

AS INTRODUCED IN LOK SABHA

Bill No. 74 of 2010

THE SECURITIES AND INSURANCE LAWS (AMENDMENT
AND VALIDATION) BILL, 2010

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BILL

further to amend the Reserve Bank of India Act, 1934, the Insurance Act, 1938, the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992.

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

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Securities and Insurance Laws (Amendment and
5 Validation) Act, 2010.

Short title
and
commencement.

(2) It shall be deemed to have come into force on the 18th day of June, 2010.

CHAPTER II

AMENDMENT TO THE RESERVE BANK OF INDIA ACT, 1934

Insertion of new Chapter IIIE in Act 2 of 1934. 2. After Chapter IIID of the Reserve Bank of India Act, 1934, the following Chapter shall be inserted, namely:—

"CHAPTER IIIE

JOINT MECHANISM

Joint Mechanism.

45Y. (1) Notwithstanding anything contained in this Act or the Securities and Exchange Board of India Act, 1992 or any other law for the time being in force, if any difference of opinion arises as to whether—

(i) any instrument, being derivative referred to in clause (a) or money market instrument referred to in clause (b) or repo referred to in clause (c) or reverse repo referred to in clause (d) or securities referred to in clause (e) of section 45U of this Act; or

(ii) any instrument, being policy of life insurance under the Insurance Act, 1938, or the rules or regulations made thereunder, or scrips or any other securities referred to in sub-clauses (i), (ia), (ib), (ic), (id), (ie), (ii), (iia) and (iii) of clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956,

is hybrid or composite instrument, having a component of money market investment or securities market instrument or a component of insurance or any other instrument referred to in clause (i) or clause (ii) and falls within the jurisdiction of the Reserve Bank of India or the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992 or the Insurance Regulatory and Development Authority established under section 3 of the Insurance Regulatory and Development Authority Act, 1999 or the Pension Fund Regulatory and Development Authority constituted by the Resolution of the Government of India number F.No. 1(6)2007-PR, dated the 14th November, 2008, such difference of opinion shall be referred to a Joint Committee consisting of the following, namely:—

- (a) the Union Finance Minister — *ex officio* Chairperson;
- (b) the Governor, Reserve Bank of India — *ex officio* Vice-Chairperson;
- (c) the Secretary, Department of Economic Affairs, in the Ministry of Finance, Government of India — *ex officio* Member;
- (d) the Secretary, Department of Financial Services, in the Ministry of Finance, Government of India — *ex officio* Member;
- (e) the Chairperson, Insurance Regulatory and Development Authority — *ex officio* Member;
- (f) the Chairman, Securities and Exchange Board of India — *ex officio* Member;
- (g) the Chairperson, Pension Fund Regulatory and Development Authority — *ex officio* Member.

(2) The Secretary (Financial Services) in the Ministry of Finance, Government of India shall be the convener of the meetings of the Joint Committee referred to in sub-section (1).

(3) In case of any difference of opinion referred to in sub-section (1), any Member of the Joint Committee referred to in clauses (b), (e), (f) or (g) of that sub-section may make a reference to the Joint Committee.

(4) The Joint Committee shall follow such procedure as it may consider expedient and give, within a period of three months from the date of reference made under sub-section (3), its decisions thereon to the Central Government.

5 (5) The decision of the Joint Committee shall be binding on the Reserve Bank of India, the Securities and Exchange Board of India, the Insurance Regulatory and Development Authority and the Pension Fund Regulatory and Development Authority.”.

CHAPTER III

AMENDMENT TO THE INSURANCE ACT, 1938

10 3. In the Insurance Act, 1938, in section 2, after clause (11), the following *Explanation* shall be inserted and shall be deemed to have been inserted with effect from the 9th day of April, 2010, namely:—

Amendment of section 2 of Act 4 of 1938.

15 ‘*Explanation.*— For the removal of doubts, it is hereby declared that “life insurance business” shall include any unit linked insurance policy or scrips or any such instrument or unit, by whatever name called, which provides a component of investment and a component of insurance issued by an insurer referred to in clause (9) of this section.’.

CHAPTER IV

AMENDMENT TO THE SECURITIES CONTRACTS (REGULATION) ACT, 1956

20 4. In the Securities Contracts (Regulation) Act, 1956, in section 2, in clause (h), after sub-clause (id), the following *Explanation* shall be inserted and shall be deemed to have been inserted with effect from the 9th day of April, 2010, namely:—

Amendment of section 2 of Act 42 of 1956.

25 ‘*Explanation.*— For the removal of doubts, it is hereby declared that “securities” shall not include any unit linked insurance policy or scrips or any such instrument or unit, by whatever named called, which provides a combined benefit risk on the life of the persons and investment by such persons and issued by an insurer referred to in clause (9) of section 2 of the Insurance Act, 1938.’.

4 of 1938.

CHAPTER V

AMENDMENT TO THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992

30 5. In the Securities and Exchange Board of India Act, 1992, in section 12, in sub-section (1B), the following *Explanation* shall be inserted and shall be deemed to have been inserted with effect from the 9th day of April, 2010, namely:—

Amendment of section 12 of Act 15 of 1992.

35 ‘*Explanation.*— For the removal of doubts, it is hereby declared that, for the purposes of this section, a collective investment scheme or mutual fund shall not include any unit linked insurance policy or scrips or any such instrument or unit, by whatever name called, which provides a component of investment besides the component of insurance issued by an insurer.”.

CHAPTER VI

MISCELLANEOUS

40 6. Notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority, the provisions of section 2 of the Insurance Act, 1938 or section 2 of the Securities Contracts (Regulation) Act, 1956 or section 12 of the Securities and Exchange Board of India Act, 1992, as amended by this Act, shall have and shall be deemed to always have effect for all purposes as if the provisions of the said Acts, as amended by this Act, had been in force at all material times and accordingly

45 any unit linked insurance policy or scrips or any such instrument or unit, by whatever name called, issued or purported to have been issued at any time before the 9th day of

Validation.

4 of 1938.

42 of 1956.

15 of 1992.

April, 2010, shall be deemed and always deemed to have been validly issued and shall not be called in question in any court of law or other authority solely on the ground that it was issued without a certificate of registration under any law for the time being in force or without following any procedure under any law for the time being in force, by an insurer or any other person. 5

Repeal and savings.

7. (1) The Securities and Insurance Laws (Amendment and Validation) Ordinance, 2010 is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the said Ordinance, shall be deemed to have been done or taken under the corresponding provisions of the principal Act, as amended by this Act. Ord. 3 of 2010. 10

STATEMENT OF OBJECTS AND REASONS

The Securities and Exchange Board of India Act, 1992 was enacted, *inter alia*, to provide for the establishment of a Board to protect the interests of investors in securities and to promote the development of, and to regulate, the securities market and for matters connected therewith or incidental thereto. The Insurance Act, 1938, *inter alia*, contains the law relating to the business of Insurance and the Insurance Regulatory and Development Authority Act, 1999 was enacted, *inter alia*, to provide for the establishment of an Authority to protect the interests of holders of insurance policies, to regulate, promote and ensure orderly growth of the insurance industry and for matters connected therewith or incidental thereto.

2. The Securities and Exchange Board of India (SEBI) issued on the 9th April, 2010, an order against certain insurance companies directing them not to issue any offer document, advertisement, brochure soliciting money from investors or raise money from investors by way of new or additional subscription for any product including ULIPs having an investment component in the nature of mutual funds, till they obtain the requisite certificate of registration from the SEBI. The differences of opinion relating to jurisdiction of the SEBI and the Insurance Regulatory and Development Authority (IRDA) in respect of hybrid or composite instruments or units (by whatever name called) which provides a component of investment and a component of insurance issued by an insurer had arisen.

3. In order to clear uncertainties on the differences of opinion relating to jurisdiction of the securities market regulator, *i.e.*, the SEBI and the insurance regulator, *i.e.*, the IRDA it has become necessary to clarify that the "life insurance business" also include any unit linked insurance policy and accordingly to amend the Insurance Act, 1938, the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992 for the said purpose.

4. In order to address the differences of opinion among certain statutory regulators which may arise in future, it was felt necessary to set up a joint mechanism, consisting of the Union Finance Minister as its Chairperson, and Governor, the Reserve Bank of India (RBI), Finance Secretary, Secretary (Financial Services) and Chairpersons of the Insurance Regulatory and Development Authority, Securities and Exchange Board of India and the Pension Fund Regulatory and Development Authority (PFRDA) as its members, for resolving future differences of opinion as to whether any hybrid or composite instrument, having a component of insurance or any other investment or securities market instrument or a component of money market instrument falls within the jurisdiction of the IRDA or SEBI or RBI or PFRDA.

5. As both Houses of Parliament were not in Session and immediate action was required to be taken, the President promulgated the Securities and Insurance Laws (Amendment and Validation) Ordinance, 2010 on the 18th June, 2010 to achieve the above objectives.

6. The Bill seeks to replace the aforesaid Ordinance.

PRANAB MUKHERJEE

NEW DELHI;
The 20th July, 2010.

Memorandum explaining the modifications contained in the Bill to replace the Securities and Insurance Laws (Amendment and Validation) Ordinance, 2010

The Securities and Insurance Laws (Amendment and Validation) Bill, 2010, which seeks to repeal and replace the Securities and Insurance Laws (Amendment and Validation) Ordinance, 2010, proposes to make the following modifications apart from modifications of consequential or drafting nature in the provisions contained in the said Ordinance, namely:—

(1) It is proposed to clarify that the difference of opinion between regulators over jurisdiction of hybrid or composite products shall only be referred to the Joint Committee and to omit the words “or the Central Government” in sub-section (1) of section 45Y of the Reserve Bank of India Act, 1934 proposed to be inserted by clause 2 of the Bill.

(2) It is proposed to provide that the Governor of the Reserve Bank of India shall be the Vice-Chairperson of the Joint Committee instead of a members of the Joint Committee as provided in the Ordinance and to substitute the words “*ex officio* Member” with the words “*ex officio* Vice-Chairperson” in clause (b) of sub-section (1) of section 45Y of the Reserve Bank of India Act, 1934 proposed to be inserted by clause 2 of the Bill.

(3) It is proposed to provide that Secretary, Department of Economic Affairs in the Ministry of Finance shall be the member of the Joint Committee instead of Finance Secretary in the Ministry of Finance as provided in the Ordinance and to substitute the words “the Finance Secretary” with the words “Secretary, Department of Economic Affairs” in clause (c) of sub-section (1) of section 45Y of the Reserve Bank of India Act, 1934 proposed to be inserted by clause 2 of the Bill.

(4) It is proposed to provide that in case of any difference of opinion between regulators referred to in sub-section (1) of section 45Y of the Reserve Bank of India Act, 1934, only the members referred to in clauses (b), (e), (f) and (g) of that sub-section, namely, the Governor of Reserve Bank of India, the Chairman of Insurance Regulatory and Development Authority, the Chairman of Securities and Exchange Board of India and the Chairperson of Pension Fund Regulatory and Development Authority shall make a reference to the Joint Committee and to insert the words, brackets and letters “referred to in clauses (b), (e), (f) and (g) of that sub-section”, after the words “the Joint Committee” in sub-section (3) of section 45Y of the Reserve Bank of India Act, 1934 proposed to be inserted by clause 2 of the Bill.

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further to amend the Reserve Bank of India Act, 1934, the Insurance Act, 1938, the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992.

(Shri Pranab Mukherjee, Minister of Finance)