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**STANDING COMMITTEE
ON FINANCE
(1998-99)**

TWELFTH LOK SABHA

**MINISTRY OF FINANCE
(DEPARTMENT OF ECONOMIC AFFAIRS)**

**THE INSURANCE REGULATORY
AUTHORITY BILL, 1998**

FIFTEENTH REPORT



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**LOK SABHA SECRETARIAT
NEW DELHI**

March, 1999/Phalgun, 1920 (Saka)

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MINISTRY OF FINANCE
(DEPARTMENT OF ECONOMIC AFFAIRS)

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Presented to Lok Sabha on 16.03.1999

Laid in Rajya Sabha on 16.03.1999



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NEW DELHI

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COMPOSITION OF THE STANDING COMMITTEE
ON FINANCE (1998-99)

Shri Murli Deora — *Chairman*

MEMBERS

Lok Sabha

2. Shri Dharendra Agarwal
3. Shri Mohanbhai Sanjibhai Delkar
4. Shri Haribhai Parathibhai Chaudhary
5. Shri Uttam Singh Pawar
6. Shri Girdhari Lal Bhargava
7. Shri Chetan Chauhan
8. Shri Bhagwan Shankar Rawat
9. Shri Rayapati Sambasiva Rao
10. Shri T. Subbarami Reddy
11. Shri Kavuru Sambasiva Rao
12. Shri Sandipan Bhagwan Thorat
13. Shri Praful Manoharbai Patel
14. Shri Prithviraj D. Chavan
15. Shri R.L. Jalappa
16. Shri Magunta Sreenivasulu Reddy
17. Shri Rupchand Pal
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19. Shri Beni Prasad Verma
20. Shri S. Murugesan
21. Shri M. Sahabuddin
22. Dr. S. Venugopalachary
23. Shri Tathagata Satpathy

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25. Dr. Bikram Sarkar
26. Shri S. Jaipal Reddy
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29. Shri Buta Singh
30. Shri Ch. Vidyasagar Rao

Rajya Sabha

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32. Shri Krishna Kumar Birla
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34. Shri M. Rajsekara Murthy
35. Shri Narendra Mohan
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40. Shri Amar Singh
41. Shri Prem Chand Gupta
42. Shri R.K. Kumar
43. Shri Gurudas Das Gupta
44. Shri Satishchandra Sitaram Pradhan
45. Shri Suresh A. Keswani

SECRETARIAT

1. Dr. A.K. Pandey — *Additional Secretary*
2. Dr. (Smt.) P.K. Sandhu — *Director*
3. Shri S.B. Arora — *Under Secretary*
4. Shri Srinivasulu Gunda — *Executive Officer*

INTRODUCTION

1. the Chairman of Standing Committee on Finance having been authorised by the Committee to submit the Report on their behalf present this Fifteenth Report on the Insurance Regulatory Authority Bill, 1998.

2. The Bill was introduced in Lok Sabha on 15 December, 1998. The Hon'ble Speaker referred the Bill to the Standing Committee on Finance for examination and report thereon on 4 January, 1999.

3. It was decided to issue press communique for inviting suggestions/views/memoranda from individuals/experts/Chambers of Commerce and Industry and interested organisations/parties on the Bill. All the State Governments were also requested to furnish their considered views on the Bill.

4. The Committee at their sitting held on 18 January, 1999 heard the views of representatives of (i) Insurance Regulatory Authority (IRA), (ii) National Trade Unions viz. All India Trade Union Congress (AITUC), Bhartiya Mazdoor Sangh (BMS), Centre of Indian Trade Unions (CITU); and (iii) Employees' Associations of LIC and GIC namely General Insurance Employees All India Association, All India Insurance Employees Association, National Federation of General Insurance Employees and All India LIC Employees Federation on the Insurance Regulatory Authority Bill, 1998.

5. At their sitting held on 3 February, 1999, the Committee took the evidence of representatives of (i) LIC, (ii) GIC and its four subsidiaries, (iii) IRA and (iv) Chambers of Commerce viz. Confederation of Indian Industry (CII), Federation of Indian Chambers of Commerce and Industry (FICCI), PHD Chambers of Commerce and Industry (PHDCCI) and Associated Chambers of Commerce and Industry (ASSOCHAM) on the provisions contained in the Bill.

6. The Committee took the evidence of experts, representatives of Ministries of Finance (Department of Economic Affairs) and Law, Justice and Company Affairs (Legislative Department) on 4 February, 1999 on the provisions contained in the Bill.

7. The Committee at their sitting held on 17 February, 1999, after discussing the draft Report in detail, directed the Secretariat to prepare revised draft Report in the light of suggestions/amendments made by them. The Committee considered and adopted the revised draft report at their sitting held on 4 March, 1999.

8. The Committee wish to express their thanks to representatives of (i) Chambers of Commerce *viz.* CII, FICCI, ASSOCHAM and PHDCCI, (ii) National Trade Unions *viz.* All India Trade Union Congress (AITUC), Bhartiya Mazdoor Sangh (BMS), Centre of Indian Trade Unions (CITU), (iii) Employees Associations of LIC and GIC—General Insurance Employees All India Association, All India Insurance Employees Association, National Federation of General Insurance Employees and All India LIC Employees Federation, (iv) S/Shri Deepak S. Parekh, Deepak M. Satwalekar, K.V. Kamath, Ms. Lalita D. Gupte, Dr. Sangeeta Reddy, Dr. Yogi Mehrotra, Dr. Arun Ghosh and (v) officers of Ministries of Finance (Department of Economic Affairs) and Law, Justice and Company Affairs (Legislative Department) for cooperation extended in placing before them their considered views and perceptions on the subject and for furnishing written notes and information that the Committee had desired in connection with the examination of the Bill.

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

NEW DELHI;
10 March, 1999

19 Phalgun, 1920 (Saka)

MURLI DEORA,
Chairman,
Standing Committee on Finance.

REPORT

Background

1. The Insurance Act, 1938 provides for the institution of the Controller of Insurance to act as a strong and powerful supervisory and regulatory authority with powers to direct, advise, caution, prohibit, investigate, inspect, prosecute, search, seize, fine, amalgamate, authorise, register and liquidate insurance companies. The insurance industry requires a high degree of regulation. However, after the nationalisation of the Life Insurance industry, in 1956 and the General Insurance industry in 1972, the role of the Controller of Insurance diminished in significance over a period of time.

2. As a part of the reforms in the financial sector, Government of India, in April, 1993, set up a high powered Committee headed by Shri R.N. Malhotra, former Governor, Reserve Bank of India, to examine the structure of the insurance industry and recommend changes to make it more efficient and competitive keeping in view the structural changes in other parts of financial system of the economy. The Committee which submitted its report on 7 January, 1994 felt that due to rapid developments in telecommunications, information technology and transportation, growing activities of multinational corporations, banks and securities business and progressive increase in cross border movement of funds due to deregulation, the world markets have become highly dynamic and increasingly integrated. Besides the developed countries, other developing economies have also been integrating into these markets and India which is already being regarded as an important emerging market could do the same if its economic reforms are carried further. The Committee also felt that though a majority of areas previously reserved for the public sector have been thrown open to the private sector in order to strengthen the forces of competition, life and general insurance companies in India continued to remain State monopolies with very little competition even among the subsidiary companies of GIC. The Committee therefore posed a question as to why the consumers of insurance services should not be provided a better and wider choice so that they could also get the benefit of competition in terms of range of insurance products, lower price of insurance covers and better customer service. It also

advocated that the insurance regulatory apparatus should be activated even in the present set up of nationalised insurance sector and recommended, *inter-alia*, the establishment of strong and effective Insurance Regulatory Authority (IRA) in the form of a statutory autonomous Board on the lines of Securities and Exchange Board of India.

3. After the Committee submitted its report it was felt that the recommendations of Committee should be widely discussed in different forums. Accordingly, the recommendations of the Committee were discussed at different forums including the Consultative Committee of the Parliament attached to the Ministry of Finance, managements of Life Insurance Corporation, General Insurance Corporation and its subsidiary companies, trade unions, chambers of commerce and consumer interest groups. The recommendations to set up an autonomous Insurance Regulatory Authority found wide support. In view of the general support received, the Government in January, 1996, decided to bring in a legislation to establish an independent Regulatory Authority for the insurance industry. In view of the very fact that enacting legislation for creating the Insurance Regulatory Authority would have taken time, the Government thought it prudent to constitute an interim Insurance Regulatory Authority through a Government Resolution, pending the enactment of a comprehensive legislation. The Chairman, Insurance Regulatory Authority has been notified as Controller of Insurance under the Insurance Act, 1938. The said interim Regulatory Authority is discharging certain functions and exercising powers of the Controller.

4. In pursuance of the Budget speech in July, 1996 the Government introduced on 20 December, 1996, the Insurance Regulatory Authority Bill, 1996 for establishment of an Authority to protect the interests of holders of insurance policies and to regulate, promote and ensure orderly growth of the insurance industry and for the matters connected therewith or incidental thereto. The Bill was referred to the Departmentally related Standing Committee of Parliament. The Committee submitted its report on 9th May, 1997. However, the said Bill incorporating therein the recommendations of the Standing Committee was taken up for consideration in Lok Sabha but could not be passed and had to be withdrawn by the Government.

5. In the Budget speech, 1998, the Finance Minister announced that alongwith the reforms of the Banking Sector, it is necessary to

move forward with reforms in insurance which has so far been a public sector monopoly. In order to provide better insurance coverage to our citizens and also to augment the flow of long term resources for financing infrastructure, it has been proposed by the Government to open the insurance sector to competition from private Indian companies. Under the Insurance Regulatory Authority Bill, 1998 it is now proposed to give a statutory character to the interim Insurance Regulatory Authority, and amend Section 30 of the Life Insurance Corporation Act, 1956 and Section 24 of General Insurance Business (Nationalisation) Act, 1972 (GIBNA) with a view to permit the entry of private Indian companies into the insurance sector and to make certain consequential amendments to the Insurance Act, 1938. Indian private Companies have been defined under Section 2(7A)(b) according to which an Indian Insurance Company means a company which is formed and registered under the Companies Act, 1956 and in which the aggregate holding of equity shares by a foreign company, either by itself or through its subsidiary companies or its nominees, do not exceed 26% paid up capital. However, an aggregate share holding of equity shares not exceeding 14% of the paid up share capital in an Indian insurance company has been allowed to be held by foreign institutional investors, non-resident Indians, and overseas body corporates. This 14% share holding shall also be excluded while calculating 26% paid up share capital which a foreign company can hold.

6. It has further been proposed that the Insurance Regulatory Authority shall be a body corporate having perpetual succession and a common seal with power to acquire, hold and dispose of property and to contract. It will consist of a Chairperson and other members not exceeding nine in number, of whom not more than five shall serve as full time members and not more than four as part time members, to be appointed by the Central Government from amongst persons of ability, integrity and standing who have knowledge or experience of life insurance, general insurance, actuarial science, finance, economics, law, accountancy, administration or any other discipline which in the opinion of the Central Government shall be useful to the authority. The Chairperson and other whole-time Members shall hold office for a term of 5 years or until the age of 65 years in the case of Chairperson and 62 years in the case of other whole-time Members, whichever is earlier and they shall be eligible for re-appointment subject to the age consideration. A part-time Member shall also hold office for a term not exceeding 5 years.

7. The duties, powers and functions of Authority, *inter-alia*, as specified under the proposed Bill are:—

- (a) to issue to the applicant a certificate of registration, to renew, modify, withdraw, suspend or cancel such registration;
- (b) protection of the interests of the policy holders in matters concerning assigning of policy, nomination by policy holders, insurable interest, settlement of insurance claim, surrender value of policy, and other terms and conditions of contract of insurance.
- (c) specifying requisite qualifications and practical training for insurance intermediaries and agents;
- (d) specifying the code of conduct for surveyors and loss assessors;
- (e) promoting efficiency in the conduct of insurance business;
- (f) promoting and regulating professional organisations connected with the insurance and reinsurance business;
- (g) levying fees and other charges for carrying out the purposes of this Act.
- (h) calling for information form, undertaking inspection of, conducting enquiries and investigations including audit of the insurers, insurance intermediaries and other organisations connected with the insurance business;
- (i) control and regulation of the rates, advantages, terms and conditions that may be offered by insurers in respect of general insurance business not so controlled and regulated by the Tariff Advisory Committee under Section 64U of the Insurance Act, 1938;
- (j) prescribing the form and manner in which books of accounts shall be maintained and statement of accounts will be rendered by insurers and insurance intermediaries;
- (k) regulating investment of funds by insurance companies;
- (l) regulating maintenance of margin of solvency;

- (m) adjudication of disputes between insurers and intermediaries;
- (n) exercising such other powers as may be prescribed.

8. The powers and functions mentioned above would enable the Authority to perform the role of an effective watchdog and regulator for the insurance sector in India. To enable the authority to function in a truly independent manner and discharge its assigned responsibilities effectively, it is proposed to vest the Authority with statutory status.

9. The IRA Bill, 1998 contains almost all the provisions of the earlier IRA Bill, 1996 and also incorporates all the amendments recommended by the Standing Committee on Finance which examined the IRA Bill, 1996. The additional provisions are contained in the three Schedules. The first schedule contains consequential amendments to the Insurance Act, 1938 which will enable the regulatory authority to effectively regulate the opened up insurance sector. The second and third schedules contains amendments to the LIC Act, 1956 and General Insurance Business (Nationalisation) Act, 1972 to remove the exclusive privilege of LIC, GIC & subsidiaries to do life insurance and general insurance business respectively.

10. With a view to have an expert opinion on the various provisions of the Bill, the Committee sought memoranda from experts, economists, associations and individuals on the subject. In order to seek clarification with regard to the provisions contained in the Bill, the Committee also took evidence of the representatives of All India National Trade Unions, Employees' Unions of Life Insurance Corporation, General Insurance Corporation as well as Chairman, Insurance Regulatory Authority on 18.1.99, representatives of Insurance Companies i.e. LIC and GIC, Chairman, Insurance Regulatory Authority, representatives of Chambers of Commerce on 3.2.99 and Experts as well the representatives of Ministry of Finance (Department of Economic Affairs—Insurance Division) and Ministry of Law, Justice and Company Affairs (Legislative Department) on 4.2.99. Through the various memoranda which have been received from the Employees' Unions, representatives of Agents as well as individuals, a strong view has been expressed against the idea of opening up the Insurance Sector and introduction of competition. Most of them have contended that in view of the very fact that both LIC and GIC have grown at the rate of 20% annually and have succeeded in expanding their business and also contributed significantly to the Government by way of dividends earned as well

as payment of corporate tax and particularly in view of the fact that more than 50% of the business of LIC comes from rural sector and the ratio of the settlement of claims is 97% in the case of LIC and 75% in the case of GIC as compared to the international percentage of 40%; it would not be prudent to open this sector. An apprehension has also been expressed that the hard earned savings of the investors may not be safe in the hands of private companies and new companies entering this sector may confine their business only to the rich and elite sections of the Society living in the urban areas. Similar apprehensions were also expressed both by the Chairman of LIC and GIC during the course of evidence before the Committee. Chairman, LIC had stated that due to the opening up this sector, there could be a shift of business from LIC to the new companies resulting in reduction in their assets and since it was quite possible that the new players would be concentrating their business only in urban areas it might result into a situation where LIC would be left with the less profitable business in rural areas which would be highly disadvantageous to them on account of the high cost of operations involved. Besides, an immediate fall out of the opening up could also result in depletion of the skilled work force in LIC. Chairman, GIC also expressed a similar viewpoint stating that the new players would aim at maximisation of profits and would not like to operate in areas which are not lucrative enough and GIC would face a loss of business immediately on opening up this sector. He supported his contention further by saying that prior to 1973 most of the new companies operated from the urban centres such as Bombay, Delhi, Calcutta and Madras. In some cases, they operated from Hyderabad, Bangalore and Kanpur and not beyond that. He also stated that the General Insurance Business (Nationalisation) Act, 1972 has entrusted GIC with certain obligations which were being carried out quite successfully, but once this sector is opened up, GIC would have to dilute to some extent some of these directions to be able to compete with the new comers. He further added that GIC will be more vulnerable than LIC due to opening up of the sector. After the evidence, both the Chairmen LIC and GIC also submitted written memoranda to the Committee (Annexures I and II) It has been suggested that more autonomy should be conferred on both LIC and GIC in order to enable them to take decisions independently without the interference of the Government.

11. The corporates as well as the representatives of Commerce and Industry have, on the other hand, advocated opening of the insurance sector in view of the very fact that in the changing scenario where the thrust has been placed on liberalisation and delicensing, this sector

should no longer be continued to be monopolised by the LIC, GIC and its four subsidiaries which are owned by the State. It has also been contended that the Indian market is currently under insured, for instance, the percentage of Life Insurance premium in India as a percentage of GDP has grown up only at the rate of 1.29% as compared to 2.25% in Malaysia, 2.65% in Germany, 5.90% in France and 7.27% in U.K. Besides, per capita Life Insurance premium in India is only US \$5 as compared to US \$98 in Malaysia, US \$978 in Singapore, US \$36 in Thailand and US \$1433 in U.K. While recommending the opening up of the sector, a view has also been expressed that once this is opened it will result in wider range of products, better and cost effective service, speedy settlements, efficient back up facility, technological advancement which will go a long way in improving the customers' service. Besides, opening up of this sector can result in tapping the so far under exploited areas such as health care and pension funds. It will also result in facilitating the channelisation of long term savings into the capital market as well as the infrastructure. In response to a query as to the need for opening up the insurance sector, the Finance Secretary stated as under:

"The *raison d'être* for bringing insurance sector wide open is to make resources available for our own development because India is today one of the least developed countries. When we come to contractual savings, we are certainly behind even a number of Asian countries, a number of Latin American countries and our attempt here is to expand our contractual savings market so that we can contribute towards development of our infrastructure.

Today, if you look at the data, what has happened to Korea and what is happening in Malaysia and Latin American countries, the coverage of insurance and mobilisation of resources in the insurance sector for long term capital markets is at least three-four times what we are doing. So we are mobilising resources."

12. The Committee considered the views expressed for and against the opening up of the insurance sector and are of the opinion that there is no denying the fact that though the nationalised insurance industry has over a period of time succeeded in expanding their business extensively and the nationalised insurance companies have built up a large infrastructure and have financial strength as well as managerial competence, yet there still remains a vast potential which

has so far not been tapped. Besides, in the recent times insurance sector in India has come to occupy a centre stage and reforms in this sector have become crucial for giving an impetus to the overall health of the financial sector. Allowing the entry of some foreign insurance companies, therefore, in the insurance sector would be useful in the context of India's objective of integrating with the global economy. They are also of the view that the apprehensions which have been expressed by certain bodies and individuals with regard to opening up of this Sector can be minimized if proper safeguards and checks are taken in the larger interest of the insuring public. After having considered the Insurance Regulatory Authority Bill, 1998 clause-wise and having been convinced of the objectives of the Bill, the Committee approve the same for enactment by Parliament subject to certain modifications/amendments/recommendations as detailed in the succeeding paragraphs of this Report.

Clause 1-short title

13. The Preamble of the Bill reads as under:

"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 and further to amend the Insurance Act, 1938, the Life Insurance Corporation Act, 1956 and the General Insurance business (Nationalization), Act 1972."

14. In view of the very fact that as enunciated in the Preamble the Insurance Regulatory Authority will not only have to perform the role of an effective watch dog and regulator for the entire insurance industry but also ensure an orderly growth of this sector, they are of the view that the title of the Bill should be changed from 'The Insurance Regulatory Authority Bill, 1998' to that of 'Insurance Regulatory and Development Authority Bill, 1998'.

Clause 6—Removal from Office

15. Clause 6 reads as under:

"The Central Government may remove from office any member who—

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

- (b) has become physically or mentally incapable of acting as a member;
- (c) has been convicted of any offense which, in the opinion of the Central Government, involves moral turpitude;
- (d) has acquired such financial or other interests 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."

16. The Committee note that the word 'or' is missing from the above sub-clauses (a), (b) and (c). The Committee are given to understand that the intention of the government is to remove any member who gets covered under any of the conditions mentioned above. They therefore suggest that the word 'or' be inserted after sub-clause (a), (b) and (c).

Clause 14—Duties, Powers and Functions of the Authority

17. Clause 14 specifies various duties, powers and functions which the Insurance Regulatory Authority has to discharge. The Committee however note that there is no mention under the provisions of this Clause with regard to the role of the Authority concerning the functions of Tariff Advisory Committee, which at present is under the control of GIC. The Chairman of GIC is the Chairman of TAC and all the members of TAC are nominated by GIC with the prior approval of the Central Government to represent GIC, the subsidiary companies, the State Insurance Funds, the Ministry of Finance and the Bureau of Industrial Costs and Prices. The composition, powers and functioning of TAC came under heavy criticism by many interest groups as well as opinion leaders who deposed before the Malhotra Committee. It was alleged that TAC was insensitive, dilatory, unresponsive, non-transparent and its decisions were based on inadequate and outdated statistical data, premium rates were not revised for those lines of business which had persistent high claim ratio and it failed to inspire confidence among the insurers. It was suggested that either TAC should be abolished or its functions be taken over by the Insurance Regulatory Authority. Another suggestion was that TAC should be brought under the control of the Regulatory Authority and that its composition should be expanded by including members from outside the industry. The

Malhotra Committee after having gone into the issue had recommended that TAC should be delinked from GIC and should function as a separate statutory body under the supervision of the Insurance Regulatory Authority without becoming a part thereof and also recommended restructuring of TAC.

18. The Committee are inclined to accept the recommendations of the Malhotra Committee and recommend that the TAC should function under the supervision of Insurance Regulatory Authority, without becoming a part thereof, in the changed scenario. They therefore suggest that a new sub-clause (o) be added under sub-clause (n) of this clause which should read as under:

“(o) supervising the functioning of the Tariff Advisory Committee.”

They also suggest that as recommended by the Malhotra Committee TAC should be delinked from GIC and given a statutory status and restructured immediately.

19. It has also been suggested to the Committee that safety and loss prevention activities as well as research and development are the areas which need special attention by the Insurance Regulatory Authority. The Committee are inclined to accept that there is a need to pay attention to these areas by bringing about an awareness in the public and to set standards/bench marks for various safety devices. Research and development also needs desired attention. They therefore suggest that Clause 14(2)(f) be amended as under:

“(f) promoting and regulating professional organisations, preferably a national organisation to propagate safety and loss prevention, undertake research and development activities connected with the insurance and re-insurance business.”

The Committee desire that in order to enable the professional bodies to discharge their functions, the Central Government/IRA should be authorised to prescribe a specified percentage of premium amount of all the companies. The Committee also note that many schemes are in operation which are catering to the welfare of the un-insured and they are of the view that there is a need to not only continue with such schemes but also strengthen and widen them. They are, therefore, of the considered opinion that a specific

provision must be incorporated in the Act for prescribing certain percentage of the prescribed amount of premium to finance such schemes.

20. The Committee note that there is a provision for constitution of an Advisory Committee under the Electricity Regulatory Commissions Act, 1998 which provides that the Central Commission may by a notification establish a Committee to be known as the Central Advisory Committee which shall consist of not more than 31 Members to represent the interests of commerce, industry, transport, agriculture etc. This Committee shall advise the Central Commission on questions of policy, protection of consumer interests, compliance by licensees with the conditions and requirements of their license etc. The Committee has received suggestions from different corners stating that a similar Committee or a Board should also be constituted for advising the Insurance Regulatory Authority on various matters. Views have also been expressed by some of the experts that before finalisation of the regulations IRA should take the opinion of the cross sections of the population.

21. The Committee are of the opinion that constitution of an Advisory Committee can cater to such demands. Moreover, in view of the fact that the Insurance Regulatory Authority shall have to discharge multifarious functions relating to regulations of the Insurance industry, the Committee suggest that an Advisory Committee on the similar lines as that of Electricity Regulatory Commission may be set up and a separate Clause as mentioned below to this effect be inserted after Clause 14.

Clause 14A—The Advisory Committee

22. (1) The Insurance Regulatory Authority may, by notification establish with effect from such date as it may specify in such notifications, a Committee to be known as the Advisory Committee.

(2) The Advisory Committee shall consist of not more than 25 members excluding ex-officio members to represent the interests of commerce, industry, transport, agriculture, consumer forums, surveyors, agents, intermediaries, organisations engaged in safety and loss prevention, research bodies and employees Association in the insurance sector.

(3) The Chairperson and the members of the Insurance Regulatory Authority shall be the ex-officio Chairperson and ex-officio Members of the Advisory Committee.

23. The Committee also suggest that the objects and the functions to be discharged by the Advisory Committee may also be specified by the Government.

Clause 18—Power of Central Government to issue directions

24. Clause 18 of the Bill provides that the Central Government may give directions to the Insurance Regulatory Authority on matters of policy and the Authority shall be bound by such directions. The Government is also empowered to decide as to which are matters of policy.

25. In view of the very fact that a statutory status is being accorded to IRA under the proposed legislation and it is IRA which will be a centre piece in the new scheme of things and which will function to make the insurance sector vibrant, it is very important that the Authority is accorded autonomy in order to enable it to exhibit creditability, check abuses/malpractices, benefit the customers by better products and services at competitive prices and maintain highest standards of professional competence. The Committee are of the opinion that the provisions as contained under this Clause, on the contrary make the IRA subservient to changes in the Government policy from time to time. In order to enable the Authority to function in a free and independent manner, the Committee are of the view that it should be allowed to frame policy guidelines in consonance with the changes which may take place in the insurance industry. Moreover, since it is IRA which would be in regular touch both with the insurance companies as well as the insured, it would have a definite edge over the Government as regards appreciation of various issues and associated problems. They therefore recommend that this section be suitably amended to read as under:

“18(1) Without prejudice to the foregoing provisions of this Act, the Authority shall, in exercise of its powers or the performance of its functions under this Act, be bound by such directions on questions of policy, other than those on 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.”

Clause 25—Power to make regulations

26. Clause 25 stipulates that the Authority may by notification make regulations consistent with the Act and rules made thereunder to carry out the purposes of this Act.

27. In view of the very fact that vast powers are going to be bestowed on the Insurance Regulatory Authority ranging from issuing the certificates of registration to that of promoting efficiency in the conduct of insurance business and regulating investment of funds as well as adjudication of disputes, the Committee are of the view that there should be an element of transparency in framing the regulations. They are of the view that before finalising the regulations, therefore, it would be useful to have proper feedback from the representative body such as the Advisory Committee in the newly evolving market such as insurance. They therefore suggest that clause 25 may be amended to read as under:

“The Authority may, in consultation with the Advisory Committee, by notification, make regulations consistent with this Act and the rules made thereunder to carry out the purposes of this Act.”

THE FIRST SCHEDULE

Amendments to the Insurance Act, 1938

Section 2

28. Under this section after Clause 7 a new clause *i.e.* (7A) has been proposed to be inserted which reads as follows:

“(7A) ‘Indian Insurance Company’ means any insurer being a company—

- (a) which is formed and registered under the Companies Act, 1956;
- (b) in which the aggregate holding of equity shares by a foreign company, either by itself or through its subsidiary companies or its nominees, do not exceed twenty-six per cent paid up capital of such Indian Insurance Company:

Provided that an aggregate share holding of equity shares not exceeding fourteen per cent of the paid up share capital in an Indian Insurance Company may be held by foreign institutional investors, non-resident Indians, overseas body corporate and such equity share holdings of fourteen per cent, shall be excluded while calculating the twenty-six per cent paid up share capital specified in Clause (b);

- (c) whose sole purpose is to carry on life insurance business, general insurance business or reinsurance business.

Explanation 1—“foreign company” shall have the meaning assigned to it under clause (23A) of section 2 of the Income Tax Act, 1961.

Explanation 2—“foreign institutional investors” means such investors as the Central Government may, by notification in the Official Gazette, specify in this behalf.

Explanation 3—“non-resident Indian” shall have the meaning assigned to it in clause (e) of section 115(C) of the Income Tax Act, 1961.

Explanation 4—“overseas corporate body” means any body corporate, whether incorporated or not, established under the laws of the country outside India in which not less than sixty per cent of the controlling interest is held by the non-resident Indians and includes the trust formed and registered outside India in which not less than sixty per cent of the beneficial interest is irrevocably held by non-resident Indian.

29. As it is clear from the above, Section 2 (7A) provides that upto fourteen per cent of the paid up share capital in the Indian Insurance Company may be held by foreign Institutional Investors, non-resident Indians and overseas corporate bodies. Explanation 2, 3 and 4 further define all these entities. When asked as to why 14% stake in the case of NRIs, OCBs, FIIs was proposed to be offered over and above 26% to foreign companies, the Finance Secretary stated as under:

“The objective of the Government was to encourage the NRIs participation in the construction of this sector because NRIs have contributed a lot and responded magnificently to India’s needs. For instance, we had the recent RIB bond in which they have contributed 4.5 billion dollars. There are a number of NRIs who want to participate in India’s development. They want to contribute to India. So we thought that there is a meaningful participation together making it 40%. One can argue why just 40% and why not 90%. I am not carrying a brief for anybody. But the thing is that we have this very important source. They have resources and why should we not strengthen their participation and contribution? That is why we suggested like that.”

30. Elaborating further on the issue, Special Secretary (Insurance) stated as under:

“We felt that funds may come from the portfolio investment and this is one of the ways of portfolio investment and that is why we have mentioned 14%. It is Rs. 60 crores as regards Indian promoters since this entire amount is the share capital. Most of the Companies which are going in for this Rs. 60 crores are normally meeting us and are in touch with us. We find increasingly that the Indian promoters may find, except for one or two very important players who have no difficulty of cash and share capital, since there is no component of this in terms of equity or in terms of debt or per se equity, it will be difficult

even to have this Rs. 60 crores. So, subsequently another Rs. 70 and 80 crores would be required in the coming years because there will be losses in the next years in the Life Insurance Sector. So an amount of Rs. 180 crores would be required. Unless we have an amount of portfolio investment the Indian Companies may not be able to participate at all. Therefore, it will be a good idea in case they have a support by portfolio investment."

Chairman, HDFC in this context stated as under:

"Our view at HDFC is that this is not necessary. Most insurance companies have an FII registration because insurance companies are one of the largest players in the capital market. So, we have today in India the FIIs. A number of insurance companies have set up FIIs and are operating in the Indian capital market. If you want foreign insurance partners or players with more than 26%, do it directly by making it 40%. But I do not think giving 26% like this and 14% through NRIs or OCBs is warranted."

31. The Committee are however of the view that as it would be practically difficult to ensure that a foreign institutional investor is not affiliated to a foreign insurance company and participation by foreign institutional investors, non-resident Indians or overseas corporate bodies can amount to back door entry for foreign companies, it would not be prudent to permit them to invest in Indian Insurance Companies at the initial stage. Moreover, the Committee apprehend that there may be a possibility of the foreign insurance companies holding stakes in OCBs also. Further the Committee believe that as there is no sub-division of state of 14% among FIIs, OCBs and NRIs and the entire stake of 14% might be owned/captured by either of the three categories of the investors mentioned above. As a result, there might arise a situation where the Indian promoters with a stake of only 26% of the total paid-up capital will be at disadvantage vis-a-vis their foreign counterparts after a specified period. The participation at the most can be considered only when the shares are listed on the Stock Exchange. The Committee therefore suggest that proviso to Section 2(7A) alongwith Explanation 2, 3 and 4 may be deleted.

32. The Committee have also been given to understand during the course of the evidence by the representative of Ministry of Finance (Department of Economic Affairs—Insurance Division) that no new

entrant shall be allowed to do composite business in the insurance sector. The Committee note that the Malhotra Committee had also recommended the same thing.

However, reading of Section 2(7A) (c) gives the impression that an insurer can also undertake composite business which apparently is not the intention of the Government. They therefore recommend that Section 2(7A) (c) be amended to read as under:

“(c) whose sole purpose is to carry on life insurance business or general insurance business or re-insurance business.”

Section 6—Requirement as to capital

33. The Committee note that the draft Bill does not specifically lay down the minimum paid up share capital requirements for the Indian Insurance Companies. Section 6 of the Insurance Act, 1938, which has not been amended in the proposed legislation reads as under:

“No insurer incorporated after, or who commenced carrying on the business of Life Insurance in (India) whether solely or in common with any other business, after the 26th day of January, 1937, shall be registered unless he has as working capital a net sum of not less than fifty thousand rupees exclusive of the deposit to be made before registration under sub-section (5) of Section 7 of this Act, and exclusive in the case of a company of any sums payable as preliminary expenses in the formation of the company.”

34. Many experts including Chairman, IRA, who had deposed before the Committee during the course of the evidence had suggested that the minimum paid up share capital in the case of life and non-life business should not be less than Rs. 100 crores. Some of the experts had even suggested that in the case of Life Insurance due to the long term investments involved the amount of paid up share capital should not be less than Rs. 200 crores.

35. The Special Secretary, Insurance during the course of evidence informed the Committee that the minimum limit of paid up share capital which would be reasonable should be Rs. 100 crores for the life as well as non-life business. He also informed that the Government had proposed to incorporate this provision in the rules. However, in a separate note given to the Committee it has been suggested that any new insurance company (life and non-life) should have a minimum paid up share capital of Rs. 100 crores and a re-insurance company Rs. 200 crores. It has also been suggested that since the capital structure

of an insurance company has been provided for under Section 6, 6A, 6B and 6C of the Insurance Act, 1938 the Government also proposes to amend these Sections.

36. While accepting the viewpoint expressed by the Ministry of Finance (Department of Economic Affairs—Insurance Division) regarding the minimum requirement of paid up share capital in the case of life, non-life and reinsurance business, the Committee also desire that in the interest of the policy holders, it would be desirable to bring in necessary amendments in the Insurance Act, 1938. They also recommend that the minimum requirement of paid up share capital should be exclusive of the deposits and preliminary expenses that may have to be incurred by a Company at the time of incorporation.

Section 6AA—Manner of divesting excess share holding by promoter in certain cases

37. It has been proposed to add a new section 6AA after Section 6A of the Insurance Act, 1938. This Section reads as follows:—

“6AA (1) No promoter shall at any time hold more than twenty-six per cent or such other percentage as may be prescribed, of the paid up capital in an Indian Insurance Company:

Provided that in a case where an Indian Insurance Company begins the business of life insurance, general insurance or reinsurance in which the promoters hold more than twenty-six per cent of the paid up capital or such other excess percentage as may be prescribed, the promoters shall divest in a phased manner the share capital in excess of the twenty-six per cent of the paid up capital or such excess paid up capital as may be prescribed, after a period of six years from the date of commencement of the said business by such Indian Insurance Company or within such period as may be prescribed by the Central Government.

Explanation—for the removal of doubts it is hereby declared that nothing contained in the proviso shall apply to the promoters being foreign company, foreign institutional investors, non-resident indians and overseas body corporate referred to in sub-clause (b) of clause (7A) of Section 2.

(2) The manner and procedure for divesting the excess share capital under sub-section (1) shall be specified by regulations made by the Authority."

The reading of Clause 6AA (1) makes it obvious that no promoter can at any time hold more than twenty-six per cent or such other percentage as may be prescribed of the paid up capital in an Indian Insurance Company. On the other hand, Proviso lays down that where an Indian Insurance Company begins the business of the life insurance, general insurance or re-insurance in which the promoters hold more than twenty-six per cent of the paid up capital or such other excess percentage as may be prescribed, it will have to divest excess of twenty-six per cent of the share capital in a phased manner.

The above provisions imply the following:

- (1) The share of a single promoter will be restricted to twenty-six per cent of the share holding or such other percentage which may be prescribed. In other words, it means that a single promoter can not hold more than twenty-six per cent of the share capital even at the time of incorporation of a company.
- (2) The share of group of promoters would be restricted to twenty-six per cent or such other percentage, which may be prescribed after a certain period.

On the issue of divestment of the stake to 26% or such other percentage as may be prescribed after six years, the Finance Secretary while deposing before the Committee stated as under:—

"The other thought was the reason why this whole industry was nationalised because earlier some of the entrepreneurs did misuse its dominant position and utilised essentially the policy holders' resources. So, it is important that we make it as widely held as possible. That is the other thought why we suggested that the Indian promoters should bring it down.....It is not fair that you would bring it down the moment you start making money. Should we bring it down in one go, is another thing. If you ask him to do it one go, he would lose money in the market and so, should it be done in stages? There is the other possibility. So the time frame within which it should be brought down, probably would vary form case to case. Perhaps, in our formulation, we may require the Government to have this flexibility so that everybody benefits."

38. The Committee are of the opinion that restricting the share of an Indian promoter to twenty-six per cent even at the initial stage will result in forcing such a promoter to join hands with at least two other Indian promoters in order to make up the shortfall in the minimum share capital required. This may not result in adding value to the joint venture. Moreover, this Section would also pose hindrance in such a case where the Indian promoters possess a financial capacity to subscribe to seventy-four per cent of the paid up capital. The Committee note that even Malhotra Committee had opined that "if the promoters wish to start with a higher holding, they should be permitted to do so."

39. Moreover, the wording "twenty-six per cent or such other percentage as may be prescribed....." and "the promoters shall divest in a phased manner the share capital in excess of twenty-six per cent or such other excess capital as may be prescribed....." used in the above section and the proviso respectively are loosely worded leaving thereby scope for wide interpretation and causing uncertainty in the minds of the promoters. For instance, it could also mean that the percentage of twenty-six could also be lower in future which would result in divesting the share holding of the promoters to even a greater extent than what was originally envisaged. It could also result in the Indian promoters having a lower share holding than their foreign counterparts. The Committee are of the opinion that the commercial prudence demands that the promoters should have definite knowledge of the actions that they may be required to undertake at a future point of time.

40. The proviso also provides for divestment of the excess paid up capital in a phased manner after a period of six years from the date of commencement of business by an Indian Insurance Company or within such period as may be prescribed. The Committee, were, however, informed through various representatives who had deposed before the Committee during the course of evidence as well as through Memoranda received from different quarters that though general insurance companies may start making profits after a period of four or five years, it takes much longer for a Life Insurance Company to even break-even after a period of six years. Therefore, it would be unfair to judge both types of companies by the same yardstick of six years. The Committee are, however, of the opinion that it would be highly unjust to expect the promoters to divest soon after they have started making some profits and therefore this period needs to be enhanced. They also feel that it is likely that an insurance company may not be able to get good returns at the time fixed for divestment

due to the poor market conditions prevailing at that time. The Committee therefore feel that such problems need to be addressed by leaving the position regarding opportune time of divestment with the Authority.

41. The Committee therefore recommend that Section 6AA(1) may be amended to read as under:

"No promoter shall at any time, other than at the time of incorporation of the Indian Insurance Company, hold more than twenty six per cent or such other higher percentage as may be prescribed of the paid up capital in an Indian Insurance Company:

Provided that in case where an Indian Insurance Company begins the business of life insurance or general insurance or re-insurance in which the promoters hold more than twenty-six per cent of the paid up capital or such other higher percentage as may be prescribed, the promoters shall divest in a phased manner the share capital in excess of the twenty six per cent of the paid up capital within a maximum period of ten years."

Section 7—Deposits

42. The Committee note that Section 7 of the Insurance Act, 1938 stipulates that every insurer shall deposit and keep deposited with the Reserve Bank of India either in cash or in approved securities or partly in cash and partly in approved securities, a specified amount depending upon the gross premium written by him in the country. The Committee note that though the amount of the limits provided for the deposits under this Section are meager and have not been revised for long, this section has not been amended in the proposed legislation. It has been specified under this section that the maximum deposits for Re-insurers who write gross premium of Rs. one crore shall be Rs. ten lakhs and in the case of those insurers who write gross premium of more than Rs. one crore, it shall be Rs. Twenty lakhs.

43. In a separate note received by the Committee from the Ministry of Finance (Department of Economic Affairs—Insurance Division), it has been suggested that the limits for such deposits which were prepared decades ago need to be suitably enhanced. The revision regarding the limits for deposits has been proposed as under:

- (1) For insurers carrying on life insurance business, one per cent of the gross premium received in the year subject to a maximum of Rs. Ten crores.

- (2) For insurers carrying on general insurance business, three per cent of the total gross premium subject to a maximum of Rs. Ten crores.
- (3) For insurers carrying on solely reinsurance business, a sum of Rs. Twenty crores.

44. The Committee are in agreement with the enhanced limits proposed above. They also opine that stipulations of deposits should not have concessions of payments by way of installment. The Committee therefore desire that Section 7 of The Insurance Act, 1938 be suitably amended and inserted.

Section 42—Licensing of Insurance Agents

45. The Committee note that while under Section 42D (5) exhaustive conditions for disqualification in the case of intermediaries have been proposed in the Bill, conditions for disqualifications in the case of insurance agents as specified under Section 42(4) have not been amended. These are as under:

- (a) that the person is a minor;
- (b) that he is found to be of unsound mind by a court of competent jurisdiction;
- (c) that he has been found guilty of Criminal misappropriation or criminal breach of trust or cheating or forgery or an abetment of or attempt to commit any such offence by a Court of competent jurisdiction:

Provided that where at least five years have elapsed since the completion of the sentence imposed on any person in respect of any such offence, the Controller shall ordinarily declare in respect of such person that his conviction shall cease to operate as a disqualification under this clause.

- (d) that in the course of any judicial proceeding relating to any policy of insurance or the winding up of an insurance company or in the course of an investigation of the affairs of an insurer it has been found that he has been guilty of or has knowingly participated in or connived at any fraud, dishonesty or misrepresentation against an insurer or an insured."

46. The Committee therefore suggest that conditions as mentioned under the proposed Section 42D (5) (e) and (f) of the Bill, may be added after the above sub-clause (d) and this section may be amended accordingly and suitably inserted in the Act.

Section 64 VA—Sufficiency of Assets

47. The Committee note that while Insurance Regulatory Authority has been empowered under the Bill to make regulations on solvency margins, under Section 64 VA the solvency margins have not been revised. This Section of the Insurance Act, 1938, requires a minimum of solvency margin at 20% of the net premium upto Rs. 5 crore plus ten per cent of the net premium in excess of Rs. five crores subject to a minimum amount of Rs. Ten lakhs. In pursuance of the recommendations of the Mukherjee Committee, the Ministry of Finance (Department of Economic Affairs—Insurance Division), in a note submitted to the Committee has stated that following amendments have been proposed to the existing provisions in the Insurance Act, 1938 governing the solvency margins—

(I) For Life Insurance Companies—

Solvency margins for Life Insurance Industry will be the higher of (1) and (2)—

- (1) an amount of Rs. Ten crores (Rs. Twenty crores in case of reinsurers)
- (2) Three per cent of mathematical reserves suitably adjusted for reinsurance (The percentage of mathematical reserves can be reduced according to the class of business) plus a suitable percentage of sum at risk after appropriately adjusting for reinsurance.

(II) For General Insurance Companies—

The required solvency margins may be the highest of:

- (1) Rs. Fifty crores (Rs. hundred crores in case of reinsurers);
- (2) Twenty per cent of net premium;
- (3) Thirty per cent of net incurred claims.

Subject to credit for reinsurance in computing net premium and net incurred claims being actual but not exceeding fifty per cent.

48. It has also been suggested that IRA may prescribe additional solvency margins for life insurance, general insurance and reinsurance companies in accordance with regulations, if certain risks are either not covered or inadequately covered or ask any individual company to make such provisions after hearing the Company.

49. The Committee are also of the opinion that there is a need to revise the solvency margins upwards and accordingly recommend that the same may be fixed at Rs. 50 crores for both Life and Non-Life insurance business. They also suggest that suitable amendment be incorporated under Section 64VA and the same be suitably inserted in the Act.

50. In addition to the modifications/amendments suggested above, the Committee also recommend the following:

The Ministry of Finance (Department of Economic Affairs—Insurance Division) have suggested that Section 3, 3A, 6, 20, 39, 42, 42A, 64R, 64UK, 64UN, 70A, 119, etc. of the Insurance Act, 1938 under which specific amount of fees has been provided also need to be amended by way of revision in the rates which range from six annas to Rs. Five Hundred and one fourth of one per cent of the gross premium written directly in India. It has been suggested that IRA may fix by regulations fees for various purposes other than registration ranging from Rs. 250 to Rs. 50,000. The fees relating to initial registration may be fixed to minimum amount of Rs. 50,000 at the time of registration. The renewal fees may be fixed so that it would be one-fourth of the one per cent of the gross premium income of the insurer, subject to a maximum of Rs. Five crores and a minimum of Rs. 50,000.

51. The Committee recommend that the revised rates as suggested above may suitably be incorporated by way of amendments in various Sections.

52. The Government have also informed through a separate note to the Committee after the evidence, that IRA may also be given powers to appoint an Adjudicating Officer to impose penalty and the Insurers Appellate Tribunal may be constituted on the lines of Securities Appellate Tribunal (SAT) as provided under the SEBI Act, 1992. The Tribunal may hear appeals under the Insurance Act in respect of all matters including imposition of penalties. The powers may also be given to IRA to impose certain new penalties on Directors and other employees of an Insurance company responsible for running its business

on the lines of the provisions contained in the SEBI Act, 1992, for violation of provisions of IRA Act, rules, regulations and the Insurance Act, 1938 subject to a maximum limit of Rs. 5 lakhs. In addition, the Authority may direct payment of such amount as considered essential, by way of punitive action on the insurance companies/Directors/employees, to protect the interests of the policy holders. The Authority may also follow the same procedure in this regard as is prevalent under the SEBI Act.

53. While the Committee are in agreement with the above suggestions, they are of the view that the same should have been incorporated suitably in the proposed legislation. They therefore desire that the provisions with regard to penalty and adjudication, and establishment of an Appellate Tribunal may be incorporated in the Bill under separate Chapters on the lines of SEBI Act, 1992.

54. The Committee have been informed by the Ministry of Finance (Department of Economic Affairs—Insurance Division) that at present under the Insurance Act, 1938 corporate bodies are not allowed as agents for the life insurance business. The Ministry has proposed that corporate bodies like banks should also be allowed to act as Insurance agents for life/non-life insurance business for the purposes of soliciting or procuring this business.

55. The Committee are inclined to accept the suggestion and desire that the same may be incorporated suitably by way of amendment in the Insurance Act, 1938. They also recommend that the Government may consider effecting necessary amendments in the relevant Acts governing the Banking Sector in this regard, if necessary.

56. The Committee note that the Bill seeks to amend the provisions of the LIC Act, 1956 and the General Insurance (Business Nationalisation) Act, 1972. The amendments mentioned in these clauses as contained in Second and Third Schedules to the Bill only seek to remove the monopoly powers of the existing insurers. The Committee is informed that under Section 43 of the LIC Act and Section 35 of the General Insurance (Business Nationalisation) Act, 1972, some of the provisions of the Insurance Act, 1938, which would be applicable to insurers have been made inapplicable to the existing insurers. The Malhotra Committee in its report had suggested that the insurers as a whole including those who would be permitted to

set up business in the de-nationalised atmosphere should be treated similarly and there should be a level playing field applicable to all the insurers. The Committee would like to suggest that the special provisions of Section 43 of the LIC Act and Section 35 of the General Insurance Business (Nationalisation) Act, 1972 and notifications issued thereunder must be so modified that all the provisions of the Insurance Act, 1938 and the IRA Act and rules and regulations made thereunder which would be applicable to the existing insurers should be applicable to the new companies as well. The Committee desire that the Central Government should also invariably consult IRA before making any changes under the existing laws or rules.

57. The Insurance Regulatory Authority to be set up under this Bill must be an independent body which is in a position to carry out fully the various objectives laid down in the Bill. The Committee note that Section 33 of the Insurance Act, 1938 which lays down the power of investigation as one of the potent weapons with the Controller of Insurance to ensure that the insurance companies do not indulge in malpractices, at present calls for a decision to be made by the Central Government in writing for ordering the Controller of Insurance to make an investigation. In view of the very fact that the Authority is being vested with powers to deal fully with the management, control and monitoring of all the insurers, such powers need to be conferred on the IRA independently without the interference of the Government. The Committee therefore recommend that Section 33 of the Insurance Act, 1938 be suitably amended accordingly.

58. The Committee note that under the definition of Indian Insurance Companies, the cooperative societies have not been included. They have received representations from the National Cooperative Union of India seeking admission into this Sector. In view of the very fact that adequate capital requirement will have to be there and the Malhotra Committee had recommended that lower capital requirement can be prescribed for the State level cooperative institutions taking up life insurance, the Committee at this stage would not like to ignore the claims of this sector and desire that this issue may be examined in detail by the Government.

59. The Committee note that the nationalised companies presently working in this sector are also administering social security schemes and undertaking rural business. For instance LIC has introduced a large number of products catering to the needs of different segments

of the community including those in rural areas. The coverage given are both profit oriented as well as subsidised to fulfil social obligations. Apart from operating in not so profitable rural areas, LIC is also administering some social security schemes such as Landless Agricultural Labourers Group Insurance Scheme (LALGIS) and Rural Group Life Insurance Scheme (RGLIS). Besides, LIC also subsidises premium in respect of various social security group schemes covering 23 approved occupations amongst weaker sections. In view of the fact that operating in rural areas is costlier *vis-a-vis* urban areas, since cost of the writing insurance policies in rural areas is higher due to high mortality as well as higher expenses, it is apprehended that in case LIC is pushed to operate only in rural areas even when the sector is opened up, it will surely have an adverse affect on its working. Likewise, GIC has also been operating in low profit areas and in order to stay afloat in such areas it has to resort to cross subsidisation. The Committee therefore recommend that in order to provide a level playing field for all, the Authority must ensure that the new companies also undertake specified percentage of business in rural and social sector and in the case of their failure to adhere to given targets in this regard, the IRA should consider imposing stringent punishment including monetary penalties.

60. To be able to withstand impending competition from the private players in the post liberalised scenario, the Committee recommend that the General Insurance Corporation and its four subsidiaries should be restructured so as to enable GIC to identify the business potential, assess the resource requirements and deploy surplus resources into the new markets by either of the following strategies:

- (a) All the four subsidiaries of GIC may be merged to form a single Company.
- (b) Each of the four subsidiaries could be made as independent companies.
- (c) Only one Company may operate in the corporate area of business while others may operate in non-corporate areas of business.

61. The Committee have been informed that Insurance Act, 1938 provides for certain limitations for payment of commission under Section 40-A, but there is no provision to limit the other expenses

on marketing including incentives payment to the sales force. An apprehension has been expressed by the present companies that when the private insurance companies start operating with foreign equity, they will not hesitate to provide huge incentives to the sales force outside the provisions of the Insurance Act at the cost of the policy holders. The Committee therefore desire that IRA should make regulations to limit the expenses on new business including the incentive payments.

62. The Committee note that lakhs of agents are working at present in the Life and General Insurance companies and large sums have been invested by such companies for their training and development. It has been apprehended that once the sector is opened up the new companies may take the trained agents alongwith their clients to the detriment of both LIC and GIC. The Committee therefore recommend that tied agency system should be brought in by the IRA in the industry so that an agent is not permitted to operate in more than one company.

63. Health Insurance is an area which requires special attention of the Committee. Some of the experts who appeared before the Committee had informed that the coverage of health insurance in India so far has been only one per cent, while GIC has done pioneering work in this area with the social perspective, more players and competition are required with a view to cover maximum percentage of population. There is a need to cover all sections of population *i.e.* small employer groups, large corporations, unorganised sector, rural sector, disabled and special needs groups and students. It has therefore been suggested that health insurance should be undertaken in a big way both by LIC and GIC. The Committee are in agreement with the viewpoint expressed by the experts in this regard and feel that health care is an area which has so far not been able to get adequate attention and therefore needs a special thrust. They, therefore, recommend that the Government should consider bringing the health insurance into the domain of life insurance also and consider amending the relevant Acts if necessary.

64. Due to nationalisation of Life insurance business in 1956 and General insurance business in 1972, no private sector players were allowed to operate in the Insurance sector for a number of years. Hence, the Committee recommend that prior experience in the case of the intending Indian entrants who want to commence the Insurance business without foreign participation should not be made the criterion for granting licenses by IRA.

65. The Committee have been informed that under section 3 of the Insurance Act, 1938, the powers have now been vested with the Insurance Regulatory Authority to issue registration certificates to new insurance companies. IRA Bill, prescribes necessary regulations in this regard and all companies meeting the requirement of registration and regulations will have the right to get a licence. The Committee are of the view that it is essential that some minimum period is specified by the Authority within which the licence will have to be issued with a view to ensure expeditious processing of applications as well as minimise the delays.

66. The Committee have been informed by the Ministry of Finance (Insurance Division) that investment by private insurance companies in Life Sector will be governed by Section 27, 27A and 27B of the Insurance Act, 1938 and regulations made by IRA thereunder. Companies doing the Life and General Insurance business will have to invest 50% and 45% respectively of their accretions to the 'Controlled Fund' in the designated sectors. The Committee desire that these stipulations should strictly be adhered to as far as possible.

NEW DELHI;
10 March, 1999

19 Phalguna, 1920 (Saka)

MURLI DEORA,
Chairman,
Standing Committee on Finance.

NOTE OF DISSENT

Dr. Biplab Dasgupta, MP.

In my comments I am questioning the rationale of opening up the insurance sector and allowing in foreign companies with 26-40% equity holding. I am, therefore, not dealing with various proposals for improving IRA Bill as contained in the report of the Committee and concentrating on the more fundamental issue: whether there was any need for this bill.

In the introductory part of the report there should have been a stronger justification for this bill, for two very specific reasons. First, the dense cloud of suspicion among a large section of knowledgeable population, that this bill is being adopted under pressure from the United States, World Bank and WTO. As for the United States, it had been knocking at our door since 1989, to gain access for its multinational companies to our insurance sector. Quite a number of times over the past decade, India had been put on the 'hit list' under the notorious article 301 of its trade legislation, popularly known as Super 301, to force us to undertake such a course. Adopting IRA Bill can, therefore, be construed as succumbing to that pressure. Even when the 1996 IRA Bill was being discussed by the Standing Committee on Finance, and it was being claimed that the principal objective of this bill was to regulate and not to globalise, many of us (including, in my case, a note of dissent to the report of the Committee) argued that IRA was a prelude to the opening up of the insurance sector to the foreign MNCs. When discussing the 1998 IRA Bill now, this is no longer a matter of conjecture.

Secondly, a major consequence of passing this bill and allowing foreign private companies to participate in this sector, would be to sideline two of the most successful public sector companies of the country that have, in addition to making good profits, contributed significantly to India's development. I understand that LIC, which began in the mid-1950s in Calcutta with a capital of Rs. five crores, now handles thousands of crores, and would contribute more than Rs. one lakh crores during the current plan period. This bill can be interpreted by many, therefore, as an attempt to destroy the credibility

of the public sector by sacrificing two of the best such enterprises at the altar of globalisation.

While arguments favouring IRA have been stated in the introductory part of the report, the opposing arguments have been very briefly and inadequately presented, and, as we shall see below, the main ones seem to be missing. There was too much of a hurry to get this bill through, meetings with experts were not followed by a day of discussion before preparing the draft report. For example, when the Finance Secretary is quoted in page 8 as saying the India is one of the least developed countries in terms of the level of contractual saving, it does not add that India is among the least developed in terms of practically all the major indicators of development, such as per capita GNP, literacy, infant mortality rate, share of global exports, and what have you. Performance in the insurance sector should not be treated in isolation from the overall performance of the economy, nor should the foreign MNCs be expected to cure all ills by waving their magic wand.

Here the choice is not between public sector and private sector. Nationalisation of insurance business followed a spate of bankruptcies of private sector firms and the attended human problems. Nor would one find even today a private Indian company willing to invest in this sector on its own. The choice is, therefore, between Indian-public and foreign-private. Needless to point out, the preference for the latter and, therefore, for *Videshi-vandana*, hardly conforms to the full throttled rhetoric of *Swadeshi* and *maryada* to which we have been subjected over the past one year. While earlier, during the debate on the 1996 IRA Bill, a distinction was made between Indian private participation and globalisation under MNC umbrella, the latter seems to have prevailed over the former by now.

It is not important that the share of the foreign component would be 26% as the committee report suggests, or 40% with NRI, as the Government seeks. As our experience tells us, there would be incremental increases in foreign share, in budget following budget, and eventually, led by the garden path, we would reach the magic figure of 51% in due course, thus permitting the foreign companies—with their vast experience and tentacles spread throughout the world—to take over the insurance business. The report of the Standing Committee should have addressed itself to this fundamental issue: Do we need the foreign companies to run this business? Who would gain

from their higher efficiency level? How much of their business would be in the interest of the rural folk? Would they be interested in 'crop insurance' that would bring benefit to the majority or would they confine themselves entirely to the juicy parts of insurance—in car, theft etc.—in compact urban areas? How can bankruptcy be avoided, and if not how to ensure the survival of poor and middle class policy holders after working? This report is totally silent on such vital life and death issues.

Let us analyse some of the major arguments that have been advanced in favour of foreign MNC participation under the new insurance regime.

First, the argument, first advanced by Malhotra Committee, that the coverage of Indian population by LIC-GIC is very low, and the expectation that the entry of MNCs would significantly increase such coverage. To strengthen this argument, the report has mentioned, in page 7, figures from Germany, France, UK, and Malaysia, and so on, without realising that these countries are either rich or middle-income countries, while India is one of the 20-odd poorest countries of the world. Comparison should be between comparable. If comparable figures were used, from countries as poor as India or those better off than India but 'poor' in terms of their per capita GNP, that would have told that our public sector insurance business has done no worse than their counterparts in poor countries. Why instead India's insurance coverage was not compared with those for Bangladesh, Pakistan, Sri Lanka, Burkina Faso, or Zimbabwe? Similarly, what meaning can one attach to the statement—"Besides, per capita life insurance premium, in India is only US \$5 as compared to US \$98 for Malaysia, US \$978 in Singapore, US \$36 in Thailand, and \$1433 in UK"—or to the statement in page 8, that Korea and Malaysia are ahead of us in terms of insurance coverage and mobilisation of resources? The fact is that, as we have noted already in terms of practically all development indicators. South Korea or Taiwan, incomparably smaller countries in terms of population size, reveal GDP (not per capita, but aggregate) figures that are 50% higher than India's.

Insurance is not a business that is insulated from the rest of the economy. If GDP remain so low, and lower in per capita terms, the organised sector constitutes a negligible proportion of the Indian Multitude, the salaried component in the population continues to be equally negligible, and the proportion of income-tax payers remain

pitifully small, how can the insurance coverage be raised only with the aid of MNCs? All that MNCs would succeed in doing is to divert saving and business away from banks, share market and competing insurance companies, while the overall insurance coverage can only rise with GDP. This is simple economics.

The same argument applies to saving. There is an implicit assumption in the statement of Finance Secretary quoted in page 2, that the foreign companies, working efficiently, and in competition with one another and the Indian firms, can raise the level of saving in India. The world wide experience is that the saving ratio does not increase without an increase in the level and the rate of growth of GDP. As a study of the East Asian countries would show, the level of saving was very low to start with, even less than 6-7% in sixties, and then increased with high growth in GDP, reaching figured around 35-40% after two decades. Further, the overwhelming part of these savings were tapped by public sector banks and central provident funds schemes and not by foreign, private banks and insurance companies.

It is clear that the flow of funds from foreign sources entering our insurance business would be no more than a trickle. Assuming capital base of Rs. 100 crores, and a foreign share of 40%, that would only contribute Rs. 40 crores for a company. By paying this meagre amount of Rs. 40 crores the same company would handle may be a few thousand crores of rupees of insurance business, mobilising all but that paltry amount from our own domestic savings, and that too by diverting savings mobilised by other sources—share market, banks and other insurance companies. The report says in page 7: that IRA would “also result in facilitating the channelisation of long term savings into the capital market as well as the infrastructure”. If the level of savings remains as it is, around 26% or increases slightly, how can this be achieved without being at the cost of savings mobilised by other fields? And how could the foreign insurance companies be induced to invest in infrastructure?

The report paints, in page 7, a rosy picture of India with foreign participation in insurance business: “While recommending the opening up of the sector, a view has also been expressed that once this is opened it will result in wider range of products, better and cost effective service, speedy settlements, efficient back-up facilities, technological advancement which will go a long way in improving

customer service. Besides, opening up of this sector can result in tapping the so far under exploited areas such as health care and pension funds.

I am prepared to accept that the customer services will improve under the foreign companies, but I am not sure how much of that increased efficiency would be translated into higher rate of saving and how much would that contribute to financial outflow by way of profit remittance. The important question to ask is whether their total investment in India—net of the profit they remit and the savings they divert from other domestic fields—would exceed the investment being undertaken by LIC-GIC now, allowing for normal growth? We know, LIC or GIC can be induced to invest in accordance with national priorities—for infrastructure and industries—but not their foreign counterparts.

It may also be asked how many of those 'new products' are really necessary, when the more urgent need is to spread the coverage even on the basis of a few basic products. The 'new products' might be in demand at the upper end of the elite market, but would make little difference to the economy and society as a whole. It is like huge investment in curing rare diseases such as blood cancer or in treatment such as heart or kidney transplant, while ignoring the need for providing basic preventive health services related to malaria, hepatitis, diphtheria, tuberculosis, death during pregnancy and so on, or even to provide safe drinking water, in order to reduce mortality rates. To give another example, it is like having 50 TV channels in place of 2 or 3, where it is not clear whether this enormous increase in choices amounts to increased social welfare. Some would argue that too many choices reduce social welfare, as people, spending their time and energy to hop from one channel to another in search of the best one at a particular moment, become fickle minded and unable to concentrate on anything.

World is going round that, under competition, the premiums would go down. Just the opposite is more likely to happen. It is more than certain that car insurance premium would be increased many-fold in line with the rates prevailing in the western countries where the automobile prices are lower but premiums are much higher compared with India. The same would apply to other areas of insurance. Only the ignorant would believe that premiums would go down. Further, as the report itself admits in page 7, the record of settlement of

insurance claims is quite good in cases of LIC and GIC 97% and 75%, respectively, compared with the international average of 40%. Even in the West there are frequent allegations that the foreign companies make use of conditions laid down in small print to deny customers legitimate compensation. Nor is this true that the foreign companies settle the claims faster. I can speak from my own personal experience about a car accident leading to injury where more than one year has passed without the claim having been settled by the concerned company in UK.

The same with health services. I am not sure, going by the US experience, what proportion of the Indian population would be able to pay premiums required for this purpose based on actuarial estimates. The coverage of diseases and the compensation paid would be linked to the premium paid; the higher the premium paid the greater would be such coverage and the amount of compensation in case of treatment required for such illness. No ordinary middle class salaried employees would be able to afford premium prescribed by the private companies for AIDS or kidney or heart transplant or for similar difficult disease that may or may not affect a particular person during his life time. It is not fair to project a rosy picture when neither the Government nor the Committee has been able to assess the subsidy requirements, the link between premium and coverage and compensation, and the experience in countries like UK and USA with such private medical insurance. If the purpose of opening up the insurance sector is to satisfy the elite demand for better services in health care and car insurance that should be clearly stated. Otherwise it is incumbent on the committee to justify such statements with facts and figures from other countries, particularly those belonging to the category of countries to which India belongs.

The same applies with regard to the claim often made that the globalisation of the insurance business would bring better technologies. Apart from the universal global experience that the rich countries and their companies are shy about disseminating their technologies and are likely to keep those under patent protection long enough—20 years under TRIPs agreement—to ward off competition from the poor countries, it is not at all clear what technology one is talking about. If by technology one implies software management packages incorporating tested actuarial models, we have been told in the Committee by some of the witnesses that Lloyds, one of the global giants in this field, uses the services of Indian firms for developing some of those required by them.

Two specific questions, raised a number of times by myself and others, have remained unanswered. First, would not private business in life insurance expose the Indian clientele to a high risk of default? As we know, the life insurance business was nationalised in the 1950s because of a high level of bankruptcy among the private companies. We also learn from the experiences of US and other countries that bankruptcy continues to be a problem with them, though they are trying over the past few years to bring down their frequency. This is not simply a matter of the size of the firm—even a large firm with massive financial resources can fail because of imprudent management decisions and practices—and, therefore, can not be cured by only having companies capable of operating on a big scale, as the report has suggested. In India's case, the adverse consequences are likely to be many times more serious.

A low-paid clerk saves month after month for 35 to 40 years with the expectation that at the end of his working life, he would have a substantial fund in his kitty to survive for the remaining post-retirement years of his life. Not having a national assistance or old age state pension to fall back upon, as in most developed countries, only by way of this saving can he survive during post-retirement years. If it is a publicly-owned insurance company, the state itself implicitly guarantees against such bankruptcy; no government can afford to ignore this guarantee that it would still be operational after 35-40 years, and if it does not who would guarantee payment at the end of the client's working life? For a poor country like India, the private business in life makes the insurance policy holders vulnerable. It may be asked why should the Indian policy holders be exposed to such a risk simply because the World Bank and WTO want it? We have already seen in case of the share market, that, after an initial period of enthusiastic participation, the ordinary salaried employees is shying away from the share market. We should calculate the risks involved in aping foreign institutions and their practices, when our economy and society operate at a different level and a different social milieu.

It is clear that the private companies—both foreign and Indian—would be mainly interested in operating in compact high density areas, such as big cities and towns, where the cost of administration per unit of money transacted would be the least, and where they would be better able to monitor their business. That the private companies are unwilling to operate in rural areas that are spread out over a large low density area, and the population is diffused in a large number of

small settlements, is demonstrated in other fields too, such as bank and power. Before the bank nationalisation of 1969, the activities of private banks were negligible in rural areas; had it not been for bank nationalisation it is doubtful whether banks would have been willing to provide short-term crop loans and medium term loans for tractors and other equipment's, to make 'green revolution' possible. Similarly, would the government be able to persuade Enron or Calcutta Electricity Supply Company to operate in remote, backward districts? In contrast, both LIC and GIC have excellent track records when it comes to mobilising saving and investing in rural areas.

When it comes to non-life insurance, the single biggest item that can bring 'greatest good to greatest number' would be 'crop insurance'. The crop insurance scheme in operation until now can not be described as a great success, but it is by improving upon the scheme, and not by abandoning it, can one make progress in our country. The single biggest curse befalling our country is fluctuations in agricultural production because of vagaries of nature. If the farmer is assured of some compensation in the years of bad harvest or low price, if a 'floor' is assured, this will do much more to the Indian economy than tax concessions declared in every budget to benefit private business. The fact is that the private business—whether Indian or foreign—is not interested in crop insurance. To them this is a loss making area that they are keen to avoid. Nor can any means be found to force them, by way of commandments issued by IRA, to allocate a certain proportion of investment to this area—that would be opposed to World Bank view against 'directed investment' or 'local content requirements'. Such a measure is likely to invite retaliation from the government of the United States and other western governments; and, as we have seen in this case as also in the case of patents, our governments are likely to yield to such 'external compulsion' without a fight.

If the foreign companies are unwilling to enter in an area so vital from the point of view of the Indian economy and society like crop insurance, why should they be allowed entry to 'juicy' areas like car or theft insurance in urban areas? Should not the public sector companies be allowed to have monopoly over these 'juicy' areas to compensate for the losses they would be forced to sustain in activities like crop insurance? Why should the foreign and Indian private companies be allowed to amass profits in urban areas when they are unwilling to share the social obligation of crop insurance?

I am not suggesting that every thing is fine with LIC and GIC. There remains a great deal of space for improvement. More improvement would come if the central government really believes in the 'autonomy' of the public sector companies. In recent years they have signed many Memoranda of Understanding (MoU) with public sector companies delineating government obligation in terms of budgetary support etc., while leaving matters like management, Staff recruitment, etc. in the hands of the PSU concerned. This 'autonomy' is a fiction. The appointment of CEO and their promotion to better posts are in the hands of the top echelon of bureaucracy or the Minister. That political and bureaucratic interference forces the banks to advance big non-viable has been highlighted by the Narasimham Committee on banking in 1991. Such interference constrain PSU functioning and make it difficult for them to compete with foreign firms on a level playing field. Where such interference are less in evidence, *e.g.* in Indian PSU operation in Singapore, they successfully compete with the best in the world.

I would have preferred the incorporation of these views in the report itself, preceded by in-depth analysis of the consequences of globalisation, and followed by logically derived conclusions.

sd/-

Dr. Biplab Dasgupta.

NOTE OF DISSENT

Sh. Rupchand Pal, MP
Sh. Varkala Radhakrishnan, MP

The IRA Bill is more than regulatory in character and seeks to privatise the Insurance Industry. It seeks to at one stroke to amend LIC and General Insurance Business (Nationalisation) Act through an addendum to the IRA Bill. These two are important social legislations with stated objectives of establishing two national institutions with commendable record. The Bill seeks to change their character even obliterate them without so much of an explanation. Through these provisions in IRA Bill existing legislations are proposed to be changed which is beyond the objects and reasons for which the legislative measure is proposed. If regulatory law is to be strengthened Insurance Act, 1938 itself could be strengthened by amendment and the office of Controller of Insurance could be debureaucratised, professionalised and well structured. The purpose is not regulation but privatisation.

The definition of Indian Company has been defined, which includes foreign companies registered in India with 26% or 40% equity when earlier United Front Government moved the Bill as stated, an amendment was moved against foreign equity or collaboration in Insurance sector. When the then Govt. refused to accept the amendment the amendment was pressed. The Bill was withdrawn by the then Government as otherwise the bill would have fallen. But now the political forces that moved the amendment against the foreign equity collaboration have brought about the bill with the same stipulations rather with harsher provisions. The compulsions have not been shared. We oppose the bill and give a note of dissent.

Opening up of Insurance to private companies including foreign investors would lead to unethical practices like undercutting of premium, aggressive marketing, misleading people, transfer of funds etc. Foreign financial investors are so big that they are capable of undercutting premia (dumping insurance) incurring even losses during initial few years in order to snuff out LIC and GIC from the market. This has happened in other countries.

We already have experience of foreign banks which do not fulfill social obligations in terms of investments etc. imposed by law. They

utilise every loophole available. RBI has not been in a position to control this and the Insurance Companies in private sector will violate these social obligations more recklessly. Banks are not known to have invested in any infrastructure which foreign Insurance companies/ investors are expected to do.

In WTO negotiations on financial services and Insurance, settlement could not be reached mainly because many of the industrial countries, apart from third world countries, did not agree to open up their Insurance industry. Negotiations have been postponed to the year 2000. Why should Government of India be in a hurry to allow entry in the arena which has been shunned by advanced industrial countries? In the US market Insurance industry enjoys special protection against inroads from foreign insurance companies. Germany, France and Switzerland have kept out foreign insurance companies. Japan has also not opened its insurance sector inspite of the fact that some years back it was threatened along with India and Brazil by U.S. for action under the provisions of its trade law "Super 301". In this situation there is no reason for enacting this legislation. It is proposed that the issue be kept pending, till the situation gets crystalised. Several of the East Asian Countries are reintroducing capital control after the economic debacle.

1. The Bill goes much beyond the stated object of framing regulatory laws and clearly seeks to open up and privatise the industry. This latter aspect more than putting in place a regulatory framework is the object and intent of the Bill.

2. The Bill seeks to amend LIC Act, 1956 and GIC Business (Nationalisation) Act, 1972 and in a most cavalier fashion seeks to amend the two legislations and destroy the two national institutions *i.e.* LIC and GIC tucked up in an addendum to the main Bill. It is patently beyond the stated objects and reasons.

3. LIC and GIC are two of the most successful social welfare institutions besides being the most successful intermediaries in mobilising savings of the community for social and economic development and providing vital insurance cover. There is no explanation as to why this is proposed to be done. There is not even an attempt or an effort, however unconvincing it would be to justify the move.

4. The aspect of divesting LIC and GIC of their monopoly jurisdiction in insurance, which the addendum seeks to effect, ought

to have been gone into in depth explaining why and how monopoly character had proved to be detrimental. Evidence as provided by experience world over shows the contrary to be the truth.

5. The argument of 'competition' is a myth. In the process of competition, what has taken place is mergers and acquisitions (M&A), cartelisation and growth of oligopolies and monopolies. No competition will be meaningful if there is no reciprocal arrangement. Indian insurance companies, public and private (if permitted) have no scope for competing in foreign countries. To talk of competition without such reciprocal arrangement is meaningless. In such a situation, what will happen is that savings in our economy channelised through insurance companies would be taken out of the country in diverse ways without India being in a position to have a share in the foreign insurance markets and the savings/capital in their economies. This is what has happened in regard to all developing countries. This aspect should have been gone into. It is emphasized that Insurance market in foreign countries particularly in advanced industrialised countries are very tightly regulated and are closed markets. There is no scope for registration of Indian companies in USA. For example, only 3% of the total insurance premium collected in USA was controlled by non-US companies in the year 1990 (Source: SIGMA Swiss *Re. Insurance*—April/1992). The position in France was 5%. Switzerland 5%, UK 5% and Japan 3%.

(Source : *Ibid*). S

6. There is evidence on record that LIC and GIC have been growing at the rate of 18%—20%. Foreign companies growth has been dwindling. In 1996 life insurance has registered growth of 1.8% and non-life (general) 0.5% (Source: SIGMA *Re. Insurance* April, 1998). With the phased use of Information Technology servicing in LIC and GIC has improved alround. The adaptation of IT is being done without destabilising the servicing apparatus. The process is being continued by interaction between the management and the unions. There is no justification to disturb it. One of the important objectives of nationalisation was to generate necessary resources for social and economic development reducing the costs. The achievement of LIC and GIC in this regard has been monumental. No financial institution in this country or elsewhere can match in this regard. It has not been contested by anyone.

7. There is evidence across the world particularly in the Third World of outgo of resources by devious means, legal and illegal, in spite of existence of capital controls. The experiences of South East Asian economies as well as of Russia and Brazil are cases in point. In the recent G-15 Conference at Jamaica, Mr. Mahathir Mohammed, Prime Minister of Malaysia has candidly expressed himself about the outgo of capital resources. The countries of G-15 have attributed this and other maladies including capital volatility to distortions in globalisation and unequal terms of trade and investment between industrialised countries and developing countries and called for safeguards. The experience elsewhere should be kept in view and should be gone into. In insurance, the known legal channels of resource transfer are dividends, re-insurance, royalties, bonus shares, etc. There are other illegal and devious methods too.

8. Reference is drawn to a study by RBI as published in The Hindu dated November 11, 1998 which states that 458 surveyed firms with foreign shareholdings resulted in a net drain of foreign exchange of over Rs. 15 billion over a five year period.

9. Clause 10 of IRA Bill (insertion in Sec. 6A of Insurance Act, 1938) provides for disinvestment of holdings by Indian promoters in excess of 26% within a specified period. With this the Central Government having 100% holding in LIC and GIC would get classified as existing promoter and might get caught up within the provisions of clause 10, relating to disinvestment in excess of 26%. The bill leaves the question open for a future dangerous interpretation, threatening LIC and GIC's public ownership. It is privatisation through back door and beyond the stated objects.

10. Another major argument being advanced is that if insurance industry was opened up, large amount of FDI inflows particularly for infrastructure development, would come. The anticipated inflow is said to be as high as \$25 billion (as per published reports). This is a pipe dream, if not, wild in the extreme. A reference is drawn to the World Investment Report, 1998, published by UNCTAD eloquently deals with concentration of capital in the process of globalisation and privatisation. The bulk of the FDI flows, the report illustrates, were utilised for Mergers & Acquisition (M&A) which increased from 69.5% of the total in 1992, to 74.6% in 1993, to 80.8% in 1994, to 71.6% in 1995, to 81.4% in 1996 and 85.3% in 1997. In aggregate terms in 1997 Cross border M&A amounted to \$341.653 billion out of FDI inflows of \$400.486

billion *i.e.* 85.3% (Source: World Investment Report-1998). Very little of the FDI flows have been utilised for productive purposes, let alone, establishment and expansion of infrastructure facilities. Whatever FDI in infrastructure has come, has come under extortionate terms injurious to India's long term interests as in the case of Enron. It should not be ignored.

11. The process of de-regulation and privatisation of Telecom and Power generation tell their own sordid story. The Private bidders in telecom have failed to pay by way of licence fee around Rs. 4000 crores and are seeking waiver, as per media reports. The fast-track private power projects announced with much fanfare, are yet to find funding. Examples are numerous. If the prospective foreign investors make insurance privatisation a pre-condition for investment in infrastructure, is it not clear with whom the balance of advantage remains? It is not for nothing that the former American Ambassador Mr. Frank Wisner, characterised, "Insurance as the America's flagship" without allowing which into Indian ports, allowing the rest was meaningless. Insurance investments are obviously to be liberalised meaning thereby allowing free investment in stock market. Many foreign insurers have come to grief because of reckless investment practices as also underwriting practices. The insuring public are the ones to suffer ultimately. The company invariably gets revived through a re-floatation package put in place to give the impression that everything is hunky-dory with the liberalisation of financial sector and there is nothing wrong with the system that fosters it. It is the customers who have borne the brunt and lost their savings. There have been several experiences the world over.

12. Accusations are made that penetration of insurance in India is inadequate. This is incorrect. This is an unfair accusation. Comparisons are inappropriate and odious. The rate of penetration in industrialised countries as well as first tier developing countries are bound to be more because the GDP as well as per capita income are much higher. There is no point in making a comparison between India with a per capita income of around \$425 with a first-tier developing country with per capita income of \$3108 (Malaysia), South Korea \$5663 and countries like USA with per capita income of \$20716 and above. (Source: Human Development Report-1998).

13. Another oft-repeated argument is inadequacy of the products and lack of special products. This is not only incorrect but indicates

inadequate appreciation of the insurance industry. LIC and GIC have introduced large number of products catering to diverse needs of the insuring public. Many of them cater to the ordinary and poor. The GIC has as many as 175 products and LIC 125 products. New products are constantly being introduced. It is a fallacy to think that LIC and GIC cannot provide special products which it is alleged could be provided to the Indian consumer only through opening up and privatisation. Innovative and special products are capable of being introduced only if the Industry has the expertise to innovate and financial strength to undertake risks. LIC and GIC have both. There is no special expertise that needs to come from outside.

The special products that are being talked about have exclusive and elitist orientation, like for example, insuring the eye brow of a cine actress or the wrist of a cricketer or a violinist or the ankle of a football star. There is the famous case of the Lloyds of London underwriting for an astronomical sum in those days, actress Marylene Deitrich's legs. Such type of fancy insurances are not the requirement in Indian conditions. These are 50/50 propositions and cannot be classified as insurance. What is the probability that a football player would permanently injure his ankle? Insurance can provide for treating his injury and not compensating his impaired football skills.

Insurance Industry is a highly regulated industry in the advanced industrial countries as well as some of the Third World countries. In spite of it, the experience with foreign insurance companies is not good. Several companies have collapsed in US, Europe, Japan and other countries. A report of the House of Representatives of the USA published in February 1990 entitled "Failed Promises"—Insurance company insolvencies—gives a comprehensive and glaring picture of the misfeasance indulged in by American Insurance companies. From the report it is clear that the insolvencies are not due to normative risk in the course of business. These involved deliberate frauds.

14. The American insurance scenario is riddled and vitiated by litigations and adverse consequences for the companies as well as customers. Even the great Lloyds of London has not been free from this though it had immunity from being tried in course outside the UK. In USA itself, in the two decades between 1981 and 1998 there were glaring instances of insurance failure. As many as 300 companies out of 3000 are reported to have closed down in 1997. The Premier Insurance company of USA closed down in 1991 sending shock waves

around. (Refer—an article entitled ‘The Biggest Life Insurance Failure in USA by Shri V. Sessa Aiyar, Consulting Actuary, published in *Yogakshema*, June, 1996). This was followed by First Capital. As recently as 1997, Nissan Mutual Life of Japan collapsed. The list is too long to enumerate. The question is how and why in spite of strong regulatory laws these companies went bust? Major reasons mentioned by regulators and insurance journals including SIGMA of Swiss Re-Insurance are improper methods of evaluation of risks as well as speculative investments. The cases of First Executive, first Capital and Nissan Mutual Life illustrate these points.

15. Insurance companies have been traditionally managing pension funds too. The reason obviously is that both involve management of long term funds. The BBC carried a feature early in 1997 under the title “Pension Gamble”. This video graphically illustrated how the pension customers were defrauded. The clipping carries several interviews with customers from different classes of society with the climatic statement by regulator in Britain that they could do nothing about it. It should have been possible for the Committee to call for the said clipping which would have provided an eye opener and nothing should have been done to hurry up on this issue. The report published in *The Economist*, London, dated October 17, 1998 about vanishing insurance companies in Russia, should have been gone into and should not have been ignored. Interaction with competent persons, Authorities and Institutions should have been undertaken.

It is pertinent to assert here that these are the type of companies who have dodged the regulators in their own countries mismanaging others’ funds and depriving and defrauding millions of ordinary people of their life savings through insurance, savings and loan accounts, commercial bank deposits and pension schemes, who are seeking entry into Indian insurance market which, ever since nationalisation of insurance, has remained free of these maladies. It is the same people who have managed to circumvent regulatory laws and dodged the regulators in their own countries who are asserting that all that is required is to have strong regulation and insurance industry in India can be opened up. They have a vested interest. They wish to use Public money for private profit and speculative purpose. Hence, this note of dissent.

The Draft Report should have contained the views of many people who deposed before the Committee. Most of them opined that the opening up of the Insurance Industry as has been proposed in the

IRA Bill would immensely harm our overall economy and the Govt. and the people will be deprived of the huge corpus of funds made available by both GICI & LIC for fulfilling some of the basic needs of the people like Drinking water facilities, Housing, roads and infrastructure.

While the Private operators will be interested in, profit only and concentrate their operations in profitable areas and neglect the non-profitable areas, the burden of social responsibility will largely fall on the residue of PSUs only and there will be no level playing field.

The mega private operations with their financial miracle will first try to drive away the PSU competitors with unethical forms cartilisation and fierce under cutting of premium.

The penetration of Insurance services is largely dependent on the overall improvement in the health in the economy and rise in the purchasing power of the people of the country. In today's scenario of half the population living below poverty line the question of increase in the penetration of Insurance services is only a day-dream to say the least.

As far as the diversity and number of products the existing PSU companies have been seen to continuously augment the products according to needs of the people as also their capacity to buy the products.

The private Insurance Companies will market some fashionable products for the affluent sections of the society and try to push out the existing PSU players to the detriment to the average consumers.

As regards the quality of existing service the GICI & LIC are on record that while the claim settlements policies of

| | | |
|------|---|-----|
| GICI | - | 97% |
| LIC | - | 70% |

The global average in respect of the same is 40%.

Failure of large number of Insurance Companies in US and other developed industrial countries has demonstrated how in contrast the Indian state run insurance companies have not been involved in any scam/corruption.

On the other hand the rate of growth as also the valuable contributions of both GICI and LIC through making available huge corpus of fund to Union Govt. payment to tax; payment of dividends to Govt. have put these institutions—GICI and LIC in place of pride as economic Ratna.

The failures of and scams involving Insurance Companies of US and some other country (as given in the Reports of important bodies of the respective countries amply demonstrates) should be pointer to all of us and we must take into account that the reasons and the background of nationalisation of LIC, in 1956 and GICI in 1973 still hold good and are very much relevant.

It will be not only wrong to forget the reasons for nationalisation but a great disservice to the Nation to recommend or support the disastrous path of privatisation of the insurance industry.

The draft Report gives an impression that the very important bill has been some how pushed through by the Standing Committee and unnecessary hurry and impatience has been noticed.

I want to put on record that the style of functioning of the Standing Committee in this particular case has not been democratic on many occasions.

While presenting my note of dissent in respect of the Standing Committee Report on the IRA Bill, I want to enumerate below reasons for my dissent—

My first objection to the draft report is as under—

Although the Standing Committee had sought suggestions/memorandum through an Advertisement dated 17.01.99 and large number of experts—economists, associations and individuals had written for opportunities to appear before the Committee for oral evidence they were denied this opportunity although some of the people who had responded to the above Lok Sabha Secretariat advertisement included many eminent economists, educationists, former Governors, former Members of Planning Commission, Dy. Chairman of Planning Commission of some States, former Ministers and former MPs.

Although the foreign equity in the report is sought to be limited to 26% only, as is well known the foreign insurance companies will control the Joint Sector companies through back seat manipulation.

Even in the case of Indian Private Companies it is known that only by a small fraction of equity the private management of a company controls huge corpus of public sector fund and the private sector with small equity enjoy the returns of public money.

So will be the case with foreign collaborators who with a cap of 26% also will virtually run the show.

The report should have taken serious note of the views of the Chairman of GICI and LICI and how the existing PSU companies will be put to disadvantage and will have to restructure their strategy and redefine their role to meet the competitive market which will ultimately harm the social sector in many ways.

The report has also failed to incorporate the views of the employees representatives and their unions, associations and representatives of national trade unions like CITU, AITU, BMS, etc.

The salient point of their views should also have been incorporated in brief in the report.

The views of corporates have been unnecessarily over emphasized which has made the report appear having particular bias in favour of the corporate views which has marred the case for presentation of a balanced view as expected from the Standing Committee.

sd/-

Varkala Radha Krishnan

sd/-

Rupchand Pal

NOTE OF DISSENT

Shri Gurudas Dasgupta, MP

I must, at the outset, express my anguish and disappointment over the manner in which the business of the Standing Committee of Finance in the matter of examination of The Insurance Regulatory Authority Bill, 1998 [Bill No. 161 of 1998] has been conducted. Quite a large number of respected citizens who had intimated their desire to give oral evidence before the Committee, in response to the public notice dated 11 January, 1999 have been denied the opportunity altogether. They included several men of high standing.

I should add here that this public notice dated 11 January, 1999 appeared only on 19 January, 1999 and that too only in Delhi editions of some newspapers. It was almost impossible for anyone to submit a written memorandum before the deadline of 30 January, 1999.

I am now making hereunder observations which are based on the facts on record and I emphasize that this can be the only way to arrive at conclusions on a rational basis.

Let me begin with the submission that no case has been made out for denationalisation—of the industry which was brought in the public sector after a very careful and pragmatic consideration. In the case of the life insurance industry, the first examination in 1951 itself pointed towards nationalisation as the obvious step, according to the statement made by Finance Minister Mr. C.D. Deshmukh while moving the Bill for nationalisation in 1956. Still the Government tried legislative controls for five more years and took the step of nationalisation only after being convinced through such a long experience that nothing else could remedy the situation.

The Insurance industry was nationalised because it became impossible for the Regulatory Authority to discipline the private insurers which were continuously cheating the policy-holders, misusing their money which they held in trust.

Are there any compelling reasons now for the denationalisation of this industry after such a long time? Have there been scams in LIC or

GIC? Are the LIC's policy-holders required to pay kickbacks for getting their policy claims? Are the policy-holders clamouring for more sops because they are thoroughly dissatisfied with the performance of these two public sector institutions? Does the industry require foreign technology which can be available only with private companies which want to open their shops in collaboration with foreign insurers? Does it require foreign capital for its mega projects? Are they sick units?

The only one answer to all these questions is an emphatic NO.

Why then such a step is being suggested when as recently as on 17 August, 1995, the Committee on Petitions headed by Smt. Sushma Swaraj, had arrived at the following conclusions?

- * though it is being argued that privatisation would instill more competition and promote efficiency, the fear that privatisation in insurance sector would lead to unhealthy competition giving rise to monopoly by few companies is genuine. It can not be assumed that only privatisation can improve efficiency and generate better service;
- * the insurance sector is one of the most capital intensive sectors and is required to meet social obligations—the fear is that these social obligations would largely be neglected by the private sector because meeting of social obligations is not a proposition.
- * the Secretary, Ministry of Finance (Insurance Division) has stated that the Government has no obligation towards World Trade Organisation in opening of this sector for privatisation.
- * in view of the above, the Committee recommends that General Insurance Corporation should not be opened for privatisation. (What was referred to the Committee on Petitions was examination of the question of privatising the general insurance industry).

What has happened between 1995 and 1998 that warrants reconsideration of the recommendations made by the Committee on Petitions?

Yes, something has happened but it only gives further strength and sanction to the recommendations of the Committee on Petitions.

Thus the trend in the insurance world which the report of the senate sub-committee submitted to the US House of Representatives in the 1990s called as "scandalous mismanagement and rascality of the pirates operating insurance companies and ill-effects of fraud and incompetence leading to bankruptcies", has continued and accentuated.

As recently as in 1996, the "Prudential" of USA, one of the leading insurers in the world, had to apologise to the policy-holders and agree to pay a record of \$35 mn in fines and set up a restitution plan for 10.7 mn policy-holders for failing to curb widespread sales abuses by its agents. Elizabeth Randall, New Jersey's Banking and Insurance Commissioner had estimated that restitution could go upto \$ one billion. Her 232-page report revealed that the top management knew about sales abuses of agents. Investment scandals also surfaced. Not only the "Prudential", other large American insurance corporates like "Metropolitan" and "First Executive" had also to face fines and multiple court cases.

According to "Sigma" Report (1975-92), such deviations from standard good faith practices were almost a routine affair.

During 1995-98, Japan's Nippon Mutual Life collapsed. This was followed by the insolvency suffered by Japan's "Nissan Mutual Life" which shook the world.

The worldwide growth in insurance premium income touched an all-time low of 1% in real terms in 1996 (the year for which the latest figures are available).

The International Conference of Insurance held in New Delhi on 25-26 August, 1998, flashed advertisements, which Mr. Rangachary, the Chairman of the Interim Insurance Regulatory Authority began flaunting without even a cursory verification, to project the "achievements" of South-East Asian countries on account of the opening of the Insurance Sector. While the figures quoted are of doubtful veracity, the comparison of India with these countries has no valid basis. What is again sought to be hidden is the stark reality that Korea, Indonesia and all these South-East Asian countries suffered a virtual collapse of their economies in this period, unprecedented indeed!

Contrast this with the performance of LIC, its total premium income is steadily rising. It rose from Rs. 16239.78 crore in 1996-97 to Rs. 19252.07 crore in 1997-98 which means 18.55% increase. The

inflation—adjusted growth rate of LIC comes to about 17% as against worldwide 1% growth rate and is nearly three times the growth rate of Gross Domestic Product (GDP).

GIC's growth rate also compares favourably and by the turn of this century, it is expected to generate an annual premium of Rs. 12,000 crores servicing one hundred million policies.

Three important facts need to be stated here in connection with the achievements of LIC and GIC.

First, LIC has done a great job in spreading the message of life insurance to rural India. Almost 50% of its business comes from the rural sector. It should be added here that the rural business is costlier not only because of small sums assured but also on account of adverse mortality experience. According to 1994-96 investigations made by the LIC, the ratio of rural to urban deaths was as under :

| Age Group | Ratio |
|-----------|---------|
| Upto 20 | 120.55% |
| 20-24 | 154.08% |
| 25-34 | 116.01% |
| 35-39 | 130.45% |

Second, both LIC and GIC have been subsidising Social Security Schemes for the people living below the poverty line. As at 31st March, 1998, the LIC had covered 50,19,941 persons under these schemes with 50% subsidies from its own funds. They included Beedi workers, Handloom workers, Primary Milk producers, Safai Karmacharis, Tendu Leaf Collectors, etc.

GIC's Social Security Schemes covered livestock, poultries, fisheries, agricultural pumpsets, huts, etc.

Third, the GIC has achieved 90% retention capacity in respect of general insurance business. It gets more business for reinsurance than what it has to reinsure with companies abroad. This cannot be expected from the new entrants with the result that most of the premium collected in India will go out of the country by way of reinsurance. This important aspect has been ignored altogether.

Much is being said about "low" penetration of insurance business in India. Ignorance is the only explanation for such observations.

The Life Insurance Fact Book Update (1991), a publication of American Council of Life Insurance, gives information about the spread of insurance business according to the income levels. It shows that 56% of the life insurance purchases are from those whose annual income is more than \$ 40,000 (approximately Rs. 17 lakhs). The life insurance purchases from the persons with annual income of less than \$ 10,000 (Rs. 4.25 lakhs) is only 1% of the total business.

The footnote to the table appearing in this book says that the number of persons reporting less than \$ 3,000 (about Rs. 1.27 lakhs) have been excluded which must be with the consideration that their income levels do not permit buying of the insurance.

As against this, the "Business Consulting Group Database" (quoted in the White Paper on Private Sector Participation in Insurance Industry) has published the following information:

| Annual Household Income | Penetration |
|-------------------------|-------------|
| Less than Rs. 18,000 | 5% |
| Rs. 18,000 - Rs. 36,000 | 25-35% |
| Rs. 36,000 - Rs. 60,000 | 40-50% |
| Above Rs. 60,000 | 55-60% |

While acknowledging that there is scope for further expansion of insurance business in India, it should be pointed out that the talk about low penetration of insurance business here in our country is highly misleading.

To those who say in their day-dreams that competition will lead to a windfall of insurance business. I may finally point out that the Gross Domestic Savings are stagnating around 25-26% of GDP for the period from 1994-95 to 1996-97 (Source: National Accounts Statistics of India - 1950-51 to 1996-97 published by EPW Research Foundation - October 1998).

The above facts on record persuade me to arrive at firm conclusion that the Insurance Sector must not be opened to private Indian and foreign companies, the main grounds being as under:

- * The performance of LIC and GIC is distinctively better as compared to foreign insurance companies transacting insurance business in far more favourable conditions.
- * "Competition" in the Insurance Sector in UK, USA and Japan has led to continuous underwriting of losses and insolvencies.
- * These insurance companies have earned bad reputation due to the unhealthy practices they follow.
- * Almost the whole premium collected by private insurance companies will be transferred abroad by way of Reinsurance.
- * Competition cannot lead to a windfall of Insurance business as Gross Domestic Savings in terms of percentage or GDP are stagnating.
- * Social obligation of Insurance Industry of Third World countries is a very important aspect and cannot be fulfilled without capacity to generate surplus from other classes of operation. What is again important to note here is that India spends less than 1% of its GDP on social service. The Indian Insurance Industry is well established and there are bright prospects for its further development with due restructuring for improving operational efficiency and involvement of all sectors of the community in its working.

What I believe, insurance sector is being opened up to allure foreign investments. This objective shall remain unrealised. Not more than 500 crores are likely to flow in, that too over years. The country is being made to surrender to foreign pressure much to the detriment of national interest. In the background of world recession, the international insurance business tycoons are looking for new markets. India is being looked upon as a potential market for their profit making business adventure. We are only walking into their trap.

Sd/-
Gurudas Dasgupta.

NOTE OF DISSENT

Shri S. Jaipal Reddy, MP

"1. I had no closed mind either way when we began to consider the Bill, as I am also alive to the virtues of creation of competitive economic environment. I was eager to hear the arguments in favour of the opening of the Insurance Sector. After I heard the weak arguments advanced by the Government's representatives, I began to develop my doubts about the appropriateness of the opening of Insurance Sector at the present time.

2. The Government's representatives themselves admitted that the LIC and GIC have been well-run public sector undertakings and they have been providing huge investible surplus year after year, apart from huge dividend and corporate tax. For example, the dividend given by LIC alone in 1997-98 was Rs. 199.97 crore. In fact, the dividend given by LIC since inception on investment of Rs. 5 crore comes to a total of Rs. 1,326 crore. It is important to note that corporate tax paid by LIC and by GIC in 1997-98 was Rs. 563.06 crore and Rs. 384.65 crore respectively. Besides LIC and GIC made over Rs. 20,000 crore available as investible surplus for the national economy in 1997-98. Taking a slightly longer-term perspective, LIC alone invested Rs. 12,969 crore as against the target of Rs. 8,000 crore during the Seventh Five Year Plan. Similarly, during Eighth Five Year Plan, LIC alone contributed Rs. 56,097 crore as against the target of Rs. 25,000 crore. In terms of present growth rates, LIC and GIC will be in a position to invest more than Rs. 1.3 lakh crore during the 9th plan period. This could be even more, given the fact that current growth rates of LIC and GIC are around 20% per annum. The performance of LIC and GIC in terms of claims settlement ratio is also very impressive, as it is 97% and 74% respectively, which is much higher than the international average. When LIC and GIC are doing so well, their sudden exposure to unbridled competition across the entire spectrum is likely to weaken these well established giants without joint venture Insurance Companies making up for the decline in the growth rates of LIC and GIC.

There is a possibility that the new players will mount focused forays among the urban upper class sections, while shunning low-

yielding rural areas. This could burn the candle of LIC and GIC from both the ends with their more profitable urban share plummeting while being saddled with more burdensome rural areas and weaker sections. In view of the above, all the safeguards suggested by LIC and GIC should be provided if the Insurance Sector is eventually opened.

Those who favoured the opening of the sector argued that the Indian market is currently underinsured since Life Insurance premium in India as a percentage of G.D.P. has grown up only at the rate of 1.29% as compared to 2.25% in Malaysia and 2.65% in Germany. But, this argument ignores the basic fact that percapita income of our country is much lower and growth in insurance rate is more linked to growth in G.D.P. than to the opening. Be that as it may, I donot see why the opening should necessarily be linked to foreign equity participation. The argument in favour of foreign equity is that Indian companies donot have experience in the area and that it is better to obtain expertise through equity than through payment of royalty. It has been further argued that foreign equity would accelerate the flows of F.D.I.. Both the arguments in favour of foreign equity are not of clinching character, as the royalty payments will be much cheaper than dividend on equity in the long run and the foreign exchange inflow through equity route cannot inherently be immense. I, therefore, feel that neither opening of the Sector nor the foreign equity is warranted at the present time. These are measures that can brook further awaiting."

Sd/-
Jaipal Reddy.

MINUTES OF THE TWENTY-FIFTH SITTING OF THE
STANDING COMMITTEE ON FINANCE (1998-99)

The Committee sat on Thursday, 7 January, 1999 from 1100 hrs. to 1400 hrs.

Shri Murli Deora—*Chairman*

Lok Sabha

2. Shri Dharendra Agarwal
3. Shri Haribhai Parathibhai Chaudhary
4. Shri Uttam Singh Pawar
5. Shri Girdhari Lal Bhargava
6. Shri Chetan Chauhan
7. Shri Rayapati Sambasiva Rao
8. Shri Kavuru Sambasiva Rao
9. Shri Magunta Sreenivasulu Reddy
10. Shri Rupchand Pal
11. Shri Varkala Radhakrishnan
12. Shri Beni Prasad Verma
13. Shri Tathagata Satpathy
14. Kum. Kim Gangte
15. Shri S. Jaipal Reddy
16. Shri Joachim Baxla
17. Shri P. Chidambaram
18. Shri Buta Singh

Rajya Sabha

19. Dr. Manmohan Singh
20. Shri N.K.P. Salve
21. Shri O.P. Kohli

22. Dr. Biplab Dasgupta
23. Shri Prem Chand Gupta
24. Shri R.K. Kumar
25. Shri Satishchandra Sitaram Pradhan
26. Shri Suresh A. Keswani

SECRETARIAT

| | | | |
|----|----------------------------|----|-----------------------------|
| | 1. Dr. A.K. Pandey | — | <i>Additional Secretary</i> |
| | 2. Dr. (Smt.) P. K. Sandhu | — | <i>Director</i> |
| | 3. Shri S.B. Arora | — | <i>Under Secretary</i> |
| 2. | ** | ** | ** ** |
| | ** | ** | ** ** |
| 3. | ** | ** | ** ** |
| | ** | ** | ** ** |
| 4. | ** | ** | ** ** |
| | ** | ** | ** ** |

5. The Chairman, thereafter, informed the Members that Insurance Regulatory Authority Bill (IRA), 1998 has been referred to the Committee for examination and report thereon by the Hon'ble Speaker. In this connection he requested the Members to give their suggestions as to which of the trade unions were to be called for evidence on the Bill. After consultation, it was decided to invite a representative each from major national trade unions viz. Indian National Trade Union Congress (INTUC), All India Trade Union Congress (AITUC), Centre of Indian Trade Unions (CITU) and Bhartiya Mazdoor Sangh (BMS), Employees'/officers' unions of LIC and GIC, Policyholders Association, Actuaries Association. It was also decided to invite eminent economists, bankers, experts, etc. for soliciting their views on the Insurance Regulatory Authority (IRA), Bill, 1998.

| | | | |
|----|----|----|-------|
| 6. | ** | ** | ** ** |
| | ** | ** | ** ** |

7. Thereafter, the Committee adjourned to meet again on 18 and 19 January, 1999.

MINUTES OF THE TWENTY-SEVENTH SITTING OF THE
STANDING COMMITTEE ON FINANCE (1998-99)

The Committee sat on Monday, 18 January, 1999 from 1530 hrs. to
2000 hrs.

PRESENT

Shri Murli Deora — *Chairman*

MEMBERS

Lok Sabha

2. Shri Dharendra Agarwal
3. Shri Chetan Chauhan
4. Shri Bhagwan Shankar Rawat
5. Shri Kavuru Sambasiva Rao
6. Shri Sandipan Bhagwan Thorat
7. Shri Magunta Sreenivasulu Reddy
8. Shri Rupchand Pal
9. Shri Varkala Radhakrishnan
10. Dr. S. Venugopalachary
11. Dr. Bikram Sarkar
12. Shri S. Jaipal Reddy

Rajya Sabha

13. Shri N.K.P. Salve
14. Shri M. Rajsekara Murthy
15. Shri O.P. Kohli
16. Dr. Biplab Dasgupta
17. Shri Prem Chand Gupta
18. Shri R.K. Kumar
19. Shri Gurudas Das Gupta
20. Shri Suresh A. Keswani

SECRETARIAT

- | | | |
|---------------------------|---|------------------------|
| 1. Dr. (Smt.) P.K. Sandhu | — | <i>Director</i> |
| 2. Shri S.B. Arora | — | <i>Under Secretary</i> |

WITNESSES

1. Shri N.I. Rangachari, Chairman, Insurance Regulatory Authority
2. Shri D.S. Narain, Member, IRA
3. Shri P. Chander, Officer on Special Duty, IRA

Representatives of National Trade Unions

All India Trade Union Congress (AITUC)

Shri G.L. Dhar—Secretary

Bhartiya Mazdoor Sangh (BMS)

Shri Raj Krishna Bhakt—Member, National Executive Committee

Centre of Indian Trade Unions (CITU)

Shri W.R. Varadarajan—Secretary

Representatives of Employees Associations of LIC and GIC

General Insurance Employees All India Association

Shri M.S. Upadhyay—General Secretary

All India Insurance Employees Association

Shri N.M. Sundaram

National Federation of General Insurance Employees

Shri Anil Desai—Joint Secretary

All India LIC Employees Federation

Shri A.V. Nachane—General Secretary

2. At the outset, Chairman welcomed the Chairman, Insurance Regulatory Authority (IRA) and invited his attention to the provisions contained in the direction 55 of the Directions by the Speaker.

3. The Committee then heard the views of the Chairman, IRA on the provisions contained in the Insurance Regulatory Authority (IRA) Bill, 1998.

4. The evidence was inconclusive.

A verbatim record of the proceedings has been kept.

PART II

2. The Chairman welcomed the representatives of various Trade Unions viz. Indian National Trade Unions (INTUC), All India Trade Union Congress (AITUC), Bhartiya Mazdoor Sangh (BMS) and Centre of Indian Trade Unions (CITU) and also representatives of various Employees Associations of LIC and GIC viz. General Insurance Employees All India Association, All India Insurance Employees Association, National Federation of General Insurance Employees and All India LIC Employees Federation and invited their attention to Direction 55 of the Directions by the Speaker.

The Committee then heard the views of the above mentioned representatives of National Trade Unions as well as Employees Associations of LIC and GIC.

A verbatim record of the proceedings has been kept.

(The witnesses then withdrew).

The Committee then adjourned.

MINUTES OF THE TWENTY-EIGHTH SITTING OF THE
STANDING COMMITTEE ON FINANCE (1998-99)

The Committee sat on Wednesday, 3 February, 1999 from 1030 hrs. to 1400 hrs. and again from 1530 hrs. to 1730 hrs.

PRESENT

Shri Murli Deora—*Chairman*

MEMBERS

Lok Sabha

2. Shri Dhirendra Agarwal
3. Shri Girdhari Lal Bhargava
4. Shri Chetan Chauhan
5. Shri Bhagwan Shankar Rawat
6. Shri Praful Manoharbai Patel
7. Shri Rupchand Pal
8. Shri Varkala Radhakrishnan
9. Shri M. Sahabuddin
10. Dr. S. Venugopalachary
11. Kum. Kim Gangte
12. Dr. Bikram Sarkar
13. Shri S. Jaipal Reddy
14. Shri Buta Singh

Rajya Sabha

15. Dr. Manmohan Singh
16. Shri N.K.P. Salve
17. Shri M. Rajsekara Murthy
18. Shri Narendra Mohan
19. Shri O.P. Kohli

20. Shri Raghavji
21. Shri Amar Singh
22. Shri Prem Chand Gupta
23. Shri R.K. Kumar
24. Shri Satishchandra Sitaram Pradhan
25. Shri Suresh A. Keswani

SECRETARIAT

1. Dr. (Smt.) P.K. Sandhu — *Director*
2. Shri S.B. Arora — *Under Secretary*

WITNESSES

Life Insurance Corporation of India (LIC)

1. Shri G. Krishnamurthy — *Chairman*
2. Shri Y.P. Gupta — *Managing Director*
3. Shri G.P. Kohli — *Managing Director*
4. Shri P.G. Gupta — *Executive Director (Acturial)*

General Insurance Corporation of India (GIC)

1. Shri D. Sengupta — *Chairman*
2. Shri P.M. Venkatasubramanian — *Managing Director*
3. Shri B.D. Banerjee — *Managing Director*
4. Shri D.D. Rasgotra — *General Manager*
5. Shri V. Mohan — *Financial Advisor*

Subsidiary Companies of GIC

1. Shri S.N. Mathur — *C.M.D., Oriental Ins. Co. Ltd.*
2. Shri K.N. Bhandari — *C.M.D., United India Ins. Co. Ltd.*
3. Shri S.K. Kanwar — *C.M.D., New India Ass. Co. Ltd.*
4. Shri A.N. Poddar — *C.M.D., National Ins. Co. Ltd.*

Insurance Regulatory Authority

1. Shri N.I. Rangachari - Chairman
2. Shri D.S. Narain - Member
3. Shri Prabodh Chander - Officer on Special Duty

Representatives of Chambers of Commerce and Industry

PHD Chambers of Commerce and Industry (PHDCCI)

1. Shri K.S. Mehta - Vice-President
2. Shri Sushil Ansal - Chairman, Chamber's Finance
Banking Capital Market
Committee
3. Shri Shambu Anand - Chairman, Chamber's Study
Group on Insurance
4. Shri R.S. Gupta - Former Chairman, National
Insurance Company

Federation of Indian Chambers of Commerce and Industry (FICCI)

1. Shri Sudhir Jalan - President
2. Shri S.K. Seth - Advisor, MIWG
3. Shri N.N. Joshi - ING Insurance
4. Shri Ravikumar - Managing Director, Alpic
Finance
5. Shri Ashok Sahni - Zurich Insurance
6. Shri Mahim Bisht - Joint Secretary

The Associated Chambers of Commerce and Industry (ASSOCHAM)

1. Shri T. Ramanan - Chairman, Committee on
Insurance
2. Shri Alok Gupta - Member -do-
3. Shri S.S. Raghavan - Member -do-
4. Shri Sairam Iyer - Member -do-
5. Dr. M.V.B. Rau - Secretary

Confederation of Indian Industry (CII)

1. Shri Arun Bharat Ram — Chairman, CII (NR)
2. Shri Nandan Maluste — Senior Vice-President, Kotak Mahindra Finance Ltd.
3. Smt. M. Roy — Deputy Director General
4. Shri Atul Bansal — General Manager, Tata Financial Services Ltd.
5. Shri Deepak Roy — Director
6. Shri Sunil Kant Munjal — Executive Director, Hero Cycles

PART I

2. At the outset, Chairman welcomed the Chairmen, Insurance Regulatory Authority (IRA), GIC and LIC and invited their attention to the provisions contained in the Direction 55 of the Directions by the Speaker.

3. The Committee then heard the views of the Chairmen, IRA, GIC and LIC on the provisions contained in the Insurance Regulatory Authority (IRA) Bill, 1998.

4. The evidence was concluded.

A verbatim record of the proceedings has been kept.

The Committee then adjourned to meet again at 1530 hrs.

PART II

2. The Chairman welcomed the representatives of various Chambers of Commerce viz. FICCI, ASSOCHAM, CII & PHDCCI and invited their attention to Direction 55 of the Directions by the Speaker.

3. The Committee then heard the views of the above mentioned representatives of the Chambers of Commerce.

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

(The witnesses then withdrew)

The Committee then adjourned.

MINUTES OF THE TWENTY-NINTH SITTING OF THE STANDING
COMMITTEE ON FINANCE (1998-99)

The Committee sat on Thursday, 4 February, 1999 from 1030 hrs. to 1400 hrs. and again from 1530 hrs. to 1800 hrs.

PRESENT

Shri Murli Deora — *Chairman*

MEMBERS

Lok Sabha

2. Shri Dharendra Agarwal
3. Shri Girdhari Lal Bhargava
4. Shri Chetan Chauhan
5. Shri Kavuru Sambasiva Rao
6. Shri Praful Manoharbai Patel
7. Shri Prithviraj D. Chavan
8. Shri Rupchand Pal
9. Shri Varkala Radhakrishnan
10. Shri S. Murugesan
11. Shri M. Sahabuddin
12. Dr. S. Venugopalachary
13. Kum. Kim Gangte
14. Dr. Bikram Sarkar
15. Shri S. Jaipal Reddy
16. Shri Buta Singh

Rajya Sabha

17. Shri Narendra Mohan
18. Shri Raghavji
19. Dr. Biplab Dasgupta

20. Shri Amar Singh
21. Shri Prem Chand Gupta
22. Shri R.K. Kumar
23. Shri Gurudas Das Gupta
24. Shri Suresh A. Keswani

SECRETARIAT

1. Dr. (Smt.) P.K. Sandhu — *Director*
2. Shri S.B. Arora — *Under Secretary*

WITNESSES

Experts

1. Shri Deepak S. Parekh — Chairman, HDFC Ltd.
2. Shri Deepak M. Satwalekar — MD, HDFC
3. Shri K.V. Kamath — MD&CEO, ICICI
4. Ms. Lalita D. Gupta — Deputy Managing Director, ICICI
5. Dr. Sangeeta Reddy — MD, Apollo Hospitals
6. Dr. Yogi Mehrotra — Director, Indian Hospitals Corporation Ltd.
7. Dr. Arun Ghosh — Former Member, Planning Commission

**Representatives of Ministry of Finance
(Deptt. of Economic Affairs)**

1. Dr. Vijay L. Kelkar — Finance Secretary
2. Dr. Shankar Acharya — Chief Economic Adviser
3. Shri B.K. Chaturvedi — Special Secretary (Ins.)
4. Shri C.S. Rao — Joint Secretary (Ins.)
5. Shri R. Ranganath — Director (Ins.)

**Representatives of Ministry of Law, Justice and Company Affairs
(Legislative Department)**

1. Shri T.K. Vishwanathan — Additional Secretary
2. Shri V.L. Bhasin — Additional Legislative Counsel

PART I

2. At the outset, the Chairman welcomed Shri Deepak S. Parekh, Chairman, HDFC Ltd, Shri K.V. Kamath, M.D. & C.E.O., ICICI, Dr. (Mrs.) Sangeeta Reddy, M.D., Apollo Hospitals and Dr. Arun Ghosh, Former Member, Planning Commission and their colleagues to the sitting of the Committee and invited their attention to the provisions contained in the Direction 55 of the Directions by the Speaker.

3. The Committee then heard the views of the above mentioned experts on the provisions contained in the Insurance Regulatory Authority (IRA) Bill, 1998.

4. The Committee, thereafter asked Dr. Arun Ghosh to furnish a note on the Report of the Committee on Reforms in the Insurance Sector (Malhotra Committee Report).

5. The evidence was concluded.

A verbatim record of proceedings has been kept.

The Committee then adjourned to meet again at 1530 hrs.

PART II

2. At the outset, the Chairman welcomed Dr. Vijay Kelkar, Finance Secretary, Sh. B.K. Chaturvedi, Special Secretary (Insurance) Shri T.K. Viswanathan, Additional Secretary (Ministry of Law, Justice and Company Affairs—Legislative Department) and their colleagues to the sitting of the Committee and invited their attention to the provisions of the Direction 55 of the Directions by the Speaker.

3. The Committee then heard the views of the above mentioned representatives of Ministry of Finance on the provisions contained in the IRA Bill, 1998.

4. The Committee thereafter asked the representatives of Ministry of Finance to furnish notes on certain points raised by the Members during the evidence.

5. The evidence was concluded.

A verbatim record of proceedings has been kept.

The Committee then adjourned.

MINUTES OF THE THIRTIETH SITTING OF THE
STANDING COMMITTEE ON FINANCE (1998-99)

The Committee sat on Wednesday, 17 February, 1999 from
1500 hrs. to 1800 hrs.

PRESENT

Shri Murli Deora — *Chairman*

MEMBERS

Lok Sabha

2. Shri Girdhari Lal Bhargava
3. Shri Chetan Chauhan
4. Shri Bhagwan Shankar Rawat
5. Shri T. Subbarami Reddy
6. Shri Kavuru Sambasiva Rao
7. Shri Sandipan Bhagwan Thorat
8. Shri Praful Manoharbai Patel
9. Shri Prithviraj D. Chavan
10. Shri Rupchand Pal
11. Shri Varkala Radhakrishnan
12. Shri S. Murugesan
13. Dr. S. Venugopalachary
14. Dr. Bikram Sarkar
15. Shri S. Jaipal Reddy

Rajya Sabha

16. Dr. Manmohan Singh
17. Shri M. Rajsekara Murthy
18. Shri Narendra Mohan

19. Shri O.P. Kohli
20. Shri Raghavji
21. Dr. Biplab Dasgupta
22. Shri C. Ramachandraiah
23. Shri Prem Chand Gupta
24. Shri R.K. Kumar
25. Shri Satishchandra Sitaram Pradhan
26. Shri Suresh A. Keswani

SECRETARIAT

- | | | |
|---------------------------|----|-----------------|
| 1. Dr. (Smt.) P.K. Sandhu | — | Director |
| 2. Sh. S.B. Arora | — | Under Secretary |
| 2. | ** | ** |
| | ** | ** |

3. The Committee, thereafter took up the draft report on the Insurance Regulatory Authority (IRA) Bill, 1998 for discussion.

4. The Committee after discussing the draft report on the IRA Bill, 1998 directed the Secretariat to prepare a revised draft report incorporating the suggestions/amendments as suggested by the Members (Annexure)

5. As some Members expressed their desire to give note of dissent as they were not in agreement with the contents of the draft Report, the Chairman requested them to give their notes of dissent within ten days.

6. A verbatim record of proceedings has been kept.

The Committee then adjourned.

Page 2, Para 3

For "the then Government".

Substitute "the Government in January, 1996"

Page 3, Para 4

For "the then Government"

Substitute "the Government"

Page 7, Para 10

After "in the hands of Private Companies"

Add "and new companies entering this sector may confine their business only to the rich and elite sections of the society living in the urban areas. Similar apprehensions were expressed both by the Chairman of LIC and GIC during the course of evidence before the Committee. Chairman, LIC had stated that due to the opening up this sector, there could be a shift of business from LIC to the new companies resulting in reduction in their assets and since it was quite possible that the new players would be concentrating their business only in urban areas it might result into a situation where LIC would be left with the less profitable business in rural areas which would be highly disadvantageous to them on account of the high cost of operations involved. Besides, an immediate fall out of the opening up could also result in depletion of the skilled work force in LIC. Chairman, GIC also expressed a similar viewpoint stating that the new players would aim at maximisation of profits and would not like to operate in areas which are not lucrative enough and GIC would face Loss of business immediately on opening up this sector. He supported his contention further by saying that prior to 1973 most of the new companies operated from the

urban centres such as Bombay, Delhi, Calcutta and Madras. In some cases, they operated from Hyderabad, Bangalore and Kanpur and not beyond that. He further stated that the General Insurance Business (Nationalisation) Act, 1972 has entrusted GIC with certain obligations which were being carried out quite successfully, but once this sector is opened up, GIC would have to dilute to some extent some of these directions to be able to compete with the new comers. After the evidence, both the Chairmen LIC and GIC also submitted written memorandum to the Committee which are annexed hereto alongwith the Report. It has been suggested that more autonomy should be conferred on both LIC and GIC in order to enable them to take decisions independently without the interference of the Government.

Page 10, Para 14 & 15 Clause 4

Paras 14 and 15 dealing with composition of the Authority should be deleted.

Pages 11 & 12, Para 18 Clause 14

- (i) *After* "Insurance Regulatory Authority"
Add "without becoming a part thereof"
- (ii) *Delete* "and chaired by Head of Insurance Regulatory Authority"

Page 13, Para 21, Clause 14A

- (i) *For* "Consumers"
Substitute "Consumer Forums"
- (ii) *For* "and research bodies"
Substitute "research bodies and employees' Associations"

Page 14, Para 22, Clause 18

- Delete* "when during the course of evidence, Chairman, Insurance Regulatory Authority was asked about his

reaction to the provisions made under this clause, he remarked:

It may appear to be a little odd for an autonomous body to accept some policy directives from the Government... If the Hon'ble Members support us in saying that such policy directions could be in areas other than technical and administrative matters, possibly it will make the functioning of the Authority a little more independent."

Page 14, Para 23, Clause 18

(i) *For* "Full autonomy"

Substitute "Autonomy"

(ii) *After* "check abuses/malpractices

Add "benefit the customers by better products and services at competitive prices"

Pages 15 & 16, Paras 24 & 25, Clause 19

Recommendation for deleting clause 19 which proposes to vest the power of supersession of the Insurance Regulatory Authority in the Central Government should be deleted.

Page 17, Para 28, Clause 28

Para 28 containing recommendation with regard to the need for providing non-obstante clause should be deleted.

Page 21, Para 33, Clause 5

In view of deletion of paras 24-25 regarding 'Powers of Central Government to supersede Authority' para 33 dealing with appointment of Controller of Insurance in the event of supersession of Authority, becomes redundant and should be deleted.

Page 27, Para 41, Section 6AA

In the Proviso,

(i) *For* "Insurance Regulatory Authority"

Substitute "Central Government"

(ii) *Delete* "Provided that where an Indian promoter incorporates a Company without any foreign participation, he will not be required to divest less than forty per cent of the paid up capital.

Explanation—For the removal of doubts, it is hereby clarified that nothing contained in the first Proviso shall apply to the promoters being a foreign company referred to in sub-clause (b) of clause (7A) of Section 2."

Page 32, Para 55

For "The Committee are inclined to accept the suggestion and desire that the same may be incorporated suitably by way of amendment in the Insurance Act, 1938."

Substitute "The Committee are inclined to accept the suggestion and desire that the same may be incorporated suitably by way of amendment in the Insurance Act, 1938. They also recommend that the Government may consider effecting necessary amendments in the relevant Acts governing the Banking Sector in this regard, if necessary.

Page 34, Para 59

For "The Committee note that the nationalised companies presently working in this sector are also administering social security schemes and also undertaking rural business. After the entry of the private companies in this sector in order to provide a level playing field for all, the Authority must ensure that the new companies also undertake specified percentage of business in rural and social sector."

Substitute

The Committee note that the nationalised companies presently working in this sector are also administering social security schemes and undertaking rural business. For instance LIC has introduced a large number of products catering to the needs of different segments of the community including those in rural areas. The coverage given are both profit oriented as well as subsidised to fulfill social obligations. Apart from operating in not so profitable rural areas, LIC is also administering some social security schemes such as Landless Agricultural Labourers Group Insurance Scheme (LALGIS) and Rural Group Life Insurance Scheme (RGLIS). Besides, LIC also subsidises premium in respect of various social security group schemes covering 23 approved occupations amongst weaker sections. In view of the fact that operating in rural areas is costlier *vis-a-vis* urban areas, since cost of the writing insurance policies in rural areas is higher due to high mortality as well as higher expenses, it is apprehended that in case LIC is pushed to operate only in rural areas even when the sector is opened up, it will surely have an adverse affect on its working. Likewise, GIC has also been operating in low profit areas and in order to stay afloat in such areas it has to resort to cross subsidisation. The Committee therefore recommend that in order to provide a level playing field for all, the Authority must ensure that the new companies also undertake specified percentage of business in rural and social sector and in the case of their failure to adhere to given targets in this regard, the IRA should consider imposing stringent punishment including monetary penalties.

Page 35

Add the following new para after para 61

"Health Insurance is an area which requires special attention of the Committee. Some of the experts who appeared before the Committee had informed that the coverage of health insurance in India so far has been only one per cent, while GIC has done pioneering work

in this area with the social perspective, more players and competition are required with a view to cover maximum percentage of population. There is a need to cover all Sections of Population *i.e.* small employer groups, large corporations, unorganised sector, rural sector, disabled and special needs groups and students. It has therefore been suggested that health insurance should be undertaken in a big way both by LIC and GIC. The Committee are in agreement with the viewpoint expressed by the experts in this regard and feel that health care is an area which has so far not been able to get adequate attention and therefore needs a special thrust. They therefore, recommend that the Government should consider bringing the health insurance into the domain of life insurance also and consider amending the relevant Acts if necessary.

MINUTES OF THE THIRTY-FIRST SITTING OF THE STANDING
COMMITTEE ON FINANCE (1998-99)

The Committee sat on Thursday, 4 March, 1999 from 1500 hrs. to
1730 hrs.

PRESENT

Shri Murli Deora—*Chairman*

MEMBERS

Lok Sabha

2. Shri Girdhari Lal Bhargava
3. Shri Chetan Chauhan
4. Shri Rayapati Sambasiva Rao
5. Shri Praful Manoharbhair Patel
6. Shri Magunta Sreenivasulu Reddy
7. Shri Rupchand Pal
8. Shri Varkala Radhakrishnan
9. Shri S. Murugesan
10. Dr. Bikram Sarkar
11. Shri S. Jaipal Reddy
12. Shri Joachim Baxla
13. Shri Buta Singh

Rajya Sabha

14. Dr. Manmohan Singh
15. Shri Krishna Kumar Birla
16. Shri Narendra Mohan
17. Shri O.P. Kohli
18. Shri Raghavji
19. Shri C. Ramachandraiah

20. Shri Amar Singh
21. Shri R.K. Kumar
22. Shri Gurudas Das Gupta
23. Shri Suresh A. Keswani

SECRETARIAT

1. Dr. (Smt.) P.K. Sandhu — *Director*
2. Shri S.B. Arora — *Under Secretary*

2. At the outset, the Chairman welcomed the members and requested the members to give their suggestions on the recommendations contained in the revised draft report on the Insurance Regulatory Authority (IRA) Bill, 1998.

3. Thereafter, some members expressed their dissatisfaction for not inviting any experts who have sent their suggestions and/or who have expressed their desire to appear before the Committee for expressing their views on the IRA Bill, 1998.

4. The Committee then took up for consideration the revised draft report on the Insurance Regulatory Authority Bill, 1998. The Committee, after deliberation adopted the revised draft report with modifications/ amendments as shown in Annexure.

5. As some members desired to submit their written suggestions which were agreed to by the Committee for incorporation in final report, the Chairman requested them to send their written suggestions to the Secretariat by 8 March, 1999.

6. As some members did not agree to some of the recommendations contained in the revised draft report, they desired to submit notes of dissent. The Chairman informed them that they could send their notes of dissent by 12 March, 1999.

7. The Committee, thereafter, authorised the Chairman to finalise the report in the light of the amendments/suggestions received from the Members and also to make consequential verbal changes and present the same to Parliament.

8. The Committee then decided to hold their next sittings on 10 March, 1999 for consideration and adoption of the draft report on the Securities Contracts (Regulation) Amendment Bill, 1998 and on 22 and 23 March, 1999 for discussing and considering the Demands for Grants of Ministry of Finance for the year 1999-2000.

The Committee then adjourned.

Page 7, Para 10, Bottom Line

After "to be able to compete with the new comers."

Add "He further added that GIC is more vulnerable than LIC due to opening up."

Page 21, Para 36

During the discussion, some Members felt that the minimum paid up share capital of the Indian Insurance companies should be enhanced to Rs. 200 crore to prevent non-serious players from entering into insurance business. Some Members have equally expressed the view that minimum paid up share capital of Rs. 100 crore is sufficient enough. However, the Committee authorised the Chairman to take a final decision in this regard for incorporation in the Report.

Page 25, Para 41 (sub-para), Bottom Line

Delete "or such other period as may be prescribed by the Central Government."

Page 29, Para 49,

For "and accordingly recommend that the same may be enhanced to the extent suggested as above.

Substitute and accordingly recommend that the same may be fixed at Rs. 50 crore for both Life and Non-life insurance business."

Page 33, Para 59

Add the following new Para:

60. To be able to withstand impending competition from the private players in the post liberalised scenario, the

Committee recommend that General Insurance Corporation and its four subsidiaries should be restructured so as to enable GIC to identify the business potential, assess resource requirements and deploy surplus resources into the new markets by either of the following strategies:—

- (a) All the four subsidiaries of GIC may be merged to form a single company.
- (b) Each of the four subsidiaries could be made as independent companies.
- (c) Only one company may operate in the corporate areas of business while others may operate in non-corporate area of business.

Page 34, Para 62

After Para 62, Add the following Paras:

64. Due to nationalisation of Life Insurance business in 1956 and General Insurance business in 1972, no private sector players were allowed to operate in the insurance sector for a number of years. Hence, the Committee recommend that prior experience of the intending Indian entrants who want to commence the insurance business without foreign participation should not be made the criteria for granting Licences by IRA.

65. The Committee have been informed that under Section 3 of the Insurance Act, 1938 the powers have now been vested with the Insurance Regulatory Authority to issue registration certificates to new insurance companies. IRA Bill prescribes necessary regulations in this regard and all companies meeting the requirement of registration and regulations will have the right to get a licence. The Committee are of the view that it is essential that some minimum period is specified by the Authority within which the licence will have to be issued with a view to ensure expeditious processing of the application as well as minimise the delays.

66. The Committee have been informed by the Ministry of Finance (Insurance Division) that investment by private insurance companies in life sector will be governed by Section 27, 27A and 27B of the

Insurance Act and regulations made by IRA thereunder. Companies doing the insurance business will have to invest 50% of their accretions to the 'controlled fund' in the designated sectors. Besides 45% of fresh annual accretions of General Insurance companies should be invested in mandated sectors. The Committee desire that these stipulations should be strictly adhered to as far as possible.

NOTE FROM LIFE INSURANCE CORPORATION
OF INDIA ON THE POSSIBLE IMPACT OF
OPENING UP OF INSURANCE SECTOR

Impact of Privatisation of the Life Insurance Industry

Life Insurance Corporation of India has been catering to the needs of the insuring public of the country from 01.09.1956 and has grown to be a mammoth organisation with 2,046 Branches, 100 Divisions and 7 Zones deploying nearly 6 lakh Agents and 1.26 lakh employees belonging to all classes. The contribution of the Corporation towards nation building activities has been substantial with a sizable portion of the sovereign debt being provided by the organisation. The total assets of the Corporation has crossed Rs. 1,09,955 crores as at 31.03.1998. In the course of achieving these landmarks, the organisation has built up a professional team both in the administrative and marketing fields including technical personnel like Actuaries, Lawyers, Chartered Accountants, I.T. specialists, Investment experts, etc. There being no other source of such skilled personnel with insurance background, it is likely that in the event of the industry being opened up, many skilled personnel may be weaned away from the organisation by the new entrants.

The Corporation has been able to spread its network throughout the length and breadth of the country penetrating deep into the rural areas. A little over 51% in terms of policies and 43% in terms of Sum Assured are being secured from the rural areas as new business every year. Although, pricing is common for both rural and urban policies, the cost of new business procurement and experience in payment of claims vary between the rural and urban business. Mortality being heavier in the rural areas, claims experience is higher as compared to the urban areas. The cost of business procurement in rural areas is also higher. In the liberalised scenario, it is unlikely that the new players would venture to enter into deeper rural areas and it is expected that they will try to establish themselves in the metro or bigger cities. Even in the urban business the creamy layer with high

sum assured and high premium policies are likely to be targeted by the new players. This is likely to result in the urban share of the Corporation's business taking a dip and preponderance of the rural share, causing strain on the profitability of the organisation.

It is expected that, as and when the industry is thrown open, the new business procured by the industry including LIC will record a higher growth rate assuming that LIC will continue to show a higher growth rate even in the liberalised scenario. However, the new business of the new players may come partly by fresh business and partly by shift of existing business in force from LIC to the new players. It can be expected that people would surrender or lapse their existing policies with LIC and take new policies with the new players. While it is difficult to assess the exact number or amount of such surrenders and lapses, the possibility of atleast a few lakhs of policies and a few crores of rupees of sum assured and premium income going out of the books of LIC cannot be ruled out. The resultant impact of this will be additional pressure on LIC to procure higher new business to offset such loss of existing business and as such this will call for more concerted efforts on the part of the LIC to ensure that the existing asset base is not eroded.

LIC, in addition to individual assurances, also markets group insurance schemes including group pension schemes. Most of the group schemes are from the corporate sector that are being assisted by banks and development financial institutions. It is possible that when these institutions are allowed to transact life insurance business there is a shift of existing P&GS business from the corporation to such institutions. Many companies have also tied up with foreign companies to enter the general and life insurance sector and a shift of P&GS business of these group companies from LIC to such corporates is also expected to happen.

Product pricing has, of late, been a topic of discussion and there have been demands that the LIC should reduce the premium rates after reassessing the mortality rates. In view of the likely cost effective lean and mean organisations who might set up business in the liberalised scenario, there could be competitive pricing of the products which if not controlled is likely to lead to price wars as had happened in the pre-nationalisation days.

There have been rising expectations from the public regarding expansion of product variety, improvement in the servicing standards,

introduction of new channels of distribution and offer of better yield from the life insurance industry. With the technological revolution taking place in the country, it is likely that the new players will be setting up offices with the state-of-the-art technology, investing more information technology and less in human resources, leading to low cost of operations and improved servicing standards and yield. Products hitherto unknown in the life insurance industry like unit-linked products and universal products are likely to hit the market. New channels of distribution like institutional agencies including bancassurance, direct marketing, etc. are likely to be introduced. The companies being private ones will have greater operational freedom as compared to nationalised institutions.

Steps taken by LIC

LIC has been taking several steps to prepare itself well for the competitive scenario ever since the proposal of throwing open of the insurance industry was mooted. Thrust areas such as upgradation of technology, market research and training and human resource development were identified and acted upon. The level of computerisation has been raised in the organisation in tune with the recommendations of the Malhotra Committee with the result that out of 2,046 Branches, Front-end Operations have been introduced in more than 1,840 Branches enhancing the quality of servicing to the policy-holders. Metro Area Network and Inter Active Voice Response System (supplying information over the telephone) have been introduced in Mumbai, Bangalore and Chennai and extension of these systems to the other metros and big cities like Hyderabad, Pune and Ahmedabad is on the cards. The information technology plan of the organisation for the next five years envisages link-up of the cities by which the policy-holders can get services like premium payment, etc. even from a distant city. Internet and E-mail have been introduced in the organisation and the Y2K problem is being successfully tackled. LIC will thus be highly competitive in the area of information technology. To improve the servicing standards further, relaxation of servicing rules, adoption of Citizens Charter, setting up of Board level Consumer Affairs Committee, delegation of enhanced powers to operating offices, etc. have been implemented and customer orientation will continue to receive the attention of the Corporation in the future. With a view to developing and retaining skilled personnel. HRD and training initiatives have been taken in a big way. About 186 'Impact Centres' have been identified where the impact of liberalisation is likely to be felt and the

Branch heads at these centres are being intensively trained. Attitudinal changes to be brought about in the liberalised scenario have been engaging the attention of the Corporation and with a view to developing a sense of belonging to the Corporation, Corporation Identity programme has been promoted including training modules that have been introduced in various training centres.

Developing the human resources with particular reference to technical categories like Actuaries, I.T. specialists, etc., have been taken up and as many as 218 Actuarial Apprentices are being recruited apart from supporting the Actuarial Society of India in its endeavours as recommended by the Malhotra Committee. The process of strengthening investment capabilities is being carried on by giving intensive training to young officers selected from within LIC in Project Appraisal, Infrastructure Funding, Equity Research, Portfolio Management, Credit Rating, etc. Deputation of senior management personnel to seminars within the country and overseas is also being done.

As recommended by the Malhotra Committee, Urban Career Agency system has also been strengthened with a view to providing a professional sales force in the urban centres to tackle the competition in these areas.

Revised Mortality Tables have been constructed on the basis of the experience pertaining to the period 1994-96 and are being used with effect from 1st September, 1997 for premium rates for new plans and for Valuation from the year ended 31st March, 1997. Without profit premium rates have also been reviewed and reduced with effect from 1st May, 1998 ranging from 1 to 33%. Extension of benefits of reduction to existing without profit policyholders is also under consideration. This apart, health extra premium has also been reduced in respect of both with and without profit policyholders ranging from 22% to 38% with effect from 1st May, 1998.

With a view to improving servicing standards, information technology is being upgraded as already mentioned above. This apart Zonal Claims Review Committees have been strengthened by inducting an ex-member of the Judiciary of the rank of High Court Judge and they have been delegated necessary powers to decide on claims finally upto Rs. 1 lakh. Claims procedures have also been liberalised for easier and quicker settlement of death claims.

A variety of products keeping in mind the need of different segments of the society have been introduced in the last 4½ years. Bima Kiran—a low cost insurance plan for younger age groups, Jeevan Shree—a high cost insurance plan for the rural and urban affluent, Jeevan Sneha—a specific insurance cover for women, Jeevan Suraksha—a personal pension plan, Asha Deep II and Jeevan Asha—health care plans, Childrens Money Back—for the Children segment and Jeevan Adhar—for the benefit of the physically handicapped are some of the plans launched by the Corporation for different segments. In the group insurance portfolio also innovative plans providing for funding of leave encashment and low cost insurance for women bread-winners of selected hilly districts have been introduced. The product innovation is a continuous marketing activity, which the Corporation is confident of carrying on successfully in the liberalised scenario.

With a view to promoting additional channels of distribution, thrust has been given to appointment of institutional agencies by appointing more Village Panchayats, Co-operative Societies and the other Societies registered under the Societies Act which are presently permissible under the Insurance Act. The matter has also been taken up with the Government for suitable amendment of the Insurance Act to provide for the other types of institutional agencies like Corporates, Banks, etc. so that these channels including 'bancassurances' can be made available to the insuring public.

To facilitate greater operational freedom, the matter was taken up with the Government and many provisions/guidelines, particularly in the area of investments have been relaxed by the Government. Notable among them are permission to make non-consortium, non-scheduled investments without prior approval of the Government; appointment of fund managers; widening of the scope of socially oriented sector investments to include ports, airports, roads, highways, railways etc.; liberalisation of the pattern of investments of group insurance scheme fund; permission to trade in Government Securities; permission to charge market rates under the socially oriented sector investments; permission to dispose off unprofitable properties etc. Amendments to LIC Act to provide for autonomy to LIC in the matter of deciding the terms and conditions of service of employees and agents under Section 49 is also under consideration of the Government.

With a view to giving a thrust to pension and group schemes including individual pension schemes, steps have been taken to form a separate division within LIC for this class of business.

A Committee of Actuaries was constituted as per the recommendations of the Malhotra Committee and the recommendations of the Committee of Actuaries are being implemented wherever feasible, after a thorough examination of the issues involved. Many a recommendation of the Malhotra Committee including those which have been mentioned above have been implemented keeping in mind the impending opening up of the insurance sector. The proposal to engage an international consultant to advise us on the strategies to meet competition in an effective manner is also on the anvil.

Formulation of an estate policy for better estate management to improve the rental income of the properties owned by LIC is also engaging the attention of the Corporation.

Safeguards to be provided while opening up the Insurance Sector:

1. Section 37 of the LIC Act, provides for Central Government guarantee for the sums assured by insurance policies taken with the Life Insurance Corporation of India. With the proposal to provide for solvency margins by the IRA, it is likely that the government guarantees may be sought to be abolished. The Life Insurance Corporation of India as per the policy pronouncements made by the government is expected to continue to function as a Government Undertaking and, therefore as a corollary it is necessary that the government guarantee continues. Removal of government guarantee without removal of the other constraints of a government undertaking may not go well in a competitive scenario.
2. LIC, apart from providing insurance cover through individual and group insurance, is also administering social security schemes like LALGI, IRDP, RGLIS, etc. The Malhotra Committee has gone into the issue and has recommended that in a competitive scenario the relief oriented welfare schemes may be taken away from the LIC so that it can operate totally as a business organisation in a competitive scenario. This needs further consideration by the Government.
3. The Insurance Act, 1938 provides for certain limitations for payment of commission under Section 40-A. But there is no

provision to limit the other expenses on marketing including incentive payments to the sales force. It is felt that when the other insurance companies start operating with foreign equity they will not hesitate to provide huge incentives to the sales force outside the provisions of the Insurance Act at the cost of the policyholder which Public Sector organisations like LIC may not be able to afford. The IRA should, therefore, make regulations to limit the expenses on new business including the incentive payments to the sales force.

4. The IRA may consider making rural business mandatory for the new players as recommended by the Malhotra Committee.
5. The IRA may also consider making product pricing and terms and conditions subject to approval by the IRA to avoid price war and unfair trade practices.
6. It is necessary to make it obligatory for the intermediaries to disclose the losses on re-writing the business to the policyholders. Code of conduct for industry as a whole has to be prescribed by the IRA in the interests of policyholders and insurance companies.
7. With a view to improving the reinsurance business in the country provisions for compulsory cession to Indian Reinsurers may be made by the IRA.
8. The objective of opening up of the insurance sector is to provide for greater coverage and funds for promoting infrastructure in the country. Keeping in view the likely surrender/lapse of existing business of LIC and also the need to improve the coverage of people in the different parts of the country, insurance sector may be thrown open in a gradual manner with restricted entry of the new players including foreign players. The restrictions may be as follows:
 - (a) Permission to transact life business may be initially given in only certain States where presently the coverage is low. It can be extended to other States once the coverage reaches the average level in the country;

- (b) The restriction can also be on the basis of nature of business. Since there is lot of scope for transacting pension business in the country, initially the companies may be permitted to transact only group and individual pension business in the country;
- (c) Restricted entry can also be thought of by permitting limited number of companies on the basis of reciprocity of LIC's and GIC's presence in the foreign countries.

9. The sales force of LIC comprises nearly 6 lakh Agents who work on commission basis. LIC has invested huge funds to train, develop and maintain these agents. It is likely that many of them particularly, the top producers will be aspiring to do business for the new companies and may take their clients also alongwith them. Tied agency system has to be brought in by the IRA in the industry so that an Agent is not permitted to operate in more than one company. Existing agents of LIC should not be allowed to transact business for other companies now or in future. If they so desire they can leave LIC, foregoing the benefits (except the renewal commission) and join the other companies as Agents. Allowing them to operate for LIC and the competitors simultaneously, at the same time retaining their claim to benefits and status in LIC is not desirable.

Conclusion:

The LIC has been taking, as mentioned above, many proactive steps to retain its image and market share in the competitive scenario. It is confident that it can deliver the goods even in the liberalised insurance sector.

NOTE FROM GENERAL INSURANCE CORPORATION
OF INDIA ON THE POSSIBLE IMPACT OF OPENING
UP OF INSURANCE SECTOR

1. Government had constituted a Committee on Restructuring of Insurance Sector (CRIS) in 1993, more popularly known as Malhotra Committee. The Committee submitted its report in January 1994 marking far-reaching recommendations covering the entire insurance industry, life and general. It is understood that the Government has more or less decided to implement the recommendations of the Committee.

In this regard it is pertinent to mention that in respect of the general insurance the major recommendations of the Committee can be grouped into three distinct heads, namely:

A: *Activising an Insurance Regulatory Apparatus;*

B: *Restructuring of the Public Sector insurance units, and,*

C: *Framing Ground Rules for the entry of the Private Sector.*

A reference to the Report indicates that the above three categories of recommendations are meant to be implemented in the above mentioned sequential order. As the Government is considering to implement the recommendations A and C, it is very critical that the recommendations B is also implemented simultaneously so that the benefits of liberalisation accrue as envisaged.

2. One of the adverse impacts that may follow the opening up of the Insurance sector is the likelihood of the foreign company managed insurers becoming glorified go-between/conduits for capital flows as was experienced in some countries.

A very strict vigil over the opening up of the sector will therefore be essential in order to avoid the pitfalls that these other countries have been through and protect national interest which should be the supreme and overriding consideration.

3. Yet another danger that waylays the liberalisation process is the prospect of forex drain taking place on account of profit repatriation, reinsurance with parent or a non-Indian company and purchasing of services from parent or a non-Indian company, particularly in the event of the foreign companies being allowed to conduct insurance business in the country.

The operation of private players is likely to be characterized by low retention and high reinsurance abroad. This is substantiated by the fact that a minimum paid-up capital requirement of Rs. 100 crore would, as per prudential norms, permit an insurer an annual net premium volume of 2 to 3 times the capital employed *i.e.*, to begin with a premium volume of Rs. 200 crore to Rs. 300 crore. A low net premium cap will therefore accentuate the tendency towards high reinsurance.

The only way to combat this adverse fallout is to have a national reinsurer, as also recommended by the Malhotra Committee.

4. An important ratio for assessing an insurance company's financial soundness is the assets-to-premium multiple. From this perspective, India's non-life insurance sector outshines most other emerging Asian markets. As of mid-1996 *i.e.* prior to the South-east Asian currency crisis, India's assets-to-premium multiple stood at 2.5 as against around 1.5 of Malaysia, Indonesia and Thailand and of the little under 1 of South Korea. Post currency crisis the multiple has further improved in favour of India of more than 2.75 as against nearly 1 of South Korea, Malaysia, Thailand and around 1.4 of Indonesia.

Between 1985 and 1996 non-life insurance premiums in our country have grown by an average rate of 8.2% p.a. in real, inflation adjusted terms which is quite satisfactory compared with around 3%-4% real inflation adjusted growth rate globally.

An important challenge that lies before the liberalisation process is ensuring improvements in the overall assets-to-premium multiple as well as the growth rate.

(Source: Insights - India's insurance markets on the threshold of liberalisation—A Swiss Reinsurance Company publication)

5. Currently, non-life insurance industry of the country offers more than 100 products ranging from cattle insurance to engineering

cover for the petrochemical complexes. A possible impact of opening up would be product segmentation and shrinkage in the number of products.

Between 1988 and 1996 the non-life insurance industry's average loss ratio was about 68% adjusted for a notable exception in 1994 where it hiked to more than 80% 1994's massive drop in underwriting profitability was mainly due to huge losses in motor business which accounts for nearly one-third of all non-life insurance premiums. The deterioration of underwriting results in motor was the result of a sharp increase in number and amounts of third party injury awards, an increase not matched by rising premium rates. With the proposed liberalisation of the market, the scope for cross-subsidising motor deficits will shrink.

(Source : Insights: India's insurance markets on the threshold of liberalisation—A Swiss Reinsurance Company publication)

6. In assessing the possible impact of liberalisation of the insurance industry, it is appropriate to take a look at the liberalisation process in China considering the similarities in size, population and the various economic parameters between the two countries.

Following the establishment of the People's Republic of China in 1949, all insurance business was nationalised and absorbed by the state-owned People's Insurance Company of China (PICC).

In line with a more open economic policy, the PICC's monopoly was broken in 1986 when the first domestic competitor was approved. In 1992 the first foreign insurer (American International Assurance) was granted a licence to conduct general and life insurance business- but strictly confined to Shanghai.

In a little over ten years, China's insurance market has developed from a state monopoly to a relatively open market with more than 20 domestic and foreign players. Nonetheless, the pace of liberalisation has been very cautious : Only 3 companies are currently conducting business on a national scale. The state supervisory authority continues to exercise tight control over the number of licences issued and over companies' pricing and product development.

The outcome of these policies so far has been that first, the authorities have succeeded in avoiding a repeat of what happened

in some Eastern European markets : the emergence of under-capitalised, poorly run and poorly supervised insurance companies. Second, and this is the aspect which is catching the world's attention, China's insurance business has been displaying spectacular growth rates; this applies to life insurance in particular. In 1997 alone, premiums grew by more than 80%—in real, inflation-adjusted terms.

(Source : Insights-India's insurance market on the threshold of liberalisation-A Swiss Reinsurance Company publication)

7. The experience of some of the decontrolled markets in the recent times e.g., the US market and the East European market, illustrates the case for a calibrated, cautious approach towards opening up lest there be emergence of under-capitalised, poorly run and poorly supervised companies leading to liquidations and consequent pain on shareholders. The case of Eastern European markets has already been highlighted in the context of China experience. The experience of the US market is also worthy of a close look, which saw 600 companies getting liquidated between 1986 and 1991 due to inadequate capital base, inadequate provisioning, farming out various business activities by numerous insurance companies.
8. As with any competitive market, one of the immediate impact of opening up would be a shrinkage in the market share for GIC and its companies. Detariffing/deregulation which would follow may result in aggressive price war adversely impacting the margins and profits. An implication of this could be that cross subsidising a loss-making business e.g., motor business, may not be feasible. It is pertinent here to mention the example of Philippines—a recently liberalised market—which currently has 4 overseas life insurance companies controlling 60% of the market and 22 domestic companies vying for the remaining 40% share. The advent of more overseas companies is likely to reduce the market share of local companies further.
9. It is apprehended that private players would engage in 'cherry-picking' and selective/niche marketing Non-profitable lines of business. Such as the motor insurance today is may be selectively avoided. Insurance in rural areas and insurance products having

a major social component may not be preferred on account of low operating leverage. The business focus of the private players would be on commercial clients. They would also concentrate on personal lines of business like PA cover, Health cover, Household sector in the upper income category.

10. The private sector is expected to follow a market segmentation approach to business. It is unlikely that they would operate beyond Mumbai, New Delhi, Calcutta, Chennai. Hyderabad, Bangalore, Kanpur and the cities of that size. It is also unlikely that they would operate in states like J&K, North Eastern states, Rajasthan, Bihar etc. which are traditionally loss making and high cost states. The country had similar experience prior to 1972 when the market was open, for example, foreign companies such as Royal Commercial Union etc. operated only in a few cities.
11. Another logical consequence of opening up would be an exodus of trained and competent human resources GIC and its companies, which have played the role of a State in providing employment to the populace in general and its socially/economically disadvantaged sections in particular, would be saddled with huge surplus manpower.
12. The private players are expected to have a distinct advantage over the existing Indian companies in the matter of IT. The new companies will have a choice in the matter of selecting the best IT system to suit their business needs. In contrast the existing Indian companies have evolved their IT systems incrementally and are not in a position to consider an altogether new IT system.
13. Through the long period of 25 years of nationalisation, the industry has demonstrated stability and satisfactory overall financial strength but the tariff culture also got firmly entrenched. While 40% of the business now falls under detariffed category, 60% of the business is still under the tariff regime. To avoid financial instabilities, it will be necessary to ensure that detariffing over the remaining businesses is gradual, based on experience and other applicable factors Malhotra Committee's recommendation in this regard refers.

Desired Government Support

1. A level playing field which is a prerequisite for the conduct of insurance business in a liberalised environment requires that GIC and its companies be appropriately restructured so that they can face competition on equal terms. In this connection once again attention is invited to Malhotra Committee's 3 recommendations and their sequential implementation:
 - A. Establishing an Insurance Regulatory Authority,
 - B. Restructuring of the Public Sector insurance companies, and
 - C. Framing ground rules for the entry of the private sector. It is important to reiterate that B is to follow A and C is to follow B. Having stated that restructuring of the existing companies before liberalisation is crucial for deriving full benefits of liberalisation, it is essential to highlight the following three components of restructuring which need urgent attention.
 - (i) The first step is dilution of Government ownership to the extent of 50% to enable the existing companies to function effectively as a full-fledged Board-run companies.
 - (ii) The second step is to permit the existing companies to raise their authorised share capital to Rs. 100 crore.
 - (iii) The third step is to consolidate the existing structure in one of the following manners suggested.
 - (a) All four companies of GIC could merge into a single company,
 - (b) All four companies could be made independent companies,
 - (c) The existing structure may continue with cross holdings,
 - (d) Only one company may operate in the corporate area of business while the others may operate in the non-corporate areas of business, (e) Each of the four companies may operate on regional basis with the holding company continuing to coordinate.

The restructuring needs to be done immediately. In the alternative law needs to be passed to allow a two-year period to the existing companies to restructure, set up adequate IT systems and implement productivity-linked compensation system.

2. The Public Sector insurance companies will continue their nationwide operation providing service to all segments of the insuring public. In contrast, as already pointed out earlier, the new domestic/joint venture insurer will most likely concentrate in the niche market or specialised lines of business (particularly applicable to joint venture units). To ensure level playing field, it would therefore be necessary to obligate all companies, existing as well as new, to also participate in the not so attractive classes of business under some agreed formula or scheme. The necessity for writing such obligatory non-selective business is also suggested in the Malhotra Committee Report. Should this require amendments in GIBNA, the same may also be considered at the same time.

3. The domestic retention of the Indian market is currently as high as 91%. Liberalisation must not water down the domestic retention level already reached. It would therefore be critically important to ensure that no reinsurance is allowed directly with any foreign reinsurer and that reinsurance for all players are done only by the national reinsurer, as also recommended by the Malhotra Committee. The concerns expressed in paragraphs 2 and 3 of the first part refer.

As the same argument would equally apply to life insurance business, the national reinsurer for the non-life business may also be allowed to write life reinsurance business so that specialisation in this field is developed under one agency without the necessity of creating another organisation for this purpose.

4. Regulatory control should be vigorous. It should not concern itself with day-to-day running of the business rather it should focus attention on the following areas:
 - Capital adequacy
 - Licensing requirements
 - Solvency margin
 - Valuation of assets
 - Calculation of unexpired premium

- Assessment of outstanding losses
 - Mandatory investment
 - Accounting standards
5. The opening up of the Insurance sector may be considered keeping in view the experience of China, and of the East European and the US markets which have been discussed in the earlier paragraphs of part I.

Steps at the Level of GIC/Companies to meet the Impact

1. Awareness/Image building

- Focussed and enhanced public awareness campaign including intensive interaction with various chambers of commerce and industry

2. Organisation restructuring

- Flattening of the organisation with a view to making the decision-making process more efficient

3. Consolidation

- Ensuring viability of the offices
- Intra/Inter-company merger of offices to enhance cost-effectiveness of the operating offices
- Controlled expansion without additional infusion of manpower

4. Cost control

- Control on addition to manpower
- Redeployment of surplus manpower
- Value addition to jobs

5. Functional autonomy to companies in all matters

- Operating companies/subsidiaries to be largely independent, Board-run companies

6. Market Thrust

- R&D
- Product upgradation/new products
- Product review *vis-a-vis* organisation/customer needs
- Packaged covers
- Reinforcing distribution/retail channels
- Building up intermediaries
- Product promotion
- Entry into new markets—
 - Managed Health Care
 - Retail Banking
 - Agricultural Insurance
 - Savings-linked Insurance
- Establish joint ventures in the above lines of business to redeploy the surplus manpower gainfully and also maintain growth

7. Customer focus

- Computerisation for—
 - Timely issue of policies
 - Prompt settlement of intermediaries' dues
 - Speeding up claims' disposal
- Bridging technology gap through—
 - Progressive integrated computerisation to cover all operations
 - IT based MIS/Decision support systems, ERP Application
 - Y2K remediation

- Reforming systems and procedures—

To make them more efficient and effective

To attune them better towards commercial decision-making

8. Management ethos

- Evolving productivity-linked wage system
- More empowerment through greater delegation and greater accountability
- Sensitizing staff to customer-service requirements

9. Retention of talent

- Productivity oriented incentives
- Job enrichment/empowerment
- Skill upgradation through national/international training

APPENDIX

THE INSURANCE REGULATORY AUTHORITY BILL, 1998

ARRANGEMENT OF CLAUSES

CHAPTER I

PRELIMINARY

CLAUSES

1. Short title, extent and commencement.
2. Definitions.

CHAPTER II

INSURANCE REGULATORY AUTHORITY

3. Establishment and incorporation of Authority.
4. Composition of Authority.
5. Tenure of office of Chairperson and other members.
6. Removal from Office.
7. Salary and allowances of Chairperson and members.
8. Bar on future employment of members.
9. Administrative powers of Chairperson.
10. Meeting of Authority.
11. Vacancies, etc., not to invalidate proceedings of Authority.
12. Officers and employees of Authority.

CHAPTER III

TRANSFER OF ASSETS, LIABILITIES, ETC., OF INTERIM INSURANCE REGULATORY AUTHORITY

13. Transfer of assets, liabilities, etc., of Interim Insurance Regulatory Authority.

CHAPTER IV

DUTIES, POWERS AND FUNCTIONS OF THE AUTHORITY

14. Duties, powers and functions of Authority.

CHAPTER V

FINANCE, ACCOUNTS AND AUDIT

CLAUSES

15. Grants by Central Government.
16. Fund.
17. Accounts and audit.

CHAPTER VI

MISCELLANEOUS

18. Power of Central Government to issue directions.
19. Power of Central Government to supersede Authority.
20. Furnishing of returns, etc., to Central Government.
21. Chairperson, members, officers and other employees of Authority to be public servants.
22. Protection of action taken in good faith.
23. Delegation.
24. Power to make rules.
25. Power to make regulations.
26. Rules and regulations to be laid before Parliament.
27. Application of other laws not barred.
28. Power to remove difficulties.
29. Amendment of Act 4 of 1938.
30. Amendment of Act 31 of 1956.
31. Amendment of Act 57 of 1972.

THE FIRST SCHEDULE.

THE SECOND SCHEDULE.

THE THIRD SCHEDULE.

Bill No. 161 of 1998

THE INSURANCE REGULATORY AUTHORITY BILL, 1998

A

BILL

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 and further to amend the Insurance Act, 1938, the Life Insurance Corporation Act, 1956 and the General Insurance Business (Nationalisation) Act, 1972.

Be it enacted by Parliament in the Forty-ninth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Insurance Regulatory Authority Act, 1998.

Short title, extent and commencement.

(2) It extends to the whole of India.

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

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

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

(a) “appointed day” means the date on which the Authority is established under sub-section (1) of section 3;

(b) “Authority” means the Insurance Regulatory Authority established under sub-section (1) of section 3;

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

(d) “Fund” means the Fund constituted under sub-section (1) of section 16;

(e) “Interim Insurance Regulatory Authority” means the Insurance Regulatory Authority set up by the Central Government through Resolution No. 17(2)/94-Ins-V dated the 23rd January, 1996.

(f) “Intermediary or insurance intermediary” includes insurance brokers, reinsurance brokers, consultants, surveyors and loss assessors;

(g) “Member” means a whole time or a part time member of the Authority and includes the Chairperson;

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

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

(j) “regulations” means the regulations made by the Authority.

4 of 1938.
31 of 1956.
57 of 1972.

(2) Words and expressions used and not defined in this Act but defined in the Insurance Act, 1938 or the Life Insurance Corporation Act, 1956 or the General Insurance Business (Nationalisation) Act, 1972 shall have the meanings respectively assigned to them in those Acts.

CHAPTER II

INSURANCE REGULATORY AUTHORITY

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

Establishment and incorporation of Authority.

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

(3) The head office of the Authority shall be at such place as the Central Government may decide from time to time.

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

4. The Authority shall consist of the following members, namely:—

Composition of Authority.

(a) A Chairperson;

(b) not more than five whole-time members;

(c) not more than four part-time members;

to be appointed by the Central Government from amongst persons of ability, integrity and standing who have knowledge or experience in life insurance, general insurance, actuarial science, finance, economics, law, accountancy, administration or any other discipline which would, in the opinion of the Central Government, be useful to the Authority:

Provided that the Central Government while appointing the Chairperson and the whole-time members shall ensure that at least one person each is a person having knowledge or experience in life insurance, general insurance or actuarial science respectively.

Tenure of office of Chairperson and other members.

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

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

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

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

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

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

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

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

Removal from office.

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

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

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

(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.

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

Salary and allowances of Chairperson and members.

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

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

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

Bar on future employment of members.

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

(b) any appointment in any company in the Insurance sector.

Adminis-
trative
powers of
Chairper-
son.

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

Meeting of
Authority.

10. (1) The Authority shall meet at such times and places, and shall observe such rules and procedures in regard to transaction of business at its meetings (including 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 vote of the members present and voting, and in the event of an equality of votes, the Chairperson, or in his absence, the person presiding shall have a second or casting vote.

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

Vacancies,
etc. not to
invalidate
proceed-
ings of
Authority.

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

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

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

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

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

Officers and employees of Authority.

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

CHAPTER III

TRANSFER OF ASSETS, LIABILITIES, ETC., OF INTERIM INSURANCE REGULATORY AUTHORITY

13. On the appointed day,—

(a) all the assets and liabilities of the Interim Insurance Regulatory Authority shall stand transferred to, and vested in, the Authority;

Transfer of assets, liabilities, etc., of Interim Insurance Regulatory Authority.

Explanation—The assets of the Interim Insurance Regulatory Authority shall be deemed to include all rights and powers, and all property, whether movable or immovable, including, in particular, cash balances, deposits and all other interests and rights in or arising out of such property as may be in the possession of the Interim Insurance Regulatory Authority and all books of account and documents relating to the same; and liabilities shall be deemed to include all debts, liabilities and obligations of whatever kind;

(b) without prejudice to the provisions of clause (a) all debts, obligations and liabilities incurred, all contracts entered into and all matters and things engaged to be done by, with or for the Interim Insurance Regulatory Authority immediately before

that day, for or in connection with the purpose of the said Regulatory Authority, shall be deemed to have been incurred, entered into or engaged to be done by, with or for, the Authority;

(c) all sums of money due to the Interim Insurance Regulatory Authority immediately before that day shall be deemed to be due to the Authority; and

(d) all suits and other legal proceedings instituted or which could have been instituted by or against the Interim Insurance Regulatory Authority immediately before that day may be continued or may be instituted by or against the Authority.

CHAPTER IV

DUTIES, POWERS AND FUNCTIONS OF THE AUTHORITY

Duties,
powers
and
functions
of
Authority.

14. (1) Subject to the provisions of this Act and any other law for the time being in force, the Authority shall have the duty to regulate, promote and ensure orderly growth of the insurance business and reinsurance business.

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

(a) to issue to the applicant a certificate of registration, to renew, modify, withdraw, suspend or cancel such registration;

(b) protection of the interests of the policy holders in matters concerning assigning of policy, nomination by policy holders, insurable interest, settlement of

insurance claim, surrender value of policy, and other terms and conditions of contract of insurance;

(c) specifying requisite qualifications and practical training for intermediary or insurance intermediaries and agents;

(d) specifying the code of conduct for surveyors and loss assessors;

(e) promoting efficiency in the conduct of insurance business;

(f) promoting and regulating professional organisations connected with the insurance and reinsurance business;

(g) levying fees and other charges for carrying out the purposes of this Act;

(h) calling for information from, undertaking inspection of, conducting enquiries and investigations including audit of the insurers, intermediaries, insurance intermediaries and other organisations connected with the insurance business;

(i) control and regulation of the rates, advantages, terms and conditions that may be offered by insurers in respect of general insurance business not so controlled and regulated by the Tariff Advisory Committee under section 64U of the Insurance Act, 1938;

4 of 1938

(j) prescribing the form and manner in which books of account shall be maintained and statement of accounts shall be rendered by insurers and other insurance intermediaries;

(k) regulating investment of funds by insurance companies;

(l) regulating maintenance of margin of solvency;

(m) adjudication of disputes between insurers and intermediaries or insurance intermediaries;

(n) exercising such other powers as may be prescribed.

CHAPTER V

FINANCE, ACCOUNTS AND AUDIT

Grants by
Central
Govern-
ment.

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

Fund.

16.(1) There shall be constituted a Fund to be called "The Insurance Regulatory Authority Fund" and there shall be credited thereto—

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

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

(2) The fund shall be applied for meeting—

(a) the salaries, allowances and other remuneration of the 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.

17. (1) The Authority shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central

Government in consultation with the Comptroller and Auditor-General of India.

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

(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 and privileges and authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Authority.

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

CHAPTER VI

MISCELLANEOUS

18.(1) Without prejudice to the foregoing provisions of this Act, the Authority shall, in exercise of its powers or the performance of its functions under this Act, be bound by such

Power of
Central
Govern-
ment to
issue
directions.

directions on questions of policy 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.

19.(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 appoint a person to be the Controller of Insurance under section 2B of the Insurance Act, 1938, if not already done:

Power of
Central
Govern-
ment to
supersede
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 representations, if any, of the Authority.

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

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

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

(c) all property 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 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 taken under this section and the circumstances leading to such action to be laid before each House of Parliament at the earliest.

20. (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, such

Furnishing
of returns,
etc., to
Central
Govern-
ment.

returns and statements and such particulars in regard to any proposed or existing programme for the promotion and development of the insurance industry as the Central Government may, from time to time, require.

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

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

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

45 of 1860.

Protection of action taken in good faith.

22. No suit, prosecution or other legal proceedings 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 from any suit or other proceedings which might, apart from this Act, be brought against him.

23. (1) 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 under this Act as it may deem necessary. Delegation.

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

24.(1) The Central Government may, by notification, make rules for carrying out the purposes of this Act. Power to make rules.

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

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

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

(c) such other powers that may be performed by the Authority under clause (n) of sub-section (2) of section 14;

(d) the form of annual statement of accounts to be prepared by the Authority under sub-section (1) of section 17;

(e) the time at, the form and the manner in which returns and statements and particulars are to be furnished to the Central Government under sub-section (1) of section 20;

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

Power to
make
regula-
tions.

25. (1) The Authority may, by notification, make regulations consistent with this Act and the rules made thereunder to carry out the purposes 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 times 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 10;

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

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

Rules and
regulations
to be laid
before
Parliament.

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

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

Applica-
tion of
other laws
not barred.

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

Power to
remove
difficulties.

Provided that no order shall be made under this section after the expiry of two years from the appointed day.

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

29. The Insurance Act, 1938 shall be amended in the manner specified in the First Schedule to this Act.

Amend-
ment of
Act 4 of
1938.

30. The Life Insurance Corporation Act, 1956 shall be amended in the manner specified in the Second Schedule to this Act.

Amend-
ment of
Act 31 of
1956.

31. The General Insurance Business (Nationalisation) Act, 1972 shall be amended in the manner specified in the Third Schedule to this Act.

Amend-
ment of
Act 57 of
1972.

THE FIRST SCHEDULE

(See Section 29)

AMENDMENTS TO THE INSURANCE ACT, 1938

(4 OF 1938)

1. In the Act, except in clause (5B) of section 2 and section 2B, for "Controller" wherever it occurs, substitute "Authority" and such consequential changes as the rules of grammar may require shall also be made;

2. In sections 27, 27A, 27B, 31, 32A, 40A, 48B, 64F, 64G, 64-I, 64J, 64L, 64R, 64UC, 64UM, 113 and 115, for "Central Government" wherever they occur, substitute "Authority";

3 Section 2,—

(a) after clause (1), insert the following:—

'(1A) "Authority" means the Insurance Regulatory Authority established under subsection (1) of section 3 of the Insurance Regulatory Authority Act, 1998';

(b) for clause (5B), substitute the following:—

'(5B) "Controller of Insurance" means the officer appointed by the Central Government under section 2B to exercise all the powers and to discharge the functions and to perform the duties of the Insurance Regulatory Authority under this Act or the Life Insurance Corporation Act, 1956 or the General Insurance Business (Nationalisation) Act, 1972 or the Insurance Regulatory Authority Act, 1998';

31 of 1956.

57 of 1972.

(c) after clause (7), insert the following:—

“(7A) “Indian Insurance Company” means any insurer being a company—

1 of 1956.

(a) which is formed and registered under the Companies Act, 1956;

(b) in which the aggregate holdings of equity shares by a foreign company, either by itself or through its subsidiary companies or its nominees, do not exceed twenty six per cent paid up capital for such Indian Insurance Company:

Provided that an aggregate share holding of equity shares not exceeding fourteen per cent of the paid up share capital in an Indian Insurance Company may be held by foreign institutional investors, non-resident Indians, overseas body corporate and such equity share holdings of fourteen per cent shall be excluded while calculating the twenty-six per cent paid up share capital specified in clause (b);

(c) whose sole purpose is to carry on life insurance business, general insurance business or reinsurance business.

43 of 1961.

Explanation 1.— “foreign company” shall have the meaning assigned to it under clause (23A) of section 2 of the Income-tax Act, 1961.

Explanation 2.— “foreign institutional investors” means such investors as the Central Government may, by notification in the Official Gazette, specify in this behalf.

43 of 1961.

Explanation 3.— “non-resident Indian” shall have the meaning assigned to it in clause (e) of section 115(c) of the Income-tax Act 1961.

Explanation 4,—"overseas body corporate" means any body corporate, whether incorporated or not, established under the laws of the country outside India in which not less than sixty per cent of the controlling interest is held by the non-resident Indian and includes the trust formed and registered outside India in which not less than sixty per cent of the beneficial interest is irrevocably held by non-resident Indian.

(d) in clause (14) for "section 114", substitute "this Act";

4. After section 2, insert the following:—

"2A. Words and expressions used and not defined in this Act but defined in the Life Insurance Corporation Act, 1956, the General Insurance Business (Nationalisation) Act, 1972 and the Insurance Regulatory Authority Act, 1998 shall have the meanings respectively assigned to them in those Acts."

31 of 1956.

57 of 1972.

5. Section 2B, for sub-section (1), substitute the following:—

"(1) If at any time, the Authority is superseded under sub-section (1) of section 19 of the Insurance Regulatory Authority Act, 1998, the Central Government may, by notification in the Official Gazette, appoint a person to be the Controller of Insurance till such time the Authority is reconstituted under sub-section (3) of section 19 of that Act."

6. Section 2C, in sub-section (1), after the second proviso, insert the following:—

"Provided also that no insurer other than an Indian insurance company shall begin to carry on any class of insurance business in

India under this Act on or after the commencement of the Insurance Regulatory Authority Act, 1998.”.

7. Section 3,—

(a) in sub-section (1), after the first proviso, insert the following:—

“Provided further that a person or insurer, as the case may be, carrying on any class of insurance business in India, on or before the commencement of the Insurance Regulatory Authority Act, 1998, for which no registration certificate was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or if he had made an application for such registration within the said period of three months, till the disposal of such application:

Provided also that any certificate of registration, obtained immediately before the commencement of the Insurance Regulatory Authority Act, 1998, shall be deemed to have been obtained from the Authority in accordance with the provisions of this Act.”;

(b) in sub-section (2),—

(i) in the opening portion, for “Every application for registration shall be accompanied by—”, substitute the following:—

“Every application for registration shall be made in such manner as may be determined by regulations made by the Authority and shall be accompanied by—”;

(ii) in clause(f), in the proviso, omit "and" occurring at the end;

(iii) for clause (g), substitute the following:—

"(g) such other documents as may be specified by regulations made by the Authority;

(c) in sub-section (4),—

(i) in clause (f), for "of any rule or order made thereunder, or", substitute the following:—

"of any rule or any regulation or order made or, any direction issued thereunder, or";

(ii) in clause (h), at the end insert "or";

(iii) after clause (h), insert the following:—

"(i) if the insurer makes default in complying with any direction issued or order made, as the case may be, by the Authority under the Insurance Regulatory Authority Act, 1998, or

(j) if the insurer makes default in complying with, or acts in contravention of, any requirement of the Companies Act, 1956, the Life Insurance Corporation Act, 1956 or the General Insurance Business (Nationalisation) Act, 1972 or the Foreign Exchange Regulation Act, 1973.";

1 of 1956.

31 of 1956.

57 of 1972.

46 of 1973.

(d) in sub-section (5C),—

(i) for "clause (h)", substitute "clause (h) or clause (i) or clause (j).";

(ii) for "any requirement of this Act or of any rule or order made thereunder," substitute the following:—

"any requirement of this Act or the Insurance Regulatory Authority Act, 1998

or of any rule or any regulations or any order made or any directions issued under those Acts,";

(e) after sub-section (5D), insert the following:—

"(5E) The Authority may by order, suspend or cancel any registration in such manner as may be determined by regulations made by the Authority:

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

8. Section 3A,—

(a) in sub-section (1), for "the 31st day of December, 1941", substitute the following:—

"the 31st day of March, after the commencement of the Insurance Regulatory Authority Act, 1998";

(b) in sub-section (2), for "prescribed fee", substitute "fee as determined by regulations made by the Authority,";

(c) in sub-section (3), for "prescribed fee", substitute "fee as determined by regulations made by the Authority,";

(d) in sub-section (4), for "prescribed fee", substitute "fee as determined by regulations made by the Authority, and";

9. Section 6A,—

(a) in sub-section (4) in clause (b),

(i) in sub-clause (i), omit "and" occurring at the end,

(ii) in sub-clause (ii) for "sanction of the Central Government has been obtained to the Transfer.", substitute "approval of the Authority has been obtained to the transfer," and

(iii) after sub-clause (ii), insert the following:—

'(iii) where, the nominal value of the shares intended to be transferred by any individual, firm, group, constituents of a group, or body corporate under the same management, jointly or severally exceeds one per cent of paid up capital of the insurer, unless the previous approval of the Authority has been obtained for the transfer.

Explanation—For the purpose of this sub-clause, the expressions "group" and "same management," shall have the same meanings respectively assigned to them in the Monopolies and Restrictive Trade Practices Act, 1969;

54 of 1969

(b) in sub-section (11),—

(x) for "Explanation 1", substitute "Explanation";

(ii) omit Explanation 2.

10. After section 6A, insert the following:—

"6AA. (1) No promoter shall at any time hold more than twenty-six per cent or such other percentage as may be prescribed, of the paid up capital in an Indian Insurance company:

Provided that in a case where an Indian insurance company begins the business of

Manner of divesting excess share holding by promoter in certain cases.

life insurance, general insurance or reinsurance in which the promoters hold more than twenty-six per cent of the paid up capital or such other excess percentage as may be prescribed, the promoters shall divest in a phased manner the share capital in excess of the twenty-six per cent of the paid up capital or the such excess paid up capital as may be prescribed, after a period of six years from the date of commencement of the said business by such Indian insurance company or within such period as may be prescribed by the Central Government.

Explanation—For the removal of doubts it is hereby declared that nothing contained in proviso shall apply to the promoters being foreign company, foreign institutional investor, non-resident Indian and overseas body corporate referred to in sub-clause (b) of clause (7A) of section 2.

(2) the manner and procedure for divesting the excess share capital under sub-section (1) shall be specified by regulations made by the Authority.”.

11. Section 11,—

(a) in sub-section (1), for “calendar year” substitute “financial year”;

(b) after sub-section (1), insert the following:—

“(1A) Notwithstanding anything contained in sub-section (1), every insurer, on or after the commencement of the Insurance Regulatory Authority Act, 1998,

in respect of insurance business transacted by him and in respect of his shareholders' funds, shall at the expiration of each financial year prepare with reference to the year, a balance sheet, a profit and loss account, a separate account of receipts and payments, a revenue account in accordance with the regulations made by the Authority.

(1B) Every insurer shall keep separate accounts relating to funds of shareholders and policy holders."

12. Section 13,—

(a) in sub-section (1),—

(i) for "once at least in every three years", substitute "every year";

(ii) in the first proviso, for "not later than four years", substitute "not later than two years";

(iii) after the second proviso, insert the following:—

"Provided also that for an insurer carrying on life insurance business in India immediately before the commencement of the Insurance Regulatory Authority Act, 1998, the last date at which the first investigation after such commencement shall be caused by an actuary shall be the 31st day of March, 1999;"

(iv) after third proviso, insert the following:—

"Provided also that every insurer on or after the commencement of the Insurance Regulatory Authority Act, 1998, shall cause an abstract of the report of the actuary to be made in the manner specified by regulations made by the Authority.";

(b) in sub-section (4), after proviso, insert the following:—

“Provided further that the statement referred to in sub-section (4) shall be appended in the form and in the manner specified by regulations made by the Authority.”;

13. After section 27B,—insert the following:—

“27C. No insurer shall directly or indirectly invest outside India, the funds of the policy holders.

Provisions of investment of funds outside India.

27D.(1) Without prejudice to anything contained in sections 27, 27A and 27B, the Authority may, in the interests of the policy holders, specify by regulations made by it, the time, manner and other conditions of investment of assets to be held by an insurer for the purposes of this Act.

Manner and conditions of investment.

(2) The Authority may, after taking into account the nature of business and to protect the interests of the policy holders, issue to an insurer the directions relating to the time, manner, and other conditions of investment of assets to be held by him:

Provided that no directions under this sub-section shall be issued unless the insurer concerned has been given a reasonable opportunity of being heard.”.

14. Section 28A, in sub-section (1), for “31st day of December”, substitute “31st day of March”.

15. Section 28B, in sub-section (1), for “31st day of December”, substitute “31st day of March”.

16. Section 31B,—

(a) in sub-section (1), for “Central Government” at both the places where they occur, substitute “Authority”;

(b) after sub-section (3), insert the following:—

“(4) Every direction under this section shall be issued by an order made by the Authority:

Provided that no order under this section shall be made unless the person concerned has been given an opportunity of being heard.”.

17. Section 33A, omit “Central Government or the”.

18. Section 34H,—

(a) in sub-section (1),—

(i) for “Controller”, substitute, “Chairperson of the Authority”;

(ii) for “an Assistant Controller of Insurance”, substitute “an officer authorised by the Authority”;

(b) in sub-sections (5) and (7), for “Controller” wherever it occurs, substitute “the Chairperson of the Authority”.

19. Section 35,—

(a) in sub-section (1), for “sanctioned by the Controller”, substitute “approved by the Authority”;

(b) in sub-section (3),—

(i) in the first paragraph, for “to sanction any such scheme”, substitute “to approve any such scheme”;

(ii) in the second paragraph, for “the amalgamation or transfer if sanctioned”, substitute “the amalgamation or transfer if approved”.

20. Section 36,—

(a) in sub-section (1), for “may sanction the arrangement”, substitute “may approve the arrangement”;

(b) in sub-section (2),—

(i) for “the insurers concerned in the amalgamation, the Controller may sanction”, substitute “the insurers concerned in the amalgamation, the Authority may approve”;

(ii) for “contracts as sanctioned by the Controller”, substitute “contracts as approved by the Authority”.

21. Section 37, in clause (c) for “scheme sanctioned”, substitute “scheme approved”.

22. Section 42A, in sub-section (1),—

(a) for “Controller or an officer authorised by him”, substitute “Authority or an officer authorised by it”;

(b) for “an application to him”, substitute “an application to it”.

23. After section 42C, insert the following:—

“42D. (1) The Authority or an officer authorised by it in this behalf shall, in the manner determined by regulations made by the Authority and on payment of the fees determined by regulations made by the Authority issue, to any person making an application in the manner determined by the regulations, a licence to act as an intermediary or an insurance intermediary under this Act:

Issue of
licence to
intermediary
or insurance
intermediary.

Provided that—

(a) in the case of an individual, he does not suffer from any of the disqualifications mentioned in sub-section (4) of section 42, or

(b) in the case of a company, firm, any of its directors or partners does not suffer from any of the said disqualifications and a certificate to act as an intermediary or an insurance intermediary shall be issued to him.

(2) A licence issued under this section shall entitle the holder thereof to act as an intermediary or insurance intermediary for any insurer.

(3) A licence issued under this section, shall remain in force for a period of three years only from the date of issue, but shall, if the applicant, being an individual does not, or being a company or firm any of its directors or partners does not suffer from any of the disqualifications mentioned in clauses (b), (c) and (d) of sub-section (4) of section 42 and the application for renewal of licences reaches the issuing authority at least thirty days before the date on which the licence ceases to remain in force, be renewed for a period of three years at any one time on payment of the fee determined by regulations made by the Authority and additional fee for an amount determined by the regulations not exceeding one hundred rupees by way of penalty, if the application for renewal of the licence does not reach the issuing authority at least thirty days before the date on which the licence ceases to remain in force.

(4) No application for renewal of a licence under this section shall be entertained if the application does not reach the issuing authority before the licence ceases to remain in force:

Provided that the Authority may, if satisfied that undue hardship would be caused otherwise, accept any application in

contravention of this sub-section on payment by the applicant of a penalty of seven hundred and fifty rupees.

(5) The disqualifications above referred to shall be the following:—

(a) that the person is minor;

(b) that he is found to be of unsound mind by a court of competent jurisdiction;

(c) that he has been found guilty of criminal misappropriation or criminal breach of trust or cheating (or forgery or an abetment of or attempt to commit any such offence) by a court of competent jurisdiction:

Provided that, where at least five years have elapsed since the completion of the sentence imposed on any person in respect of any such offence, the Authority shall ordinarily declare in respect of such person that his conviction shall cease to operate as a disqualification under this clause;

(d) that in the course of any judicial proceedings relating to any policy of insurance of the winding up of an insurance company or in the course of an investigation of the affairs of an insurer it has been found that he has been guilty of or has knowingly participated in or connived at any fraud dishonesty or misrepresentation against an insurer or an insured;

(e) that he does not possess the requisite qualifications and practical training for a period not exceeding twelve months, as may be specified by the regulations made by the Authority in this behalf;

(f) that he has not passed such examinations as may be specified by the regulations made by the Authority in this behalf.

(6) If it be found that an intermediary or an insurance intermediary suffers from any of the foregoing disqualifications, without prejudice to any other penalty to which he may be liable, the Authority shall, and if the intermediary or insurance intermediary has knowingly contravened any provision of this Act may, cancel the licence issued to the intermediary or insurance intermediary or under this section.

7. The Authority may issue a duplicate licence to replace a licence lost, destroyed or mutilated, on payment of such fee, as may be determined by regulations made by the authority”;

(8) Any person who acts as an intermediary or an insurance intermediary without holding a licence issued under this section to act as such shall be punishable with fine and any insurer or any person acting on behalf of an insurer, who appoints as an intermediary or an insurance intermediary any person not licensed to act such or transacts any insurance business in India through any such person, shall be punishable with fine.

(9) Where the person contravening sub-section (7) is a company or a firm, then, without prejudice to any other proceedings which may be taken against the company or firm, every director, manager, secretary or other officer of the company, and every partner of the firm who is knowingly a party to such contravention shall be punishable with fine.

24. Section 64UA, in sub-section(1), in sub-clause (a), for "Controller of Insurance" substitute "Chairperson of the Authority".

25. Section 64UB, in sub-section (5), for "Controller of Insurance", substitute "Chairperson of the Authority".

26. Section 64UC, in sub-section (1), in proviso, for "the Controller may, with the previous approval of the Central Government" substitute "the Authority may";

27. Section 64UD, in sub-section (1), for "Controller of Insurance" substitute "Chairperson of the Authority".

28. Section 64UJ, in sub-section (5), for "Central Government" wherever it occurs, substitute "Authority".

29. Section 64UM,—

(a) in sub-section (1),—

(i) in clause (C) for "as may be prescribed", substitute "as may be determined by regulation" made by the Authority";

(ii) in clause (D), in sub-clause (i),—

(A) for item "(a) has been in practice as a surveyor or loss assessor on the 26th day of October 1968, or," substitute "(a) has been in practice as a surveyor or loss assessor on the date of commencement of the Insurance Regulatory Authority Act, 1998, or";

(B) in item (f), for "prescribed" substitute "specified by regulations made by the Authority";

(b) after sub-section (1), insert—

“(1A) Every surveyor and loss assessor shall comply with the code of conduct in respect of their duties, responsibilities and other professional requirements as may be specified by regulations made by the Authority.”

30. Section 70, in sub-section (1), for “the Controller a certificate of registration”, substitute “the Authority, before the date of commencement of the Insurance Regulatory Authority Act, 1998, a certificate of registration”;

31. Section 95, in sub-section (1), for “In this Part—”, substitute, “In this Part before the date of commencement of the Insurance Regulatory Authority Act, 1998,—”;

32. Section 101A,—

(a) in sub-section (2), for “the Central Government”, substitute “the Authority with the previous approval of the Central Government”;

(b) in sub-section (2), for “the Central Government”, substitute “the Authority”.

33. Section 101B, in sub-section (1), for “the Central Government”, substitute “the Authority with the previous approval of the Central Government”.

34. Sections 110A, 110B and 110C for “Controller”, wherever it occurs, substitute “Chairperson of the Authority”;

35. Section 110G, for “Controller” at both the places where it occurs, substitute “Chairperson of the Authority”.

36. Section 110H, in sub-section (1), for "under sections", substitute "under section 27D,";

37. After section 114, insert the following:—

"114A (1) The Authority may, by notification in the Official Gazette, make regulations consistent with this Act and the rules made thereunder, to carry out the provisions of this Act.

Power of Authority to make regulations.

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

(a) the matters relating to registration of insurers under section 3;

(b) the manner of suspension or cancellation of registration under sub-section (5E) of section 3;

(c) the matters relating to renewal of registration under section 3A;

(d) the manner and procedure for divesting excess share capital under sub-section (2) of section 6AA;

(e) the preparation of balance sheet, profit and loss account and a separate account of receipts and payments and revenue account under sub-section (1A) of section 11;

(f) the manner in which an abstract of the report of the actuary to be specified under the second proviso to sub-section (1) of section 13;

(g) the form and the manner in which the statement referred to in sub-section (4) of section 13 shall be appended;

(h) the time, manner and the other conditions of investment of assets held by an insurer under sub-sections (1) and (2) of section 27D;

(i) the manner and the fee for issue of a licence to an intermediary or an insurance intermediary under sub-section (1) of section 42D;

(j) the fee to be determined for renewal of licence of intermediaries or insurance intermediaries under sub-section (3) of section 42D;

(k) the period for specifying the requisite qualifications and practical training of intermediaries or insurance intermediaries under sub-section (5) of section 42D;

(l) the matter relating to issue of duplicate licence under sub-section (7) of section 42D;

(m) the matter relating to licensing of surveyors and loss assessors, their duties, responsibilities and other professional requirements under section 64UM;

(n) the matter relating to reinsurance under sections 101A and 101B;

(o) matters relating to redressal of grievances of policy holders to protect their interest and to regulate, promote and ensure orderly growth of insurance industry;

(p) any other matter which is to be or may be specified by regulations made by the Authority in respect of which provisions is to be made or may be, made by the regulations.

(3) Every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session, for a total period of thirty days which may be comprised in one session or in two or 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 regulation or both Houses agree that the regulation should not be made, the 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 the regulation.”;

38. Section 116A for “Central Government”, at both the places where they occur, substitute “Central Government, before the date of commencement of the Insurance Regulatory Authority Act, 1998”.

THE SECOND SCHEDULE

(See section 30)

AMENDMENT TO THE LIFE INSURANCE CORPORATION ACT, 1956

(31 OF 1956)

1. In the Act, for "Controller" wherever it occurs, substitute "Authority".

2. After section 30, insert the following:—

Exclusive
privilege
of
Corpora-
tion to
cease.

"30A. Notwithstanding anything contained in this Act, the exclusive privilege of carrying on life insurance business in India by the Corporation shall cease on and from the commencement of the Insurance Regulatory Authority Act, 1998 and the Corporation shall, thereafter, carry on life insurance business in India in accordance with the provisions of the Insurance Act, 1938".

4 of 1938

THE THIRD SCHEDULE

(See section 31)

AMENDMENT TO THE GENERAL INSURANCE BUSINESS (NATIONALISATION) ACT, 1972

(57 OF 1972)

After section 24, insert the following:—

“24A. Notwithstanding anything contained in this Act, the exclusive privilege of the Corporation and the acquiring companies of carrying on general Insurance business in India shall cease on and from the commencement of the Insurance Regulatory Authority Act, 1998 and the Corporation and the acquiring companies shall, thereafter, carry on general insurance business in India in accordance with the provisions of the Insurance Act, 1938”.

Exclusive
privilege
of
Corpora-
tion and
acquiring
companies
to cease.

4 of 1938

STATEMENT OF OBJECTS AND REASONS

The insurance industry requires a high degree of regulation. The Insurance Act, 1938 provides for the institution of the Controller of Insurance to act as a strong and powerful supervisory and regulatory authority with powers to direct, advice, caution, prohibit, investigate, inspect, prosecute, search, seize, fine, amalgamate, authorize, register and liquidate insurance companies. However, after the nationalisation of the life insurance industry in 1956 and the general insurance industry in 1972, the role of the Controller of Insurance diminished in significance over a period of time.

2. In April, 1993 the Government set up a high-powered committee headed by Shri R.N. Malhotra, former Governor, Reserve Bank of India, to examine the structure of the insurance industry and recommend changes to make it more efficient and competitive keeping in view the structural changes in other parts of the financial system of the economy. The Committee which submitted its report on 7th January, 1994 felt that the insurance regulatory apparatus should be activated even in the present set up of nationalised insurance sector and recommended, *inter alia*, the establishment of a strong and effective Insurance Regulatory Authority (IRA) in the form of a statutory autonomous board on the lines of Securities and Exchange Board of India.

3. The recommendations of the Committee were discussed at different forums including the Consultative Committee of the Parliament attached to the Ministry of Finance, managements of Life Insurance Corporation, General Insurance Corporation and its subsidiary companies, trade unions, Chambers of Commerce and consumer interest groups. The recommendation to set up an autonomous Insurance Regulatory Authority found wide support. In view of the general support received, the then Government decided to bring in a legislation to establish an independent regulatory authority for the insurance industry. Since enacting legislation for creating the Insurance Regulatory Authority would take time, the then Government constituted through a Government resolution an Interim Insurance Regulatory Authority pending the enactment of a comprehensive legislation. The Chairman, Insurance Regulatory Authority has been notified as Controller of

Insurance under the Insurance Act, 1938. The said Interim Regulatory Authority at present is discharging certain functions and exercising powers of the Controller.

4. In pursuance of the Budget Speech in July, 1996 the then Government introduced on the 20th December, 1996, the Insurance Regulatory Authority Bill, 1996 for establishment of an Authority to protect the interests of holders of insurance policies and to regulate, promote and ensure orderly growth of the insurance industry and for matters connected therewith or incidental thereto. The Bill was referred to the Department related standing Committee on the Ministry of Finance. The Committee submitted its report on 9th May, 1997.

However, the said Bill incorporating therein the recommendations of the said standing Committee was taken for consideration but could not be passed and the Bill was withdrawn by the then Government.

5. In the Budget Speech, 1998 the Finance Minister announced that along with the reforms of the Banking Sector, it is necessary to move forward with reforms in insurance which has hitherto been a public sector monopoly. In order to provide better insurance coverage to our citizens and also to augment the flow of long term resources for financing infrastructure, it has been proposed by the Government to open the insurance sector to competition from private Indian companies. The Insurance regulatory Authority will also be converted into a statutory body. Accordingly, it is now proposed to give a statutory charter to the Interim Insurance Regulatory Authority by enacting a legislation in this regard and amend section 30 of the Life Insurance Corporation Act, 1956 and section 24 of the General Insurance Business (Nationalisation) Act, 1972 to permit the entry of private Indian companies into the insurance sector and to make certain consequential amendments to the Insurance Act, 1938.

6. The proposed Authority shall be a body corporate having perpetual succession and a common seal with power to acquire, hold and dispose of property and to contract. It will consist of a Chairperson and other members not exceeding nine in number, of whom not more than five shall serve full time, to be appointed by the Central Government from amongst persons of ability, integrity and standing who have knowledge or experience of life insurance, general insurance, actuarial science, finance, economics, law, accountancy, administration or any other discipline which in the opinion of the Central Government

shall be useful to the Authority. The Chairperson and other whole-time Members shall hold office for a term of 5 years or until the age of 65 years in the case of Chairperson and 62 years in the case of other whole-time Members, whichever is earlier and they shall be eligible for re-appointment subject to age consideration. A part-time Member shall hold office for a term not exceeding 5 years.

7. The duties, powers and functions of Authority, *inter alia*, are:—

(a) to issue to the applicant a certificate of registration, to renew, modify, withdraw, suspend or cancel such registration;

(b) protection of the interests of the policy holders in matters concerning assigning of policy, nomination by policy holders, insurable interest, settlement of insurance claim, surrender value of policy, and other terms and conditions of contracts of insurance;

(c) specifying requisite qualifications and practical training for insurance intermediaries and agents;

(d) specifying the code of conduct for surveyors and loss assessors;

(e) promoting efficiency in the conduct of insurance business;

(f) promoting and regulating professional organisations connected with the insurance and reinsurance business;

(g) levying fees and other charges for carrying out the purposes of this Act;

(h) calling for information from, undertaking inspection of, conducting enquiries and investigations including audit of the insurers, insurance intermediaries and other organisations connected with the insurance business;

(i) control and regulation of the rates, advantages, terms and conditions that may be offered by insurers in respect of general insurance business not so controlled and regulated by the Tariff Advisory Committee under section 64U of the Insurance Act, 1938;

(j) prescribing the form and manner in which books of account shall be maintained and statement of accounts will be rendered by insurers and insurance intermediaries;

- (k) regulating investment of funds by insurance companies;
- (l) regulating maintenance of margin of solvency;
- (m) adjudication of disputes between insurers and intermediaries;
- (n) exercising such other powers as may be prescribed.

8. The powers and functions mentioned above would enable the Authority to perform the role of an effective watchdog and regulator for the insurance sector in India. To enable the Authority to function in a truly independent manner and discharge its assigned responsibilities effectively, it is proposed to vest the Authority with statutory status.

9. The Bill seeks to achieve the above objects.

NEW DELHI;
The 7th December, 1998.

YASHWANT SINHA

Notes on Clauses

Clause 2 defines the various expressions occurring in the Bill.

Clause 3 provides for the establishment of the Insurance Regulatory Authority by the Central Government as a body corporate. The head office of the Authority shall be at such place as the Central Government may decide from time to time.

Clause 4 provides that the Authority shall consist of a Chairperson, not more than five whole-time members and not more than four part-time members, to be appointed by the Central Government.

Clause 5 provides that the Chairperson and other whole-time members shall hold office for a term of five years or until the age of 65 years in the case of Chairperson and 62 years in the case of other whole-time members, whichever is earlier, and a part-time member shall hold office for a term not exceeding five years.

Clause 6 provides that the Central Government may, after giving a reasonable opportunity of being heard in the matter, remove from office the Chairperson and members of the Authority in certain circumstances.

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

Clause 8 provides that the Chairperson and members shall be ineligible for appointment in Central or State Governments or any private company in the insurance sector for a period of two years from the date on which they cease to hold office as such.

Clause 9 provides that the Chairperson shall have the powers of general superintendence and directions of all administrative matters of the Authority.

Clause 10 contains detailed provisions regarding conduct of the meetings of the Authority.

Clause 11 provides for certain conditions which will not invalidate the proceedings of the Authority.

Clause 12 empowers the Authority to appoint officers and other employees and determine their terms and conditions of service through regulations.

Clause 13 provides for transfer of assets, liabilities, etc., of the Interim Insurance Regulatory Authority to the Insurance Regulatory Authority.

Clause 14 provides that the Authority shall have the duty to regulate, promote and ensure orderly growth of the insurance business and prescribes its specific powers and functions.

Clause 15 provides for grants to the Authority by the Central Government.

Clause 16 provides for constitution of the Insurance Regulatory Authority Fund and crediting thereto all Government grants, fees and charges received by the Authority and its appropriation for making payments.

Clause 17 provides that the Authority shall maintain its accounts in the form prescribed by the Central Government in consultation with the Comptroller and Auditor General of India and that the accounts will be audited by the Comptroller and Auditor General of India with the same rights and privileges as in the case of audit of Government accounts. It also provides that the accounts of the Authority as certified by the Comptroller and Auditor General of India together with the audit report thereon shall be laid before each House of the Parliament every year.

Clause 18 provides that the Authority shall be bound by the directions of the Central Government on questions of policy and that the decisions of the Central Government, whether a question is one of policy or not, shall be final.

Clause 19 provides that the Central Government may, by notification and for reasons specified therein supersede the Authority, for a period not exceeding six months, in certain circumstances and during the period of supersession appoint a person to act as the Controller of Insurance under the Insurance Act, 1938. It also provides for reconstitution of the Authority before the expiry of the period of

supersession and that a copy of the notification for supersession and a full report on the action taken shall be laid before each House of Parliament.

Clause 20 provides for furnishing of returns, etc., by the Authority to the Central Government.

Clause 21 provides that the Chairperson, members, officers and employees of the Authority shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

Clause 22 provides for usual provisions relating to the protection of action taken in good faith.

Clause 23 provides for delegation of power of the Authority.

Clause 24 confers on the Central Government the power to make rules for carrying out the provisions of the Bill.

Clause 25 confers on the Authority the power to make regulations consistent with the provisions of the Bill.

Clause 26 provides that the rules made by the Central Government and regulations made by the Authority shall be laid before each House of Parliament.

Clause 27 provides that the provisions of this Bill shall be in addition to and not in derogation of, the provisions of any other law for the time being in force.

Clause 28 seeks to empower the Central Government to remove difficulties which may arise in giving effect to the provisions of the Bill.

Clause 29 seeks amendments of certain provisions of the Insurance Act, 1938 in the manner as set out in the First Schedule to the Bill.

The amendments to the Insurance Act, 1938 are consequential in nature to empower the Insurance Regulatory Authority to effectively regulate, promote and ensure orderly growth of the insurance industry. The Amendments *inter alia* provide for the substitution of the word "Controller" by the word "Authority" and substitution of the word "Central Government" by the word "Authority" in certain sections of the Insurance Act, 1938.

It also provides for certain definitions including definition of an Indian insurance company.

The other consequential amendments relate to empowering the authority in respect of registration of insurers, percentage of equity capital to foreign company, investment provisions, regulation of licence to intermediaries or insurance intermediaries and power of the Authority to make regulations.

Clause 30 seeks to amend section 30 of the Life Insurance Corporation Act, 1956, in the manner as set out in the Second Schedule.

The amendment provides that the exclusive privilege of the Life Insurance Corporation shall cease so as to enable other Indian insurance companies to do life insurance business.

Clause 31 seeks to amend section 24 of the General Insurance Business (Nationalisation) Act, 1972 in the manner as set out in the Third Schedule.

The amendment provides that the exclusive privilege of the General Insurance Corporation and the four subsidiary companies shall cease so as to enable other Indian insurance companies to do non-life insurance business.

FINANCIAL MEMORANDUM

The Central Government proposes to set up an independent statutory Insurance Regulatory Authority under clause 3 of the Bill. Recurring expenditure towards salary and allowances, etc., of the Chairperson and other members under clause 7 will be of the order of Rs. 62 lakhs per annum and the officers and employees of the Authority under clause 12 will be of the order of Rs. 160 lakhs per annum. Other recurring expenditures by way of rent, maintenance, training, etc., will be of the order of Rs. 200 lakhs per annum. Non-recurring expenditure by way of purchase of accommodation, furniture and fixtures, office equipment, vehicle etc., will be approximately of the order of Rs. 855 lakhs.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 19 of the Bill confers powers upon the Central Government to supersede, by notification, the Authority in the circumstances specified in that clause. This clause further requires that a copy of such notification and a full report of any action taken under this clause and the circumstances leading to such supersession shall be laid before each of the House at the earliest.

2. Clause 24 of the Bill empowers the Central Government to make rules to provide, *inter-alia*, for the salary and allowances payable to and other conditions of service of the Chairperson and the other members, the additional powers and functions that may be performed by the Authority, the form of annual statement of accounts to be prepared by the Authority, the forms and manner in which the returns and statements and particulars are to be prepared and to be furnished by the Central Government, and any other matter which is to be, or may be, prescribed, or in respect of which provision is to be or may be made by rules.

3. Clause 25 of the Bill empowers the Authority to make regulations to provide for, *inter-alia*, the time and places of meeting of the Authority and the procedure to be followed at such meetings including the quorum necessary for the transaction of the business, and the terms and conditions of service of officers and employees of the Authority.

4. Clause 29 of the Bill proposes to amend the Insurance Act, 1938 which, *inter-alia*, proposes to insert section 6AA in that Act. The said section 6AA proposes to confer power upon the Central Government to prescribe the percentage of the paid up equity capital in excess of twenty-six per cent, which the promoter shall at any time hold in an Indian insurance company. This clause further proposes to confer a power upon the Central Government to prescribe the period within which such excess paid up capital shall be divested by the promoters of such Indian insurance company.

This Clause further proposes to amend the Insurance Act, 1938 which, *inter-alia*, empowers the Authority to make regulations in respect

of the matter relating to registration of insurers under section 3; the manner of suspension or cancellation of registration under sub-section (5E) of section 3; the matters relating to renewal of registration under section 3A; the manner and procedure for divesting excess share capital under sub-section (2) of section 6AA; preparation of balance sheet, profit and loss account and separate account of receipts and payments and revenue account under sub-section (1A) of section 11; the manner in which an abstract of the report of the actuary to be specified under the second proviso to sub-section (1) of section 13; the form and the manner in which the statement referred to in sub-section (4) of section 13 shall be appended; the time, manner and the other conditions of investment of assets held by an insurer under sub-sections (1) and (2) of section 27D; the manner in which and the fee for issue of a licence to an intermediary or an insurance intermediary under sub-section (1) of section 42D; the fee to be determined for renewal of licence of insurance intermediaries under sub-section (3) of section 42D; the period for specifying the requisite qualifications and practical training of intermediaries or insurance intermediaries under sub-section (5) of section 42D; the matter relating to issue of duplicate licence under sub-section (7) of section 42D; the matter relating to licensing of surveyors and loss assessors, their duties, responsibilities and other professional requirements under section 64UM; the matter relating to reinsurance under sections 101A and 101B; matters relating to redressal of grievances of policy holders to protect their interests and to regulate, promote and ensure orderly growth of industry; any other matter which is to be or may be specified by regulations or in respect of which provisions is to be made or may be, made by regulations.

5. The rules and regulations made shall be laid, as soon as may be, after they are made, before each House of Parliament.

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

ANNEXURE

EXTRACTS FROM THE INSURANCE ACT, 1938

(4 OF 1938)

* * * * *

2. In this Act, unless there is anything Definitions.
repugnant in the subject or context,—

* * * * *

(5B) "Controller of Insurance" or
"Controller" means the officer appointed by the
Central Government to perform the duties of
the Controller of Insurance under this Act;

* * * * *

2B (1) The Central Government may, by Appointment of
notification in the Official Gazette, appoint a Controller of
person to be the Controller of Insurance under Insurance.
this Act.

* * * * *

3. (1) * * * * * Registration.

(2) Every application for registration shall
be accompanied by—

* * * * *

(f) a certified copy of the published
prospects, if any and of the standard policy
forms of the insurer and statements of the
assured rates, advantages, terms and
conditions to be offered in connection with
insurance policies together with a certificate
in connection with life insurance business

by an actuary that such rates, advantages, terms and conditions are workable and sound:

Provided that in the case of marine accident and miscellaneous insurance business other than workmen's compensation and motor car insurance the above requirements regarding prospects, forms and statements shall be complied with only in so far as the prospectus, forms and statements may be available; and

(g) the receipt showing payment in the prescribed manner of the prescribed fee which shall not be more than five hundred rupees for each class of business.

* * * * *

(4) The Controller shall cancel the registration of an insurer either wholly or in so far as it relates to a particular class of insurance business, as the case may be,—

* * * * *

(f) if the insurer makes default in complying with, or acts in contravention of, any requirement of this Act or of any rule or order made thereunder, or

* * * * *

(h) if the insurer carries on any business other than insurance business or any prescribed business;

* * * * *

(5C) Where a registration is cancelled under clause (a), clause (aa), clause (e), clause (f), clause (g) or clause (h) of sub-section (4), the

Controller may at his discretion revive the registration, if the insurer within six months from the date on which the cancellation took effect makes the deposits required by section 7 or section 98, or complies with the provisions of section 64VA as to the excess of the value of his assets over the amount of his liabilities or has his standing contract restored or has had an application under sub-section (4) of section 3A accepted, or satisfies the Controller that no claim upon him such as is referred to in clause (g) of sub-section (4) remains unpaid or that he has complied with any requirement of this Act or of any rule or order made thereunder or that he has ceased to carry on any business other than insurance business or any prescribed business, as the case may be, and complies with any directions which may be given to him by Controller.

* * * * *

3A(1) An insurer who has been granted a certificate of registration under section 3 shall have the registration renewed annually for each year after that ending on the 31st day of December, 1941.

Renewal of registration.

(2) An application for the renewal of a registration for any year shall be made by the insurer to the Controller before the 31st day of December of the preceding year, and shall be accompanied as provided in sub-section (3) by evidence of payment of the prescribed fee which may vary according to the total gross premium written direct in India, during the year preceding the year in which the application is required to be made under this section, by the insurer in the class of insurance

business to which the registration relates but shall not—

(i) exceed one-fourth of one per cent of such premium income,

(ii) be less, in any case, than five hundred rupees for each class of insurance business:

Provided that in the case of an insurer carrying on solely re-insurance business, the provisions of this sub-section shall apply with the modification that instead of the total gross premium written direct in India, the total premiums in respect of facultative reinsurances accepted by him in India shall be taken into account.

(3) The prescribed fee for the renewal of a registration for any year shall be paid into the Reserve Bank of India, or, where there is no office of that Bank, into the Imperial Bank of India acting as the agent of that Bank, or into any Government treasury, and the receipt shall be sent along with the application for renewal of the registration.

(4) If an insurer fails to apply for renewal of registration before the date specified in sub-section (2) the Controller may, so long as an application to the Court under sub-section (5D) of section 3 has not been made, accept an application for renewal of the registration on receipt from the insurer of the fee payable with the application and such penalty not exceeding the prescribed fee payable by him, as the Controller may require:

Provided that an appeal shall lie to the Central Government from an order passed by the Controller imposing a penalty on the insurer.

Requirements as to capital structure and voting rights and maintenance of registers of beneficial owners of shares.

* * * * *

6A. (1) * * * * *

(4) A public company as aforesaid which carries on life insurance business—

* * * * *

(b) shall not register any transfer of its shares—

7 of 1913

(i) unless, in addition to compliance being made with the provisions of section 34 of the Indian Companies Act, 1913, the transferee furnishes a declaration in the prescribed form as to whether he proposes to hold the shares for his own benefit or as a nominee, whether jointly or severally, on behalf of others, and in the latter case giving the name, occupation and address of the beneficial owner or owners, and the extent of the beneficial interest of each; and

(ii) where, after the transfer, the total paid-up holding of the transferee in the shares of the company is likely to exceed five per cent of its paid-up capital or where the transferee is a banking or an investment company, is likely to exceed two and a half per cent of such paid-up capital, unless the previous sanction of the Central Government has been obtained to the transfer.

* * * * *

62 of 1968

(11) The provisions of this section, except those of sub-sections (7), (8) and (9), shall, on and from the commencement of the Insurance (Amendment) Act, 1968 also apply to insurers carrying on general insurance business subject to the following modifications, namely:—

47 of 1950

62 of 1968

(i) that references in sub-sections (1), (3), (5) and (6) to the Insurance (Amendment) Act, 1950, shall be construed as references to the Insurance (Amendment) Act, 1968; and

(ii) references in sub-section (10) to sub-sections (7) and (8) shall be omitted.

Explanation— For the purposes of this section, the holding of a person in the shares of a company shall be deemed to include—

(i) the total paid-up holding in such shares held by such person in the name of others; and

(ii) if any shares of the company are held—

(a) by a public limited company, of which such person is a member holding more than ten per cent of the paid-up capital, or

(b) by a private limited company, of which such person is a member, or

(c) by a company, of which such person is a managing director, manager, managing agent or in which he has a controlling interest, or

(d) by a firm in which such person is a partner, or

(e) by such person jointly with others,

such part of the total paid-up holding of the company or firm or of the total joint holding in those shares, as is proportionate to the contribution made by such person to the paid-up capital of the company, the paid-up capital of the firm or the joint holding, as the case may be.

Explanation 2,— The provisions of *Explanation 1* shall, in their application, after

62 of 1968

the commencement of the Insurance (Amendment) Act, 1968, to insurers carrying on general insurance business, be subject to the modification that for sub-clauses (a) and (b) of clause (ii) thereof, the following shall be substituted, namely:—

“(a) by a company of which such person is a member holding more than ten per cent of the paid-up share capital, or”

* * * * *

11.(1) Every insurer, in the case of an insurer specified in sub-clause (a) (ii) or sub-clause (b) of clause (9) of section 2 in respect of all insurance business transacted by him, and in the case of any other insurer in respect of the insurance business transacted by him in India, shall at the expiration of each calendar year prepare with reference to that year—

Accounts
and
balance-
sheet.

(a) in accordance with the regulations contained in Part I of the First Schedule, a balance-sheet in the form set forth in Part II of that Schedule;

(b) in accordance with the regulations contained in Part I of the Second Schedule, a profit and loss account in the forms set forth in Part II of that Schedule, except where the insurer carries on business of one class only of the following classes, namely, life insurance, fire insurance or marine insurance and no other business;

(c) in respect of each class or sub-class of insurance business for which he is required under sub-section (1) of section 10 to keep a separate account of receipts and payments, a revenue account in accordance

with the regulations, and in the form or forms, set forth in the Third Schedule applicable to that class or sub-class of insurance business.

(2) Unless the insurer is a company as defined in clause (2) of sub-section (1) of section 2 of the Indian Companies Act, 1913 the accounts and statements referred to in sub-section (1) shall be signed by the insurer, or in the case of a company by the chairman, if any, and two directors and the principal officer of the company, or in the case of a firm by two partners of the firm, and shall be accompanied by a statement containing the names, descriptions and occupations of, and the directorships held by, the persons in charge of the management of the business during the period to which such accounts and statements refer and by a report on the affairs of the business during that period. 7 of 1913.

* * * * *

Actuarial
report and
abstract.

13.(1) Every insurer carrying on life insurance business shall, in respect of the life insurance business transacted by him in India, and also in the case of an insurer specified in sub-clause (a) (ii) or sub-clause (b) of clause (9) of section 2 in respect of all life insurance business transacted by him, once at least in every three years cause an investigation to be made by an actuary into the financial condition of the life insurance business carried on by him, including a valuation of his liabilities in respect thereto and shall cause an abstract of the report of such actuary to be made in accordance with the regulations contained in Part I of the Fourth Schedule and in conformity with the requirements of Part II of that Schedule:

Provided that the Controller may, having regard to the circumstances of any particular

insurer, allow him to have the investigation made as at a date not later than four years from the date as at which the previous investigation was made:

* * * * *

INVESTMENT, LOANS AND MANAGEMENT

27. (1) Every insurer shall invest and at all times keep invested assets equivalent to not less than the sum of— Investment of assets.

(a) the amount of his liabilities to holders of life insurance policies in India on account of matured claims, and

(b) the amount required to meet the liability on policies of life insurance maturing for payment in India,

less—

(i) the amount of premiums which have fallen due to the insurer on such policies but have not been paid and the days of grace for payment of which have not expired, and

(ii) any amount due to the insurer for loans granted on and within the surrender values of policies of life insurance maturing for payment in India issued by him or by an insurer whose business he has acquired and in respect of which he has assumed liability,

in the manner following, namely twenty-five per cent. of the said sum in Government securities, a further sum equal to not less than twenty-five per cent of the said sum in Government securities or other approved securities and the balance in any of the approved investments specified in sub-section

(1) of section 27A or, subject to the limitations, conditions and restrictions specified in sub-section (2) of that section, in any other investment.

(2) For the purposes of sub-section (1),—

(a) the amount of any deposit made under section 7 or section 98 by the insurer in respect of his life insurance business shall be deemed to be assets invested or kept invested in Government securities;

(b) the securities of, or guaranteed as to principal and interest by, the Government of the United Kingdom shall be regarded as approved securities other than Government securities for a period of four years from the commencement of the Insurance (Amendment) Act, 1950, in the manner and to the extent hereinafter specified, namely:—

41 of 1950

(i) during the first year, to the extent of twenty-five per cent in value of the sum referred to in sub-section (1);

(ii) during the second year, to the extent of eighteen and three-fourths per cent in value of the said sum;

(iii) during the third year, to the extent of twelve and a half per cent in value of the said sum; and

(iv) during the fourth year, to the extent of six and a quarter per cent in value of the said sum:

Provided that, if the Central Government so directs in any case, the securities specified in clause (b) shall be regarded as approved securities other than Government securities for

a longer period than four years, but not exceeding six years in all, and the manner in which and the extent to which the securities shall be so regarded shall be as specified in the direction.

(c) any prescribed assets shall, subject to such conditions, if any, as may be prescribed, be deemed to be assets invested or kept invested in approved investments specified in sub-section (1) of section 27A.

(3) In computing the assets referred to in sub-section (1),—

(a) any investment made with reference to any currency other than the Indian rupee which is in excess of the amount required to meet the liabilities of the insurer in India with reference to that currency, to the extent of such excess; and

(b) any investment made in the purchase of any immovable property outside India or on the security of any such property,

shall not be taken into account:

Provided that nothing contained in this sub-section shall affect the operation of sub-section (2):

Provided further that the Central Government may, either generally or in any particular case, direct that any investment, whether made before or after the commencement of the Insurance (Amendment) Act, 1950, and whether made in or outside India, shall, subject to such conditions as may be imposed, be taken into account, in such manner as may be specified in computing the assets referred to in sub-section (1) and where

any direction has been issued under this proviso copies thereof shall be laid before Parliament as soon as may be after it is issued.

(4) Where an insurer has accepted reinsurance in respect of any policies of life insurance issued by another insurer and maturing for payment in India or has ceded reinsurance to another insurer in respect of any such policies issued by himself, the sum referred to in sub-section (1) shall be increased by the amount of the liability involved in such acceptance and decreased by the amount of liability involved in such cession.

(5) The Government securities and other approved securities in which assets are under sub-section (1) to be invested and kept invested shall be held by the insurer free of any encumbrance, charge, hypothecation or lien.

(6) The assets required by this section to be held invested by an insurer incorporated or domiciled outside India shall, except to the extent of any part thereof which consists of foreign assets held outside India be held in India, and all such assets shall be held in trust for the discharge of the liabilities of the nature referred to in sub-section (1) and shall be vested in trustees resident in India and approved by the Central Government, and the instrument of trust under this sub-section shall be executed by the insurer with the approval of the Central Government and shall define the manner in which alone the subject-matter of the trust shall be dealt with.

Explanation—This sub-section shall apply to an insurer incorporated in India whose share capital to the extent of one-third is owned by, or the members of whose governing body to the extent of one-third consists of members domiciled elsewhere than in India.

27A. (1) No insurer shall invest or keep invested any part of his controlled fund otherwise than in any of the following approved investments, namely:—

Further provisions regarding investments.

(a) approved securities;

(b) securities of, or guaranteed as to principal and interest by, the Government of the United Kingdom;

(c) debentures or other securities for money issued with the permission of the State Government by any municipality in a State:

(d) debentures or other securities for money issued by any authority constituted under any housing or building scheme approved by the Central or a State Government, or by any authority or body constituted by any Central Act or Act of a State Legislature;

(e) first mortgages on immovable property situated in India under any housing or building scheme of the insurer approved by the Central Government or a State Government;

(f) debentures secured by a first charge on any immovable property, plant or equipment of any company which has paid interest in full for the five years immediately preceding or for at least five out of the six or seven years immediately preceding or such or similar debenture issued by it;

(g) debentures secured by a first charge on any immovable property, plant or equipment of any company where either

the book value or the market value, whichever is less, of such property, plant or equipment is more than three times the value of such debentures;

(h) first debentures secured by a floating charge on all its assets of any company which has paid dividends on its ordinary shares for the five years immediately preceding or for at least five out of the six or seven years immediately preceding;

(i) preference shares of any company which has paid dividends on its ordinary shares for the five years immediately preceding or for at least five out of the six or seven years immediately preceding;

(j) preference shares of any company on which dividends have been paid for the five years immediately preceding or for at least five out of the six or seven years immediately preceding and which have priority in payment over all the ordinary shares of the company in winding up;

(k) shares of any company which have been guaranteed by another company, such other company having paid dividends on its ordinary shares for the five years immediately preceding or for at least five out of the six or seven years immediately preceding;

Provided that the total amount of shares of all the companies under guarantee by the guaranteeing company is not in excess of fifty per cent of the paid-up amount of preference and ordinary shares of the guaranteeing company;

(l) shares of any company on which dividends of not less than four per cent including bonus have been paid for the

seven years immediately preceding or for at least seven out of the eight or nine years immediately preceding.

(m) first mortgages on immovable property situated in India or in any other country where the insurer is carrying or insurance business:

Provided that the property mortgaged is not leasehold property with an outstanding term of less than thirty years and the value of the property exceeding by one-third, or if it consists of buildings, exceeds by one-half, the mortgage money;

(n) immovable property situated in India or in any other country where the insurer is carrying on insurance business:

Provided that the property is free of all encumbrances;

(o) loans on life interests, or on policies of life insurance within their surrender values issued by him or by an insurer whose business he has acquired and in respect of which business he has assumed liability;

(p) life interests;

(q) fixed deposits with banks included for the time being in the Second Schedule to the Reserve Bank of India Act, 1934 or with Co-operative societies registered under the Indian Co-operative Societies Act, 1912 or under any other law for the time being in force, the primary object of which is to finance other Co-operative societies similarly registered;

(r) debentures of, or shares in Co-operative societies registered under the Indian Co-operative Societies Act, 1912, or

under any other law for the time being in force;

(s) such other investments as the Central Government may, by notification in the Official Gazette, declare to be approved investments for the purposes of this section.

(2) Notwithstanding anything contained in sub-section (1), an insurer being a company or a co-operative life insurance society as defined in clause (b) of sub-section (1) of section 95, may, subject to the provisions contained in the next succeeding sub-sections, invest or keep invested any part of his controlled fund otherwise than in an approved investment, if—

(i) after such investment, the total amounts of all such investments of the insurer do not exceed fifteen per cent. of the sum referred to in sub-section (1) of section 27,

(ii) the investment is made, or, in the case of any investment already made, the continuance of such investment is with the consent of all the directors present at a meeting and eligible to vote, special notice of which has been given to all the directors then in India, and all such investments, including investments in which any director is interested, are reported without delay to the Controller with full details of the investments and the extent of the director's interest in any such investment.

(3) An insurer shall not out of his controlled fund invest or keep invested in the shares of any one banking company or investment company more than—

(a) two and a quarter per cent. of the sum referred to in sub-section (1) of section 27, or

(b) two per cent of the subscribed share capital and debentures of the banking company or investment company concerned,

whichever is less.

(4) An insurer shall not out of the controlled fund invest or keep invested in the shares or debentures of any one company other than a banking company or investment company more than—

(a) two and a quarter per cent. of the sum referred to in sub-section (1) of section 27, or

(b) ten per cent. of the subscribed share capital and debentures of the company, whichever is less:

Provided that nothing in this sub-section shall apply to any investment made with the previous consent of the Central Government by an insurer, being a company with a view to forming a subsidiary company carrying on insurance business.

(5) An insurer shall not out of his controlled fund invest or keep invested any sum in the shares or debentures of any private limited company.

(6) Where an investment is in partly paid-up shares, the uncalled liability on such shares shall be added to the amount invested for the purpose of computing the percentages referred to in clause (a) of sub-section (3) and clause (a) of sub-section (4).

(7) Notwithstanding anything contained in sub-sections (3) and (4), where new shares are issued to the existing share-holders by a

company the existing shares of which are covered by clause (i) or clause (k) or clause (l) of sub-section (1) and of which an insurer is already a share-holder, the insurer may subscribe to such new shares:

Provided that the proportion of new shares subscribed by him does not exceed the proportion which the paid-up amount on the shares held by him immediately before such subscription bears to the total paid-up capital of the company at the time of such subscription.

(8) If, on an application submitted through the Controller the Central Government is satisfied that special grounds exist warranting such exemption, the Central Government may for such period, to such extent and in relation to such particular investments and subject to such conditions as may be specified by it in this behalf, exempt an insurer from all or any of the provisions of sub-sections (3), (4) and (7).

(9) An insurer shall not keep more than three per cent. of the controlled fund in fixed deposit or current deposit, or partly in fixed deposit and partly in current deposit, with any one banking company or with any one Co-operative society registered under the Indian Co-operative Societies Act, 1912, or under any other law for the time being in force and doing banking business:

2 of 1912.

Provided that in applying this sub-section to the amount in deposit with a banking company on any day all the premiums collected by that company on behalf of the insurer during the preceding thirty days shall be excluded:

Provided further that the Controller may permit a Co-operative life insurance society as

defined in clause (b) of sub-section (1) of section 95 to keep more than three per cent. of its controlled fund in fixed deposit with any Co-operative society referred to in this sub-section, if the fixed deposit is secured by a first mortgage on any immovable property.

(10) All assets forming the controlled fund, not being Government securities or other approved securities in which assets are to be invested or held invested in accordance with section 27, shall (except for a part thereof not exceeding one tenth of the controlled fund in value which may, subject to such conditions and restrictions as may be prescribed, be offered as security for any loan taken for purposes of any investment), be held free of any encumbrance, charge, hypothecation or lien.

(11) If at any time the Central Government considers any one or more of the investments constituting an insurer's controlled fund to be unsuitable or undesirable, the Central Government may, after giving the insurer an opportunity of being heard, direct him to realise the investment or investments, and the insurer shall comply with the direction within such time as may be specified in this behalf by the Central Government.

47 of 1950. (12) Every insurer in existence at the commencement of the Insurance (Amendment) Act, 1950, whose investments of any part thereof at such commencement contravene or contravenes any of the provisions of this section, shall, within ninety days from such commencement, submit to the Controller a report specifying all such investments, and if the Central Government is satisfied that it will not be in the interest of the insurer or any class of insurers generally to realise any such investments, it may, by order, direct that the

provisions of this section other than the provisions contained in sub-section (11) shall not apply in relation to any such investments or to any class of investments generally for such period or periods as may be specified in the order.

(13) Without prejudice to the powers given to the Central Government by sub-section (11), nothing contained in this section shall be deemed to require any insurer to realise any investment made in conformity with the provisions of sub-section (1) after the commencement of this Act which, after the making thereof, has ceased to be an approved investment within the meaning of this section.

(14) Nothing contained in this section shall be deemed to affect in any way the manner in which any moneys relating to the provident fund of any employee or to any security taken from any employee or other moneys of a like nature are required to be held by or under any Central Act, or Act of a State Legislature.

Explanation.—In this section “controlled fund” means—

(a) in the case of any insurer specified in sub-clause (a) (ii) or sub-clause (b) of clause (9) of section 2 and carrying on life insurance business,—

(i) all his funds, if he carries on no other class of insurance business;

(ii) all the funds appertaining to his life insurance business if he carries on some other class of insurance business also; and

(i) in the case of any other insurer carrying on life insurance business,—

(i) all his funds in India, if he carries on no other class of insurance business;

(ii) all the funds in India appertaining to his life insurance business if he carries on some other class of insurance business also;

but does not include any fund or portion thereof in respect of which the Controller is satisfied that such fund or portion thereof as the case may be, is regulated by the law of any country outside India or in respect of which the Controller is satisfied that it would not be in the interest of the insurer to apply the provisions of this section.

62 of 1968.

27B. (1) No insurer carrying on general insurance business shall, after the commencement of the Insurance (Amendment) Act, 1968, invest or keep invested any part of this assets otherwise than in any of the following approved investments, namely:—

Further provisions regarding investments.

(a) the investments specified in clause (a) to (e), (n), (q) and (r) of sub-section (1) of section 27A.

(b) debentures secured by a first charge on any immovable property, plant or equipment of any company which has paid interest in full for the three years immediately preceding or for at least three out of the four or five years immediately preceding on such or similar debentures issued by it;

(c) debentures secured by a first charge on any immovable property, plant or equipment of any company where either the book value or the market value, whichever is less, of such property, plant or equipment is more than twice the value of such debentures;

(d) first debentures secured by a floating charge on all its assets or by a fixed

charge on fixed assets and floating charge on all other assets of any company which has paid dividends on its equity shares for the three years immediately preceding or for at least three out of the four or five years immediately preceding the date of the investment.

(e) preference shares of any company which has paid dividends on its equity shares for the three years immediately preceding or for at least three out of the four or five years immediately preceding;

(f) preference shares of any company on which dividends have been paid for the three years immediately preceding or for at least three out of the four or five years immediately preceding and which have priority in payment over all the equity shares of the company in winding up;

(g) shares of any company which have been guaranteed by another company, such other company having paid dividends on its equity shares for the three years immediately preceding or for at least three out of the four or five years immediately preceding;

Provided that the total amount of shares of all the companies under guarantee by the guaranteeing company is not in excess of fifty per cent. of the paid-up amount of preference and equity shares of the guaranteeing company;

(h) shares of any company on which dividends of not less than four per cent. including bonus have been paid for the three years immediately preceding or for at least three out of the four or five years immediately preceding;

(i) first mortgages on immovable property situated in India or in any other country where the insurer is carrying on insurance business:

Provided that the property mortgaged is not lease-hold property with an outstanding term of less than fifteen years and the value of the property exceeds by one-third, or if it consists of buildings, exceeds by one-half, the mortgage money;

(j) such other investments as the Central Government may, by notification in the Official Gazette, declare to be approved investments for the purposes of this section.

(2) Any prescribed assets shall, subject to such conditions, if any, as may be prescribed, be deemed to be assets invested or kept invested in approved investments specified in sub-section (1).

(3) Notwithstanding anything contained in sub-section (1) an insurer may, subject to the provisions contained in the next succeeding sub-sections, invest or keep invested any part of his assets otherwise than in an approved investment specified in sub-section (1), if,—

(i) after such investment, the total amounts of all such investments of the insurer do not exceed twenty-five per cent. of his assets, and

(ii) the investment is made, or, in the case of any investment already made, the continuance of such investment is with the consent of all the directors, other than the directors appointed under section 34C, present at a meeting and eligible to vote, special notice of which has been given to all the directors then in India, and all such

investments, including investments in which any director is interested, are reported without delay to the Controller with full details of the investments and the extent of the directors' interest in any such investment:

Provided that the making, or the continuance, of such investment is not objected to by any director appointed under section 34C.

(4) An insurer shall not invest or keep invested any part of his assets in the shares of any one banking company or investment company more than—

(a) ten per cent. of his assets, or

(b) two per cent. of the subscribed share capital and debentures of the banking company or investment company concerned whichever is less.

(5) An insurer shall not invest or keep invested any part of his assets in the shares or debentures of any one company other than a banking company or investment company more than—

(a) ten per cent. of his assets, or

(b) ten per cent. of the subscribed share capital and debentures of the company.

whichever is less:

Provided that nothing in this sub-section shall apply to any investment made by an insurer in the shares of any other insurer if such other insurer is a company within the meaning of section 3 of Companies Act, 1956, and carries on insurance or re-insurance business in India.

1 of 1956.

(6) An insurer shall not invest or keep invested any part of his assets in the shares or debentures of any private company.

(7) Where an investment is in partly paid-up shares, the uncalled liability on such shares shall be added to the amount invested for the purpose of computing the percentages referred to in clause (a) of sub-section (4) and clause (a) of sub-section (5).

(8) Notwithstanding anything contained in sub-sections (4) and (5), where new shares are issued to the existing shareholders by a company, the existing shares of which are covered by clause (e) or clause (g) or clause (h) of sub-section (1) and of which an insurer is already a shareholder, the insurer may subscribe to such new shares:

Provided that the proportion of new shares subscribed by him does not exceed the proportion which the paid-up amount on the shares held by him immediately before such subscription bears to the total paid-up capital of the company at the time of such subscription.

(9) If, on an application submitted to the Controller, he is satisfied that special grounds exist warranting such exemption, he may, for such period, to such extent and in relation to such particular investments and subject to such conditions as may be specified by him in this behalf, exempt an insurer from all or any of the provision of sub-sections (4), (5) and (8).

(10) An insurer shall not keep more than ten per cent. of his assets in fixed deposit or current deposit, or partly in fixed deposit and partly in current deposit, with any one banking company or with any Co-operative Society registered under the Co-operative Societies Act, 1912 or under any other law for the time being in force and doing banking business:

2 of 1912.

Provided that in applying this sub-section to the amount in deposit with a banking company on any day, all the premiums credited during the preceding sixty days, to the account of the insurer with such banking company and the amounts deposited, during the preceding thirty days, by such insurer with that banking

company for payment of claims or out of re-insurance recoveries, shall be excluded.

(11) All assets shall (except for a part thereof not exceeding one-tenth of the total assets in value which may, subject to such conditions and restrictions as may be prescribed, be offered as security for any loan taken for purposes of any investment or for payment of claims, or which may be kept as security deposit with the banks for acceptance of policies) be held free of any encumbrance, charge, hypothecation or lien.

(12) If at any time the Controller considers any one or more of the investments constituting an insurer's assets to be unsuitable or undesirable, he may, after giving the insurer an opportunity of being heard, direct the insurer to realise the investment or investments, and the insurer shall comply with the direction within such time as may be specified in this behalf by the Controller.

(13) Every insurer in existence at the commencement of the Insurance (Amendment) Act, 1968, whose investments or any part thereof at such commencement do or does not fulfil the requirements of this section, shall, within ninety days from such commencement, submit to the Controller a report specifying all such investments, and if the Controller is satisfied that it will not be in the interest of the insurer or any class of insurers generally to realise any such investments, he may, by order, direct that the provisions of this section, other than the provisions contained in sub-section (12) shall not apply in relation to any such investments or to any class of investments generally for such period or periods as may be specified in the order.

62 of 1968.

(14) Without prejudice to the powers conferred on the Controller by sub-section (12),

62 of 1968.

nothing contained in this section shall be deemed to require any insurer to realise any investment made in conformity with the provisions of sub-section (1) after the commencement of the Insurance (Amendment) Act, 1968, which, after the making thereof, has ceased to be an approved investment within the meaning of this section.

(15) Nothing contained in this section shall be deemed to affect in any way the manner in which any moneys relating to the provident fund of any employee or to any security taken from any employee or other moneys of a like nature are required to be held by or under any Central, Provincial or State Act.

(16) In this section, unless the context otherwise requires, "assets" means—

(a) in the case of an insurer carrying on life insurance business in India, all his assets required to be shown under the column "Other Classes of Business" in the balance-sheet in Form A, in Part II of the First Schedule, but excluding any items against the head "Other Accounts (to be specified)";

(b) in the case of an insurer specified in sub-clause (a) (ii) or sub-clause (b) of clause (9) of section 2, who is not carrying on life insurance business in India, all his assets, required to be shown in the balance-sheet in Form A in Part II of the First Schedule but excluding any items against the head "Other Accounts (to be specified)";

(c) in the case of any other insurer, the assets required to be shown in the statement in Form AA, in Part II of the First Schedule, but excluding office furniture,

but does not include any assets specifically held against any fund or portion thereof in respect of which the Controller is satisfied that such fund or portion thereof, as the case may be, is regulated by the law of any country outside India or in respect of which the Controller is satisfied that it would not be in the interest of the insurer to apply the provisions of the section.

* * * * *

Return of investments relating to controlled fund and changes therein.

28A. (1) Every insurer carrying on life insurance business, shall every year, within thirty-one days from the beginning of the year submit to the Controller a return in the prescribed form showing as at the 31st day of December of the preceding year, the investments made out of the controlled fund referred to in section 27A, and every such return shall be certified by a principal officer of the insurer.

* * * * *

Returns of investments relating to the assets and changes therein.

28B. (1) Every insurer carrying on general insurance business, shall, every year, within thirty-one days from the beginning of the year, submit to the Controller a return in the prescribed form showing as at the 31st day of December of the preceding year the investments made out of his assets referred to in section 27B, and every such return shall be certified by a principal officer of the insurer.

* * * * *

Assets of insurer how to be kept.

31. (1) None of the assets in India of any insurer shall, except in the case of deposits made with the Reserve Bank of India under section 7 or section 98 or in so far as assets are required to be vested in trustees by sub-section (4) of section 27, be kept otherwise than

in the name of a public officer approved by the Central Government, or in the corporate name of the undertaking, if a company, or in the name of the partners, if a firm, or in the name of the proprietor, if an individual.

(2) Nothing contained in this section shall be deemed to prohibit the endorsement in favour of a banking company of any security or other document solely for the purpose of collection or for realisation of interest, bonus or dividend.

* * * * *

31B.(1) The Central Government may if it is satisfied that any insurer, in the case of an insurer specified in sub-clause (a) (ii) or sub-clause (b) of clause (9) of section 2 in respect of all insurance business transacted by him and in the case of any other insurer in respect of the insurance business transacted by him in India, is paying any person remuneration, whether by way of commission or otherwise, on a scale disproportionate, according to the normal standards prevailing in insurance business, to the resources of the insurer, call upon the insurer to comply within six months with such directions as it may think fit to issue in the matter, and if compliance with the directions so issued requires the alteration of any of the terms of the contract entered into by the insurer with such person, no compensation shall be payable to such person by the insurer by reason only of such alteration or of the resignation of such person if the altered terms are not acceptable to him and no payment by way of renewal commission or otherwise shall be made to such person by the insurer in respect of any premiums paid after the date of such resignation except at such rate as may be approved by the Central Government in this behalf.

Power to restrict payment of excessive remuneration.

* * * * *

Prohibition of common officers and requirement as to whole-time officers.

32A. (1) A managing director or other officer of an insurer specified in sub-clause (b) of clause (9) of section 2 and carrying on life insurance business shall not be a managing director or other officer of any other insurer carrying on life insurance business or of a banking company or of an investment company:

Provided that the Central Government may permit such managing director or other officer to be a managing director or other officer of any other insurer carrying on life insurance business for the purpose of amalgamating the business of the two insurers or transferring the business of one insurer to the other.

(2) Where an insurer specified in sub-clause (b) of clause (9) of section 2 has a life insurance fund of more than twenty-five lakhs of rupees or insurance funds totaling more than fifty lakhs of rupees, the manager, managing director or other officer of the insurer shall be a whole-time employee of the insurer:

Provided that the Central Government may, for such period as it thinks fit, permit the employment of any specified person as a part-time manager, managing director or other officer of such insurer.

(3) Nothing in this section shall prevent—

(a) the manager, managing director or other officer of an insurer being the manager, managing director or other officer of a subsidiary company of the insurer with the previous approval of the Central Government;

(b) the manager, managing director or other officer of an insurer, exclusively carrying on life insurance business, being

the manager, managing director or other officer of an insurer not carrying on life insurance business;

(c) any officer of a branch of one insurer carrying on general insurance business from being any officer of a branch in the same town of another insurer carrying on general insurance business;

(d) an officer in the employment of an insurer from giving professional advice.

Explanation.—In this section the expression “officer” does not include a director.

* * * * *

APPOINTMENT OF STAFF

33A. The Central Government or the Controller may appoint such staff, and at such places as it or he may consider necessary, for the scrutiny of the returns, statements and information furnished by insurers under this Act and generally to ensure the efficient performance of the functions of the Controller under this Act.

Power to appoint staff.

* * * * *

34H.(1) Where the Controller, in consequence of information in his possession, has reason to believe that—

Search and seizure.

(a) any person who has been required under sub-section (2) of section 33 to produce, or cause to be produced, any books, accounts or other documents in his custody or power has omitted or failed to produce, or cause to be produced, such books, accounts or other documents, or

(b) any person to whom a requisition to produce any books, accounts or other documents as aforesaid has been or might be issued will not, or would not, produce or cause to be produced, any books, accounts or other documents which will be useful for, or relevant to, an investigation under sub-section (1) of section 33 or an inspection under sub-section (1A) of that section, or

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

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

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

(f) any illegal rebate or commission has been paid or is likely to be paid by an insurer, or

(g) any books, accounts, receipts, vouchers, survey reports or other documents, belonging to an insurer are likely to be tampered with, falsified or manufactured, he may authorise any subordinate officer of his, not lower in rank than an Assistant Controller of Insurance (hereafter referred to as the authorised officer) to—

(i) enter and search any building or place where he has reason to suspect that such books, accounts or other documents,

or any books or papers relating to any claim, rebate or commission or any receipts, vouchers, reports or other documents are kept;

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

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

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

* * * * *

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

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

* * * * *

(7) If a person legally entitled to the books, accounts, papers, receipts, vouchers, reports, or

other documents seized under sub-section (1) objects for any reason to the approval given by the Controller under sub-section (5), he may make an application to the Central Government stating therein the reason, for such objection and requesting for the return of the books, accounts, papers, receipts, vouchers, reports, or other documents.

* * * * *

AMALGAMATION AND TRANSFER OF INSURANCE BUSINESS

Amalga-
mation and
transfer of
insurance
business.

35.(1) No life insurance business of an insurer specified in sub-clause (a) (ii) or sub-clause (b) of clause (9) of section 2 shall be transferred to any person or transferred to or amalgamated with the life insurance business of any other insurer except in accordance with a scheme prepared under this section and sanctioned by the Controller.

* * * * *

(3) Before an application is made to the Controller to sanction any such scheme, notice of the intention to make the application together with a statement of the nature of the amalgamation or transfer, as the case may be, and of the reason therefor shall, at least two months before the application is made, be sent to the Controller and certified copies, four in number, of each of the following documents shall be furnished to the Controller, and other such copies shall during the two months aforesaid be kept open for the inspection of the members and policy-holders at the principal and branch offices and chief agencies of the insurers concerned, namely:—

(a) a draft of the agreement or deed under which it is proposed to effect the amalgamation or transfer;

(b) balance-sheets in respect of the insurance business of each of the insurers concerned in such amalgamation or transfer, prepared in the Form set forth in Part II of the First Schedule and in accordance with the regulations contained in Part I of that Schedule;

(c) actuarial reports and abstracts in respect of the life insurance business of each of the insurers so concerned, prepared in conformity with the requirements of Part II of the Fourth and Fifth Schedules and in accordance with the regulations contained in Part I of the Schedule concerned;

(d) a report on the proposed amalgamation or transfer, prepared by an independent actuary who has never been professionally connected with any of the parties concerned in the amalgamation or transfer at any time in the five years preceding the date on which he signs his report;

(e) any other reports on which the scheme of amalgamation or transfer was founded.

The balance-sheets, reports and abstracts referred to in clauses (b), (c) and (d) shall all be prepared as at the date at which the amalgamation or transfer if sanctioned by the Controller is to take effect, which date shall not be more than twelve months before the date on which the application to the Controller is made under this section:

Provided that if the Controller so directs in the case of any particular insurer there may be substituted respectively for the balance-sheet, report and abstract referred to in clauses (b)

and (c) prepared in accordance with this sub-section certified copies of the last balance-sheet and last report and abstract prepared in accordance with sections 11 and 13 of this Act or sections 7 and 8 of the Indian Life Assurance Companies Act, 1912, if that balance-sheet is prepared as at a date not more than twelve months, and that report and abstract as at a date not more than five years, before the date on which the application to the Controller is made under this section. 6 of 1912.

Sanction of amalgamation and transfer by Controller.

36.(1) When any application such as is referred to in sub-section (3) of section 35 is made to the Controller, the Controller shall cause, if for special reasons he so directs, notice of the application to be sent to every person resident in India who is the holder of a life policy of any insurer concerned and shall cause a statement of the nature and terms of the amalgamation or transfer, as the case may be, to be published in such manner and for such period as he may direct, and, after hearing the directors and such policy-holders as apply to be heard and any other persons whom he considers entitled to be heard, may sanction the arrangement, if he is satisfied that no sufficient objection to the arrangement has been established and shall make such consequential orders as are necessary to give effect to the arrangement, including orders as to the disposal of any deposit made under section 7 or section 98:

Provided that—

(a) no part of the deposit made by any party to the amalgamation or transfer shall be returned except where, after effect is given to the arrangement, the whole of the deposit to be made by the insurer carrying on the amalgamated business or the person

to whom the business is transferred is completed,

(b) only so much shall be returned as is no longer required to complete the deposit last mentioned in clause (a), and

(c) while the deposit last mentioned in clause (a) remains uncompleted, no accession, resulting from the arrangement, to the amount already deposited by the insurer carrying on the amalgamated business or the person to whom the business is transferred shall be appropriated as payment or part payment of any instalment of deposit subsequently due from him under section 7 or section 98.

(2) If the arrangement involves a reduction of the amount of the insurance and other contracts of the transfer insurer or of any or all of the insurers concerned in the amalgamation, the Controller may sanction the arrangement reducing the amount of such contracts upon such terms and subject to such conditions as he may think proper, and the reduction of contracts as sanctioned by the Controller shall be valid and binding on all the parties concerned.

37. Where an amalgamation takes place between any two or more insurers, or where any business of an insurer is transferred whether in accordance with a scheme confirmed by the Controller or otherwise, the insurer carrying on the amalgamated business or the person to whom the business is transferred, as the case may be, shall, within three months from the date of the completion of the amalgamation or transfer, furnish in duplicate to the Controller—

Statements
required
after
amalgama-
tion and
transfer.

(c) where the amalgamation or transfer has not been made in accordance with a scheme sanctioned by the Controller under section 36—

(i) balance-sheets in respect of the insurance business of each of the insurers concerned in such amalgamation or transfer, prepared in the Form set forth in Part II of the First Schedule and in accordance with the regulations contained in Part I of that Schedule, and

(ii) certified copies of any other reports on which the scheme of amalgamation or transfer was founded.

* * * * *

Limitation
of expenditure
on
commis-
sion.

40A. (1) No person shall pay or contract to pay to an insurance agent, and no insurance agent shall receive or contract to receive by way of commission or remuneration in any form in respect of any policy of life insurance issued in India by an insurer after the 31st day of December, 1950, and effected through an insurance agent, an amount exceeding—

(a) where the policy grants an immediate annuity or a deferred annuity in consideration of a single premium, or where only one premium is payable on the policy, two per cent. of that premium,

(b) where the policy, grants a deferred annuity in consideration of more than one premium, seven and a half per cent. of the first year's premium, and two per cent. of each renewal premium, payable on the policy, and

(c) in any other case, thirty-five per cent. of the first year's premium, seven and

a half per cent. of the second and third year's renewal premium, and thereafter five per cent. of each renewal premium, payable on the policy:

Provided that in a case referred to in clause (c), an insurer, during the first ten years of his business, may pay to an insurance agent, and an insurance agent may receive from such an insurer, forty per cent. of the first year's premium payable on the policy.

(2) No person shall pay or contract to pay to a special agent, and no special agent, shall receive or contract to receive, by way of commission or as remuneration in any form, in respect of any policy of life insurance issued in India by an insurer after the 31st day of December, 1950, and effected through a special agent, an amount exceeding—

(a) in a case referred to in clause (a) of sub-section (1), one half per cent. of the premium,

(b) in a case referred to in clause (b) of sub-section (1), two per cent. of the first year's premium payable on the policy, and

(c) in a case referred to in clause (c) of sub-section (1), fifteen per cent. of the first year's premium payable on the policy:

Provided that in a case referred to in clause (c), an insurer, during the first ten years of his business, may pay to a special agent, and a special agent may receive from such an insurer, seventeen and a half per cent. of the first year's premium payable on the policy.

(3) No person shall pay or contract to pay to an insurance agent, and no insurance agent shall receive or contract to receive, by way of commission or remuneration in any form, in respect of any policy of general insurance issued in India by an insurer after the commencement of the Insurance (Amendment) Act, 1968, and effected through an insurance agent, an amount exceeding— 62 of 1968.

(a) where the policy relates to fire or marine insurance, five per cent. of the premium payable on the policy, and

(b) where the policy relates to miscellaneous insurance, ten per cent. of the premium payable on the policy.

(4) No person shall pay or contract to pay to a principal agent, and no principal agent shall receive or contract to receive, by way of commission or remuneration in any form, in respect of any policy of general insurance issued in India by an insurer after the commencement of the Insurance (Amendment) Act, 1950, and effected through a principal agent, an amount exceeding— 47 of 1950.

(a) in the case referred to in clause (a) of sub-section (3), twenty per cent. of the premium payable on the policy, and

(b) in the case referred to in clause (b) of that sub-section, fifteen per cent. of the policy.

less any commission payable to any insurance agent in respect of the said policy:

Provided that the Central Government may, in such circumstances and to such extent and for such period as may be specified, authorize the payment of commission or remuneration exceeding the limits specified in this sub-section to a principal agent of an insurer incorporated or domiciled elsewhere than in India, if such agent carries out and has continuously carried out in his own office duties on behalf of the insurer which would otherwise have been performed by the insurer.

(5) Without prejudice to the provisions of section 102 in respect of a contravention of any of the provisions of the preceding sub-sections by an insurer, any insurance agent who contravenes the provisions of sub-section (1) or sub-section (3) shall be punishable with fine which may extend to one hundred rupees.

40B. (1) Every insurer transacting life insurance business in India shall furnish to the Controller, within such time as may be prescribed, statements in the prescribed form certified by an actuary on the basis of premiums currently used by him in regard to new business in respect of mortality, rate of interest, expenses and bonus loading.

Limitation of expenses of management in life insurance business.

(2) After the 31st day of December, 1950, no insurer shall, in respect of life insurance business transacted by him in India, spend as expenses of management in any calendar year an amount in excess of the prescribed limits and in prescribing any such limits regard shall be had to the size and age of the insurer and the provision generally made for expenses of management in the premium rates of insurers:

Provided that where an insurer has spent as such expenses in any year an amount in excess of the amount permissible under this

sub-section, he shall not be deemed to have contravened the provisions of this section, if the excess amount so spent is within such limits as may be fixed in respect of the year by the Controller after consultation with the Executive Committee of the Life Insurance Council constituted under section 64F by which the actual expenses incurred may exceed the expenses permissible under this sub-section.

(3) In respect of any statement mentioned in sub-section (1), the Controller may require that it shall be submitted to another actuary appointed by the insurer for the purpose and approved by the Controller, for certification by him, whether with or without modifications.

(4) Every insurer transacting life insurance business in India shall incorporate in the revenue account—

(a) a certificate signed by the Chairman and two directors and by the principal officer of the insurer, and an auditor's certificate, certifying that all expenses of management in respect of life insurance business transacted by the insurer in India have been fully debited in the revenue account as expenses; and

(b) if the insurers is carrying on any other class of insurance business in addition to life insurance business an auditor's certificate certifying that all charges incurred in respect of his life insurance business and in respect of his business other than life insurance business have been fully debited in the respective revenue accounts.

Explanation.—In this section,—

(a) "calendar year" or "year" means, in relation to an insurer who is required to furnish returns in accordance with sub-

section (2) of section 16, the period covered by the revenue account furnished by such insurer under clause (b) of that sub-section;

(b) "expenses of management" means all charges wherever incurred whether directly or indirectly, and includes—

- (i) commission payments of all kinds,
- (ii) any amount of expenses capitalized,
- (iii) in the case of an insurer having his principal place of business outside India, a proper share of head office expenses which shall not be less than such percentage as may be prescribed of the total premiums (less re-insurances) received during the year in respect of life insurance business transacted by him in India.

but does not include in the case of an insurer having his principal place of business in India any share of head office expenses in respect of life insurance business transacted by him outside India.

* * * * *

42A. (1) The Controller or an officer authorized by him in this behalf shall, in the prescribed manner and on payment of the prescribed fee, which shall not be more than twenty-five rupees for a principal agent or a chief agent and ten rupees for a special agent, register any person who makes an application to him in the prescribed manner if,—

Registration of principal agents, chief agents, and special agents.

(a) in the case of an individual, he does not suffer from any of the disqualifications mentioned in sub-section (4) of section 42, or

(b) in the case of a company or firm, any of its directors or partners does not suffer from any of the said disqualifications,

and a certificate to act as a principal agent, chief agent or special agent, as the case may

be, for the purpose of procuring insurance business shall be issued to him.

* * * * *

Life insurance agents not to be directors of life insurance companies.

48A. No insurance agent who solicits or procures life insurance business, and no chief agent or special agent shall be eligible to be or remain a director of any insurance company carrying of life insurance business:

Provided that any director holding office at the commencement of the Insurance (Amendment) Act, 1946, shall not become ineligible to remain a director by reason of this section until the expiry of six months from the commencement of that Act. 6 of 1946.

Further provision regarding directors.

48B. (1) An insurer specified in sub-clause (b) of clause (9) of section 2 and carrying on life insurance business shall not have a common director with another such insurer.

(2) The Central Government may, for such period, to such extent and subject to such conditions as it may specify, exempt from the operation of this section—

(a) any insurer, who is a subsidiary company of another insurer, or

(b) two or more insurers, for the purpose of facilitating their amalgamation or the transfer of business of one insurer to the other.

* * * * *

Executive Committees of the Life Insurance Council and the General Insurance Council.

64F. (1) The Executive Committee of the Life Insurance Council shall consist of the following persons namely:—

(a) two officials nominated by the Central Government, one as the Chairman and the other as a member;

(b) eight representatives of members of the Insurance Association of India carrying on life insurance business elected in their individual capacity by the said members in such manner, from such groups of members and from such areas as may be specified by the Central Government;

(c) one non-official not connected with any insurance business, nominated by the Central Government; and

(d) five persons connected with life insurance business, nominated by the Central Government for the purpose of representing such groups of insurers carrying on life insurance business or such areas as have not been able to secure adequate representation on the Executive Committee of the Life Insurance Council or for any other purpose.

(2) The Executive Committee of the General Insurance Council shall consist of the following persons, namely:—

(a) two officials nominated by the Central Government one as the Chairman and the other as a member;

(b) eight representatives of members of the Insurance Association of India carrying on general insurance business elected in their individual capacity by the said members in such manner, from such groups and from such areas as may be specified by the Central Government;

(c) one non-official not connected with any insurance business, nominated by the Central Government; and

(d) five persons connected with general insurance business nominated by the Central Government for the purpose of

representing such groups of insurers carrying on general insurance business or such areas as have not been able to secure adequate representation on the Executive Committee of the General Insurance Council or for any other purpose.

(3) If any body of persons specified in sub-sections (1) and (2) fails to elect any of the members of the Executive Committees of the LIC Insurance Council or the General Insurance Council, the Central Government may nominate any person to fill the vacancy, and any person so nominated shall be deemed to be a member of the Executive Committee of the Life Insurance Council or the General Insurance Council, as the case may be, as if he had been duly elected thereto.

(4) No official nominated by the Central Government shall be entitled, whether as chairman or as a member, to vote in respect of any matter coming up before any meeting of the Executive Committee of the Life Insurance Council or the Executive Committee of the General Insurance Council, as the case may be, and subject thereto each of the said Executive Committees may, with the approval of the Central Government, make bye-laws for the transaction of any business at any meeting of the said Committee, and any such bye-law may provide that any member of the Committee who is interested in any matter for the time being before that Committee may not be present at or take part in any meeting thereof.

(5) The Life Insurance Council or the General Insurance Council may form such other committees consisting of such persons as it may think fit to discharge such functions as may be delegated thereto:

Provided that any action taken by any of the said Council under this sub-section shall

be with the previous consent of the Central Government, and nothing in this sub-section shall derogate from any of the powers vested in the Executive Committees.

(6) The Secretary of the Executive Committee of the Life Insurance Council and of the Executive Committee of the General Insurance Council shall in each case be an official nominated by the Central Government.

64G. (1) Any member of the Executive Committee of the Life Insurance Council or of the General Insurance Council may resign his membership of the Committee by notice in writing addressed to the Chairman of the Committee to that effect.

Registration and filling up of casual vacancies.

(2) Casual vacancies in the Executive Committee of the Life Insurance Council or of the General Insurance Council, whether caused by resignation, death or otherwise, shall be filled by nomination by the Central Government, and any person so nominated to fill the vacancy shall hold office until the dissolution of the Committee to which he has been nominated.

(3) No act of the Executive Committee of the Life Insurance Council or of the General Insurance Council shall be called in question on the ground merely of the existence of any vacancy in, or defect in the constitution of the Committee concerned.

* * * * *

64I. The Life Insurance Council may, with the approval of the Central Government, authorize its Executive Committee to hold examinations for individuals wishing to qualify themselves as insurance agents for the purpose of procuring life insurance business, and if the

Power of Executive Committee of Life Insurance Council to hold examinations for insurance agents.

Central Government, by notification in the Official Gazette, so declares, then notwithstanding anything contained in section 42, only individuals who have passed any such examination shall be eligible to apply for a licence under section 42:

Provided that nothing in this sub-section shall affect the right of any individual, who has been licensed to act as an insurance agent under section 42 before the date of such notification to act as such, or to have his licence renewed from time to time.

Functions
of Execu-
tive
Committee
of Life
Insurance
Council.

64J. (1) The functions of the Executive Committee of the Life Insurance Council shall be—

(a) to aid, advise and assist insurers carrying on life insurance business in the matter of setting up standards of conduct and sound practice and in the matter of rendering efficient service to holders of life insurance policies;

(b) to render advice to the Controller in the matter of controlling the expenses of insurers in respect of their life insurance business in India;

(c) to bring to the notice of the Controller the case of any insurer acting in a manner prejudicial to the interests of holders of life insurance policies;

(d) to act in any matter incidental or ancillary to any of the matters specified in clauses (a) to (c) as with the approval of the Central Government, may be notified by the Life Insurance Council in the Gazette of India.

(2) For the purpose of enabling it effectively to discharge its functions, the Executive Committee of the Life Insurance Council may collect such sums of money, whether by way of fees or otherwise, as may be prescribed from all members and associate members of the Insurance Association of India who carry on life insurance business.

* * * * *

64L. (1) The functions of the Executive Committee of the General Insurance Council shall be—

Functions
of Execu-
tive
Committee
of General
Insurance
Council.

(a) to aid and advise insurers, carrying on general insurance business, in the matter of setting up standards of conduct and sound practice and in the matter of rendering efficient service to holders of policies of general insurance;

(b) to render advice to the Controller in the matter of controlling the expenses of such insurers carrying on business in India in the matter of commission and other expenses;

(c) to bring to the notice of the Controller the case of any such insurer acting in a manner prejudicial to the interests of holders of general insurance policies;

(d) to act in any matter incidental or ancillary to any of the matters specified in clauses (a) to (c) as with the approval of the Central Government may be notified by the General Insurance Council in the Gazette of India.

(2) For the purpose of enabling it effectively to discharge its functions, the Executive Committee of the General Insurance Council

may collect such fees as may be prescribed from all insurers carrying on general insurance business:

Provided that if the General Insurance Council thinks fit, it may, by a resolution passed by it, waive the collection of the prescribed fees for any year and where any such resolution has been approved by the Central Government, the Executive Committee of the General Insurance Council shall not collect any fees in relation to that year.

* * * * *

General powers of Life Insurance Council and General Insurance Council.

64R. (1) For the efficient performance of its duties, the Life Insurance Council or the General Insurance Council, as the case may be, may—

(a) appoint such officers and servants as may be necessary and fix the conditions of their service;

(b) determine the manner in which any prescribed fee may be collected;

(c) keep and maintain up to date to copy of the list of all insurers who are members or associate members of the Insurance Association of India.

(d) with the previous approval of the Central Government, make regulations for—

(i) the holding of elections other than the first elections;

(ii) the summoning and holding of meetings, the conduct of business thereat and the number of persons necessary to form a quorum;

(iii) the submission by insurers to the Executive Committee of the Life Insurance Council, or the General Insurance Council

of such statements or information as may be required of them and the submission of copies thereof by the insurers to the Controller;

(iv) the levy and collection of any fees;

(v) the regulation of any other matter which may be necessary for the purpose of enabling it to carry out its duties under this Act.

(2) The Life Insurance Council or the General Insurance Council may authorize the Executive Committee concerned to exercise any of the powers conferred on the Life Insurance Council or the General Insurance Council, as the case may be, under clause (a) clause (b) or clause (c) of sub-section (1)

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64UA. (1) The Advisory Committee shall consist of the following members namely:—

Composition of the Advisory Committee.

(a) the Controller of Insurance, *ex-officio*, who shall be the Chairman;

* * * * *

64UB. (1) * * * * *

Power to make rules in respect of matter in this Part.

(5) The Controller of Insurance shall be in direct charge of the establishment of the Advisory Committee and the Secretary of the Advisory Committee shall work under his direction and control.

64UC. (1) The Advisory Committee may, from time to time and to the extent it deems expedient, control and regulate the rates, advantages, terms and conditions that may be offered by insurers in respect of any risk or of

Power of the Advisory Committee to regulate rates, advantages, etc.

any class or category of risks, the rates, advantages, terms and conditions of which, in its opinion, it is proper to control and regulate, and any such rates, advantages, terms and conditions shall be binding on all insurers:

Provided that the Controller may, with the previous approval of the Central Government, permit any insurer to offer, during such period (being not more than two years but which may be extended by periods of not more than two years at a time) and subject to such conditions as may be specified by him, rates, advantages, terms or conditions different from those fixed by the Advisory Committee in respect of any particular category of risks, if he is satisfied that such insurer generally issues policies only to a restricted class of the public or under a restricted category of risks.

(2) In fixing, amending or modifying any rates, advantages, terms or conditions, relating to any risk, the Advisory Committee shall try to ensure, as far as possible, that there is no unfair discrimination between risks of essentially the same hazard, and also that consideration is given to past and prospective loss experience:

Provided that the Advisory Committee may, at its discretion, make suitable allowances for the degree of credibility to be assigned to the past experience, including allowances for random fluctuations and may also, at its discretion, make suitable allowances for future fluctuations and unforeseen future contingencies, including hazards of conflagration or catastrophe or both.

(3) Every decision of the Advisory Committee shall be valid only after and to the extent it is ratified by the Controller, and every such decision shall take effect from the date on which it is so ratified by the Controller, or, if the Controller so orders in any case, from such earlier date as he may specify in the order.

(4) The decisions of the Advisory Committee in pursuance of the provisions of this section shall be final.

(5) Where an insurer is guilty of breach of any rate, advantage, term or condition fixed by the Advisory Committee, he shall be deemed to have contravened the provisions of this Act:

Provided that instead of proceeding against the insurer for such contravention, the Controller may, if the insurer removes the contravention by recovering the deficiency in the premium, or where it is not practicable to do so, modifies suitably or cancels the contract of insurance, compound the offence on payment to the Advisory Committee of such fine, not exceeding rupees one thousand, as he may decide in consultation with the Advisory Committee.

64UD. (1) Notwithstanding anything contained in this Part, until the names of the members of the Advisory Committee elected for the first time after the commencement of the Insurance (Amendment) Act, 1968, are notified, the Tariff Committee of the General Insurance Council appointed under regulations made under sub-section (2) of section 64 O as it was in force immediately before the commencement of the Insurance (Amendment) Act, 1968 and in existence on such commencement (hereafter in this Part referred to as the Tariff Committee) shall continue to function and shall be deemed to be the Advisory Committee duly elected under this Part and the Controller of Insurance shall become the Chairman of that Committee with effect from the commencement of Insurance (Amendment) Act, 1968, and function as such, and any Chairman of the Tariff Committee holding office immediately before such

Transitional provisions.

commencement shall cease to be the Chairman thereof from the date of such commencement but shall continue to be an ordinary member of the Advisory Committee

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Power of the Advisory Committee to Constitute Regional Committees.

64UJ. (1) * * * * *

(5) Where, in the exercise of any functions delegated to it under this section, any Regional Committee or any sub-committee thereof restrains an insurance agent from procuring or causing to be procured general insurance business in any area, such agent may prefer an appeal to the Central Government against such order within thirty days from the date of service of that order on him and the Central Government may, after giving such agent an opportunity of being heard, pass such orders thereon as it may think fit and the orders made by the Central Government on such appeal shall be final.

* * * * *

Licensing of surveyors and loss assessor.

64UM. (1)(A) Save as otherwise provided in this section no person shall act as a surveyor or loss assessor in respect of general insurance business after the expiry of a period of one year from the commencement of the Insurance (Amendment) Act, 1968, unless he holds a valid licence issued to him by the Controller.

62 of 1968

(B) Every person who intends to act as a surveyor or loss assessor after the expiry of a period of one year from the commencement of the Insurance (Amendment) Act, 1968, shall make an application to the Controller within such time, in such form in such manner and on payment of such fee, not exceeding rupees two hundred and fifty as may be prescribed.

62 of 1968

(C) Every licence issued under this section shall remain in force, unless cancelled earlier, for a period of five years from the date of issue thereof, and may be renewed for a period of five years at a time, on payment of such fee, not exceeding rupees two hundred, as may be prescribed.

(D) No licence to act as a surveyor or loss assessor shall be issued unless—

(i) the applicant, where he is an individual, satisfies the Controller that he—

(a) has been in practice as a surveyor or loss assessor on the 26th day of October, 1968, or

(b) holds a degree of a recognized University in any branch of engineering, or

(c) is a fellow or associate member of the Institute of Chartered Accountants of India or the Institute of Cost and Works Accountants of India, or

(d) possess actuarial qualifications or holds a degree or diploma of any recognized University or institute in relation to insurance, or

(e) holds a diploma in insurance granted or recognised by the Government, or

(f) possess such other technical qualification as may be prescribed, and

(g) does not suffer from any of the disqualifications mentioned in sub-section (4) of section 42;

(ii) the applicant, where he is a company or firm satisfies the Controller, that all his directors or partners, as the case may be, possess one or more of the

qualifications specified in clause (i) and none of such directors or partners suffer from any of the disqualifications mentioned in sub-section (4) of section 42.

(E) Every application for the renewal of the licence shall be made at least thirty days before the expiry of the period of validity thereof.

(F) The Controller may, if he is satisfied that any licence issued or renewed under this section has been lost or destroyed, issue a duplicate licence on payment of a fee of rupees five and the duplicate licence so issued shall remain in force for the remainder of the period of validity of the licence in lieu of which it is issued.

(G) Without prejudice to the powers conferred by sub-section (7), the Controller if satisfied that the holder of any licence has made a statement which is false in material particulars with regard to his eligibility for obtaining such licence or has, after the issue or renewal of such licence, acquired any of the disqualifications mentioned in sub-section (4) of section 42, may, after giving a reasonable opportunity to the holder of such licence of being heard, by order cancel such licence and notify such cancellation in the Official Gazette.

(2) No claim in respect of a loss which has occurred in India and requiring to be paid or settled in India equal to or exceeding twenty thousand rupees in value on any policy of insurance, arising or intimated to an insurer at any time after the expiry of a period of one year from the commencement of the Insurance (Amendment) Act, 1968, shall, unless otherwise directed by the Controller, be admitted for payment or settled by the insurer unless he has obtained a report, on the loss that has

occurred, from a person who holds a licence issued under this section to act as a surveyor or loss assessor (hereafter referred to as "approved surveyor or loss assessor"):

Provided that nothing in this sub-section shall be deemed to take away or abridge the right of the insurer to pay or settle any claim at any amount different from the amount assessed by the approved surveyor or loss assessor;

(3) The Controller may, at any time, in respect of any claim of the nature referred to in sub-section (2), call for an independent report from any other approved surveyor or loss assessor specified by him and such surveyor or loss assessor shall furnish such report to the Controller within such time as may be specified by the Controller or if no time limit has been specified by him within a reasonable time and the cost of, or incidental to, such report shall be borne by the insurer.

(4) The Controller may, on receipt of a report referred to in sub-section (3), issue such directions as he may consider necessary with regard to the settlement of the claim including any direction to settle a claim at a figure less than, or more than, that at which it is proposed to settle it or it was settled and the insurer shall be bound to comply with such directions:

Provided that where the Controller issues a direction for settling a claim at a figure lower than that at which it has already been settled, the insurer shall be deemed to comply with such direction if he satisfies the Controller that all reasonable steps, with due regard to the question whether the expenditure involved is not disproportionate to the amount required to be recovered, have been taken with due dispatch by him:

Provided further that no direction for the payment of a lesser sum shall be made where the amount of the claim has already been paid and the Controller is of opinion that the recovery of the amount paid in excess would cause undue hardship to the insured:

Provided also that nothing in this section shall relieve the insurer from any liability, civil or criminal to which he would have been subject but for the provisions of this sub-section.

(5) No insurer shall, after the expiry of a period of one year from the commencement of the insurance (Amendment) Act, 1968, pay to any person any fee or remuneration for surveying, verifying or reporting on a claim of loss under a policy of insurance unless the person making such survey, verification or report is an approved surveyor or loss assessor. 62 of 1968.

(6) Where, in the case of a claim of less than twenty thousand rupees in value on any policy of insurance it is not practicable for an insurer to employ an approved surveyor or loss assessor without incurring expenses disproportionate to the amount of the claim the insurer may employ any other person (not being a person disqualified for the time being for being employed as a surveyor or loss assessor) for surveying such loss and may pay such reasonable fee or remuneration to the person so employed as he may think fit.

(7) If the Controller is satisfied that an approved surveyor or loss assessor has been guilty of willfully making a false statement knowing it to be false or of being knowingly a party to the settlement of a claim in a fraudulent manner, he may, after giving such surveyor or loss assessor an opportunity of being heard, cancel the licence issued to him with effect from such date as may be specified by him and shall notify such cancellation in the Official Gazette.

(8) Any surveyor or loss assessor whose licence has been cancelled shall not be eligible

for having a licence to act as a surveyor or loss assessor for a period of three years from the date on which the cancellation is notified in the Official Gazette.

(9) The Controller may in respect of any claim of value of less than twenty thousand rupees on an insurance policy, if the claim has not been or is not proposed to be reported upon by a surveyor or loss assessor, direct that such claim shall be reported upon by an approved surveyor or loss assessor and where the Controller makes such direction, the provisions of sub-section (3) and (4) shall apply in respect of such claim.

(10) Where, in relation to any class of claims, the Central Government is satisfied that it is customary to entrust the work of survey or loss assessment to any person other than a licensed surveyor or loss assessor, or it is not practicable to make any survey or loss assessment, it may, by an order published in the Official Gazette, exempt such class of claims from the operation of this section.

* * * * *

70. (1) No provident society except a provident society registered under the provisions of the Provident Insurance Societies Act, 1912, shall receive any premium or contribution until it has obtained from the Controller a certificate of registration.

5 of 1912.

Registration.

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PART IV

MUTUAL INSURANCE COMPANIES AND CO-OPERATIVE LIFE INSURANCE SOCIETIES

95. (1) In this Part—

Definitions.

(a) "Mutual Insurance Company" means an insurer, being a company incorporated under the Indian Companies Act, 1913, or under the Indian Companies Act, 1882, or under the Indian Companies Act, 1866, or under any Act repealed thereby, which has no share capital and of which by its constitution only and all policy-holders are members; and

7 of 1913.

6 of 1882.

10 of 1866.

(b) "Co-operative Life Insurance Society" means an insurer being a society registered under the Co-operative Societies Act, 1912, or under an Act of a State Legislature governing the registration of Co-operative societies which carries on the business of life insurance and which has no share capital on which dividend or bonus is payable and of which by its constitution only original members on whose application the society is registered and all policy-holders are members:

2 of 1912.

Provided that any Co-operative Life Insurance Society in existence at the commencement of this Act shall be allowed a period of one year to comply with the provisions of this Act.

* * * * *

PART IVA

RE-INSURANCE

Re-
insurance
with Indian
re-insurers.

101A. (1) Every insurer shall re-insure with Indian re-insurers such percentage of the sum assured on each policy as may be specified by the Central Government under sub-section (2).

(2) For the purposes of sub-section (1), the Central Government may, by notification in the Official Gazette,—

(a) specify the percentage of the sum assured on each policy to be re-insured and different percentages may be specified for different classes of insurance:

Provided that no percentage so specified shall exceed thirty per cent of the sum assured on such policy; and

(b) also specify the proportions in which the said percentage shall be allocated among the Indian re-insurers.

* * * * *

Advisory
Committee.

101B. (1) The Central Government shall, for the purposes of section 101A, constitute an Advisory Committee consisting of not more than five persons having special knowledge and experience of the business of insurance.

* * * * *

110A. The Controller may by general or special order delegate any of his powers or duties under this Act to any person subordinate to him. The exercise or discharge of any of the powers or duties so delegated shall be subject to such restrictions, limitations and conditions, if any, as the Controller may impose, and shall be subject to his control and revision.

Delegation of Powers and duties of controller.

110B. Every document which is required by this Act or by any rule made thereunder to be signed by the Controller or by any persons subordinate to him or by any officer authorized by him under sub-section (1) of section 42 shall be deemed to be properly signed, if it bears a facsimile of the signature of such Controller, person or officer printed, engraved, lithographed or impressed by any of other mechanical process approved by the Central Government.

Signature of documents.

110C. (1) The Controller may, by notice in writing, require any insurer to supply him with any information relating to his insurance business, and the insurer shall comply with such requirement within such period after receipt of the notice as may be specified therein.

Power to call for information.

(2) Any information supplied under this section shall be certified by a principal officer of the insurer and if the notice so requires also by an auditor.

* * * * *

110.G (1) The Central Government shall constitute a Consultative Committee consisting of the Controller (who shall be the Chairman thereof) and not more than four other members having special knowledge and experience of the business of insurance.

Constitution of Consultative Committee.

(2) The term of office of, and the allowances payable to the members of the Consultative Committee, the procedure to be followed by, and the quorum necessary for the transaction of business of, the Consultative Committee and the manner of filling casual vacancies therein shall be such as may be prescribed.

(3) Before making any order under sections 34, 34A, 34B, 34C, 34E, 34F, 34G, sub-sections (4) and (7) of section 64UM and section 64VC,

the Controller shall consult the Consultative Committee constituted under sub-section (1).

Appeals.

110H. (1) any person aggrieved by any order made by the Controller under sections 34, 34A, 34B, 34C, 34E, 34F, 34G, sub-sections (1), (4) and (7) of section 64UM or section 64 VC may, within a period of thirty days from the date of such order prefer an appeal against such order to the Central Government and that Government may by order, confirm, modify or reverse the order by the Controller and the order so made by the Central Government shall be final.

* * * * *

Acquisition of surrender values by policy.

113. (1) A policy of life insurance under which the whole of the benefits become payable either on the occurrence, or at a fixed interval or fixed intervals after the occurrence, of a contingency which is bound to happen, shall, if all premiums have been paid for at least three consecutive years in the case of a policy issued by an insurer or five years in the case of a policy issued by a provident society as defined in Part III, acquire a guaranteed surrender value to which shall be added surrender value of any subsisting bonus already attached to the policy, and every such policy issued by an insurer shall show the guaranteed surrender value of the policy at the close of each year after the second year of its currency or at the close of each period of three years throughout the currency of the policy:

Provided that the requirements of this sub-section as to the addition of the surrender value of the bonus attaching to a policy at surrender shall be deemed to have been complied with where the method of calculation of the guaranteed surrender value of the policy makes provision for the surrender value of the bonus attaching to the policy:

Provided further that the requirements of this sub-section as to the showing of the guaranteed surrender value on a policy shall be deemed to have been complied with where the insurer shows on the policy the guaranteed surrender value of the policy by means of a formula accepted in this behalf by the Controller as satisfying the said requirements:

Provided further that the provisions of this sub-section as to the showing of the guaranteed surrender value on a policy shall not take effect until after the expiry of six months from such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf.

(2) Notwithstanding any contract to the contrary, a policy which has acquired a surrender value shall not lapse by reason of the non-payment of further premiums but shall be kept alive to the extent of the paid-up sum insured, and the paid-up sum insured shall for the purposes of this sub-section include in full all subsisting reversionary bonuses that have already attached to the policy, and shall, where the policy is one on which the maximum number of annual premiums payable is fixed and the premiums are of uniform amount, be before the inclusion of such bonuses not less than the amount bearing to the total sum insured by the policy exclusive of bonuses the same proportion as the total period for which premiums have already been paid bears to the maximum period for which premiums were originally payable.

(3) A policy kept alive to the extent of the paid-up sum insured under sub-section (2) shall not be entitled by virtue of that sub-section to participate in any profits declared distributable after the conversion of the policy into a paid-up policy.

(4) Sub-section (2) and sub-section (3) shall not apply—

(a) where the paid-up sum insured by a policy, being a policy issued by an insurer, is less than one hundred rupees inclusive of any attached bonus, or takes the form of an annuity of less than twenty-five rupees, or where the paid-up sum insured by a policy, being a policy issued by a provident society as defined in Part III, is less than fifty rupees inclusive of any attached bonus or takes the form of an annuity or less than twenty-five rupees, or

(b) where the parties after the default has occurred in the payment of the premium agree in writing to some other arrangement, or

(c) to policies in which the surrender value is automatically applied under the terms of the contract to maintaining the policy in force after its lapse through non-payment of premium.

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Alteration
of forms.

115. The Central Government may, on the application or with the consent of an insurer, not being a company, alter the forms contained in the Schedules as respects that insurer, for the purpose of adapting them to the circumstances of that insurer:

Provided that nothing done under this section shall exempt the insurer from supplying all information required under this Act so far as it is possible for the insurer to do so.

Summary
of returns
to be
published.

116A. The Central Government shall every year cause to be published, in such manner and it may direct, a summary of the accounts, balance-sheets, statements, abstracts and other returns under this Act or purporting to be under this Act which have been furnished in pursuance of the provisions of this Act to the Controller during the year preceding the year of publication, and may append to such summary any note of the Controller or of the Central Government and any correspondence:

Provided that nothing in this section shall require the publication of the statement referred to in sub-section (2) of section 10 or the returns referred to in sub-section (1) of section 28 for section 28A or section 28B or the statements referred to in sub-section (2) of section 31B or section 40B.

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