Bill No. 154 of 2005

THE WAREHOUSING (DEVELOPMENT AND REGULATION) BILL, 2005

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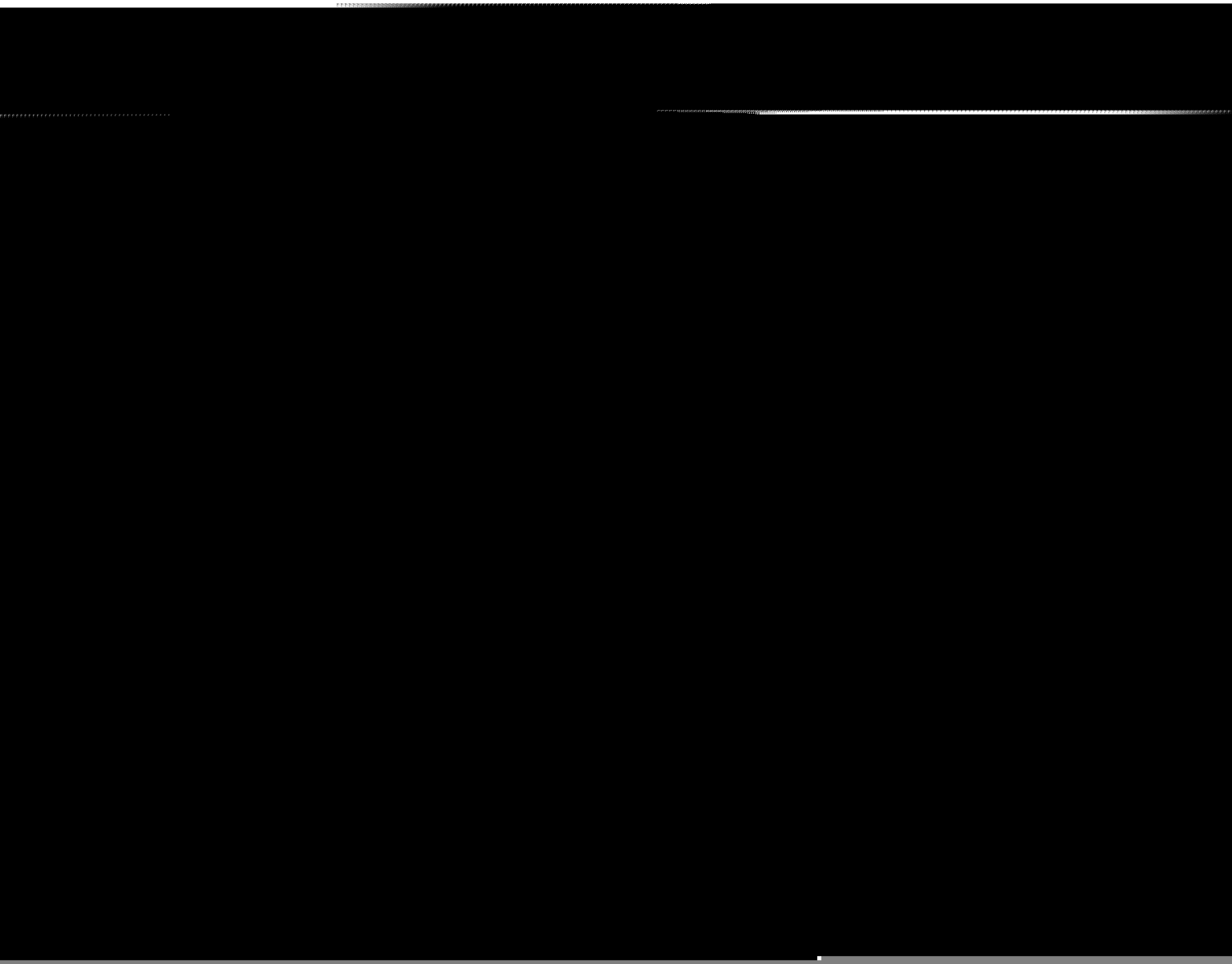

Bill No. 154 of 2005

THE WAREHOUSING (DEVELOPMENT AND REGULATION) BILL, 2005

A

BILL

to make provisions for the development and regulation of warehouses, negotiability of warehouse receipts, establishment of a warehousing development and regulatory authority 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 Warehousing (Development and Regulation) Act, 2005.

(*2*) It extends to the whole of India except the State of Jammu and Kashmir.

(*3*) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Definitions

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

(*a*) "accreditation agency" means an agency, whatever be its constitution, registered with the Authority under section 5;

(*b*) "actionable claim" shall have the meaning assigned to it in section 3 of the Transfer of Property Act, 1882; 4 of 1882

(*c*) "Authority" means the Warehousing Development and Regulatory Authority established under sub-section (*1*) of section 24;

(*d*) "depositor" means a person who delivers goods to the warehouseman for storage;

(*e*) "endorsee" means the person to whom the warehouse receipt is negotiated;

(*f*) "endorsement" means signing on the warehouse receipt by the depositor or holder of the warehouse receipt for the purpose of its negotiation;

(*g*) "electronic form", with reference to information, means any information generated, sent, received or stored in media, magnetic, optical, computer memory, microfilm, computer generated micro fiche or similar device;

(*h*) "fungible goods" means any goods of which any unit is, by nature or usage of trade, the equivalent of any other like unit and are received by a warehouseman as fungible goods;

(*i*) "goods" means all tangible movable goods (other than actionable claims, money and securities), whether fungible or not;

(*j*) "grade" means the quality standard of any goods as notified as grade designation by the Central Government under the Agriculture Produce (Grading and Marking) Act, 1937 or any other law for the time being in force; 1 of 1937

(*k*) "holder" means,–

(*i*) in relation to a negotiable warehouse receipt, a person who is in possession of such receipt and a right to goods endorsed on it; and

(*ii*) in relation to a non-negotiable warehouse receipt, a person named in it as the person to whom the goods are to be delivered or the assignee of that person;

(*l*) "member" means a member of the Authority and includes its Chairperson;

(*m*) "negotiable warehouse receipt" means a warehouse receipt under which the goods represented therein are deliverable to the depositor or order, the endorsement of which has the effect of transfer of goods represented thereby and the endorsee for which takes a good title;

(*n*) "non-negotiable warehouse receipt" means a warehouse receipt other than a negotiable warehouse receipt;

(*o*) "notification" means a notification published in the Official Gazette;

(*p*) "person" includes a firm, co-operative society or any association or body of persons, whether incorporated or not;

(*q*) "prescribed" means prescribed by rules made under this Act;

(*r*) "regulation" means a regulation made under this Act;

(*s*) "warehouse" means any premises (including any protected place) conforming to all the requirements including manpower specified by the Authority by regulations wherein the warehouseman takes custody of the goods deposited by the depositor and includes a place of storage of goods under controlled conditions of temperature and humidity;

(*t*) "Warehousing business" means the Business of maintaining warehouses for storage of goodos and issuing negotiable warehouse receipts,

(*u*) "warehouse receipt" means an acknowledgement in writing or in electronic form issued by a warehouseman or his duly authorised representative of the receipt for storage of goods not owned by the warehouseman;

(*v*) "warehouseman" means any person who is granted a certificate of registration in respect of any warehouse or warehouses by the Authority or an accreditation agency for carrying on the business of warehousing.

CHAPTER II

REGULATION OF WAREHOUSING BUSINESS

Requirement of registration for warehouses issuing negotiable warehouse receipts

3. (*1*) No person shall commence or carry on the warehousing business unless he has obtained a registration certificate in respect of the concerned warehouse or warehouses granted by the Authority under this Act:

Provided that a person carrying on the warehouses business immediately before the commencement of this Act shall be allowed to carry on such business, in case he has made an application for registration within thirty days from the date of such commencement.

Explanation.—For the removal of doubts, it is hereby clarified that a warehouse registered under this Act shall also be eligible to issue non-negotiable warehouse receipts.

(*2*) Notwithstanding anything contained in sub-section (*1*), the Authority may, subject to such regulations and guidelines issued by it, authorise any person registered under section 5 as an accreditation agency to issue certificate of accreditation to any person for carrying on the business of warehousing issuing negotiable warehouse receipts.

Registration of warehouses

4. (*1*) Any person desirous of commencing or carrying on the business of maintaining a warehouse issuing negotiable warehouse receipts may make an application to the Authority for registration in respect of one or more warehouses owned or occupied by him.

(*2*) Every application for registration under sub-section (*1*) shall be in such form and manner and shall be accompanied by such fees as may be prescribed.

(*3*) The Authority may, after such enquiry and subject to such terms and conditions as it thinks fit, grant a certificate of registration of the warehouse in the prescribed form and bearing a registration number to the applicant authorising him to carry on the business of maintaining a warehouse or warehouses and to issue negotiable warehouse receipts.

(*4*) The Authority may not grant a certificate of registration under this section unless it is satisfied that the warehouse in respect of which the application has been made has adequate facilities and safeguards required to warehouse the goods of the nature specified in the application and the applicant satisfies the financial, managerial and other eligibility criteria and competence as may be prescribed:

Provided that no certificate of registration shall be refused to any applicant under this section unless the applicant has been given an opportunity of being heard.

Registration of accreditation agencies.

5. (*1*) The Authority shall, from time to time, determine the number of accreditation agencies as it may authorise to issue certificate of accreditation to warehouses issuing negotiable warehouse receipts.

(*2*) Any person fulfilling the qualifications and other requirements as may be prescribed and desirous of functioning as an accreditation agency under this Act may make an application to the Authority seeking its registration as such under this Act.

(*3*) Every application under sub-section (*2*) shall be in such form and manner and shall be accompanied by such fees and security deposit as may be prescribed.

(*4*) The form in which and the terms and conditions subject to which a certificate of registration as an accreditation agency may be issued under this section shall be such as may be prescribed.

CHAPTER III

WAREHOUSEMEN

Liabilities of warehousemen

6. (*1*) A warehouseman is liable for loss of, or injury to, goods caused by his failure to exercise such care and diligence in regard to the goods as a careful and vigilant owner of the goods of the same bulk, quality and value would exercise in the custody of them in similar conditions.

(*2*) In case the goods are damaged or lost in spite of taking all care and precautions by the warehouseman due to unavoidable circumstances, the compensation equal to the value of goods at the time of deposit of the goods shall be payable by the warehouseman.

(*3*) In case the goods are damaged or lost due to the negligence of the warehouseman, then, the compensation shall be equal to value of goods plus the loss of profit to the holder of the receipt.

(*4*) The warehouseman shall not be responsible for any loss, destruction, damage or deterioration of the goods delivered to him for storage attributable to circumstances such as *force majeure*, act of war, act of public enemies and the like.

Duties of warehousemen

7. (*1*) In the absence of a lawful excuse, a warehouseman shall deliver the goods referred to in a negotiable or non-negotiable receipt, to the holder of the receipt on demand made by the holder and on the holder fulfilling all the following conditions, namely:–

(*a*) satisfying the warehouse lien;

(*b*) surrendering the receipt in case of non-negotiable receipt and surrendering the receipt with endorsements in case of negotiable receipt; and

(*c*) acknowledging in writing the delivery of the goods.

(*2*) If a warehouseman refuses or fails to deliver the goods in compliance with the provisions of this section, the burden of proof shall lie on the warehouseman to establish the existence of a lawful excuse for the refusal or failure.

Duties of warehouseman to keep records and accounts of warehouse business

8. (*1*) Every warehouseman shall keep in a place of safety a complete and accurate set of records and accounts of all transactions pertaining to the operation of a warehouse including records and accounts of all goods received in the warehouse and withdrawn therefrom, of all unissued receipts in his possession, of all receipts issued, returned to, or cancelled, by him.

(*2*) Subject to the provisions of sub-section (*1*), the warehouseman shall keep all the records and accounts of the warehouse business in numerical sequence separate and distinct from the records and accounts of any other business in such form and in such manner and for such period as the Authority may, by regulations, specify.

(*3*) The warehouseman shall make available to the Authority for inspection the records and accounts of the warehouse business at any time as may be desired by the Authority.

Special powers of warehouseman to deal with perishable and hazardous goods

9. (*1*) If the goods are of a perishable or hazardous nature, or their keeping shall deteriorate greatly in value or damage other property, the warehouseman may give notice that is reasonable and possible under the circumstances to the holder of the receipt for the goods, if the name and address of the holder is known to the warehouseman or if not known to the warehouseman, then, to the depositor, requiring that person to satisfy the lien on the goods and to remove them from the warehouse.

(*2*) If the person to whom a notice under sub-section (*1*) is given fails to satisfy the lien and remove the goods within the time specified in the notice, the warehouseman may sell the goods at public or private sale without advertising.

(*3*) The notice referred to in sub-section (*1*) may be given by sending it by electronic mail, speed post or registered post addressed to the person to whom it is to be given at the last known address of the person and the notice is deemed to be given on the third day of the mailing.

(*4*) If the warehouseman after a reasonable effort is unable to sell the goods, the warehouseman may dispose of them such other manner as he deems proper and shall incur no liability for that reason.

(*5*) From the proceeds of any sale or disposal of goods made under this section, the warehouseman shall, after satisfying his lien, hold the balance in trust for the holder of the receipt.

(*6*) No notice shall be necessary if the warehouseman is satisfied on reasonable grounds that in the circumstances of the case giving such notices is likely to cause further prejudice to the goods.

(*7*) If, at any time, the warehouseman is satisfied that the quality of any fungible goods or any part thereof has so deteriorated or is so deteriorating that it is necessary to do so, to protect the holders of negotiable warehouse receipts from loss and time is not sufficient for him to seek their instructions, he may, subject to the regulations in this behalf, dispose off the goods or any part thereof and keep the sale proceeds after satisfying his lien in an escrow account for the benefit of the holders of receipts.

(*8*) In case of disposal of fungible goods under sub-section (*7*), the warehouseman shall, at the choice of the holder of the receipt, either pay the sale proceeds or deliver equivalent goods of the same grade, quality and quantity to him.

Lien of warehouseman on goods

10. (*1*) Every warehouseman has a lien on goods deposited with him for storage, whether deposited by the owner of the goods or by his authority, or by any person entrusted with the possession of the goods by the owner or by his agent.

(*2*) The lien of the warehouseman is for the amount of the storage and maintenance charges including –

(*a*) all lawful charges for storage and preservation of the goods;

(*b*) all reasonable charges for–

(*i*) any notice required to be given under the provisions of this Act;

(*ii*) notice and advertisement of sale;

(*iii*) sale of goods where default is made in satisfying the lien of the warehouseman; and

(*iv*) compliance of statutory provisions.

(*3*) In case of any endorsement on the face of a negotiable warehouse receipt, by a bank or the warehouseman, such endorsement shall be evidence of a pledge and the pledgee shall have priority over the interest of the holder of the receipt.

(*4*) In case of any pledge referred to in sub-section (*3*), the warehouseman shall not deliver the goods unless the endorsement of the pledge has been duly got cancelled.

(*5*) If the goods on which a lien exists were not deposited by the owner or by his authority but by a person entrusted by the owner or his authority with the possession of the goods, the warehouseman shall, within two months after the date of deposit, give notice of the lien to the owner of the goods on which a lien exists or to the person owning the right of property of the goods.

(*6*) The notice under sub-section (5) shall be in writing and contain all the details about the goods, the location of warehouses, date of deposit, name of depositor and a statement of lien claimed by the warehouseman for the goods stored in the warehouse.

(*7*) If a warehouseman fails to issue the notice required by sub-section (*5*), his lien, as against the person to whom he has failed to issue notice shall become void from the expiration of a period of two months from the date of deposit of the goods.

(*8*) In case the goods are not taken back within the declared period of storage, the warehouseman shall have the right to recover his charges, selling the goods by public auction, or in any other manner provided in this section any goods upon which he has a lien.

(*9*) The warehouseman shall give a notice in writing of his intention to sell the goods to the person liable as debtor for the charges for which the lien exists or to the owner or person owning the right of property of the goods.

(*10*) The notice under sub-section (7) shall

(*a*) contain all the details about the goods, the location of warehouse, date of deposit, the name of depositor and a statement of lien claimed by the warehouseman for the goods stored in the warehouse; and

(*b*) state that unless the charges are paid within the stipulated time mentioned in the notice, the goods shall be advertised for sale and sold by public auction at a time and place as specified in the notice.

(*11*) If the charges are not paid on or before the day mentioned in the notice, then, unless any other mode of sale is specified by the Authority, by regulations an advertisement of the sale shall be published in a leading newspaper having circulation in the locality where the sale is to be held and the sale shall be held not less than fourteen days from the date of first publication of the advertisement.

(*12*) The warehouseman shall, from the proceeds of the sale, satisfy his lien and shall pay over the surplus, if any, to the person entitled thereto.

(*13*) If the surplus is not demanded by the person entitled thereto within ten days after the sale of goods or if there are different claims, the warehouseman shall seek instructions from the Authority and act as per the orders of the Authority.

CHAPTER IV

WAREHOUSE RECEIPTS

Warehouse receipts.

11. (*1*) A warehouse receipt, which may be either in writing or in electronic form, shall be a document of title to goods in writing if it contains all the following particulars, namely:–

(*a*) receipt number;

(*b*) warehouse registration number and date up to which it is valid;

(*c*) name of the warehouse and its complete postal address;

(*d*) name and address of the person by whom or on whose behalf the goods are deposited;

(*e*) date of issue of the warehouse receipt;

(*f*) statement that the goods received shall be delivered to the holder thereof, or that the goods shall be delivered to the order of a named person;

(*g*) rates of storage charges and handling charges;

(*h*) description of the goods or of the packages containing them with particulars of quantity and quality or grade;

(*i*) market value of the goods at the time of deposit;

(*j*) private marks of depositor on the goods or packages, if any, except in the case of fungible goods;

(*k*) name of the insurance company indemnifying for fire, flood, theft, burglary, misappropriation, riots, strikes or terrorism;

(*l*) whether the warehouse receipt is negotiable or non-negotiable;

(*m*) statement of the amount of any advance made and of any liability incurred for which the warehouseman claims his lien;

(*n*) date and signature of the warehouseman or his authorised agent; and

(*o*) declared shelf-life of goods.

(*2*) In case a warehouseman wilfully omits from a negotiable warehouse receipt any of the particulars set out in sub-section (*1*), he shall be liable for damages caused by such omission.

(*3*) No warehouse receipt shall, by reason of the omission only of any of the particulars set, forth in sub-section (*1*), be deemed to be invalid for the purpose of settlement of disputes or claims.

Negotiability of warehouse receipts

12. (*1*) The words in a negotiable warehouse receipt limiting its negotiability shall be void.

(*2*) A warehouseman who issues a non-negotiable warehouse receipt shall cause to be plainly marked upon its face the words "non-negotiable" or "not negotiable" in English or in the language in which it is issued.

(*3*) In case of non-compliance of sub-section (*2*), a holder of the warehouse receipt who purchases it for valuable consideration believing it to be a negotiable warehouse receipt may, at his option, treat the receipt as vesting in him all rights attaching to a negotiable warehouse receipt and imposing upon the warehouseman the same liabilities which he would have incurred had the receipt been a negotiable warehouse receipt and the warehouseman shall be liable accordingly.

(*4*) A negotiable warehouse receipt shall be valid for delivery till the date of expiry of the declared shelf-life of the goods for which it is issued.

Negotiation of warehouse receipt by delivery.

13. A negotiable warehouse receipt may be negotiated by its delivery if, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the order of a named person, and that person or a subsequent endorsee has endorsed it.

Transfer of negotiable warehouse receipts without endorsement

14. Where a negotiable receipt is transferred for valuable consideration by delivery, and the endorsement of the transferor is essential for negotiation, the transferee acquires a right against the transferor to compel him to endorse the receipt, unless a contrary intention appears, and the negotiation takes effect as of the time when endorsement is made.

Warrantees on negotiation of warehouse receipt

15. A person who, for valuable consideration, negotiates a negotiable warehouse receipt by endorsement and delivery, including one who assigns for valuable consideration, a claim secured by a receipt, unless a contrary intention appears, warrants the following: –

(*a*) that the receipt is genuine;

(*b*) that the person has a legal right to negotiate or transfer it;

(*c*) that the person has no knowledge of any fact that would impair the validity of the receipt;

(*d*) that the person has a right to transfer the title to the goods; and

(*e*) that the goods are merchantable or fit for a particular purpose when those warranties would have been implied, if the contract of the parties had been to transfer without a receipt the goods represented by it.

Endorser not a guaranteer

16. The endorsement of a receipt does not make the endorser liable for any failure on the part of the warehouseman or previous endorsers of the receipt to fulfil their respective obligations.

Negotiation of warehouse receipt not impaired by fraud, mistake or duress

17. The validity of the negotiation of a receipt is not impaired by the fact that–

(*a*) the negotiation was a breach of duty on the part of the person making the negotiation; or

(*b*) the owner of the receipt was induced by fraud, mistake or duress to entrust the possession or custody of the receipt to that person, if the person to whom the receipt was negotiated or a person to whom the receipt was subsequently negotiated, paid value for it without knowing of the breach of duty, fraud, mistake or duress.

Subsequent negotiation of warehouse receipts

18. If a person having sold, mortgaged or pledged goods that are in the custody of a warehouseman and for which a negotiable receipt has been issued, continues in possession of the negotiable receipt, the subsequent negotiation of it by that person under any sale or other disposition of the goods to any person receiving the receipt in good faith, for valuable consideration and without notice of the previous sale, mortgage or pledge, has the same effect as if a previous purchaser, mortgagee or pledgee of the goods, as the case may be, had expressly authorised the subsequent negotiation.

Stoppage of delivery of goods in certain cases

19. When a negotiable warehouse receipt has been issued in respect of any goods, no lien or right of stoppage of the seller in transit shall defeat the rights of a purchaser for value in good faith to whom the receipt has been negotiated, whether the negotiation is before or after notifying to the warehouseman who issued the receipt of the claim of the seller to a lien or right of stoppage in transit, and the warehouseman shall not deliver the goods to an unpaid seller unless the receipt is first surrendered for cancellation.

Transfer of non-negotiable receipts

20. (*1*) A non-negotiable warehouse receipt may be transferred by the holder by delivery to a purchaser or donee of the goods in writing executed by the holder.

(*2*) A peson to whom the goods covered by a non-negotiable warehouse receipt is transferred acquires –

(*a*) the title of the transferor to the goods; and

(*b*) the right to deposit with the warehouseman the receipt or duplicate thereof or to give notice in writing to the warehouseman of the transfer.

(*3*) The transferee shall acquire the benefit of the obligation of the warehouseman to hold goods in storage for him according to the terms of the receipt upon deposit of the transfer of the goods and on giving notice in writing of the transfer and upon the warehouseman having a reasonable opportunity of verifying the transfer.

Conclusiveness of negotiable warehouse receipt.

21. In the hands of a holder who has purchased a negotiable warehouse receipt for valuable consideration, it shall be conclusive evidence of the goods described in it as against the warehouseman or any person claiming through him

Presumption in certain cases

22. In a dispute between an endorser of a negotiable warehouse receipt and his endorsee unless it is proved otherwise, it shall be presumed that –

(*a*) the endorsement has been made voluntarily;

(*b*) the endorsement has been made for full consideration;

(*c*) the endorser had full legal title in the goods represented by the receipt, and

(*d*) the endorsement has extinguished all the rights, title and interest of the endorser in the goods.

Issue of duplicate receipt

23. (*1*) No warehouseman shall issue a warehouse receipt without actually receiving the goods of the quantity, quality or grade and other particulars as may be mentioned in the receipt.

(*2*) No warehouseman shall issue more than one receipt for the same goods deposited by any person:

Provided that in case of a loss or destruction, a duplicate receipt may be issued in such manner as may be specified by the Authority by regulations.

(*3*) If a warehouseman fails to comply with the provisions of sub-section (*2*), he would be liable for all such damages caused by the failure to any person who has transacted on such

receipt for valuable consideration, believing it to be an original, even though the transaction is after the delivery of the goods by the warehouseman to the holder of the original receipt.

(*4*) A receipt on the face of which the word "duplicate" is plainly marked is a representation and warranty by the warehouseman that it is an accurate copy of a receipt properly issued and uncancelled on the date of issue of the duplicate warehouse receipt.

CHAPTER V

THE WAREHOUSING DEVELOPMENT AND REGULATORY AUTHORITY

Establishment and incorporation of Authority.

24. (*1*) With effect from such date as the Central Government may, by notification, specify in this behalf, there shall be constituted an authority to be called the Warehousing Development and Regulatory Authority to exercise the powers conferred on, and to perform the functions assigned to it by or under this Act.

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

(*3*) The head office of the Authority shall be at New Delhi and the Authority may, with the previous approval of the Central Government, establish offices at other places in India.

Composition of Authority.

25. The Authority shall consist of –

(*a*) a Chairperson; and

(*b*) not more than two other members,

to be appointed by the Central Government from amongst persons of ability, integrity and standing who have wide knowledge and experience in inventory management, insurance, preservation, quality control, banking, finance, economics, law or administration.

Tenure of office of Chairperson and other members.

26. (*1*) The Chairperson and every other member shall hold office for a term not exceeding five years from the date on which he enters upon his office and shall be eligible for re-appointment:

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

(*2*) Notwithstanding anything contained in sub-section (*1*), a member may–

(*a*) relinquish his office by giving in writing to the Central Government notice of not less than three months; or

(*b*) be removed from his office in accordance with the provisions of section 27.

Removal from office.

27. (*1*) The Central Government may remove from office any member who–

(*a*) is, or at any time has been, adjudged as an 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 so abused his position as to render his continuation in office detrimental to the public interest.

(*2*) No such 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 allowances and other terms and conditions of Chairperson and other members

28. Subject to the rules as may be made in this behalf, the salaries and allowances payable to, and other terms and conditions of service of–

(*a*) the Chairperson shall be the same as that of a Secretary to the Government of India;

(*b*) the other members of the Authority shall be the same as that of Joint Secretaries to the Government of India.

Bar on future employment of members

29. The Chairperson and the other 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 any employment in any concern in the warehousing sector.

Chairperson to be the chief executive of Authority

30. The Chairperson shall be the chief executive of the Authority.

Meetings of Authority

31. (*1*) The Authority shall meet at such times and places and shall observe such rules of procedure in regard to transaction of business at its meetings (including the quorum at such meetings) as may be determined 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 the person presiding shall have a second or casting vote.

Vacancies, etc not to invalidate proceedings of Authority

32. No act or proceeding of the Authority shall be invalid merely by reason of–

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

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

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

Officers and employees of Authority

33. (*1*) **The Authority may appoint officers and such other employees as it considers necessary for the efficient discharge of its function under this Act.**

(*2*) **The terms and conditions of service of officers and other employees of the Authority appointed under sub-section (*1*) shall be governed by regulations made under this Act.**

Committees

34. (*1*) The Authority may, by notification, constitute a Committee to be known as the

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

(*c*) all sums realised by way of penalties under this Act.

(*2*) The fund shall be applied for meeting–

(*a*) the salaries, allowances and other remuneration of the members, officers and other employees of the Authority;

(*b*) the other expenses of the Authority in connection with the discharge of its functions and for the purposes of this Act.

Accounts and audit.

38. (*1*) The Authority shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form and manner 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 of account, 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.

Furnishing of returns, Annual Report, etc., to Central Government.

39. (*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 warehousing 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 an Annual Report giving a true and full account of its activities including the activities for promotion and development of the warehousing business 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.

CHAPTER VIII

POWERS OF CENTRAL GOVERNMENT

Powers of Central Government to issue directions.

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

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

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

Power of Central Government to supersede Authority

41. (*1*) If, at any time, the Central Government is of the opinion--

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

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

(*c*) that 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 and nominate a person to look after the functions of the Authority:

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 representation, 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, be deemed to have vacated their offices;

(*b*) all the powers, functions and duties which may, by or under the provisions of this Act, be exercised or discharged by or on behalf of the Authority shall, until the Authority is reconstituted under sub-section (*3*), be exercised and discharged by the person nominated by the Central Government under clause (*c*) of sub-section (*1*);

(*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 by a fresh appointment of its Chairperson and other members and in such case any person who had vacated his office under clause (*a*) of sub-section (*2*) shall not be deemed to be disqualified for reappointment.

(*4*) The Central Government shall cause a copy of the notification issued under sub-section (*1*) and a full report of any action to be laid before each House of Parliament at the earliest.

(*5*) Notwithstanding anything contained in any law or in any contract, or memorandum or articles of association, on the removal of a person, from office under this section, that person shall not be entitled to claim any compensation for the loss or termination of office.

CHAPTER IX

APPEALS

Appeals to Appellate Authority

42. (*1*) Any person aggrieved by an order of the Authority made under this Act, or any rules or the regulations made thereunder may prefer an appeal to such person or authority appointed by the Central Government (hereafter referred to as the Appellate Authority) within sixty days from the date of such order:

Provided that an appeal may be admitted after the expiry of the said period of sixty days but not beyond a total period of ninety days if the appellant satisfies the Appellate Authority that he had sufficient cause for not preferring the appeal within the said period.

(*2*) Every appeal made under this section shall be made in such form and manner and shall be accompanied by a copy of the order appeal against and by such fees as may be prescribed.

(*3*) The procedure for disposing of an appeal shall be such as may be prescribed:

Provided that before disposing of an appeal, the appellant shall be given a reasonable opportunity of being heard.

(*4*) An appeal filed before the Appellate Authority shall be heard and disposed of as expeditiously as possible and endeavour shall be made to finally dispose of the appeal within a period of ninety days from the date of its filing.

CHAPTER X

OFFENCES AND PENALTIES

Offences and penalties

43. (*1*) Any warehouseman knowingly issuing a warehouse receipt without taking the actual physical delivery of the goods in his warehouse or a warehouseman or an agent or servant of the warehouseman who issues a warehouse receipt without reasonably satisfying himself that the goods for which such warehouse receipt is issued have actually been received or the number, weight or grade of the goods corresponds to the number, weight or grade specified in the warehouse receipt or the goods are under his actual control at the time of issuing such warehouse receipt, commits an offence and shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to four times the value of the goods or with both.

(*2*) A warehouseman or an agent or servant of the warehouseman, who knowingly issues a duplicate warehouse receipt without substantially following the procedure for the issue of a duplicate warehouse receipt, commits an offence and shall be punishable for such offence with imprisonment for a term which may extend to three years, or with fine which may extend to one lakh rupees, or with both.

(*3*) A warehouseman or an agent or servant of the warehouseman, who, knowingly that the warehouse receipt in respect of such goods is outstanding and is uncancelled, delivers the goods without obtaining possession of such warehouse receipt at or before the time of such delivery and thereby causes unlawful loss or gain to any person, commits an offence and shall be punishable for such an offence by imprisonment for a term which may extend to three years or with fine which may extend to one lakh rupees, or with both.

(*4*) A warehouseman who fails, on surrender of a negotiable warehouse receipt by the depositer or endorsee and payment of all his lawful charges and cancellation of encumbrances endorsed on the receipt, within the declared shelf-life of the goods, as mentioned therein to deliver the goods represented by the receipt commits an offence and shall be punishable for such offence with imprisonment for a term which may extend to three years or with fine which may extend to three times the value of the goods or with both.

(*5*) Any depositor, who declared as the value of the goods delivered by him for storage with a warehouseman an amount which he does not have reason to believe to be the proper value, commits an offence and shall be punishable for such an offence by imprisonment for a term which may extend to three years or with fine which may extend to one lakh rupees, or with both.

Offences by companies.

44. (*1*) Where an offence under this Chapter is committed by a company, every person, who at the time the offence was committed, was in charge of the company or was responsible for making the deposit, as the case may be, 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 punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.

(*2*) Notwithstanding anything contained in sub-section (*1*), where any offence under this Chapter has been committed by a company and it is proved that such an offence has been committed with the consent or connivance 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.

Cognizance of offences by courts.

45. (*1*) No court shall take cognizance of any offence punishable under this Act, save on a complaint made by the Authority or by any officer authorised in writing in this behalf by the authority.

(*2*) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

CHAPTER XI

MISCELLANEOUS

Chairperson, members, officers and other employees of Authority to be public servants.

46. The Chairperson, members, officers and other employees of Authority shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of section 21 of the Indian Penal Code. 45 of 1860

Protection of action taken in good faith.

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

Provided that nothing in this Act shall exempt any person any suit or other proceedings which might, apart from this Act, be brought against him.

Delegation of powers

48. The Authority may, by general or special order in writing, delegate to the Chairperson or any other member or officer of the Authority subject to such conditions, if any, as may be specified in the order, such of its powers and functions (excluding the power to make regulations under section 51) under this Act as it may deem necessary.

Exemption from tax on wealth and income

49. Notwithstanding anything contained in the Wealth Tax Act, 1957, the Income-tax Act, 1961 or 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 their wealth, income, profits or gains derived. 27 of 1957. 43 of 1961.

Power of Central Government to make rules.

50. (*1*) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

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

(*a*) the form and manner in which an application for obtaining a certificate of registration for commencing or carrying on the business of warehousing issuing negotiable warehouse receipts may be made and the fees which shall accompany such application under sub-section (*2*) of section 4;

(*b*) the form in which a certificate for registration of warehouses may be issued under sub-section (*3*) of section 4;

(c) The financial, managerial and other eligibility criteria and competence which an applicant for registration of warehouses shall satisfy under sub-section (*4*) of section 4;

(*d*) The qualification and other requirements which a person applying for functioning as an accreditation agency shall fulfil under sub-section (*2*) of section 5;

(*e*) the form and manner in which an application for registration as an accreditation agency may be made and the fees which shall accompany such application under sub-section (*3*) of section 5;

(*f*) the form of certificate of registration of accreditation agency under sub-section (*4*) of section 5,

(*g*) the salary and allowances payable to, and the other terms and conditions of service of the Chairperson and other members under section 28;

(*h*) such other powers that may be exercised by the Authority under clause (*n*) of sub-section (*2*) of section 35;

(*i*) the form and manner of maintenance of annual statement of accounts to be maintained by the Authority under sub-section (*1*) of section 38;

(*j*) the form and manner in which and the time within which returns and statements and particulars are to be furnished by the Authority to the Central Government under sub-section (*1*) of section 39;

(*k*) the form and the manner in which an appeal may be made to the Appellate Authority and the fee which shall accompany such appeal under sub-section (*2*) of section 42;

(*l*) the procedure to be followed by the Appellate Authority in disposing of an appeal under sub-section (*3*) of section 42;

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

Power of Authority to make regulations

51. (*1*) The Authority may, with the previous approval of the Central Government, and in consultation with the Warehousing Advisory Committee, by notification, make regulations consistent with this Act and the rules made thereunder to carry out the provisions of this Act.

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

(*a*) the matters regulating the authorities of accreditation agencies under sub-section (*2*) of section 3;

(*b*) the form and manner and the period for which a warehouseman shall keep the records and accounts of the warehousing business under sub-section (*2*) of section 8;

(*c*) the manner of disposal of goods or any part thereof and the keeping of sale proceeds in an escrow account by the warehouseman under sub-section (*7*) of section 9;

(*d*) the mode of sale under sub-section (*11*) of section 10;

(*e*) the manner of issuance of duplicate warehouse receipt under the proviso to sub-section (*2*) of section 23;

(*f*) the time and places of meetings of the Authority and the procedure to be followed at such meetings including the quorum necessary for the transaction of business under sub-section (*1*) of section 31;

(*g*) the terms and conditions of service of officers and other employees of the Authority under sub-section (*2*) of section 33;

(*h*) the registration and functioning of accreditation agencies, renewal, modification, withdrawal, suspension or cancellation of such registration and the code of conduct for officials of accreditation agencies for accreditation the warehouses under clause (*b*) of sub-section (*2*) of section 35;

(*i*) the standards for approval of certifying agencies for grading of goods under clause (*f*) of sub-section (*2*) of section 35;

(*j*) the rate of fees and other charges to be levied for carrying out the provisions of this Act under clause (*h*) of sub-section (*2*) of section 35;

(*k*) 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.

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

Act to have overriding effect

53. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for time being in force or in any instrument having effect by virtue of any law other than this Act.

Power to remove difficulties

54. (*1*) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as appear to it to be necessary for removing the difficulty:

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

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

Amendment of Act 2 of 1899

55. After section 8A of the Stamp Act, 1899, the following section shall be inserted, namely:–

Negotiable warehouse receipts not liable to stamp duty.

"8B. Notwithstanding anything contained in this Act, negotiable warehouse receipts shall not be liable to stamp duty.".

STATEMENT OF OBJECTS AND REASONS

At present, the warehousing receipts issued by the warehouses in the country do not enjoy the fiduciary trust of depositors and banks as there is a fear that it is not possible to recover the loans in case of fraud, mis-management, etc., by the warehousemen or insolvency of the depositor. The available legal remedies are also time consuming and inadequate. Further, the format of warehouse receipts issued by the various warehouses in the country is not uniform. Hence, there are considerable impediments in the negotiability of warehouse receipts creating difficulties to the farmers and other depositors of goods. Having regard to the above, it is proposed to establish a negotiable warehouse receipt system for all commodities including agricultural commodities. On the one hand, it will make warehouse receipts a prime tool of trade and facilitate finance against it throughout the country, on the other, it will allow banks to improve the quality of their lending portfolio and enhance their interest in lending in respect of goods deposited in warehouses. It is, therefore, proposed to lay down the requirements for warehouse receipts to become valid negotiable instruments.

2. It is expected that the system of negotiable warehouse receipts would result in providing considerable benefits, both at the macro as well as micro levels and increase the liquidity in the rural areas, encourage scientific warehousing of goods, lower cost of financing, improve supply chains, enhance rewards for grading and quality and better price risk management. This would, in turn, result in higher returns to farmers and better services to consumers. It is also proposed to provide necessary administrative mechanism and legislative backup for regulating and streamlining the warehousing sector issuing negotiable warehouse receipts.

3. The proposed legislation, *inter alia*, seeks to provide for–

(*i*) the regulation of warehousing business by registering warehouses issuing negotiable warehouse receipts;

(*ii*) the registration of accreditation agencies for warehouses which would issue accreditation certificates to the warehouses following certain required norms;

(*iii*) the liabilities, duties and lien of warehousemen;

(*iv*) the contents of negotiable warehouse receipts;

(*v*) the conditions for negotiability of warehouse receipts by delivery and endorsement;

(*v*) the transfer of negotiable warehouse receipts without endorsement and warranties on sale of warehouse receipts;

(*vi*) the issue of duplicate receipts in case of loss or destruction;

(*vii*) the establishment and incorporation of an Authority to be called the Warehousing Development and Regulatory Authority to regulate and ensure implementation of the provisions of the proposed legislation and to promote orderly growth of the warehouse business in the country;

(*viii*) the empowerment of the Central Government to issue directions on questions of policy to the Authority and to supersede the Authority in certain circumstances;

(*ix*) the appeal to the appellate authority; and

(*x*) defining the offences and penalties in respect of such offences.

4. The Notes on clauses explain in detail the various provisions contained in the Bill.

5. The Bill seeks to achieve the above objects.

NEW DELHI;
The 26th November, 2005.

SHARAD PAWAR.

Notes on Clauses

Clause 1.–This clause provides for the short title of the Bill, the area of its operation and its commencement The proposed legislation shall not be applicable to the State of Jammu and Kashmir. As certain preparatory steps are required to be taken before the proposed legislation is brought into force, it is proposed to empower the Central Government to bring it into force from a date to be appointed by it.

Clause 2.–This clause contains definitions of certain words and expressions used in the Bill. The definitions of "accreditation agency", "actionable claim", "authority", "endorsement", "goods", "grade", "negotiable warehouse receipt", "warehouse" and "warehousing business" are some of them. The expression "accreditation agency" is defined to mean an agency, whatever be its constitution, registered with the Authority under proposed section 5. It would certify and issue accreditation certificates to warehouses based on certain norms. The words "actionable claim" shall have the meaning assigned to it in section 3 of the Transfer of Property Act, 1882. The word "Authority" means the Warehousing Development and Regulatory Authority established under proposed sub-section (1) of section 24 "Endorsement" means signing on the warehouse receipt by the depositor or holder of the warehouse receipt for the purpose of its negotiation. The expression "negotiable warehouse receipt" is defined to mean a warehouse receipt under which the goods represented therein are deliverable to the depositor or order, the endorsement of which has the effect of transfer of goods represented thereby and the endorsee for which takes a good title.

Clause 3.–This clause provides for compulsory registration of those warehouses which would issue negotiable warehouse receipts. They would be required to obtain a registration certificate from the Warehousing Development and Regulatory Authority. However, a warehouseman issuing negotiable warehouse receipts immediately before the commencement of the proposed legislation shall be allowed to carry on such business if he has made an application for registration within thirty days from the date of such commencement. The warehouses registered under the proposed legislation would be eligible for issuing non-negotiable warehouse receipts. Sub-clause (2) provides that the Authority would authorise the registered accreditation agencies to issue accreditation certificates to the warehouses based on specified norms so as to enable the Authority to quickly issue registration certificates.

Clause 4.–This clause lays down the procedure for registration with the Authority of the warehouses issuing negotiable warehouse receipts. Sub-clause (1) requires that any person desirous of commencing or carrying on the business of warehousing issuing negotiable warehouse receipts should make an application to the Authority for registration of the warehouse or warehouses. Sub-clause (2) provides for rules being made for determining the manner in which the application shall be made and the fee required to be paid in respect of such application. Sub-clause (3) authorises the Authority to conduct necessary inquiry and subject to such terms and conditions as it thinks fit to grant of a certificate of registration bearing registration number. Sub-clause (4) provides that the Authority may refuse a certificate of registration in case it feels that the warehouse has not adequate facilities and safeguards required to store the goods of the nature specified in the application and the applicant does not meet the financial, managerial and other eligibility criteria and competence.

Clause 5.–Sub-clause (1) of this clause authorises the Warehousing Development and Regulatory Authority to determine from time to time the number of accreditation agencies required for issuing certificate of accreditation to the warehouses issuing negotiable warehouse receipts. Sub-clause (2) provides that any person fulfilling the requirement and qualifications laid down by rules as accreditation agencies may apply to the Authority seeking their registration as accreditation agencies. Sub-clause (3) empowers the Central Government to lay down by rules the form and manner and the fees and security deposit to be paid for applying to become accreditation agencies.

Clause 6.–Sub-clause (1) of this clause defines the liabilities of warehouseman in case of loss of, or injury to, goods caused by his failure to exercise such care and diligence in regard to the goods as a careful and vigilant owner of the goods should take in similar conditions. Sub-clause (2) specifies the compensation to be provided to the depositor in case the goods are damaged or lost in spite of taking all the care and precaution by the warehouseman due to unavoidable circumstances. The compensation shall be equal to value of goods at the time of its deposit. Sub-clause (3) specifies the compensation in case the goods are damaged or lost due to negligence of warehouseman. In that case the compensation shall be equal to value of goods plus the loss of profit to the holder of the receipt.

Clause 7.–Sub-clause (1) of this clause defines the duties of warehousemen and lays down that in the absence of a lawful excuse, a warehouseman should deliver the goods referred to in a negotiable warehouse receipt to the holder of the receipt on demand made by the holder and on the holder fulfilling all the conditions *viz.* satisfying the warehouse lien; surrendering the receipt in case of non-negotiable receipt and surrendering the receipt with endorsements in case of negotiable receipt and acknowledging in writing the delivery of the goods. Sub-clause (2) provides that in case a warehouseman refuses or fails to deliver the goods in compliance with the provisions of this clause, the burden of proof shall lie on the warehouseman to establish the existence of a lawful excuse for the refusal or failure.

Clause 8.–Sub-clause (1) of this clause provides that every warehouseman shall maintain in a safe place the complete and accurate accounts and records of all transactions pertaining to the operation of a warehouse including records and accounts of all goods received in the warehouse and withdrawn therefrom and of all unissued receipts in his possession as well as of all receipts issued, returned to, or cancelled, by him. Sub-clause (2) provides that such records and accounts of the warehouse business would be kept in numerical sequence separate and distinct from the records and accounts of any other business. Sub-clause (3) provides that the warehouseman shall make available all such records and accounts of warehouse business for the inspection of the Authority.

Clause 9.–Sub-clause (1) of this clause contains certain special powers of the warehouseman to deal with perishable and hazardous goods. Sub-clause (2) provides that if a person to whom the notice has been issued fails to satisfy the lien and remove the goods within the specified time, the warehouseman may sell the goods at public or private sale without advertising. Sub-clauses (3) and (4) lays down the procedure for issuing notice to the person to whom it is to be given. The notice is to be given at the last known address of the holder of the receipt of the goods and in case the warehouseman after making reasonable effort is unable to sell the goods, the warehouseman may dispose of them in any other manner as he may deem fit and incur no liability for that reason. Sub-clauses (7) and (8) lay down the steps required to be taken by the warehouseman in case the quality of fungible goods is deteriorating. In case of disposal of fungible goods, the warehouseman should, at the choice of the holder of the receipt, either pay the sale proceeds or deliver equivalent goods of the same grade, quality and quantity to him.

Clause 10.–Sub-clause (1) of this clause specifies the lien of warehouseman on goods deposited with him for storage, whether deposited by the owner of the goods or by his authority, or by any person entrusted with the possession of the goods by the owner or by his agent. Sub-clause (2) clarifies that the lien of the warehouseman is for the amount of storage and maintenance charges including all lawful charges for storage and preservation of goods, for all reasonable charges for notice and advertisements for sale of goods, etc. Sub-clauses (3) and (4) provide that in case of any endorsement on the face of a negotiable warehouse receipt, by a bank or warehouseman, such endorsement shall be the evidence of a pledge and the pledgee shall have priority over the interest of the holder of the receipt and the warehouseman shall not deliver the goods unless the endorsement of the pledge has been duly got cancelled. Sub-clauses (5) and (6) provide that if the goods on which a lien exists were not deposited by the owner or by his authority but by a person entrusted by the owner or his authority with the possession of the goods, the warehouseman shall issue a notice of

lien to the owner of the goods on which lien exists or to the person owning the right of property of goods within two months after the date of deposit and the notice shall be in writing and contain all details about the goods and warehouses, etc. Sub-clauses (7) and (8) provide that if a warehouseman fails to issue the notice required under sub-clause (5), his lien shall become void from the expiration of a period of two months from the date of deposit of goods. Sub-clauses (9) and (10) lay down the procedure for issuing notice in writing and shall contain all details about the goods, warehouse, name of depositor and details of lien and a stipulation that if the charges are not paid within the specified time mentioned in the notice, the goods shall be advertised and sold by public auction at a time and place specified in the notice. Sub-clauses (11) and (12) lay down the procedure for issuing an advertisement for sale of goods in case the charges are not paid on or before the date mentioned in the notice and from the proceeds of the sale, the warehouseman shall satisfy his lien and shall pay over the surplus, if any, to the person entitled thereto. Sub-clause (13) states that if the surplus is not demanded by the person entitled thereto within ten days after the sale of goods, the warehouseman shall seek instructions from the Authority and act as per the orders of the Authority.

Clause 11.–This clause enumerates the various particulars of a warehouse receipt such as receipt number, registration number, date of validity, name and address of warehouse, date of issue of receipt, description of goods, market value, whether negotiable or non-negotiable and signature of warehouseman, etc.

Clause 12.–This clause provides that any word in a negotiable warehouse receipt limiting its negotiability shall be void and a warehouseman shall mark upon its face the words "non-negotiable" or "not negotiable" in English or in the language in which it is issued. It also provides that in case of non-compliance of sub-clause (2), a holder of the warehouse receipt purchasing it for valuable consideration and believing it to be a negotiable warehouse receipt may, at his option, treat the receipt as vesting in him all rights attaching to a negotiable warehouse receipt and imposing same liabilities on the warehouseman which he would have incurred had the receipt been a negotiable warehouse receipt. The negotiable warehouse receipt in respect of any goods shall be valid till its declared shelf life.

Clause 13.–This clause lays down the mode of negotiability of negotiable warehouse receipts. It may be negotiated by its delivery if, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the order of a named person, and that person or a subsequent endorsee has endorsed it.

Clause 14.–This clause deals with the transfer of negotiable receipts without endorsement. Where a negotiable warehouse receipt is transferred for valuable consideration by delivery and the endorsement of the transferor is essential for negotiation, the transferee acquires a right against the transferor to compel him to endorse the receipt, unless a contrary intention appears, and the negotiation takes effect as of the time when the endorsement is made.

Clause 15.–This clause provides that a person who, for valuable consideration, negotiates a receipt by endorsement or delivery, including one who assigns for valuable consideration, a claim secured by a receipt, unless a contrary intention appears, warrants that the receipt is genuine, the person has a legal right to negotiate or transfer it, has no knowledge of any fact that would impair the validity of the receipt, has a right to transfer the title to the goods and that the goods are merchantable or fit for a particular purpose.

Clause 16.–This clause provides that the endorsement of a receipt does not make the endorser liable for any failure on the part of the warehouseman or previous endorsers of the receipt to fulfil their respective obligations.

Clause 17.–This clause stipulates that the validity of negotiation of a warehouse receipt is not impaired by the fact that the negotiation was a breach of duty on the part of the person making the negotiation or the owner of the receipt was induced by fraud, mistake or duress to entrust the possession or custody of the receipt to that person, if the person to whom the

receipt was negotiated or a person to whom the receipt was subsequently negotiated, paid value for it without the knowledge of the breach of duty or fraud or mistake or duress, as the case may be.

Clause 18.–This clause provides that if a person having sold, mortgaged or pledged goods that are in the custody of a warehouse and for which a negotiable warehouse receipt has been issued, continues in possession of the negotiable receipt, the subsequent negotiation of it by that person under any sale or other disposition to any person receiving the receipt in good faith, for valuable consideration without notice of the previous sale, mortgage or pledge, has the same effect as if a previous purchaser, mortgagee or pledgee of the goods, as the case may be, had expressly authorised the subsequent negotiation.

Clause 19.–This clause deals with stoppage of delivery of goods in certain cases. It is

Clause 24.–This clause deals with the establishment and incorporation of an authority to be called the Warehousing Development and Regulatory Authority. The Authority shall exercise the powers conferred on, and perform the functions assigned to it by or under the proposed legislation. Sub-clause (2) provides that the Authority shall be a body corporate by the name aforesaid having perpetual succession and common seal with power, subject to the provisions of the proposed legislation, to acquire, hold and dispose off property, both movable and immovable, and to contract and shall, by the said name, sue or be sued. Sub-clause (3) mentions that the head office of the Authority shall be at New Delhi. The Authority with the previous approval of the Central Government may establish offices at other places in India.

Clause 25.–This clause defines the composition of the Warehousing Development and Regulatory Authority. The Authority shall consist of a Chairperson and not more than two other members to be appointed by the Central Government from amongst persons of ability, integrity and standing and having wide knowledge and experience in inventory management, insurance, preservation, quality control, banking, finance, economics, law or administration.

Clause 26.–Sub-clause (1) of this clause specifies the tenure of office of Chairperson and other members of the Authority. The Chairperson and other members of the Authority shall hold office for a term not exceeding five years from the date on which they enter upon their office and shall be eligible for re-appointment. However, no person shall hold office as a Chairperson or other member after attaining the age of sixty-five years. Sub-clause (2) provides that a member may relinquish his office by giving a notice in writing to the Central Government of not less than three months. The Chairperson or any other member may be removed from his office in accordance with the provisions of clause 27.

Clause 27.–This clause empowers the Central Government to remove from office any member of the Authority in certain cases. In case, the member has been declared as an insolvent or has become physically or mentally incapable of acting as a member or has been convicted of an offence or has acquired disappropriate assets of his income and misused of his position he could be removed. Sub-clause (2) provides that before a member is removed from his office, he should be given a reasonable opportunity of being heard.

Clause 28.–This clause deals with the salary, allowances and other terms and conditions of the Chairperson and other members of the Authority. Subject to rules as may be made in this behalf, the salary, allowances and other terms and conditions of service of the Chairperson shall be the same as that of a Secretary to the Government of India and those of a member shall be equal to that of a Joint Secretary to the Government of India respectively.

Clause 29.–This clause bars the Chairperson and other members of the Authority except with the previous approval of the Central Government from accepting any employment in any company in the warehousing sector for a period of two years from the date on which they cease to hold their office.

Clause 30.–This clause stipulates that the Chairperson shall be the Chief Executive of the Authority.

Clause 31.–This clause deals with the procedure for convening the meetings of the Authority in regard to transaction of its business. Sub-clause (2) provides that if the Chairperson is unable to attend the meeting of the Authority, any other member chosen by the members present shall preside over the meeting. Sub-clause (3) clarifies that all issues which come up before the meeting shall be decided by a majority of the votes by the members present and voting.

Clause 32.–This clause provides that, no act or proceedings of the Authority shall be invalid merely by reason of any vacancy or any defect in the constitution of the Authority, or any defect in the appointment of a person acting as a member or due to any irregularity in the procedure of the Authority not affecting the merits of the case.

Clause 33.–This clause deals with the appointment of officers and other employees of the Authority for the efficient functioning under the proposed legislation. Sub-clause (2) lays down that the terms and other conditions of service of officers and other employees of the Authority shall be governed by regulations made by the Authority.

Clause 34.–This clause deals with the constitution of Warehousing Advisory Committee to advise the Authority on matters relating to the making of regulations under clause 51. Sub-clause (2) lays down that the Advisory Committee shall consist of not more than fifteen members excluding the members of the Authority to represent the interests of various organisations engaged in warehousing, quality control, preservation and research activities. Sub-clause (3) provides that the Warehousing Advisory Committee may advise the Authority on such other matters as may be referred to it by the Authority.

Clause 35.–This clause deals with the powers and functions of the Authority. Sub-clause (1) provides that the Authority shall regulate and ensure implementation of the provisions of the proposed legislation and promote orderly growth of the warehousing business. Sub-clause (2) enumerates the various powers and functions of the Authority. These functions and powers, *inter alia,* include issuing registration certificate to warehouses issuing negotiable warehouse receipts, regulation of accreditation agencies and specifying their requisite qualifications, code of conduct and practical training for warehousemen and other staff engaged in the warehousing business, promoting efficiency in conduct of warehouse business, making regulations laying down the standards for approval of certifying agencies for grading of goods, levying the fees and charges for carrying out the provisions of the Bill, appointing arbitrators for adjudicating of disputes between warehouses and warehouse receipt holders and regulation and development of electronic system of holding and transfer of credit balances of goods deposited in the warehouses.

Clause 36.–This clause provides that the Central Government may, after due appropriation made by the Parliament by law in this behalf, could provide grants of such sums of money to the Authority as the Central Government may think fit for being utilised for the purpose of the pr ›sed legislation.

Clause 37.–This clause provides for constitution of a fund to be called the Warehousing Development and Regulatory Authority Fund. All Central Government grants and the fees and charges received by the Authority shall be credited to this Fund. All sums received by the Authority from such other sources as may be decided upon by the Central Government and all sums realized by way of penalties under the proposed legislation are also proposed to be credited to the Fund. Further, the Fund shall be applied for meeting the expenses on salary, allowances and other remuneration of members, officers and other employees of the Authority.

Clause 38.–This clause deals with the accounts of the Authority and their audit. Sub-clause (1) provides that the Authority shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be laid down by the Central Government by rules in consultation with the Comptroller and Auditor-General of India. Sub-clause (2) stipulates that the accounts of the Authority shall be audited by the Comptroller and Auditor-General of India. Sub-clauses (3) and (4) provide that the Comptroller and Auditor-General of India and any other person appointed by him for the audit of the accounts of the Authority shall have the same rights and privileges as the Comptroller and Auditor-General of India shall have and he can demand the records and books of accounts for the purpose of audit. The audit report certified by the Comptroller and Auditor-General of India is required to be laid before each House of Parliament.

Clause 39.–This clause deals with furnishing of returns, Annual Report, etc. by the Authority to the Central Government. Sub-clauses (1) and (2) require that the Authority shall furnish such returns, statements and other particulars as regards to its programmes and activities to the Central Government. An Annual Report containing full accounts of activities of the Authority shall also be submitted to the Central Government. Sub-clause (3) requires

that copies of the Annual Reports of the Authority shall be laid before each House of Parliament.

Clause 40.–This clause deals with the powers of the Central Government to issue directions on questions of policy of the Authority.

Clause 41.–This clause deals with the powers of the Central Government to supersede the Authority in certain cases. Sub-clause (1) empowers the Central Government to supersede the Authority at any time in case the Authority is unable to discharge its functions or perform its duties under the provisions of the proposed legislation or the Authority not compiling with any direction given by the Central Government under the proposed legislation or under circumstances which render it necessary in public interest to supersede the Authority. However, reasonable opportunity shall be given by the Central Government to the Authority to make representation against any proposed supersession. Sub-clause (2) provides that on supersession, the Chairperson and other members of the Authority shall be deemed to have vacated their offices and shall not have any powers, functions or duties under the proposed enactment. Sub-clauses (3) and (4) provide that on or before of the expiration of the period of supersession of the Authority, the Central Government shall reconstitute a fresh Authority and appoint its Chairperson and other members. The Central Government shall also lay a copy of the notification superseding the Authority with a full report before each House of Parliament at the earliest. Sub-clause (5) stipulates that a person removed from his post under sub-clause (1) shall not be entitled to any claim or compensation on account of such removal.

Clause 42.–This clause provides for appeals to the Appellate Authority. Sub-clause (1) provides that any person aggrieved by an order of the Authority made under the proposed legislation may file an appeal to such person or authority appointed by the Central Government which would be referred to as Appellate Authority within sixty days. However, the said period may be relaxed if the appellant satisfies the Appellate Authority the reasons of delay. Sub-clause (2) provides that every appeal made under this clause shall be in the form and manner laid down by the Central Government by rules. The appeal should also be accompanied by the fees prescribed by the Central Government. Sub-clauses (3) and (4) lay down that an appellant shall be given reasonable hearing and that the appeal shall be disposed of within ninety days from the date of its filing.

Clause 43.–This clause deals with the offences and penalties related to the proposed legislation. Sub-clause (1) provides that any warehouseman knowingly issuing a warehouse receipt without taking actual physical delivery of the goods or taking less delivery of goods than the quantity mentioned on the warehouse receipt commits an offence and shall be punishable with imprisonment for a term which may extend to three years or with fine which may be extended to four times the value of the goods, or with both. Sub-clause (2) provides that a warehouseman or his agent who issues a duplicate warehouse receipt without following the prescribed procedure commits an offence and shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to one lakh rupees, or with both. In sub-clauses (3), (4) and (5) other related offences and penalties have been defined.

Clause 44.–This clause deals with offences by companies. Sub-clause (1) provides that when an offence under Chapter X is committed by a company, every person of the company who at the time of committing the offence was responsible for making the deposits shall be deemed to be guilty of the offence and shall be liable to be proceeded and punished accordingly. Sub-clause (2) provides that if such an offence has been committed with the connivance of any official of the company, he shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Clause 45. – This clauses relates to cognizance of offences by courts. Sub-clause (1) provides that no court shall take cognizance of any offence punishable under the proposed legislation without a complaint being made by the Authority or an officer authorised by the

Authority. Sub-clause (2) provides that these offences shall not be tried by a court inferior to that of a Metropolitan Magistrate or the Judicial Magistrate of the first class.

Clause 46.–This clause provides that the chairperson, members, officers and other employees of the Authority, while acting or purporting to act in pursuance of the provisions of the proposed legislation, would be public servants within the meaning of section 21 of the Indian Penal Code.

Clause 47.–This clause seeks to provide immunity to Central Government or any other member or officer of the Authority from suits, prosecution and other legal proceedings in respect of anything which is done in good faith under the proposed legislation.

Clause 48.–This clause provides that the Authority may delegate its powers (other than the power to make regulations under clause 51) by general or special order in writing to the Chairperson or any other member or officer of the Authority under the proposed legislation.

Clause 49.–This clause provides that 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 by it.

Clause 50.–This clause empowers the Central Government to make rules for carrying out the provisions of the proposed legislation. Sub-clause (2) enumerates the various matters in respect of which such rules may be made. These matters, *inter alia*, include the form and manner in which an application for obtaining a certificate of registration for commencing warehousing business issuing negotiable warehouse receipts is to be made, the form and manner in which a registration certificate is to be issued, the form and manner for getting registration certificate by the accreditation agencies, the financial, managerial and other eligibility criteria for registration of warehouses, the requirements for an accreditation agency, salary and allowances payable to members of the Authority and all such other matters that may be exercised by the Authority under clause (n) of sub-clause (2) of clause 35.

Clause 51.–This clause empowers the Warehousing Development and Regulatory Authority to make regulations with the previous approval of the Central Government and in consultation with the Warehousing Advisory Committee to carry out the provisions of the proposed legislation. Sub-clause (2) enumerates the various matters in respect of which such regulations may be made. These matters, *inter alia*, include procedure regulating the issuance of certificate of accreditation under clause 5 by an accreditation agency, the form and manner and the period for which a warehouseman shall keep the records and accounts of warehousing business under sub-clause (2) of clause 8, the manner of disposal of goods or any part thereof and keeping of sale proceeds in and escrow account by the warehouseman under sub-clause (7) of clause 9, the terms and conditions of service of officers and other employees of Authority under sub-clause (2) of clause 33, the manner of issuance of duplicate warehouse receipt under sub-clause (2) of clause 23, the time and place of the meeting of the Authority and the procedure to be followed under sub-clause (1) of clause 31, functioning of the grading agency, standard for approval of certifying agencies for grading of goods under clause (f) of sub-clause (2) of clause 35, the fees and other charges to be levied under the proposed legislation and any other matter which is required to be, or may be, specified by regulations.

Clause 52.–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, as soon as may be after it is made, before each House of Parliament.

Clause 53.–The clause provides that the provisions of the proposed legislation shall have effect notwithstanding anything inconsistent therewith contained in any other law for time being in force or in any instrument having effect by virtue of any law other than the proposed legislation.

Clause 54.–This clause relates to the power of the Central Government to remove difficulties. Sub-clause (1) empowers the Central Government to remove any difficulty

which may arise in giving effect to the provisions of the proposed legislation by order published in the Official Gazette. Such provisions shall not be inconsistent with the provisions of the proposed legislation. This power can be exercised only within three years from the commencement of the proposed legislation. Sub-clause (2) stipulates that every order issued under this clause shall be required to be laid before the each House of Parliament.

Clause 55.–This clause seeks to insert a new section 8B in the Stamp Act, 1899 so as to provide that negotiable warehouse receipts shall not be liable to stamp duty.

FINANCIAL MEMORANDUM

Sub-clause (1) of clause 24 of the Bill provides that the Central Government shall, by notification in the Official Gazette, constitute for the purpose of the proposed legislation, an authority to be called the Warehousing Development and Regulatory Authority to exercise the powers conferred on, and to perform the functions assigned to, it by or under the proposed legislation.

2. Clause 25 of the Bill provides that the Authority shall consist of a Chairperson and not more than two other members who are experts in the field of inventory management, insurance, quality control, banking, finance, economics, law or administration.

3. Clause 28 of the Bill provides that the salaries and allowances payable to and the other terms and conditions of service of the Chairperson of the Authority shall be the same as that of a Secretary to the Government of India and those of other members shall be the same as that of a Joint Secretary to the Government of India.

4. Sub-clause (1) of clause 33 provides that the Authority may, appoint officers and such other employees as it considers necessary for the discharge of its function under this Bill. Sub-clause (2) of clause 33 provides that the terms and conditions of service of officers and other employees of the Authority appointed under clause 33 of the Bill shall be governed by regulations made by the Authority.

5. Clause 36 of the Bill provides that the Central Government may after due appropriation made by Parliament by law make to the Authority grants for being utilized for the purposes of the proposed enactment. Clause 37 of the Bill provides for the constitution of a fund to be called the Warehousing Development and Regulation Authority Fund. All Central Government grants, fees and charges shall be credited to the said Fund.

6. The implementation of aforesaid provisions would involve certain expenditure from the Consolidated Fund of India. However, it is not possible to give any specific estimate of the expenditure, both recurring and non-recurring, at this stage as it would depend upon the specific decisions which may be taken and the manner of implementation by the Authority. However, it is estimated that a sum of approximately two crores of rupees for a financial year may be required to meet the expenditure of the Authority by way of grants to be given to the Authority by the Central Government. During the Financial Year 2005-2006, no expenditure, however, is envisaged to be incurred.

7. It is estimated that the Bill will not involve any other expenditure of a recurring or non-recurring nature from the Consolidated Fund of India.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (1) of clause 50 of the Bill empowers the Central Government to make rules, by notification in the Official Gazette, for carrying out the provisions of proposed legislation. Sub-clause (2) of that clause enumerates the matters in respect of which rules may be made under the proposed legislation. These matters, *inter alia*, relate to the form and manner in which an application for obtaining a certificate of registration for commencing or carrying on the business of warehousing issuing negotiable receipts is to be made and the fees which shall accompany such application, the form in which a certificate of registration of warehouses is to be issued, the form and manner in which an application for registration as an accreditation agency is to be made and the fees which shall accompany such application, the form of certificate of registration of accreditation agency, the salary and allowances payable to and the other terms and conditions of the service of Chairperson and members of the Authority, the form of annual statement of accounts to be maintained by the Authority, the form and manner in which and the time within which returns and statements and other particulars are to be furnished to the Central Government and any other matter which is required to be, or may be, prescribed, or in respect of which provision is to be, or may be, made by rules.

2. Sub-clause (1) of clause 51 empowers the Warehousing Development and Regulatory Authority to make, by notification in the Official Gazette and with the previous approval of the Central Government and not inconsistent with the provisions of the proposed legislation and the rules made there under, regulations to provide for matters for which provision is necessary or expedient for the purposes of giving effect to the provisions of the proposed legislation. Sub-clause (2) of that clause enumerates the matters in respect of which such regulations may be made under the proposed legislation. These matters, *inter alia*, include procedure for regulating the issuance of certificate of accreditation under clause 5 by an accreditation agency, the form and manner and the period for which a warehouseman shall keep the records and accounts of warehouse business under sub-clause (2) of clause 8, the manner of disposal of goods or any part thereof and keeping of sale proceeds in an escrow account by the warehouseman under sub-clause (7) of clause 9, the terms and conditions of service of officers and other employees of Authority under sub-clause (2) of clause 33, the manner of issuance of duplicate warehouse receipts under sub-clause (2) of clause 23, the time and place of meetings of the Authority and the procedure to be followed in such meetings under sub-clause (1) of clause 31, functioning of the grading agency, standard for approval of certifying agencies for grading of goods under clause (f) of sub-clause (2) of clause 35, the fees and other charges to be levied under the proposed legislation and any other matter which is required to be, or may be, specified by regulations.

3. Clause 53 of the Bill requires that the rules and regulations made under the proposed legislation shall have to be laid before Parliament.

4. The matters in respect of which rules and regulations may be made are matters of procedure or 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.

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to make provisions for the development and regulation of warehouses, negotiability of warehouse receipts, establishment of a warehousing development and regulatory authority and for matters connected therewith or incidental thereto.

(Shri Sharad Pawar, Minister of Agriculture and Consumer Affairs, Food and Public Distribution)

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