscribers the option of 100% investment of pension funds in Government securities.

74. The Committee recommend that the option of 100% investment of the pension funds in Government Securities be made available to the subscribers and this aspect be indicated in clear terms in Clause 20 (c) of the PFRDA Bill.

75. The projections of likely returns or benefits that may accrue to the subscribers under different possible investment options as furnished by the Ministry reveal that returns from an investment option involving equities would amount to much more than the returns on investments in Government Securities. Even in the case of pessimistic asset return assumptions, the returns to an employee are expected to be more beneficial than the present pension scheme of Central Government employees which provides for a monthly pension amounting to 50% of the average of the pay drawn in the last ten months of service and the facility of commutation. However, with the specific intention of minimizing, if not totally eliminating the apprehensions or fears expressed about market based returns; the Committee recommend that in the matter of selection of pension fund managers preference be given to such companies which offer guarantees on returns. At the same time, it needs to be ensured that the subscribers have sufficient options of choosing funds/schemes

that may fetch high returns on the basis of market performance.

76. As regards the coverage of the unorganised sector, the Committee note that the New Pension System only offers an option to the workforce to join. The Committee desire that the Government must bring forward a comprehensive legislation in order to cater to the social security of the unorganised sector inclusive of pension coverage of the workforce simultaneous to the setting up of PFRDA as a statutory body.”

*After* Para 83

*Insert* new Para Nos.  
77,78 & 79

77. Clause 23 reads as under:

“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.

(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.

78. On the issue of ‘pension funds’ under the New Pension System the Joint Secretary stated as

under during the course of evidence:

“.... There will be multiple pension funds, one of which has to be in the public sector. There can be more than one. It is one of the decisions of the Government that at least one of them must be in the public sector.”

79. The Committee note that in terms of the provisions of Clause 23, the PFRDA is entitled to grant a certificate of registration to one or more pension funds for the purpose of receiving contributions, accumulating them and making payments to the subscribers. As informed to the Committee, the Government have decided that one such pension fund would be from the public sector. The Committee, therefore, recommend that this aspect about one of the pension funds being from the public sector be specified in clear terms in Clause 23 of the PFRDA Bill which would be in the interest of subscribers.”

Page Nos. 55-56, For  
Para 90

*Substitute New Para  
No. 86*

“The Committee note that unlike the case of the insurance sector, the permissibility or otherwise of FDI in the pension sector - to be promoted and regulated under the aegis of PFRDA – as well as limitations or restrictions on deployment of pension funds outside the country have not been specified. The Committee understand that the Government are yet to decide on the matter. The Committee are of the considered opinion that any decision relating to permitting FDI in the pension sector should be implemented only by way of bringing forward suitable amendment in the present legislation. They are further of the view that the decisions relating to permitting FDI in the pension sector and deployment

of pension funds outside the Country, should, in no way be in variance with the related provisions applicable to the insurance sector.”

Page 61, Para 98, Line 9

*For*

“...with the representatives of the subscribers co-opted into it.”

*Substitute*

“...with the representatives of the employees and subscribers co-opted into it.”

After Para 98

*Insert New Para*

“ The Committee are also of the view that the initial or broad contours of the regulations governing the implementation of the New Pension System under the infrastructure of PFRDA should be framed and made clear in the public domain prior to the enactment of the PFRDA Bill.”

Page 62, Para 100,  
Line 3

*For*

“With a view to protect the interests of the subscribers the Committee recommend that the representatives of the subscribers should be co-opted to join the special committees to be set up by the Authority.”

*Substitute*

“With a view to protect the interests of the subscribers the Committee recommend that the representatives of the employees associations and subscribers should be co-opted in the special committees to be set up by the Authority.”

**THE PENSION FUND REGULATORY AND DEVELOPMENT AUTHORITY  
BILL, 2005**

[Bill No. 36 of 2005]

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**

Short Title Extent and Commencement:

1. (1) This Act may be called the Pension Fund Regulatory and Development Authority Act, 2004.
- (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.

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 advisor, point of presence and such other person or entity connected with collection, management, record keeping 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 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) 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);

(iii) the Securities Contracts (Regulation) Act, 1956(42 of 1956)

(iv) the Securities and Exchange Board of India Act, 1992(15 of 1992);

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

## CHAPTER II

### PENSION FUND REGULATORY AND DEVELOPMENT AUTHORITY

Establishment and Incorporation of 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 Bill, an Authority to be called the Pension Fund Regulatory and Development 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 Bill, to acquire, hold and dispose of property, both movable and immovable, and to contract and shall, by the said name, sue or be sued.

(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(2 of 1985).

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

Composition of Authority:

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.

Term of office and Conditions of Service of Chairperson and Members 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:

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.

Removal of Members from Office:

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

(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 the 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.

(5) The Authority may make regulations for the transaction of business at its meetings.

Vacancies etc. not to Invalidate Proceedings of the 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 the 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 Bill.

(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

Extent and Application:

13. (1) This Bill shall apply to-

(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 Bill shall not apply to-

(a) the schemes or funds under-

(i) the Employees' Provident Funds and Miscellaneous Provisions Act, 1952(19 of 1952);

(ii) the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948(46 of 1948);

(iii) the Assam Tea Plantations Provident Fund and Pension Fund Scheme Act, 1955(Assam Act X of 1955);

(iv) the Jammu and Kashmir Employees' Provident Funds Act, 1961(Jammu and Kashmir Act XV of 1961); and

(v) the Seamen's Provident Fund Act, 1966(4 of 1966);

(b) contracts referred to in sub-section (11) of section 2 of the Insurance Act, 1938(4 of 1938);

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



(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(61 of 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 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

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.

(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 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 to the pension funds;

(f) establishing mechanism for redressing 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 bench marks;

(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(5 of 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 books, registers and other documents 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, either 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.

#### Power to Issue Directions:

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-

(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.

Powers of Investigation:

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

(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(1 of 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 (1) 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 (3) 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 there from, 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(2 of 1974) relating to searches and seizures shall apply, so far as may be, to every search and seizure made under sub-section (1).

(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 Bill, 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 fund managers 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.

Central Record keeping Agency:

21. (1) The Authority shall, by granting a certificate of registration under sub-section (3) of section 24, appoint a 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 Bill 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. Point of Presence:

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 or points of presence for the purpose of receiving contributions and instructions, transmitting them to the central record keeping agency and paying out benefits to subscribers in accordance with the regulations made by the Authority from time to time in this regard.

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

## Pension Funds:

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.

(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 Bill.

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



## CHAPTER VI

### REGISTRATION OF INTERMEDIARIES

Registration of Central Record Keeping agency, Pension Fund, Point of Presence etc.:

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 provisions of this Act and the regulations:

Provided that any intermediary, including any point of presence, who may be associated with a scheme of pension fund 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 record keeping 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 Provision 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 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 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.

(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.

Crediting Sums Realised by way of Penalties of Subscriber Education and Protection Fund:

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.

27. Power to Adjudicate:

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.

(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 matters referred to in 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. Attachment of Assets and Supercession of Management of Intermediary:

28. (1) Any person aggrieved may apply to the Authority for an interim measure or protection in respect of any of the following matters, namely:-

- (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 funds, 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 enquiry 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. Offences:

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.

(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.

#### 30. Power of 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(27 of 1957);

(ii) the Income Tax Act, 1961(43 of 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.



### 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 the 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 filing it 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 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.

(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 as prescribed.

#### Civil Court Not to have Jurisdiction:

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.

#### Appeal to Supreme Court;

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:

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**

Grants by Central Government :

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 Bill.

37. Constitution of Pension Regulatory and Development Fund:

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

(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 Bill.

## Constitution of Subscriber Education and Protection Fund:

38. (1) The Authority shall establish a fund to be called the 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 on Issues of Policy:

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 subsection.

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

#### Power of Central Government to Supercede the Authority:

(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 Bill; 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 Bill or in the discharge of the functions or performance of the duties imposed on it by or under the provisions of this

Bill 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 Bill, 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.

Furnishing of Returns, etc. to Central Government:

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.

(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 Bill 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.

Members, Officers and Employees of The Authority to be Public Servants:

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 Bill, to be public servants within the meaning of section 21(45 of 1860) of the Indian Penal Code.

#### Protection of Action Taken in Good Faith:

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 Bill or the rules or regulations made there under.

#### Offences by Companies:

45. (1) Where an offence under this Bill 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:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Bill 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 Bill 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 Bill.

(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 Bill and the rules made thereunder to carry out the provision of this Bill.

(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 times 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 transactions of business at the meetings of the Authority under sub-section (5) of section 10;

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

(d) 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;

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

(f) 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;

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

(h) 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;

(i) 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;

(j) 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;

(k) 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;

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

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

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

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

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

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

(r) 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.

**Rules and Regulations to be Laid Before Parliament:**

48. Every rule and every regulation made under this Bill 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.

#### Power to Remove Difficulties:

49. (1) If any difficulty arises in giving effect to the provisions of this Bill, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Bill 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 Bill.

(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 Bill (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 Bill shall be in addition to and not in derogation 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 Bill.

#### **Repeal and Saving**

53. (1) The Pension Fund Regulatory and Development Authority Act, 2004 is hereby repealed



(2) Notwithstanding such repeal, anything done or any action taken under the said Act 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 Act, 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 Act, 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 Act. The notes on clauses explain in detail the various provisions contained in the Bill.

P.

CHIDAMBARAM

NEW DELHI;

The 12th February, 2005.

**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 Act, 2004 (Ord. 8 of 2004). Sub-clause (2) saves all things done and all actions taken under the said Act 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 Act, 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 Act, 2004 closely follows the said Act 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 Act. Subsection (5) of section 10 of the Act 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 Act. The re-arrangement of provisions has been made for clarity and elegance.