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STANDING COMMITTEE ON FINANCE (2011-2012)

FIFTEENTH LOK SABHA

MINISTRY OF FINANCE (DEPARTMENT OF FINANCIAL SERVICES)

THE INSURANCE LAWS (AMENDMENT) BILL, 2008

FORTY-FIRST REPORT

LOK SABHA SECRETARIAT
NEW DELHI
December, 2011/*Agrahayana,* 1933 *(Saka)*

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Laid in Rajya Sabha on 13 December, 2011

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(2011-2012)

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2. Shri R.K. Jain — *Director*
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4. Shri Ramkumar Suryanarayanan — *Deputy Secretary*

INTRODUCTION

I, the Chairman of the Standing Committee on Finance, having been authorized by the Committee, present this Forty-first Report on the Insurance Laws (Amendment) Bill, 2008.

2. The Insurance Laws (Amendment) Bill, 2008 was introduced in Rajya Sabha on 22 December, 2008 and referred to the Committee for examination and report. However due to dissolution of 14th Lok Sabha, the Committee could not finalise and present the Report. Following the constitution of 15th Lok Sabha, the Bill was referred to the Committee on 14th September, 2009, by the Hon'ble Speaker, Lok Sabha under Rule 331E of the Rules of Procedure and Conduct of Business in Lok Sabha.

3. The Committee obtained written information on various provisions contained in the aforesaid Bill from the Ministry of Finance (Department of Financial Services).

4. Written views/memoranda were also received from the General Insurers' (Public Sector) Association of India (GIPSA), General Insurance Council, Confederation of Indian Industries (CII), US India Business Council (USIBC), Reinsurance Group of America (RGA), various private sector insurance companies, employees' association, insurance brokers' association and Indian Institute of Insurance Surveyors and Loss Assessors (IISLA), etc.

5. The Committee, at their sitting held on 7 October, 2010 and 12 January, 2011 took evidence of the representatives of the Ministry of Finance (Department of Financial Services). At their sitting held on 1 November, 2010, the Committee heard the views of various employees', agents' and field workers association such as All India LIC Employees Federation, All India Insurance Employees Association, National Federation of Insurance Field Workers of India, Life Insurance Agents Federation of India and IISLA. They also heard the views of various private insurance companies *viz.* Bajaj Allianz Life Insurance Company Ltd., Bharti Axa General Insurance Company Ltd., ICICI Lombard General Insurance Company Ltd., Shriram Life Insurance Company Ltd. Further at the sitting held on 1 December, 2010, they took evidence of GIPSA, General Insurance Corporation (GIC) and IRDA. On 21 December, 2010, they further heard the views of CII and USIBC on the various provisions of the Bill.

6. The Committee, at their sitting held on 8 December, 2011 considered and adopted this Report.

7. The Committee wish to express their thanks to the officials of the Ministry of Finance (Department of Financial Services), Insurance Regulatory and Development Authority (IRDA), GIPSA, GIC, CII, USIBC, IISLA, private insurance companies, employees' and agents' association for appearing before the Committee and furnishing the requisite material and information which were desired in connection with the examination of the Bill.

8. The Committee also wish to express their thanks to the General Insurance Council, RGA, various insurance companies *viz.* Bharti Axa General Insurance Company Ltd., Cholamandalam General Insurance Company Ltd., Max New York Life Insurance Company Ltd. etc. for placing before them their considered views on the Bill in the form of memoranda.

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

NEW DELHI;
9 *December,* 2011
18 *Agrahayana,* 1933 *(Saka)*

YASHWANT SINHA,
Chairman,
Standing Committee on Finance.

REPORT

PART I

(i) Background

1. The Insurance Act, 1938 (Insurance Act) provides for and regulates the insurance business in the country. However, with the enactment of the Insurance Regulatory and Development Authority Act, 1999 (the IRDA Act), the insurance business was opened up to the private sector. As a result of opening up of the insurance business, the number of insurance companies has increased from six nationalized companies in 1999 to forty-two insurance companies as on today. The IRDA Act paved the way for establishment of the Insurance Regulatory and Development Authority (IRDA) to protect the interest 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 General Insurance Business (Nationalisation) Act (GIBNA), 1972 nationalised the general insurance business in India and provided for the acquisition and transfer of shares of Indian general insurance companies, in order to serve better the need of the economy, by securing the development of general insurance business in the best interest of the public.

2. At the instance of the Insurance Regulatory and Development Authority (IRDA), the Law Commission of India (the Commission) had examined the Insurance Act, 1938 (Act 4 of 1938) and the Insurance Regulatory and Development Authority Act, 1999 (Act, 1999) and submitted its 190th Report to the Government on 1st June, 2004. While making specific recommendations in areas which relate to legal issues, the Commission opined that in respect of a few areas, a detailed examination by experts in the respective fields would be necessary to consider any changes. Accordingly, the following subjects were to be examined by the experts:

(i) Provisions relating to Investments (Sec. 27, 27A and 27B)

(ii) Sufficiency of Assets (Sec. 64VA)

(iii) Insurance Surveyors (Sec. 64UM)

(iv) Tariff Advisory Committee (Sec.64UA and ULA)

(v) Shareholders' Fund and Policyholders' Fund (Sec. 49)

3. The Insurance Regulatory and Development Authority (IRDA) constituted a Committee of Experts under Sh. K.P. Narasimhan (Ex-Chairman, LIC) (KPN Committee) on 7th March, 2005 to specifically examine these fields. The Committee submitted its report to IRDA on 26 July 2005. The reports of the Commission and the KPN Committee were examined by the IRDA which forwarded its recommendations on amendment of Insurance laws to the Government on 16 March 2006. The Government thereafter consulted the Life Insurance Corporation of India (LIC), General Insurance (Public Sector) Association of India (GIPSA) and General Insurance Corporation of India (GIC). After due consultations as above, a proposal to amend the Insurance Act 1938, the IRDA Act, 1999 and the General Insurance Business Nationalisation Act, 1972 was considered and approved by the Cabinet in its meeting held on 30 October, 2008. Accordingly, the Insurance Laws (Amendment) Bill, 2008 with a view to amend the Insurance Act, 1938, the General Insurance Business (Nationalisation) Act, 1972 and the Insurance Regulatory and Development Authority Act, 1999 was introduced in Rajya Sabha on 22 December, 2008.

4. The Bill was referred to the Standing Committee on Finance (2008-09) on 22 December, 2008 by the Speaker for examination and report thereon. However, the Committee could not complete examining the Bill and present their report thereon owing to the dissolution of the 14th Lok Sabha. Following the constitution of the 15th Lok Sabha, the Bill was referred by the Speaker to the Standing Committee on Finance (2009-10) for examination and report on 14 September, 2009.

5. The Bill, as introduced and referred to the Committee *inter-alia*, seeks to:—

(i) define "health insurance business" and provides for a minimum paid-up equity capital of Rs. 50 crore in case of insurers carrying on exclusively the business of health insurance;

(ii) raise the foreign equity in Indian insurance company from 26% to 49% and maintain foreign direct investment cap at 26% for the Insurance Co-operative Societies;

(iii) permit foreign re-insurers to open branches only for re-insurance business in India;

(iv) facilitate entry of Lloyd's of London in insurance business in India as a foreign company in joint venture with Indian partners and also as branch of foreign re-insurer;

(v) provide for permanent registration of the insurers with annual renewal fee and right to cancel the registration on breach of conditions specified by the IRDA;

(vi) remove restriction on divestment by Indian promoters of insurance companies, which were required earlier to divest to 26% or such other, prescribed percentage in the manner and period prescribed by the Central Government;

(vii) remove requirements of deposits by insurers for registration in view of these being regulated by the IRDA on the basis of solvency margin;

(viii) provide obligatory underwritting of third party risks of motor vehicles on the pattern of insurance in rural areas and social sectors;

(ix) make provision for absolute and conditional assignments of life insurance policies;

(x) make provision for distinction between a beneficiary nominee and a collector nominee in life insurance policies;

(xi) entrust responsibility of appointing insurance agents to insurers and IRDA to regulate their eligibility, qualifications and other aspects;

(xii) make life insurance policy unchallengeable on whatsoever ground after five years of issue of the policy and limiting the grounds for challenge during the period within five years;

(xiii) delete provisions relating to Tariff Advisory Committee (TAC) in view of the detariffing of rates and premiums *w.e.f.* 1st January, 2007;

(xiv) provide for making Life Insurance Council and General Insurance Council as self-regulating bodies by empowering them to frame bye-laws for elections, meetings, levy and collection of fees from its members;

(xv) provide for fine up to Rs. 25 crore and imprisonment up to 10 years for carrying on insurance business without registration;

(xvi) provide for penalty of "not exceeding twenty-five crore rupees" in case an insurer fails to comply with the obligations for rural or social sector or third party insurance of motor vehicles;

(xvii) provide for powers of adjudication to the Authority and appeal to Securities Appellate Tribunal against the decisions of the Authority;

(xviii) provide for crediting sums realised by way of penalty to the Consolidated Fund of India;

(xix) bar courts from taking cognizance of any offence punishable under the Insurance Act, save on a complaint made by an officer of the IRDA;

(xx) delete redundant provisions and make consequential amendments to various provisions in the Insurance Act;

(xxi) allow insurance companies to raise newer capital through newer instruments on the pattern of banks;

(xxii) formulate regulations for payment of commission and control of management expenses;

(xxiii) formulate regulations for opening and closing of foreign branches and the closing of domestic branches of Indian insurers and norms for opening domestic branches;

(xxiv) address matters relating to the functions, code of conduct, etc., of surveyors and loss assessors in the existing regulations;

(xxv) allow nationalised general insurance companies to raise money from the market with the permission of the Central Government for increasing their business in rural and social sector, to meet solvency margin and such other purposes, as the Central Government may empower in this behalf; and

(xxvi) include "insurance agent" in the definition of "insurance intermediaries" in the IRDA Act.

6. The proposed amendments are aimed at bringing improvement and revision of the laws relating to insurance business in the changed scenario of private participation. The Bill also incorporates certain provisions to provide IRDA with flexibility to discharge its functions effectively and efficiently.

7. The Committee invited views/suggestions in the form of memoranda on the Insurance Laws (Amendment) Bill, 2008 from public and private insurance companies in both life and non-life segments, institutions, professional bodies, associations/federations of insurance brokers, employees and insurance surveyors and loss assessors etc. Apart from receiving views/suggestions from these companies, institutions etc., the Committee also received memoranda from the Council of EU

Chambers of Commerce in India, US India Business Council (USIBC) and Reinsurance Group of America (RGA). The Committee took oral evidence of the representatives of the Ministry of Finance (Department of Financial Services), Insurance Regulatory and Development Authority (IRDA), General Insurance Corporation of India (GIC), General Insurer's Public Sector Association of India (GIPSA), Indian Institute of Insurance Surveyors and Loss Assessors (IISLA), employees and agents associations and private sector insurance companies *i.e.* ICICI Lombard General Insurance Company Limited, Bharti Axa General Insurance Company Limited, Bajaj Allianz Life Insurance Company Limited and Shriram Life insurance Company Limited etc. in connection with the examination of the Bill.

8. Insurance reforms process was initiated with the enactment of the Insurance Regulatory and Development Authority Act, 1999, which paved the way for establishing the regulatory authority for the insurance sector *i.e.* Insurance Regulatory and Development Authority (IRDA). Advised by the Ministry of Finance, IRDA initiated the process of amending the archaic insurance laws and merging all the insurance related legislations into a comprehensive single Act, by requesting the Law Commission of India to review all the legislations regulating insurance sector. Consequent upon the recommendations of the Law Commission of India and its review by an Expert Committee headed by Shri K.P. Narasimhan, the Insurance Laws (Amendment) Bill, 2008 was introduced with a view to amend various regulatory laws in the insurance sector in the changed scenario. Major amendments as proposed through the Bill seek to envisage a greater role for foreign players in the Indian insurance market; define health insurance business; provide for infusion of more capital by inviting higher foreign direct investment; enable Lloyd's of London to enter into Indian insurance sector; provide complete freedom to foreign insurers operating in Special Economic Zones (SEZs) by keeping them outside the regulatory purview of IRDA; allow foreign re-insurers to operate in India through their branches on lines akin to foreign banks operating in the country; provide for permanent registration of insurers with provision for annual renewal fee; remove the restriction on divestment by Indian promoters; make underwriting of third party motor insurance obligatory; enable appointment of insurance agents by insurers; restrict the period for repudiation of policies by insurers to 5 years; enable control of management expenses and payment of commission by IRDA; bestow wide ranging regulatory powers on IRDA to enable regulation with considerable flexibility; remove redundant clauses; enhance penalties; enable public sector general insurance companies to raise capital from the market; bring in other amendments related to reforms in the insurance sector; and align all the laws pertaining to this sector in consonance with the policy stance on overall financial sector reforms.

9. The Committee, while agreeing with the necessity of bringing in comprehensive changes in the archaic laws governing the insurance sector so as to make the legislative framework capable of facilitating insurance business in the current economic scenario, nevertheless have apprehensions on the implications of some of the policy issues proposed in the amendment Bill. The Committee feel that the suggested policy stance of enabling a greater role for foreign capital in the insurance sector, may not necessarily have the desired impact in view the experience of its limited role thus far in terms of facilitating investment in infrastructure, deepening insurance accessibility for the poor and also in developing products suited as a means of providing social security to the Indian masses at large. On the other hand, increased role of foreign capital may lead to the possibility of exposing the economy to the vulnerabilities of the global market by way of likely inheritance of unsound balance sheets and financial health of the foreign partners through joint ventures and subsidiary routes, flight of capital outside the country and also endangering the interest of the policy holders. Also, there are a number of critical issues relating *inter-alia* to health insurance, reinsurance, performance of the insurers in rural and social sector etc., which need to be addressed to enable the policyholders to reap the benefits of insurance. Therefore, these issues which have a bearing on the overall performance of the insurance industry since its liberalization have been discussed separately.

10. In the course of examining the various provisions of the Bill, primarily on the basis of the written memoranda and depositions of various stakeholders, including the Ministry of Finance (Department of Financial services) and IRDA, *the Committee have observed that many of the amendment proposals of the Bill are riddled with infirmities, which the Ministry have, at the behest of the Committee sought to rectify so as to enable them to serve the intended purpose.* The first part of the Report contains an overview of the prevailing issues in the sector in the context of the Insurance Laws (Amendment) Bill, 2008, which is followed by a Clause-wise examination of the provisions of the Bill in the second part. The Committee recommend consideration of the Bill subject to the modifications/observations as brought out in the subsequent paragraphs.

(ii) Overview of the Committee's examination of the Insurance Laws (Amendment) Bill, 2008

11. Certain broader issues/aspects relating to the laws governing the insurance sector came to the fore during the course of examination of the Insurance Laws (Amendment) Bill, 2008. These issues are dealt

with in brief in the subsequent paragraphs which is followed by Clause-wise examination of the provisions of the Bill, in Part-II of the report.

(A) Foreign Direct Investment (FDI) in Insurance Sector

(i) Insurance Regulatory and Development Authority Act, 1999 (IRDA Act, 1999)

12. The Insurance sector was opened up for private sector in the year 2000 after the enactment of the Insurance Regulatory and Development Authority Act, 1999 (IRDA Act, 1999). This Act also permitted foreign shareholding in Indian insurance companies to the extent of 26 per cent in order to provide better insurance coverage and to augment the flow of long term resources for financing infrastructure. The then Finance Minister, during the discussion on the IRDA Bill, 1999 in Parliament stated the objective of permitting foreign equity participation upto a limit of 26 per cent, which reads as follows:—

> "We have kept it because we want technology to come into this country in this sector…Mr. Deputy-Speaker, Sir, the world has progressed. There are all kinds of insurance products which are being marketed in various countries of the world, which are unfortunately not yet available in India. It is our belief that with this opening up, it will be possible for those insurance products to come up in this country and provide both depth and weight to the market…through a larger coverage in the insurance sector, it is possible to cover a larger segment of the population through health insurance. For instance, there are pension schemes. There are sections of employees, sections in the unorganized sector, particularly, who have no pension cover. Now, there could be insurance companies which will provide them pension facility. They can make small contribution. That will come in handy when they retire. Now this is the kind of social security which will become possible once the insurance sector is opened up, and that is why we are putting social service, social sector obligations even on the newer companies."

13. By way of addressing the concerns expressed on possible indirect breach of FDI limit of 26% in insurance companies, the Finance Minister had also informed the Lok Sabha:—

> "In one of the provisions of the Bill we are saying that neither through their subsidiaries nor through their nominees will it be

possible for any foreign company to increase their share-holding through the back-door. We are taking even that care so that foreign equity is capped at 26 per cent and remains at 26 per cent…Some hon. Members have also raised the issue of non-corporate persons like NRI, trusts, etc. finding their way to make investments which may not be covered by the existing provisions. Sir, I am informed that the existing guidelines under FIPP will adequately take care of this problem also. I would like to assure this august House that the Government has been alive to the possibility of misuse of the provision of the Bill and breaching the limit by adopting dubious method. Adequate care has been taken in drafting these provisions and in due course the authority will publish necessary guidelines to be followed in this regard which will be applicable to all those who apply for the licence. The Authority will keep a close watch on the companies and ensure that the provisions are fully adhered to…Now I am making it very clear that the intention of the Government is to restrict it to 26 per cent…What I am saying in this House is based on expert legal opinion which is available to the Government. I have been assured that this is covered adequately in the way the whole clause has been drafted. It is on that basis that I am here to assure the House that there is no danger of the 26 per cent being breached."

(ii) Statement of Objects and Reasons of the Insurance Laws (Amendment) Bill, 2008

14. One of the principal objectives of the amendment Bill is to raise foreign equity participation in Indian insurance companies from the existing level of 26% to 49% and maintain foreign direct investment cap at 26 per cent for the insurance cooperative societies. In this regard, the statement and objects of reasons appended to the Bill, which mainly draws reference to the reports of the Law Commission of India and the KPN Committee reads, *inter-alia* as follows:—

"The *KPN Committee* examined various issues relating to Surveyors and Loss Assessors, Investments, Tariff, Shareholders and Policyholders Funds and *extent of Foreign Shareholdings in the Indian insurance companies and co-operative societies.* It submitted its report to IRDA on 26th July, 2005. The reports submitted by the Law Commission and the KPN Committee were examined by IRDA and the IRDA forwarded its recommendations on amendment of insurance laws to the Government on 16th March, 2006. The recommendations have been considered and finalized by the Government in consultation with General Insurers Public Sector's Association (GIPSA) and General Insurance Corporation of India

(GIC) to amend the Insurance Act, 1938, General Insurance Business (Nationalisation) Act, 1972 and Insurance Regulatory and Development Authority Act, 1999."

15. On the specific issue of foreign equity in Indian insurance companies, the recommendation of the KPN Committee, whose terms of reference were to examine issues in the domains relating to investments, sufficiency of assets, insurance surveyors, Tariff Advisory Committee and shareholders funds and policyholders funds is stated as below:—

"The Committee deliberated at length on the pros and cons of stipulating, in specific terms, the percentage of foreign participation in the paid-up equity, in clause (b) of the definition of 'Indian Insurance Company' Section 2(7A), as has been the case now, but refrained from so specifying (such as a percentage not exceeding 49 per cent), leaving it to be addressed by the Central Government in view of the sensitivity of the matter."

16. The Committee pointed out that the formulation of the statement of objects and reasons of the Bill appears to leave the impression that the proposal to raise the FDI cap flows from the recommendations of the KPN Committee, which was flawed as the KPN Committee had recommended that the issue be left to the discretion of the Government to be decided upon. In this regard, the Ministry of Finance (Department of Financial Services) in a written submission, stated as follows:—

"At the instance of the Insurance and Regulatory Development Authority (IRDA), the Law Commission of India had examined the Insurance Act, 1938 and the Insurance Regulatory and Development Authority Act, 1999 and submitted its 190th Report to the Government on 1st June, 2004. The recommendations of the Law Commission cover, *inter-alia*, legal issues concerning the following:—

(i) repudiation of life insurance policies;

(ii) nomination,

(iii) assignments and transfer of policies;

(iv) merger of IRDA Act, 1999 with the Insurance Act, 1938;

(v) setting up of a grievance redressal mechanism, and

(vi) Deletion of redundant provisions of the Act, 1938; etc.

The Law Commission had excluded the following issues for examination by experts on these domains:—

(i) surveyors and loss assessors;

(ii) investments,

(iii) tariffs,

(iv) shareholders' and policyholders' funds and

(v) extent of foreign shareholding.

To examine the domains excluded by the Commission, the Insurance Regulatory and Development Authority constituted a Committee of Experts under Shri K. P. Narasimhan (Ex-Chairman, LIC) on 7th March, 2005. The Committee submitted its report to IRDA on 26th July 2005.

IRDA, besides offering its comments on the recommendations of the Commission and the KPN Committee, has proposed some amendments to the Life Insurance Corporation Act, 1956 (LIC Act), General Insurance Business (Nationalization) Act, 1972 (GIBNA) and enabling provisions in the Insurance Act, 1938. The Government has examined the recommendations of the Law Commission, KPN Committee and IRDA and prepared the Insurance Laws (Amendment) Bill, 2008.

Although IRDA and KPN Committee refrained from making recommendation for raising the foreign equity cap but at the same time they suggested for raising of this cap by way of notification/ rules of Government. However, the Government has decided that the percentage of foreign equity in Indian insurance company shall be 49% to be provided in the Act itself as announced by the Finance Minister in his Budget Speech 2004-05.

To make the above position clear we may make necessary amendments in the SOR if required in consultation with the Legislative Department."

17. Asked further, to furnish the reasoning or the justification for seeking to raise foreign direct investment in the insurance sector, the Ministry in their written reply, stated as below:—

"Section 2(7A)(b) of the Insurance Act 1938 provides for the foreign joint venture partner in an Indian Insurance Company to hold upto 26% equity stake. As per the proposed Insurance Laws (Amendment) Bill, 2008 the foreign shareholding cap is to be enhanced from 26% to 49%. The insurance industry not only helps

in mitigating risks, it provides useful financial products and long term fund for development of infrastructure and long gestation projects. India is one of the largest insurance markets in the world and with low insurance penetration and density its vast potential remains untapped. In India the insurance companies are regulated by stringent solvency margin norms and continuously require additional capital growth for business. The foreign joint venture partners have already brought in Rs. 5950.30 crore in the country as foreign shareholding capital upto March 2010. Though, it is opportune time for insurance companies to increase their underwriting capacity, constraints of Indian promoters to contribute 74% of the paid up capital is proving a hurdle. An increase in foreign shareholding limit would facilitate investment and growth in insurance sector and thus benefiting the community. According to one of the estimates made by IRDA in order to increase insurance penetration from the existing level of 4.7% to around 8% an additional capital injection of Rs. 40,000 crore is required. This can be done by allowing inflows from abroad in the form of foreign equity. The increase of FDI to 49% will also see increased commitment by the foreign promoter to the Indian insurance company. The new product developments will offer greater choice to the policyholder. The enhanced technological capabilities, adoption of best practices and transfer of managerial skills will bring in cost efficiencies in the operations and reduce distribution expenses of the company. This would translate into the overall good of the policyholder."

18. Emphasising the need for raising foreign capital, the Secretary (Department of Financial Services) during his deposition before the Committee stated as under:—

"Sir, we would like to say that if you look into the capital requirements of the insurance sector, the capital requirements of the insurance sector as we know is that a solvency margin has to be maintained and the liabilities for each year are calculated in certain buckets, actuarially calculated, which takes into account based on the past performance, based on past pay outs, based on age profiles and those kinds of things. It is a science in itself. …Now insurance industry by nature of its being, it needs to maintain a solvency margin has to have a higher capital requirement which all the hon. Members are aware of…I would say that if you want to look at higher penetration to take place into the country, that would require higher policies to be written up which will mean higher capital requirement has to be maintained for that purpose. I would argue that way."

(iii) Performance of Insurance Sector

19. As per the submissions of the Ministry, the foreign joint venture partners brought in Rs. 5950.30 Crores in the country as foreign shareholding capital upto March 2010. The Indian shareholders have in turn contributed Rs. 20794 Crores upto March, 31, 2010. In this backdrop, the data on the performance of the insurance sector in terms of total number of companies, growth in premium income, insurance penetration, number of products launched, infrastructure investment, solvency ratio etc. since it was opened up, is shown in the following table:—

	Life		Non-Life	
	2000	2010	2000	2010
No. of players	1	23	4	24
1st Yr. Premium income (Rs. in crores)	9,707	109,260	9,806	35,815
Insurance Penetration Prem. as % of GDP (2009)	1.2%	4.61%	0.4%	0.61%
Insurance Density Prem. per capita (USD) (2009)	7.60	47.7	2.30	6.70

Number of life insurance products (including riders) cleared by the IRDA

Year	No. of products cleared from inception (including riders)	
	Public sector	Private sector
2000-01	1	47
2001-02	8	129
2002-03	10	109
2003-04	6	97
2004-05	6	77
2005-06	7	56
2006-07	10	136
2007-08	6	162
2008-09	9	191
2009-10	9	335
2010-11	2	101

Number of new insurance products launched after introducing FDI in insurance sector

Year	No. of products cleared from inception (including riders)	
	Public sector	Private sector
2001-02	8	187
2002-03	13	122
2003-04	23	40
2004-05	24	76
2005-06	11	55
2006-07	30	73
2007-08	22	104
2008-09	16	160
2009-10	-	151

20. Queried as to the reasons for public sector companies launching lesser number of new products *vis-à-vis* the private sector counterparts, the Ministry, in their written submission, stated as under:—

> "The private insurance companies have entered the insurance space over the last ten years while the PSU insurers were there for almost three decades when the private companies came to India. The private insurers who entered the market with few standard products added new products over a period of time. The PSU insurers already had a wide array of products catering to the needs of all spectrum of customers in India. They have, however added a few products every year. The number of new products being added every year by private companies and PSUs has to be seen in the context that while a private sector company starting business shall have to get all kinds of products approved, while PSUs will already have these products in its basket. Another factor to be noted is that while there are four direct general insurance companies, there are eighteen private sector insurance companies including specialised health insurance companies. Thus, while the number of new products being introduced by private companies may look more than PSUs, infact the total products being sold by PSU is more than the private sector insurance companies."

21. Asked also to furnish details of investment made by insurers in infrastructure sector , the Ministry, in a written submission, informed as under:—

Investments by insurers in infrastructure sector

(Rs. in crores)

Life Insurers		2008-09	2009-10
		Total	Total
LIC		93425.00 (92.86%)	127424.28 (79.38%)
Private Insurers		7182.00 (7.14%)	33109.10 (20.62%)
Total:		100607.00	160533.38
General Insurers			
PSUs	Infrastructure and Housing	9749.11 (73.72%)	10694.05 (70.53%)
Private Insurers	Infrastructure and Housing	3474.86 (26.28%)	4468.70 (29.47%)
Total:		13223.97	15162.75

Note : 2009-10 Figures are based on Provisional Returns filed by Insurer.
Figures in () indicate percentage *w.r.t.* the total investment.

22. The solvency ratio of life and non life insurers (both in public and private sector), as furnished by the Ministry is shown below:—

Solvency Ratio of Life Insurers in India

(as on 31st March)

Sl. No.	Name of the insurer	2010	2009	2008
1	2	3	4	5
	Private			
1.	Aegon Religare	2.66	1.93	**
2.	Aviva Ins.	5.12	5.91	4.29
3.	Bajaj Allianz	2.68	2.62	2.34
4.	Bharti Axa	1.68	2.07	2.73
5.	Birla Sun	2.11	2.44	4.29
6.	Canara HSBC	2.58	5.74	**
7.	DLF Pramerica	1.67	1.71	**
8.	Future Generali	2.34	3.17	2.94
9.	HDFC Standard	1.80	2.58	2.38

1	2	3	4	5
10.	ICICI Prudential	2.90	2.31	1.74
11.	IDBI Fortis	4.05	6.11	3.45
12.	ING Vysya	1.79	2.26	2.36
13.	Max New York	3.22	3.04	2.25
14.	Met Life	1.65	2.27	1.70
15.	Om Kotak Mahindra	2.79	2.69	2.41
16.	Reliance	1.86	2.50	1.65
17.	Sahara India	4.50	3.60	4.32
18.	SBI Life	2.17	2.92	3.30
19.	Shriram	2.69	3.05	2.85
20.	Star Union Dai-ichi	7.46	2.53	**
21.	Tata AIG	2.11	2.51	2.50
22.	India First	5.27		
	Public			
23.	LIC of India	1.54	1.54	1.52

Solvency Ratio of Non-life Insurers in India

(as on 31st March)

Sl. No.	Insurer	2010	2009	2008
1	2	3	4	5
	Private			
1.	Bajaj Allianz	1.71	1.62	1.55
2.	Bharti Axa	2.38	2.11	**
3.	Cholamandalam	1.76	1.02	1.89
4.	Future Generali	1.59	1.83	2.61
5.	HDFC Ergo	1.79	2.02	2.02
6.	ICICI Lombard	2.07	2.03	2.03
7.	IFFCO Tokio	1.76	1.77	1.51
8.	Raheja QBE	3.79	**	**
9.	Reliance	1.70	1.59	1.64
10.	Royal Sundaram	1.58	1.64	1.59
11.	Shriram	1.75	1.94	**
12.	Tata AIG	1.88	1.97	1.91
13.	Universal Sompo	3.15	4.23	4.63

1	2	3	4	5
14.	SBI General	12.84		
	Public			
15.	New India	3.55	3.41	4.00
16.	United	3.41	3.32	3.24
17.	Oriental	1.56	1.66	1.91
18.	National Specialized Insurers	1.60	1.56	1.80
19.	ECGC	14.17	16.42	18.90
20.	Star Health	1.68	1.38	1.97
21.	Apollo Munich	1.64	1.82	1.39
22.	AIC	2.07	4.58	3.27
23.	GIC	3.71	3.67	3.36

(iv) Foreign Equity in Insurance Companies – Views and Submissions

23. The Committee received views/suggestions on the Insurance Laws (Amendment) Bill, 2008 from different quarters of stakeholders, which included organizations, associations etc. from the public and private domains. Some of the views expressed, both advocating and opposing the proposed increase in foreign capital are recapitulated as under:—

> "IRDA in their submission before the Committee have advocated need for increasing foreign capital and stated that the Authority has carried out detailed projections to work out the capital requirements of the insurance industry…Based on the trends observed during the last five years (2005-10), future outlook of the economy and the new players entering the market, the capital requirements at the current trend rate of expenses, new business growth, persistency and investment yield of the life insurance industry over the next five years works out to approximately Rs. 51000 crore. Similarly assuming a gross direct premium growth of 15%, the additional capital requirements of the general insurance industry works out to Rs. 9,700 crores over a five year period. The total capital requirement of the insurance sector is therefore Rs. 61,200 crore over next 5 years. This is a large capital requirement.
>
> There can be two ways of raising this large capital (a) domestically or (b) through foreign capital. The domestic capital can be raised either by promoters investing in the venture or through IPO for general public. The Indian promoters have already invested close to Rs. 21,000 crores for the last decade without receiving any

dividends. All the life insurance companies have also accumulated losses which have to be recouped. Expecting them to further invest Rs. 61,200 crores will be a challenge. Already there are some life insurance companies like Metlife, ING Vysya Life who are finding it difficult to raise capital either because of RBI caps or structural issues to achieve the targeted premium growth. This situation will only deteriorate in future with current dispensation unless remedial steps are taken. There are 13 bank promoted insurance companies in the life and general insurance space. With the introduction of Basel II requirements, the promoter banks will need to provide extra capital for their core banking activities. Further as per RBI norms a bank can invest upto 20% of its net-worth in an insurance company. Most banks are reaching this limit making it difficult for them to infuse further capital in the insurance companies promoted by them. This will have an adverse impact on the capital requirements of insurance companies and therefore impact their growth. The alternate to raise domestic capital through the capital market route is equally difficult. As per the information available the amount of capital raised by different companies in the last three years was as follows:—

1. 2007-08 – Rs. 87,029 crores from 124 companies.
2. 2008-09 – Rs. 14,719 crores from 46 companies.
3. 2009-10 – Rs. 55,055 crores from 73 companies.

The figures given above show that the amount raised by the capital markets last year is the amount required by the insurance companies over the next 5 years. This translates into Rs. 10,000 crores of capital every year for the insurance companies. This capital will be difficult to raise from the capital markets given that the insurance companies are expected to show losses for the next 5 years. Therefore it may be difficult to attract investors who are willing to invest in loss making companies.

The other option available for the Indian joint venture companies to raise capital is to increase the FDI limit from 26% to 49% which will enable the insurance companies to access the resources required to increase insurance penetration. It is also submitted that in other financial sectors such as banking and capital markets, the FDI limit is 74%. So a similar dispensation may be considered for insurance sector.

Bharti Axa General Insurance Company Limited have welcomed the proposal to raise foreign equity to 49 per cent and have

suggested that, going forward, the limit on foreign equity could be raised beyond 50 per cent.

US India Business Council have favoured the proposal and stated that this provision will further develop India's insurance and equity markets. Access to domestic and new foreign pools of long term capital will provide financial stability. It will further enhance the insurance industry's ability to reach more Indian citizens and protect life and productive assets through efficient and cost-effective distribution channels across both rural and urban markets of India. Allowing foreign companies to inject additional capital into their India joint ventures may also facilitate industry consolidation should some weaker insurance firms falter in the coming years, ensuring the safety of policyholders. Most importantly, raising the FDI is critical to the creation of a long-term debt market-essential for financing India's ambitious infrastructure build-out. The 26 per cent cap on foreign equity only serves to prevent greater funding for India's infrastructure objectives and does not help in deepening the domestic debt and capital markets."

24. Pin pointing the necessity for raising the FDI limit, as proposed, the, USIBC, in their post evidence submission also stated as under:—

Raising and Pooling Capital Efficiently

"Recent experience in India and around the world indicates that other mechanisms for attracting capital are simply not enough:—

Initial Public Offerings (IPOs): While individual companies can and do raise funds through the issuance of stock, few if any equity exchanges could handle the listing of 40 insurers (the total number of private insurance companies operating in India today) in a short timeframe.

Foreign Institutional Investment (FII): FII can only provide short-term funding and not the level of long-term investment that insurance companies need to build and expand their operations. In contrast, FDI is a more permanent source of capital and demonstrates a long-term commitment on the part of foreign companies to the development of a robust insurance sector in India.

Funding India's Infrastructure Build Out

Because of the current 26 per cent FDI cap, the insurance industry has, to date, not been a significant player in infrastructure

financing. Raising the FDI cap will likely attract more companies to establish operations in India, further increasing the number of firms looking to invest policyholder premiums into the infrastructure debt market.

Supporting Inclusive Growth

Entry of foreign companies through joint ventures also helped develop a range of innovative insurance products geared specifically towards the urban and rural poor. Microinsurance products, for example, have been developed to protect low-income Indians against specific risks, such as poor harvests, and premiums are deliberately kept low to ensure affordability. As of 2009, 14 private life insurers have developed 28 new microinsurance products.But despite this growth, the majority of Indians today still do not have comprehensive protection against illness, loss of life, or disability. A survey conducted by Max New York Life and the National Council of Applied Economic Research found that while 81 per cent of Indian households save, they do not save for the long-term. Only 4 per cent of households surveyed stated that they could survive for more than one year after the loss of the primary household income. Consequently, insurance penetration remains low compared to other major economies in Asia. In 2009, insurance density (per capita expenditures on insurance, measured in U.S. dollars) stood at $54.3 in India, compared to $121.2 in China and $1,987.2 in South Korea. This ranks India #77 out of the 88 economies studied by Swiss Re.

Making inclusive growth a reality also depends on meaningful financial inclusion for all Indians, including bringing basic banking services to rural parts of the country. To date, the government has relied both on state-driven intervention – particularly in rural areas – as well as private-sector growth, which has been accomplished by opening the banking sector to foreign companies. For India's growing middle classes, this includes access to mutual funds, pension funds, and other forms of investment vehicles. These sectors have thrived because restrictions on outside investment were fully or partially lifted. To ensure that insurance penetration can accelerate as part of a wider financial inclusion strategy, FDI caps should be brought in line with the more liberalized financial services sector, including banking (74%), Non-Banking Financial Companies (100%) and mutual funds (100%).

Job creation

Since 1999, the insurance industry has been an important driver of job creation and growth in India. Allowing FDI in the industry has helped finance the launch of new insurance companies, increased competition and led to the development of new and innovative products. All of this growth was underpinned by strong job creation across the entire industry. Between 2000 and 2008, private sector insurance companies created over 3 million new jobs, which included insurance agents, financial analysts, investment specialists, and support staff."

Confederation of Indian Industry (CII) in their post evidence submission before the Committee have stated as follows:—

Insurance sector could play a pivotal role in achieving financial inclusion given the untapped market for insurance in India. Vast sections of Indian population are not covered by insurance on account of logistic difficulties, economically unfeasible operations along with low investments in the insurance sector.

Greater engagement of foreign partners can aid in introducing the global best practices in the Indian insurance sector in three areas, *viz.* long term risk management, innovation and technology. Efficient risk management is crucial for a sector like insurance while innovation is needed not just in terms of insurance products but also in ways of distributing them. FDI flowing into the sector would contribute to better penetration through innovation at the level of products as well as distribution practices. Further, increasing the FDI stake would augment the overall capital base. This capital would help the Companies to provide higher focus on mass marketing campaigns and creating more infrastructure by opening offices to increase the awareness, reach and distribution of insurance to the rural population.

Since the insurance products for rural population are low ticket in nature *i.e.* micro insurance, the break even time frame is longer adding to capital strain. 49% FDI stake will attract more foreign players to make investments in this sector, which in turn would help increase Insurance penetration.

Moreover, there is a shortage of expertise (skills) in the Indian insurance industry(e.g. underwriting, actuarial, claims management, data standardization etc.) Raising the FDI cap will enable expertise (skills) and know how transfer that are generally not available under the current regime."

25. On the alternative means of raising capital from the market, the CII, in their post evidence reply also stated as under:—

"Raising funds from the capital market through IPOs is not a feasible solution as there are nearly 37 private insurance companies in India today who need capital. The insurance industry has a long gestation period ranging between 5-10 years. Hence, raising funds through IPO may not be feasible in the initial years of operation.

As per the existing regulations, only equity capital is permissible for funding the insurance sector. There are no debt instruments or alternate capital structure, which limits the fund raising capability of insurance companies. Also, the long gestation period of the insurance business acts as deterrent in raising domestic capital. Further, borrowing of funds if and when permitted to be resorted to would further add to the costs in terms of debt servicing and thereby adversely affect the profitability and product pricing. Indian Promoters own share in the Private Insurance Companies, both life and non life, are on an average 75%. Moreover, most of the private insurance companies have large accumulated losses that will take several years to get off their balance sheets. In a scenario where no returns have been earned on investment by any company, it is getting difficult for the Indian partners to keep putting money on the table indefinitely. Moreover, since September 1, 2010 when IRDA regulations on ULIPs kicked-in, the cash flow for life insurance companies has got further affected.

FDI in Insurance Sector

Private Sector	FDI* (Rs. in crore)	FDI (%)
FDI in Life Insurance	5053.98	24.05
FDI in Non Life Insurance	896.33	24.76
Total 5,950.31		
Foreign Promoter		

(Source: IRDA Annual Report 2009-10)

To sum up, with 26% FDI cap in the last few years, capital worth Rs. 5,950.30 crore has come into India. While there is a need for additional long term capital, there is an even greater need to increase the commitment of the foreign partners."

The All India Insurance Employees Association, have stated that 'incase, an Indian Insurance Company raises capital through IPO and if the foreign institutional investors (FII) pick up the equity

shares either in the IPO or through secondary market purchases, the FDI and FII holdings put together at any point of time could result in a situation where the major holdings in a new insurance company would not be Indian.'

The All India LIC Employees Federation, have stated that 'it is assumed here that FDI in Insurance is beneficial because it will improve technology and efficiency in consequence and generate greater productivity and better management, thus the organization will become globally more competitive. Similar arguments were put forward when Latin American authorities decided to have more FDI in their banks. None of these institutions improved their efficiency or became globally competitive. That FDI is not at all necessary for improving technology as has been established by the performance of LIC which has raised its technological standards with in-house development of IT. In this connection it should be understood that there is no empirical evidence to show that foreign insurance companies are more efficient. LIC's performance in claims settlement is the best in the world. Another assumption that they will bring with them their superior technological and managerial skills is ludicrous in a globalised open world. Today, we are in a position to master and internalise any technology. There is no 'superior technology' that we can not absorb and apply on our own initiative.'

National Federation of Insurance Field Workers of India have opposed this amendment because 'the reasons on the basis of which the FDI was limited to 26% still remains after ten years of opening up of the Insurance Industry. The recent Global recession has seen the so called worlds giant Insurance companies collapse. Increase in foreign capital can change the investment pattern of all companies, which leads to more speculative investment. It is the fact, that it was the advent of Private companies in India with foreign equity that encouraged more investment in ULIPs and stock market. The result is that there is no social security or security of savings. The review and study of the performance of the Insurance industry post liberalization is necessary to understand whether the goals of privatizing the Insurance sector has been achieved and to what extent.'

The Insurance Brokers Association of India, in their written memorandum, have stated that 'the present prescription of enhancement of a foreign equity holders interest in an insurance company to 49% from the existing 26% will have its own fallout. Incase, in future, an Indian Insurance Company decides/is compelled

to raise capital to sustain the growth in business, through rights issue, and further the Indian promoter for whatever the reasons, is unable to subscribe to the rights issue leaving the foreign partner to pick up the un-subscribed portion of rights issue, this may result in the equity of the foreign company in the Indian Insurance Company going beyond 49%. It is not clear whether the law allows such increase in foreign companies equity in the Indian Insurance Company'.

26. Asked to explain the reasons for opposing further infusion of foreign capital, a representative of All India Insurance Employees Association stated as follows during the course of tendering evidence:—

"If you look at the experience of the last ten years since insurance industry has been opened up, we find and even the regulator of the insurance admits that 26 per cent has not been an entry barrier nor it has been a barrier for the expansion of the private insurance companies in the country… In fact, when the Parliament discussed this, even at that time there were some fears expressed whether this 26 per cent could be breached and today when we look at ICICI and HDFC, the Department of Industrial Promotion and Policy itself has said that these are the foreign owned Indian controlled banks and we feel 26 per cent has already been breached. Therefore, we feel that there should not be any increase in the FDI and the present limit should be retained and wherever there is a possibility of breach that should be plugged…

… Sir, the insurance growth is very closely related to the scale of the economy. We have seen that in the last ten years, economy has grown and the insurance business also has grown. Questions were raised here about the penetration of the insurance business. Today I am very happy to say that if we compare the insurance penetration of Life Insurance in India, it is comparable to the best in the world. The Life Insurance penetration now is around 4.1 per cent in our country whereas in Northern America, it is 3.6 per cent. If you take the average of Europe, it is 4 per cent, and every other developed country averages below 4 per cent. We have done extremely well. As the economy grows, we are confident we will continue to grow.

As far as technology is concerned, technology depends on the product development. The product in India can be developed specific to the Indian conditions. So, that kind of a technology to develop the product cannot be imported in India. The other thing is that insurance, as such, historically has adopted technology because without technology, insurance cannot survive. Therefore, I do not feel that, that argument is right.

The second thing is generation of the resources. If we look at how much of FDI has come. FDI has come only by way of capital, whereas our expectation at that particular time a part of the global premium which the foreign companies will be earning would be brought into Indian infrastructure. We do not have any evidence to suggest that, that kind of investment has taken place in this country. Whatever amount that has come is only through the capital."

27. Expressing identical views on this issue, a representative of National Federation of Insurance Field Workers of India, while deposing before the Committee, stated as below:—

"In clause 3, there is Section 2 of the Insurance Act where increase of the FDI from 26 per cent is proposed. After a lot of debate in Parliament which happened in 1999-2000 we feel that those concerns continue and in a much worse form it is still continuing. It is because once privatisation was done, the entire focus of the private insurance which came into India was not on the social security of the people or the development of the infrastructure in India through insurance funds. It was more focussed on making profits and they entirely switched over to unit linked insurance products which has taken a toll in our country…Now ULIP is totally stock market focussed and the diversification of funds for infrastructure investment itself is at a very low level…The global recession and the falling down of the giant insurance companies is an eye opener for us. Not only that the culture of these companies was reflected very badly because even after the bail out package by the US Government these companies had the audacity to take this bail out package and give bonuses to their Chief Executives and take their customers to treat in England, etc. The Unit Linked is a major issue on which we say that it is the diversification of the entire concept of insurance industry. So, our request is that 26 per cent should be retained."

28. While the stakeholders from the private sector have favoured raising the cap on FDI limit as proposed, the ICICI Lombard General Insurance Company Limited, however, expressed a contrary view on the matter, which is stated as under:—

"The insurance sector was opened up to private participation in 2000, with foreign shareholding (whether FDI or FII shareholding) being capped at 26%. Over the last decade, a large number of players have entered the market, significantly enhancing competition in this sector. Both new and existing players have introduced and scaled up new products and product variants, driving innovation and growth in the sector. Thus, the objective of furthering growth,

development and competition in the sector has been met under the current regulatory architecture with foreign shareholding being capped at 26%. Given the foreign shareholding cap, the capital requirements of the sector over the last decade have been met to a large extent by infusion of funds by the Indian promoters. Thus, the growth capital required in the initial years has already been infused and further capital requirements are likely to be relatively limited. Thus, *increase in Foreign Direct Investment (FDI) limit in the insurance sector* is not a pre-requisite for continued growth and *development of the sector*. In addition to encouraging competition and growth, overall financial sector liberalization could be another rationale for increasing the foreign shareholding limit. In this context, the increase may be permitted to be either in the form of foreign direct investment or foreign institutional investment, *i.e.* from both strategic investors (like the existing foreign partners) or a broader range of financial investors. Irrespective of shareholding, any Insurance Company constituted and registered under the laws of India shall remain to be an Indian Insurance Company governed by Indian law and regulation, carrying forward the sovereign interest of India *vis-à-vis* protecting and servicing its policy holders."

(v) Capital requirements of insurance industry

29. On the implications of foreign investment in insurance companies, the General Insurance Public Sector Association (GIPSA), in a written submission stated as below:—

> "It is perceived that even with the 26 per cent holding in the present joint venture private insurance companies, the control is normally with the foreign partner. Thus the enhancement of foreign partner's holding to 49 per cent is not expected to make any substantive change in the situation so far as the public sector insurance companies are concerned."

30. In regard to the IRDA's estimation of capital requirement of Rs. 9700 crore for the General Insurance Companies in future, GIPSA, in their post evidence reply stated as under:—

> "The estimation has been made by IRDA. However, the Public Sector General Insurance Companies are confident that if required they would be able to raise necessary capital from the market."

31. Questioned as to why the Government was insistent on inviting more foreign capital, when public sector companies were confident of

meeting the capital requirements, the Secretary, Department of Financial Services, while deposing before the Committee, stated as follows:—

> "All I am saying is that public sector insurance would project that they would get more, but there are different views and once again it is their opinion versus others opinion. So, no one would be able to judge that. But there are different views on that. But coming to this number, as we mentioned, with the kind of total amount that could be raised in the market and based on the assessment of the annual requirement and based on the fact that these are all loss making companies, our assessment is very clear that through the IPO route going to the domestic market the insurance will not be able to raise capital required. We believe that this is essential.
>
> Secondly, that is not the only reason and we have made very clearly what is the benefit this will confer on the insurance sector in the technological sense that is available with you. We had said, we are not talking of use of IT, but there are certain issues which other companies still have to get. For instance, we are looking at hardware and software, go factor, interaction, dependency and assessment, etc. are various variables which make into the deciding of the premium. We have not mastered that area. Second is that our companies have to develop and come out with new models especially in areas of health, etc. The global players are using this technology, whereas we have yet to develop these. Third is computer aided material could be decided. This we have given in our reports. This changed technical policy for which our insurance companies need to have a proper pricing of the insurance policies certainly require investment which the foreign direct investment will produce for our country."

32. On the view expressed that the capital requirements of the insurance sector could be met from the domestic market, the Secretary (Department of Financial Services), while deposing before the Committee on 7 October, 2010, stated as follows:—

> "Sir, hon'ble Members presented their views on the availability of capital. The amount of capital which we are looking at may be sufficient in the county. But if we have to increase the penetration and the number of policies, we need to have more solvency requirement and, therefore, more capital requirement. As we propose not more than 49 per cent, it is still an Indian company. The investment comes from the foreign company for usage. If equity can come from the foreign companies for use for the purpose of

insurance, I think we should welcome all methods in which capital can flow into the insurance companies, control being exercised by the Indian partner under the regulation of IRDA. I suppose we should have a case for looking at additional capital flowing through this methodology into the insurance companies."

33. Asked *inter-alia,* about the basis/assumptions on which, IRDA had projected the capital requirement of insurance sector and whether the capital could not be met from the domestic market, the Chairman, IRDA while deposing before the Committee, stated as follows:—

"This is just an arithmetic but within the bounds of that logic it is quite consistent. We have allowed also for the natural growth of the IPO market but in that scenario these are the numbers which break out. But these are just projection. This is just an indication of what we are looking at and whether the order of what we are saying is correct or not and whether it seems to be feasible or not. It is not that it is a very accurate kind of an assessment. It is only just a general estimate of where we stand."

34. The Chairman, IRDA also added:—

"…….perhaps an expansion of FDI would be a quicker route to attend that particular requirement of capital."

35. On the issue of performance of Indian insurers during the global financial crisis, the Ministry, in a written reply, stated as follows:—

"The global financial crisis adversely affected financial institutions across the world. Its impact was also felt on some of the Indian insurance companies whose promoters were particularly at the centre of the crisis, such as AIG, ING, AVIVA, AEGON, etc. wherein the growth of these companies dipped as compared to their contemporaries. However the foreign promoters infused their share of the capital in the joint venture necessary to support the business underwritten. By and large the Indian insurance sector came out unscathed from the turmoil that gripped the international financial markets.

The Indian insurance sector continued with its double digit growth at 20% for life insurance and 13% for general insurance. This was because the 74% of the paid-up equity capital was held by Indian promoters and only 26% by the foreign promoters. The demands on the foreign promoters were therefore less and the industry continued to grow rapidly."

(vi) Valuation of insurance companies

36. Asked about the methodology for valuation in the event of FDI limit being raised to 49 per cent, Bharti Axa General Insurance Company Limited, in a written reply stated as under:—

> "We should value the company based on certain uniform guidelines established by the appropriate authorities. This will also address the issue of foreign investors who may have benefited from lower valuations at the time of incorporation of the insurance companies."

37. On the issue of valuation norms for insurance companies, the Ministry in a written reply stated as under:—

> "The IRDA has still not finalized the valuation norms for the insurance companies and therefore is not in a position to furnish data on their valuations. The Institute of Actuaries of India has issued draft guidelines on valuation of life insurance companies in consultation with the life insurance council. These are under discussions with various stakeholders."

38. In this regard, the Ministry also informed in a written reply:—

> "There are a few agreements which State the price at which the equity shares shall be brought by the foreign promoter whenever the FDI limit is increased from 26% to 49%."

39. Responding to a query posed on the proposed manner of divestment of insurance companies in the event of raising the FDI capping, the Chairman, IRDA, while deposing before the Committee, stated:—

> "One could be, if the Parliament agrees that 26 may go to 49, the differential shares may be just by exchange of share between the domestic and the foreign investor. Those kinds of arrangements would be governed by two things. They would be governed by the rules of the RBI under FEMA Guidelines which determine the pricing of how domestic shares can be transferred to a foreign investor. There are some guidelines in the matter and this will be according to those guidelines."

40. Asked whether, this would only result in the capital going to the promoters and not to the insurance company, the Chairman, IRDA responded by stating:—

> "That is correct. That point is well taken. Our point is that subsequent to that, two things may happen. In future as the company

grows, the company can grow by way of further infusion by way of either accessing an IPO or by the remaining partners again contributing various share capitals in the agreed form."

41. Asked to furnish the details of calculation of FDI at 26 per cent, ICICI Lombard General Insurance Company Limited, in their post evidence replies have stated as under:—

"The capital structure of the Company as on September 30, 2010 is Authorised capital is Rs. 4.50 Billion, Paid up capital is Rs. 4.04 Billion, Foreign equity in the capital structure is 25.97%. So far as calculation of FDI is concerned, the shareholders of the Company are primarily (a) ICICI Bank Limited and (b) FAL Corporation representing Fairfax Financial Holdings Limited and holders of Employee Stock Option (ESOP). As per the shareholding pattern on September 30, 2010, FAL Corporation holds 25.97% of the outstanding shares of the Company. *The manner of computation of foreign shareholding in insurance companies is governed by the IRDA (Registration of Insurance Companies) Regulations, 2000. These regulations provide that in computing the foreign shareholding in an Indian insurance company whose Indian promoter is a bank or public financial institution, the foreign shareholding in such bank or financial institution is not to be taken into account in determining the foreign shareholding in its insurance subsidiaries.* Press Note 2 (2009 Series) on "Guidelines for calculation of total foreign investment *i.e.* direct and indirect foreign investment in Indian companies" specifically States that the guidelines contained therein would not apply to the insurance sector, which will continue to be governed by the relevant regulation."

42. In reply to a point made on the possible breach of foreign equity limit in future whereby the ownership pattern of an insurance company could be altered, the Ministry, in a written submission stated as under:—

"Presently, the foreign joint venture partner can hold 26% of equity. There has been a substantial increase in capital of Insurance Companies between 2000-01 and 2008-09. However, the additional capital has not distorted the share of the Indian or the foreign partner. The proposed Clause 3 of the Bill relating to Section 2 (7A) seeks to enhance the holdings of equity share by a foreign company through itself, the subsidiary company or nominees to not more than 49 per cent of the paid up equity capital of an Indian insurance company. The statutory provision as above will ensure

that the share holding of the foreign partner continues to be 49%. The intention of the change is to ensure that the maximum holding of foreign companies (FDI, FII, etc.) is restricted to 49%. If need be, the clause will be redrafted in consultation with the Ministry of Law to ensure clarity."

43. By extensively drawing reference to the reports of the Law Commission of India, which was appointed to review the legislations regulating the insurance sector, and the K.P. Narsimhan Committee appointed by the IRDA, the 'Statement of Objects and Reasons' (SOR) of the Insurance Laws (Amendment) Bill, 2008 creates the impression that the proposal to raise the cap on foreign equity holding in insurance companies from 26% to 49% flows from these reports, which is misleading. While the Law Commission had not touched upon the issue of foreign equity in insurance companies, the K.P. Narsimhan Committee refrained from specifying any percentage of foreign participation in the equity capital 'in view of the sensitivity of the matter' and left the issue 'to be addressed by the Central Government'. The Committee regret to note that the Government has erred in formulating the Statement of Objects and Reasons, which can not be modified in the normal course by way of moving amendments. As agreed to, the Committee expect that appropriate legislative procedure is followed for suitably modifying the Statement of Objects and Reasons so as to do away with the misleading impression that the issue of extent of foreign participation in Indian insurance companies, as proposed, was decided upon on the basis of an expert Committee's recommendations.

44. The insurance sector was liberalized in 1999 by fixing a clear cap of 26% on the foreign equity participation in the companies with the avowed purpose of providing both depth and weight to the market, bringing in new products and enabling in providing insurance as a means of social security to the Indian masses at large, particularly in the unorganized sector. At the time of opening of the sector, the Parliament was assured that the statutory prescriptions as also the foreign investment regulations would ensure that the cap of 26% on foreign equity participation in insurance companies would not, in any way, be breached. The rationale given for seeking to hike the capping on foreign equity participation from 26% to 49% broadly centre on the very same purposes for meeting which, the insurance sector was liberalized more than a decade back – enabling increasing insurance coverage, bringing in new products, technological capabilities and cost efficiencies by adopting better practices and transfer of managerial skills, meeting the solvency margin norms etc.

45. The Committee, while recognizing the need for additional capital for enabling the growth of the insurance sector, are, nevertheless constrained to note that the justification provided for relying on foreign equity capital to meet this end has not been convincing. On the basis of the submissions made by the Ministry of Finance on the development and status of the insurance sector, the Committee note that more than a decade following the liberalization of the insurance sector with 26% foreign equity participation there has not been any significant spurt in insurance coverage; the product portfolios of the public sector insurers are comparable to those of the private sector; the utility of the new products introduced over the last few years, being more investment oriented in nature with high risks attached leave a question mark on their appropriateness as a means of providing social security to the people at large; public sector insurers continue to be the major investors in the crucial infrastructure sector; and the solvency margin maintained by the companies leaves enough scope for leveraging the existing capital. The data that gives credence to these observations include the fact that growth in business as percentage of GDP during 2000 to 2010 in case of life insurance has risen merely to 4.61% from 1.2%, and in case of non-life insurance, to 0.61% from 0.4%; LIC's share of investment in infrastructure during the year 2009-10 has been 70.38% and that of the public sector general insurers to the extent of 70.53% *vis-à-vis* their private sector counterparts; and the solvency margin of the companies has been in the range of 2% to 7% in case of life insurers and 2% to 12% in case of the general insurers, which is well above IRDA's stipulations.

46. As regards the capital requirement of the insurance sector, IRDA's projections as furnished by the Ministry range from Rs. 40,000 crore for life insurance business to achieve an insurance penetration level of 8% of GDP; and Rs. 60,000 crore to 66,000 crore for the insurance sector as a whole in the next five years. As per the chairman, IRDA's deposition, however, these projections of the required capital are 'just an arithmetic', 'not very accurate' and 'just a general estimate' of where the industry stands. Thus, it would be apparent that the figures of capital requirement projected and placed before the Committee are lacking a sound basis.

47. On the issue of pursuing the alternate means of tapping the domestic market for meeting the capital needs of the industry too, there has been an element of inconsistency as also contradictions in the submissions made to the Committee by the Ministry of Finance at different stages. While the Ministry has maintained that the Indian market may not have the depth to meet the capital requirements of the industry (with Rs. 87,029 crore, Rs. 14,719 crore and Rs. 55,055 crore

raised in years 2007-08, 2008-09 and 2009-10 respectively), the Secretary, Department of Financial Services, while deposing before the Committee, nevertheless, also conceded that the capital being looked for 'may be sufficient in the country' but for the issue that FDI would enable in increasing insurance penetration, broadening the range of products etc. Also, the public sector general insurers have expressed confidence in raising the capital projected as required by IRDA, and as per the Ministry's submission to the Committee, the double digit growth of the Indian insurance sector could be maintained during the global financial crisis of 2008 'because 74% of the paid-up equity capital was held by Indian promoters and only 26% by the foreign promoters', which reduced the demands on the foreign promoters.

48. Apart from the foregoing, other critical issues in regard to the policy proposal seeking to hike the FDI limit include the fact that IRDA is yet to formulate the valuation norms for insurance companies; foreign investors are said to have benefited owing to the lower valuation at the time of incorporation of the companies; certain pre-existing agreements stating the transfer price of equity shares to the foreign promoters in the event of increasing the FDI limit to 49% are reported to be in place, in which case the investors/promoters and not the company concerned as such would stand to gain; and the existing regulations leave scope for breaching the capping on the FDI limit, as pointed out by a private insurer. In view of the fact that the Ministry of Finance could not convincingly justify the proposal, the Committee are of the considered view that in the present global economic scenario, any further hike in FDI at this juncture may not be in the interest of the Indian insurance industry, whereby the common man too would not stand to gain through insurance, particularly as a means of social security.

49. The Committee would, therefore, consider it prudent to seriously pursue the alternate route of tapping the market for raising the capital required for the sustenance and growth of the sector. Formulating the rules/regulations for enabling the companies to tap the domestic market, combined with the other capital raising options proposed to be made available in terms of the amendment proposals of the Bill, would, in the opinion of the Committee help in meeting the growth needs of the sector.

(B) Health Insurance

50. Health insurance business in India has increased manifold over the past decade. From Rs. 675.86 crore gross premium collected

through health insurance in the year 2000-2001, it increased around ten times to Rs. 6646 crore during the year 2008-09. In pursuance of the K.P. Narasimhan Committee Report, the present Bill provides for a separate definition of health insurance. The Bill proposes to fix a minimum capital requirement for this sector at Rs. 50 crores with a view to reduce entry barrier to a sector which is of priority category in the insurance space. However, there are also other issues pertaining to the sector, which have prevented full realization of benefits of health insurance for the policy holders.

51. In response to a specific query posed by the Committee on the issue of denying 'cashless facility' to the insured in early July 2010, the Ministry, in a written reply stated as follows:—

> "In Public Sector General insurance companies, the cashless facility is provided through Third Party Administrators (TPAs). The Insurance Companies are offering this facility in various cities and there are multiple TPAs in each city. Each TPA has its own network of hospitals.
>
> The Public Sector Insurance Companies have a cost ratio of around 140% of the premium received under the health portfolio. The mounting losses in this portfolio are a matter of serious concern for them. It was also observed by these Companies that some of the hospitals were charging the patients having health insurance policies at rates which are higher than the reasonable cost of treatment. Due to these high charges, the policyholders were left with smaller amounts of sum assured to be used for any other eventuality during the remaining period of the health policy thereby causing undue hardships to them.
>
> The Public Sector General Insurance Companies have not revised/ withdrawn the product (health insurance policy) or the facility of cashless treatment. However, the Companies have started rationalization of empanelment of hospitals and standardization of rates and specified procedures followed by the hospitals. This has been implemented *w.e.f.* 1st July, 2010 in the cities of Delhi, Mumbai, Bangalore and Chennai. In these cities a Preferred Provider Network (PPN) has been started by inclusion of names of the hospitals that have agreed to work at given rates for specified procedures. The list of Hospitals in the PPN in these cities is available on the websites of TPAs/Insurance Companies. In the rest of India the earlier process of rendering cashless facility is still continuing.

It may also be noted that the Standard Health Insurance Policy does not provide for any assurance of cashless facility to the insured. However, in cases where a mention of cashless facility has been made it has been mentioned that the 'claims in respect of cashless facility will be through the agreed list of Network Hospitals/Nursing Homes/Day Care Centres and is subject to pre-admission authorization. The Network Hospitals are decided through the Memorandum of Understanding (MoU) of the TPAs with the hospitals and the list is amended from time to time. Presently **(as on 24.12.2010)** , 539 hospitals are included in the network in the four cities (Delhi-170, Mumbai-169, Chennai-104 and Bangalore-96). In selection of the hospitals care has been taken to ensure geographical spread of the hospitals for the convenience of the insured.

To minimize inconvenience to the insured, TPAs have been advised that for emergency and trauma cases, cashless facility should be provided not only at hospitals within PPN but at other hospitals also. Apart from the cashless facility under the PPN, the settlement of claims on reimbursement basis continues to be available for all hospitals (including non-network).

The adoption of the aforesaid PPN system with the package rates and stabilizing the hospitalization costs would benefit the insured by lowering the cost of every hospitalization leaving a larger balance in the sum insured in the policy for future hospitalization. Further, the lower cost will also reduce loading on policy premium at the time of renewal. Thus, this PPN system is in the interest of all health insurance policy holders."

Initiatives of IRDA on the issue

52. The network relationship between the hospitals and the insurers/ TPAs are based on a contract. The relationship holds only during the contract term and either party to the contract may move out, resulting into termination of the contract. This is bound to happen in any contract. This is how the network hospitals are being associated with the insurers in providing the cashless facility since beginning. The patient always has a list of hospitals to avail cashless facility. The policyholders are well aware that this list changes from time to time. However, owing to the dynamic nature of relationship that exists between the providers to provide cashless facility, the Insurance Regulatory and Development Authority (IRDA) issued a direction to the insurers. The direction has been issued to ensure that no inconvenience is caused to existing policyholders and

insurers are required to ensure that at times when there is a change in preferred provider network of hospitals.

(i) Policyholders are always informed about the nearest possible alternative hospitals where cashless facility is available;

(ii) Where a policyholder has been issued a pre-authorisation for the conduct of a given procedure in a given hospital or if the policyholder is already undergoing such treatment at a hospital, and such hospital is proposed to be removed from the list of PPN, then the insurers are directed to continue to provide the benefits of cashless facility for such policyholder as if such hospital continues to be in the PPN list; and

(iii) That the interests of the policyholders are not adversely affected at any point of time.

53. When the Committee questioned IRDA on the measures initiated for controlling rising health insurance costs, the Authority, in a post evidence reply stated as under:—

> "It may be noted that medical inflation is increasing from 10-20%. Further, there is lack of standard terms with regard to treatment protocols and each provider has his own practices. The premium needs to be sufficient to cover these aspects together with rising inflation. There is a trend towards cashless form of facilities is being charged to higher costs for the same procedures/treatment against those paying out of pocket. All these lead to inadequacy of premium, which forces the insurer to increase the premiums. The Authority is taking steps to check the increasing health insurance costs by introducing WHO ICD-10 standardized protocols for various procedures, standardization of claims forms, etc which should go some way in meeting the objectives."

Health Insurance Schemes for Poor

54. There are Government schemes providing health insurance to BPL population *viz.* Rashtriya Swasthya Bima Yojana, Rajiv Arogyasri Yojana etc., covering expenses incurred towards in-patient hospitalization. The premium for such insurance schemes is being borne by Government of India and/or State Governments either fully or on a sharing pattern. The beneficiaries are being serviced by the insurance companies based on the Identification Cards *i.e.* Smart Card/Health Insurance/BPL Card issued to them. Around 15 crore people are beneficiaries of these Government schemes. There are also insurance policies with low premiums such as Janata Personal Accident Policy offering accidental

protection against a minimum premium of Rs. 15 against a sum insured of Rs. 25,000 etc.

55. The Committee have received suggestions highlighting various issues and problems pertaining to health insurance sector which are stated as under:—

"Awareness

There is a lack of awareness about health insurance policy terms and conditions, process to be followed at the time of cashless hospitalization etc. in the current scenario. Awareness level of the insured customer needs to be increased.

Access

There is lack of access when it comes to availing cashless benefit (especially in rural areas).

Inadequate cover and product innovation

Involving hospitals at the stage of product development will help in innovative and new health insurance products.

Service Level Agreement

The standardization of the SLA would help reduce management of multiple SLA and will help develop a common understanding of expected services. This will help benchmark the service level.

Standard treatment guidelines

The introduction of standard treatment guidelines is required for standardization of services.

Standard forms and format

The standardization of forms and format like the cashless request form, claim form etc. at an industry level will help to reduce the task of managing multiple forms (each serving the same purpose).

Trust and transparency

The current level of trust and transparency is low and to bring in synergy it is important to develop trust and transparency among insurers and network hospitals.

Relationship with Intermediaries

Good relationship with intermediaries like the TPA. Brokers and Agents would help develop synergy.

Co-payment and deductibles

Clear communication of any co-payment and deductible clause to the network hospitals is required.

Selection of room category

The selection room category directly affects the claim cost and that introduction of package rates will help develop synergy among insurers and network hospitals.

Training issues

The insurers and network hospitals invest in training their staff in the area of health insurance then the chances of development of synergy would be high.

Use of information technology

The technology can play an important role in better coordination in insurers and network hospitals.

Efficiency and Effectiveness Communication between parties

The efficient and effective communication is required between insurers and network hospitals can help develop synergy in the long run."

56. The Committee note that while the health insurance sector has witnessed a ten-fold increase in growth in less than a decade following liberalization (from 675.86 crore of gross premium collected in 2000-01 to Rs. 6646 crore in 2008-09) several critical issues and problems afflict the sector, which need to be addressed so as to enable the policyholders to avail the benefit of health insurance. A major problem in providing health cover is the number of agencies involved in the structure *i.e.* the insurers, agents, Third Party Administrators (TPAs) and health care providers/hospitals. While the insurers are under the supervision of IRDA, there is no oversight mechanism covering the roles of the other parties. Thus, the issue of excessive charges and consequently, high costs in providing health insurance arises.

For enabling proper regulation of health insurance sector, the Committee are of the view that IRDA's regulations/guidelines should necessarily and adequately encompass the roles of all the parties involved in administering and supervising health insurance schemes *i.e.* the insurers, TPAs, healthcare providers/hospitals etc. This would enable it to ensure that the hindrances and shortcomings presently experienced in administering health insurance schemes are addressed.

57. As per the submissions made to the Committee, many policyholders are not in a position to avail of health insurance benefits because of lack of clarity in the terms and conditions, complexity of the procedure for settlement of claims as well as mis-selling of policies etc. In this context, the role of health insurance agents assumes importance. The Committee, in this regard, emphasise the necessity of having a well informed and trained force of health insurance agents who would appropriately brief the customers before selling the policies. Further, for enabling proper training of agents, it would be essential on the part of the Insurance Institute of India as well as the insurers, through their in-house training fora to devise specialized training programmes in health insurance and mandate the agents to undergo the training.

58. The Committee also note in this regard that the lack of uniformity in rates and charges, settlement forms, procedures etc. result in ambiguity and give rise to the possibility of disputes in settling claims. While the public sector insurance companies are stated to have initiated efforts towards rationalizing the empanelment of hospitals and standardising the rates and procedures followed, the process needs to be completed expeditiously. With a view to ensuring that the policy holders are not inconvenienced, the Committee expect the IRDA to play a pro-active role towards evolving a common procedure for availing 'cashless facility' and standardizing the rates and charges for different hospital procedures, treatment guidelines, forms and formats for settlement of claims etc.

59. Another important issue in regard to cashless hopitalisation and claims settlement brought to the notice of the Committee is that almost all discrepancies or disparities centre on the medical history of the insured. The Committee are of the view that IRDA's regulations should squarely place the onus of verifying the health status and medical history of individuals before issuing health insurance policies on the insurers, which would not be open to questioning at the time of settlement of claims. It would also be appropriate for insurance companies to engage health insurance consultants, preferably medical

practitioners with experience in insurance sector for facilitating in designing policies and in the process of cashless hospitalization as well as settlement of claims.

60. An issue of critical importance in regard to health insurance, the Committee wish to highlight is the fact that while ideally, health insurance covers need to fulfil the requirements of the needy such as the elderly, the focus of the current health insurance portfolios is on insuring the young and healthy. While extending health insurance covers to the elderly may be considered unprofitable by the companies, the onus would be on the Government to ensure that the old, aged and the needy are covered and benefited. It would, thus, be imperative on the Government to facilitate the health insurance policy framework in this direction and the IRDA to attune the regulatory framework for making it clear that health insurance is a human-centric initiative and covering the elderly at a reasonable cost a social obligation. A percentage or number of the elderly that would be covered as an obligation could be specified. The Committee desire that serious efforts are made in this direction so as to ensure that the benefits of health insurance are extended to the really needy sections of the society.

61. The Committee are also of the opinion that for enabling a better administration, health insurance policies should also be issued in dematerialized form, which would ensure ready and quick access to information. Also, while at present, almost all health insurance products are designed for providing hospitalization benefits only, it would be appropriate to extend this facility to cover out patient treatment costs as well. The Committee would, therefore, recommend looking into this aspect for providing better benefits to the insured.

(C) Insurance in Rural and Social Sector

62. At present, every insurer, is mandated by sections 32B and 32C of the Insurance Regulatory and Development Authority Act, to ensure that he undertakes the obligations stipulated by the Authority. The obligations have been stipulated for the insurance companies based on the tenure that they have completed after entering into the sector. The obligation to be undertaken by life insurance companies in the rural sector ranges from 7% to 20% of the total policies underwritten in the relevant financial year while it ranges from 2% to 7% of the gross premium underwritten in the relevant financial year for general insurance companies. In respect of social sector, the obligation to be completed by life as well as general insurance companies range from 5000 to 55000 lives.

63. The Insurance Laws (Amendment) Bill, 2008, *vide* Clause 37 seeks to amend section 32B of the Act to provide for insurance business in rural 'and' social sector in place of rural or social sector *to be specified by regulations* instead of *to be specified, in the Official Gazette by the Authority, in this behalf.*

Performance of private and public sector insurance companies in rural and social sector

64. IRDA, in their written submission have summed up the performance of insurance companies for the last year, *i.e.* 2009-10 as follows:—

> "The stipulations for LIC for rural sector for the year 2009-10 was 25% and 20 lakh lives in the social sector for 2009-10. Similarly the public sector general insurance companies were required to do 7% of the gross premium in 2009-10 while they were obligated to increase their social sector component by 10% in the year 2009-10 as compared to the previous financial year 2008-09. For any short fall authority takes action against those insurers including penal action. All the companies except New India Assurance Company Limited have achieved their rural sector obligations during 2009-10. Further, all companies except New India Assurance Company Ltd. and HDFC Standard Life Insurance Company have fulfilled their social sector obligations during 2009-10."

65. Details of the Business introduced by the private Life insurers in rural/social sector for the financial year ending 31 March, 2010 are given below.

Life Insurance

Total New Business	**Rural area business**
Number of policies=5.31 crores	Number of policies=1.44 crores

From the above it can be seen that business done in the rural sector works out to 27.2% of the total business in terms of number of policies.

Social Sector – 2.18 crore lives

General Insurance

Total Gross Premium – 34,620.50 crores

Rural Sector – 4,479 crores Gross Premium

66. Further, the Ministry of Finance (Department of Financial Services) have also furnished the following data on performance of individual life and non life insurers during the last three years.

Life Insurers – Social Sector

No. of Lives covered in Social Sector

Insurer	2007-08		2008-09		2009-10	
	Target	Achieved	Target	Achieved	Target	Achieved
Bajaj Allianz	25000	1608948	35000	6145044	45000	4408502
ING Vysya	25000	109992	35000	40000	45000	50000
Reliance Life	25000	54394	35000	68295	45000	390275
SBI Life	25000	282723	35000	555440	45000	281856
TATA AIG	25000	30439	35000	80343	45000	70107
HDFC Standard	35000	51326	45000	46327	55000	50268
ICICI Prudential	35000	35491	45000	132625	55000	175564
Birla Sunlife	35000	87121	45000	90517	55000	253759
Aviva	25000	512488	25000	872244	35000	692907
Kotak Mahindra	25000	30476	35000	70922	45000	131166
Max NewYork	35000	82037	45000	58391	55000	58391
MetLife	25000	26367	35000	47661	45000	90912
Sahara Life	15000	16706	20000	23278	25000	26130
Shriram Life	10000	16440	15000	15343	20000	23073
Bharti Axa Life	7500	7550	10000	13500	15000	15034
Future Generali Life	0	0	5000	6848	7500	28195
IDBI Federal	0	0	5000	22602	7500	41442
Canara HSBC			2500	2586	7500	0
Aegon Religare			2500	2745	7500	7500
DLF Pramerica			2500	2602	7500	7500
Star Union Dai-ichi			n/a	101	5000	31319
IndiaFirst					0	n/a
Private Total	372500	2952498	512500	8297414	672500	6833900
LIC	2000000	11367126	2000000	11064454	2000000	14946927
Grand Total	2372500	14319624	2512500	19361868	2672500	21780827

Life Insurers — Rural Sector

% of Policies underwritten in Rural Sector

Insurer	2007-08		2008-09		2009-10	
	Target	Achieved	Target	Achieved	Target	Achieved
Bajaj Allianz	18.00	25.67	19.00	31.20	19.00	30.66
ING Vysya	18.00	19.80	19.00	20.67	19.00	20.58
Reliance Life	18.00	19.24	19.00	21.97	19.00	30.39
SBI Life	18.00	27.97	19.00	27.17	19.00	27.95
TATA AIG	18.00	34.39	19.00	38.14	19.00	31.84
HDFC Standard	19.00	22.93	19.00	12.85	20.00	25.84
ICICI Prudential	19.00	22.00	19.00	29.37	20.00	24.05
Birla Sunlife	19.00	22.00	19.00	30.99	20.00	39.78
Aviva	18.00	19.10	18.00	20.97	19.00	22.46
Kotak Mahindra OM	18.00	23.10	19.00	20.86	19.00	20.06
Max NewYork	19.00	21.64	19.00	25.00	20.00	25.00
MetLife	18.00	18.74	19.00	19.32	19.00	24.48
Sahara Life	14.00	40.41	16.00	31.18	18.00	35.83
Shriram Life	12.00	46.46	14.00	54.09	16.00	56.23
Bharti Axa Life	9.00	9.29	12.00	12.16	14.00	18.13
Future Generali Life	0.00	0.00	7.00	10.34	9.00	24.21
IDBI Federal	0.00	0.00	7.00	8.42	9.00	12.50
Canara HSBC			3.50	8.62	9.00	16.70
Aegon Religare	-	-	3.50	3.83262	9.00	9.31
DLF Pramerica	-	-	3.50	5.435565	9.00	39.51
Star Union Dai-ichi	-	-	n/a	n/a	7.00	24.66
IndiaFirst						n/a
LIC	24.00	24.04	25.00	24.27	25.00	26.39

Non-Life Insurers — Social Sector

No. of Lives covered in Social Sector

Insurer	2007-08		2008-09		2009-10	
	Target	Achieved	Target	Achieved	Target	Achieved
Royal Sundaram	25000	67763	35000	47134	45000	554757
Tata AIG	25000	40707	35000	37425	45000	108331
Reliance	25000	17570404	35000	39406819	45000	5636735
IFFCO Tokio	35000	832793	45000	1067552	55000	1462000
ICICI Lombard	25000	403843	35000	2165620	45000	93729
Bajaj Allianz	25000	38561	35000	40515	45000	73351
HDFC ERGO	25000	24863	25000	38622	35000	53098
Cholamandalam	25000	2800000	25000	4040000	35000	3532995
Future Generali	0	0	5000	8200	7500	811726
Universal Sompo	0	0	5000	262955	7500	767889
Shriram General			2500	16806	7500	7984
Bharti Axa			2500	0	7500	1400000
Raheja QBE					5000	575504
Private Total	210000	21778934	285000	47131648	380000	14502595
New India	13942899	9529969	15337189	32389489	16870908	9548803
National	1916563	1576352	2108219	2456156	2319041	2939110
United India	565694	2544987	622263	5059019	684489	11190930
Oriental	550000	13594382	605000	66665613	665500	71412698
Public Total	16975156	27245690	18672671	106570277	20539938	95091541
Grand Total	17185156	49024624	18957671	153701925	20919938	109594136
Health Insurers						0
Star Health	7500	25156828	10000	80597956	15000	44374975
Apollo Munich	0	0	5000	207	7500	36344

Non-Life Insurers — Rural Sector

% of Premium underwritten in Rural Sector

Insurer	2007-08		2008-09		2009-10	
	Target	Achieved	Target	Achieved	Target	Achieved
Royal Sundaram	5.00	12.52	6.00	7.94	7.00	8.72
TATA AIG	5.00	5.33	6.00	7.13	7.00	7.66
Reliance	5.00	6.01	6.00	7.29	7.00	9.26
IFFCO Tokio	6.00	5.36	7.00	7.52	7.00	11.71
ICICI Lombard	5.00	7.32	6.00	10.40	7.00	9.39
Bajaj Allianz	5.00	9.12	6.00	9.36	7.00	8.63
HDFC ERGO	5.00	5.60	5.00	6.02	6.00	10.70
Cholamandalam	5.00	5.04	5.00	6.60	6.00	8.49
Future Generali	0.00	0.00	2.00	3.37	3.00	7.52
Universal Sompo	0.00	0.00	2.00	12.60	3.00	6.98
Shriram General			1.00	1.45	3.00	4.57
Bharti Axa			1.00	0.64	3.00	8.16
Raheja QBE					2.00	5.67
New India	6.00	6.12	7.00	7.16	7.00	6.29
National	6.00	7.02	7.00	7.05	7.00	7.10
United India	6.00	11.96	7.00	12.47	7.00	14.55
Oriental	6.00	6.01	7.00	7.35	7.00	7.41
Health Insurers						0.00
Star Health	3.00	5.39	5.00	5.32	5.00	55.46
Apollo Munich			2.00	0.06	3.00	3.96

67. The gross premium secured in the rural sector by general insurance companies is 12.93% of the total premium. The general insurance sector has also secured 15.49 crore lives in the social sector.

68. Questioned on the performance of public sector general insurance companies in providing insurance coverage in rural areas, the Chairman, GIPSA, while tendering evidence before the Committee stated as follows:—

> "Sir, actually in terms of the rural business, the current position is that every company is given a mandate by the regulator to do

a certain percentage of business from the rural and social sectors, and this regulation applies to both public sector companies as well as private sector companies. So, this percentage keeps on increasing as the business of the company grows but still there is a long way to go as far as the reach into the rural sector of the country is concerned. But there was a question why we have not done much business in the villages.

The biggest problem that we face is the reach to the rural areas, and how in a cost effective manner we can do business. What we are doing is this. We are trying to use the rural institutions and the bank assurance partners to take the business to the rural areas.

We have also devised many micro insurance products to take to the rural areas. There are Schemes like the *Rashtriya Swasthaya Bima Yojna*, Universal Health Insurance. These Schemes take health insurance to the people below poverty line all over the country. If the contract is not fulfilled, then penalty is imposed by the regulator. Most of the companies fulfill their contracts. Still there are one or two companies which are paying penalties. In fact, in the Amendment Bill, penalty is substantially being increased also."

69. On the issue of outreach of insurance in rural and social sectors, the CII, in a post evidence reply furnished to the Committee has made following suggestions:—

"The rural sector obligations, according to IRDA regulations, in respect of a life insurer, are 7 per cent of the total policies written direct in the first financial year of commencement to 20 per cent in the tenth financial year. In case of General Insurer, 2 per cent of the total gross premium income written direct in the first financial year to 7 per cent from the ninth financial year onwards.

The social sector obligations, according to IRDA regulations, in respect of all insurers are 5,000 lives in the first financial years are to be covered and this progressively increases to 55,000 lives in the tenth year of operation."

From Obligation to Opportunity: Increasing Insurance Penetration in Rural and to Economically Weaker Sections

The Rural and Social sector offer tremendous opportunity for growth. We have witnessed excellent growth of companies who

have focused at the bottom of the economic pyramid. Insurance too as a product offers tremendous opportunity for growth and also secures the lives of those who are unsecured. This is a win-win situation for both customers of insurance as well as providers of insurance.

However, to realize this potential and move from obligation to opportunity, the following could be done:

- Integration between insurance companies and other financial intermediaries (banks, post offices, stock exchanges, etc.) could go a long way in helping insurance penetration. Lesser financial integration has resulted in lesser deepening of the system along with inefficiencies at the level of channelizing the financial savings of the population. Insurance companies could initiate these agents to cross sell additional products.
- Insurance industry is viewing the transformation of insurance agents from mere intermediaries to financial advisors. This can boost the efforts to foster financial inclusion as that would convince the customers about the benefits of investing on insurance. Besides, simplification of the insurance delivery procedures could attract more people to the industry. This would also help boost the penetration levels of rural insurance.

The following changes could be done to meet the needs of the economically weaker sections. Following changes/reforms may be considered in this regard:—

(a) Change of Product Design:

- Shift from Individual Life to Group Life.
- Shift from Regular Pay to Flexi Pay.
- Shift from single purpose plans to multipurpose plans.
- Shift from Life insurance to hybrid insurance covering Life, Health and General insurances. The acquiring insurer acting as Lead Insurer passing on the risks outside its domain to other insurers through a coinsurance arrangement.
- Shift from locked in insurance covers to flexible unlocked insurance covers.
- Shift from Fixed income oriented plans to balanced funds.

(b) Change of Sales Process:

- Shift from print based sales literature to audio/video based sales presentations.
- Shift from a single sales person doing solicitation, advice, documentation, premium collection to customer service to multiple specialized delivery channels doing these different tasks on mass scale to achieve benefits of specialization.
- Shift from field based dedicated insurance sales persons to embedding insurance sales and service as a part of additional activity of every small trader, service/utility person catering to various small needs of urban/rural poor.
- One time identification of customer through Aadhar/ Biometric identification for universal financial inclusion.

(c) Change of Servicing Process:

- Collection of premium through mobile phone network/ other utility service providers.
- Complete Policy Holders' data in a Central Record Keeping agency on the lines of NPS data maintained by CRA set up by PFDRA.
- All other service requests through a fulfillment oriented, CTI enabled regional language Universal Helpline.

(d) Change of Regulatory requirements:

Section 32B and 32C of the Insurance Act, 1938 prescribes obligation on insurers to provide insurance policies to persons residing in rural sector, workers in the unorganized or informal sector or for economically vulnerable or backward classes of the society and other categories of persons as may be specified by regulations made by IRDA. The insurance policies offered shall include insurance for crops.

IRDA has prescribed the Rural and Social Obligations by means of a regulation and further by notifications in the Official Gazette. IRDA has also prescribed Micro Insurance Regulations with a view to enhance insurance penetration in rural India.

However, the Indian landscape is such that insurers face various challenges from the geographical diversity and

reach alone. This makes the delivery mechanisms for micro insurance constitute the single largest focal point in building a sustainable model. Hence, the need for regulatory reform:—

No.	Regulation/ Guidelines	Current Regulation	Proposed Reform
1	2	3	4
I.	Group Guidelines issued by IRDA in July 2005.	Definition of Group: A group should consist of persons who assemble together with a commonality of purpose or engaging in a common economic activity like employees of a Company.	Group insurance policies for rural or urban poor should not be restricted by this definition. Farmers in a village or people like milk/ vegetable vendors living in an urban slum should be allowed to be termed as a group for providing group insurance cover though they may or may not assemble together on a common platform.
II.	IRDA (Micro-Insurance) Regulations 2005.	Minimum number of Members in a Group – 20.	The minimum number of members should be further reduced to cover even a family of 4 under a group cover.
III.	IRDA (Micro-Insurance) Regulations 2005.	Life Micro Insurance Product: Refers to term insurance contract with or without return of premium, any endowment insurance contract or health insurance contract with or without an accident rider, either on individual or group basis.	IRDA may permit a pre approved standard Micro Insurance product on the lines of NPS developed on Traditional, Universal Life or Unit Linked Insurance plans with or without capital guarantee with features of partial withdrawals and ad hoc top ups to match the critical cash flow situations of Micro Insurance customers.
IV.	IRDA (Micro-Insurance) Regulations 2005.	Limit on Minimum and Maximum Sum Assured.	Customer should be permitted to choose his Sum Assured as per his needs subject to premium limits or income eligibility.

1	2	3	4
V.	AML Guidelines.	Collection of KYC documents for establishment of identity and residential evidence.	Any individual holding Aadhar Card should be exempt from providing any further ID proof requirements. People not having UID number may be identified through bio-metric processes wherever documentary identity proof does not exist. Alternatively Insurance companies may be permitted as designated agencies to issue aadhar numbers to uncovered population.
VI.	Premium Collection proposed IRDA guidelines onoutsourcing.	The proposed IRDA guidelines on outsourcing do not envisage premium collection as an activity that can be outsourced to a specialized agencies.	Subject to adequate safeguards, outsourcing of premium collection should be permitted for any utility companies, retail vendors, shop keepers etc. to reduce the cost of collection. This is the most critical requirement for the success of Micro Insurance business in India.
VII.	Customer Service and Claim Payment.	IRDA regulations mandate this job cannot be outsourced.	Universal Helpline facility to be set up as private-public partnership and the Central Record Keeping Authority for Micro Insurance customer data management should be allowed as outsourcing agencies to render appropriate customer service and claim settlement.

(e) Measures essential for penetration of Health Insurance in rural areas:

- Changing the mass perception by increasing awareness for Health Insurance: The Government needs to bring the idea of 'Healthcare for All' at the centre of its political commitment. Also, the existing health insurance programs by the Government must reach the intended beneficiaries. Government should catalyze and guide the development of such social health insurance in India.
- Product Innovation.
- Increasing role of Government.

Micro Insurance

70. IRDA has notified Micro Insurance Regulations on 10th November 2005. The regulations were issued consequent to the recommendations made by a working group constituted by the Government. It was decided to use the services of entities that are already involved and working with the targeted groups in the country since it would enable them to leverage their reach as well as work within the cost structure involved in the model. Consequently, a micro insurance agent was defined in the regulations as an NGO/MFI/SHG which has a track record of having worked at least three years with marginalised groups. It was also stipulated that a life insurance company could tie up with a non-life company and *vice versa* to offer each other's products. An exemption was also made from the requirement of licensing and a micro insurance agent could be appointed by an insurance company through a deed of agreement. The insurer was required to impart training of at least twenty five hours to the micro insurance agent. The micro insurance agents were also empowered to collect and remit premiums, distribute policy documents, provide assistance in claims and policy servicing. IRDA also permitted payment of level commission of 20% of the premium in life insurance business throughout the term of the policy.

71. The new business secured under micro insurance for the last three years is furnished below:—

(Premium in lakhs Rs.)

	Individual		Group		
	Policies	Premium	Schemes	Lives	Premium
2007-08					
Private	83153	209.74	15	874901	871.23
LIC	854615	1613.36	7583	11367126	19256.23
Total	9377768	1823.10	7598	12242027	20127.46
2008-09					
Private	610851	537.81	14	1498994	3326.80
LIC	1541218	3118.74	6883	11052815	17268.54
Total	2152069	3656.55	6897	12551809	20595.34
2009-10					
Private	998809	839.80	17	1895143	1472.10
LIC	1985145	14982.50	5190	14946927	22869.70
Total	2983954	15822.30	5207	16842070	24341.80

72. Other than LIC, Eleven Private Insurers have secured micro insurance business in the life insurance sector (both group and individual business). 14 Life Insurance Companies including LIC have launched 28 micro insurance products as at 31st March 2010.

73. The number of micro Insurance policies of general insurers approved during the last 3 years is as under:—

1.	ITGI	Weather Insurance (Micro)	19-08-2008
2.	Cholamandalam	Group Health Insurance (Micro)	22-10-2008
3.	Bharti Axa	Micro Smart Health Insurance Policy	03-08-2009
4.	Oriental	Cycle Rickshaw Micro Insurance Policy	April,2010

74. The IRDA has also specified that micro insurance business would also be considered for rural and social sector obligations if it falls under the definition as prescribed under the Obligations of Insurers to Rural and Social Sector Regulations. The IRDA had also expanded the definition of micro insurance agents to include Non Profit Companies under sec. 25 of the Companies Act.

75. While the statistical data and other information of relevance furnished to the Committee reveals that the insurance companies, both in general and life insurance sector have been, by and large meeting the rural and social sector obligations stipulated by IRDA, the fact remains that a large section of the population continues to be deprived of insurance coverage as a means of social security. Thus, a lot remains to be done, mainly by the insurers for furthering insurance penetration and covering the economically weaker sections — a fact, which has also been accepted by the public sector insurers as well as the Chambers of Commerce and Industry (CII). While, as per GIPSA, reaching out to the rural masses is the biggest hindrance faced by the insurers, the CII has suggested undertaking specific measures for increasing insurance penetration in rural areas and covering the economically weaker sections. These require concerted action on the part of the Government in facilitating the policy framework, the IRDA for bringing in necessary regulatory reforms, and the insurers in designing suitable products and effectively facilitating the sales and servicing processes. The issues to be addressed in this regard would include measures for facilitating effective integration between the insurance companies and the other financial intermediaries such as banks, post offices etc., transforming the insurance agents to function not merely as intermediaries but as financial advisers, designing products whose focus would be on the 'group' rather than on individual 'life', involve flexible payment options, and are of

hybrid nature with aspects of life, health as well as general insurance. The Committee also note in this regard that the regulatory guidelines of IRDA need to be revisited and reformed to ensure the effective delivery and servicing of insurance policies in rural areas and to the socio-economically deprived sections. The Committee desire that the IRDA/Government seriously look into these aspects so that the objective of providing social security to the deprived through insurance is actually realized.

76. With regard to micro insurance too, the Committee note that shortcomings have been pointed out in the existing regulations issued by IRDA, which relate *inter alia* to, the sum assured under a policy the insurer is entitled to chose, KYC documentation, mechanism for collection of premium, as well as the commission entitled for by micro insurance agents, which, at 20% for the entire term of the policy as at present is not in tune with the commission entitlement of life insurance agents. The Committee desire that these regulations are reviewed and the commission entitlement of micro insurance agents rationalised so as to enable in facilitating the spread of insurance.

(D) Reinsurance Business

77. At present GIC Re is the only national reinsurer operating in India. GIC has also reinsurance business in international market. Its share of international business is 44 per cent. The performance of GIC in the last three years is shown in the following table:—

Details	2007-08	2008-09	2009-10
A. Gross Direct Premium (Indian)	27,823.74 crore	30,351.84 crore	34,620.42 crore
B. Reinsurance Premium ceded within India	29.58%	23.44%	24.63%
C. Reinsurance Premium ceded in India to GIC Re (of B)	69.6%	66.4%	58.5%

Compulsory Cession

78. GIC had earlier 20 per cent cession business but four years back it was reduced to 15 per cent and further three years back it was reduced to 10 per cent. This means today domestic companies have to pass on 10 per cent on each and every business to GIC.

79. Asked about GIC's strength to sustain reinsurance needs of India, the Chairman GIC stated during the course of oral evidence held on 1 December, 2010 stated as follows:—

> "Looking into the GIC position, we have gone in a very strong way both domestically as well as internationally. We have started this reinsurance business just in 2000 whereas the foreign reinsurance is as old as 60 to 100 years. We have geared up ourselves to meet any challenge internationally. Let me tell you, today we are the 16th largest company in the world so far as reinsurance business is concerned…In view of the strength of GIC, we understand the domestic market very well. Let me tell you that for the last three years Swiss Re and Munich Re are not participating in domestic market. They may be imparting a very meagre amount in some of the domestic markets in reinsurance programme. They have practically gone out for the last three years.
>
> Then about the reinsurance hub, GIC has practically become the reinsurance hub today. We are contributing 44 per cent with a lot of international branch offices. We have our branches in London, Dubai, Kuala Lumpur and Moscow. Practically, the GIC has become the reinsurance hub so far as this part of the world is concerned. We are covering SAARC countries, South-East Asia and the Middle-East Region."

80. A query was raised with regard to GIC's capability to provide reinsurance cover to nuclear facilities in India, to which Chairman, GIC responded as follows:—

> "We have taken an initiative in this case because this is a new area altogether and we have to provide civil liability of 1500 crore liability to the operator per location as per legislation. GIC Re has taken a lead to create a Nuclear Pool in India to provide a civil liability to operators. We are working on it and I hope that in this financial year we will be able to complete it. We are also in touch with Nuclear Power Corporation of India, who are the sole operator today, for working out the modalities of providing insurance protection."

81. The Chairman, GIC while deposing before the Committee raised the following issues relating to reinsurance sector which need to be addressed before opening the sector for branch office operations by foreign reinsurers:—

> "Today there is absolutely no bar on doing reinsurance business by any foreign reinsurance company in India. They can accept

reinsurance business without taking any licence, without opening any branch in India.

There is no regulation to control these transactions in India. There is no control from the regulator, and also no legislation to make them go by the regulations. When there is no control of any nature and in the absence of any regulation sometimes a situation arises in which they do not pay claims and you cannot go back to them for any recovery. This is a feature which sometimes creates problems. They take their own time to pay the necessary claims to the insurance companies and also it becomes difficult for insurance companies to pay claims to the insured in absence of recovery from them. When it comes to us, GIC Re being a re insurer we do transact international business in various countries. When we transact business in various countries we are subject to lot of crosschecks and regulation there. Those checks go to the extent that when we do business, we have to furnish LOC and also some times bank guarantees equivalent to the amount of the business that GIC Re has transacted. In certain other countries, they keep some percentage of the premium with them as security. In various other countries the regulation provides putting restriction on the business of the reinsurer by fixing premium limits like 10 per cent, or 20 per cent. So, this business depends upon local regulation in each country. I, therefore, would like to submit that there is definitely a need for regulation for any foreign company coming to India and doing reinsurance business. At this moment there is nothing that sort of. Anybody can come and go, whether they pay or not pay, whether they accept business this year and run away next year. So, we feel that there must be proper rules and regulations. We are not against anybody coming and doing business. Of course there is no bar even now in the reinsurance market. We suggest that if these amendments are made, necessary regulations must be put in place on these issues. Regarding opening branch offices, our suggestion is that money must remain in the country itself. The premium collected by these companies should not be taken out of the country and instead should be kept within the country. That money should be invested inside the country instead of it being taken out of the country and made a part of the local balance sheet. They should do business to the extent capital is available in the country itself. This would help at the time of having major claims. I now come to the very important point as far as reinsurance is concerned and that is the entry of Lloyds into the country. Lloyds as you know, is not a company as such. It is a society which transacts business through various syndicates each of which works in its own capacity. We are not against having Lloyds in India as such by setting up

a company. In countries like China, they opened as a company. Only those syndicates should be allowed to do business in India which have got a syndicates desk in India. It is not that the Lloyds is here and its about 121 syndicates working in London transact business from there. There should be specific underwriting desks in India itself so that they can justify their technical expertise to India as such, if any."

82. A question was posed to the Ministry that whether, allowing foreign reinsurers to operate through branches, implied bringing 100 per cent FDI in reinsurance. In this regard, the Ministry, in their written submission stated as under:—

"There is a fundamental difference between permitting a foreign insurer to operate through its branch office and permitting a 100% FDI in a reinsurance company in India. In the former case, reinsurance cover could be offered based on the strength of the balance sheet of the parent company. On the other hand, in a company constituted in India, even with 100% FDI, the strength of the balance sheet of the company in India would be considered when offering reinsurance. This is an important difference because in several sectors, the capacity of the Indian insurer (GIC) is insufficient to meet the reinsurance needs. For instance, a single refinery would pose a risk of more than Rs. 10,000 crore. Similar is the case of airlines, marine and other such capital intensive sectors.

Presently, under the Act a foreign company is required to operate only through joint venture with companies registered in India for carrying out reinsurance business in India and the Foreign holding in such companies by the foreign joint venture partner is limited to 26%. This is proposed to be enhanced to 49% in the Amendment Bill. The minimum capital required for such reinsurance companies to start their business is Rs. 200 crores.

Reinsurance business requires huge amount of capital to enable the company to provide meaningful reinsurance to direct companies. It is perhaps for this reason that while we have seen a large number of joint ventures in the life and non-life direct segment, we have not seen even a single joint venture being formed to provide reinsurance business. General Insurance Corporation, the Indian Reinsurer is the only reinsurance company in India at present. Even GIC with a net worth of Rs. 7738.34 crore as on 31.3.2009 was able to retain 91.83% of its business and has had to place business worth Rs. 658 crore premium outside India with other companies.

In case of branch office operations, there will be no requirement for a joint venture with an Indian company. The branch office can leverage the financial strength of its parent to provide reinsurance cover within the country. It may be useful here to compare the banking sector where a number of foreign banks are operating in the country through branches under the regulations of RBI. The same model is proposed to be replicated for insurance companies also. Since, currently the Act does not permit the entry of reinsurance business in the branch mode, it would require suitable amendments to the Insurance Act, 1938 to provide for regulations and supervision by IRDA. In case this is permitted in the new law, IRDA will issue detailed regulations under powers given to it under proposed section 2C of the Insurance Act. This would interalia include the following:—

- The proposed branch should have a prescribed assigned capital which is to remain invested in Government of India securities or such other investments as may be prescribed in the Regulations;
- The reinsurer to be registered in a national regulatory environment and not in an "offshore insurance market". This would ensure that the reinsurer would be adequately regulated by the Insurance Regulator of the reinsurer's home jurisdiction;
- The net shareholders' fund of the parent reinsurer not to be less than the prescribed amount at any time;
- The reinsurer to make a firm commitment to appoint in its branch office in India, sufficiently skilled staff to underwrite specialized classes of business from the branch office and the underwriting of business to take place at the Indian branch for Indian business;
- The reinsurer to make a commitment to organise training of Indian underwriters in underwriting specialized classes of business;
- The supervision of the Branch Office to still be with IRDA and with supervising powers in prescribing returns; and
- The IRDA to take a decision on the number of reinsurers that can be permitted to set-up branches in a year depending on the national interest/other related aspects.

These prudential guidelines are illustrative in nature and would be further refined by IRDA.

The advantages of allowing branches of reinsurance companies abroad to set up business in India would be as under:—

(a) The branch office will always have access to global capital of the parent reinsurer as the parent would continue to be legally responsible for the liabilities of its branch and reduce chance of default on valid claims.

(b) The cost of reinsurance will be lower for the industry because of the advantage of global diversification.

(c) The company will be required to pay taxes on the India related business it generates.

(d) It would enable the branch to function as a hub for Asian Reinsurance Business.

(e) Proposed section 27(E) prohibits an insurer to directly or indirectly invest outside India the funds of the policyholder. Thus, the amount received as premium by these branches would need to be invested in India as per the guidelines of IRDA and will serve the interests of the country.

(f) The above measure is likely to bring more competition, it will also bring efficiency in GIC. GIC has the financial strength and capacity to accept risks and compete effectively against the foreign reinsurers."

83. When the Committee desired to know why it was being proposed to allow foreign reinsurers to operate in India when GIC Re had a strong potential to meet the reinsurance needs of the country, the Ministry, in their post evidence submission, stated as under:—

"The capacity of the Indian reinsurer (GIC) is insufficient to meet the reinsurance needs. For instance, a single refinery would post a risk of more than Rs. 10,000 crores. Similar is the case of airlines, marine and other such capital intensive sectors."

84. Responding to another query posed to IRDA, on why India could not become a hub for reinsurance business, IRDA, in their post evidence submission stated as below:—

"It is correct that at the time of liberalization it was envisaged that India would become a hub of reinsurance. It is also a fact that despite one decade of liberalization the Indian insurance sector has not been able to attract even one reinsurance joint venture company.

Reinsurance business requires huge amount of capital to enable the company to provide meaningful reinsurance support to direct companies. The reinsurance support is by providing automatic capacity, offering protection against catastrophe events, imparting technical and underwriting skills and offering financial strength and support to the direct insurers. Therefore this kind of net-worth and other capacities required for the conduct of reinsurance business is available only with large foreign reinsurance companies. However the limited foreign equity participation was seen as a hurdle in establishing a reinsurance company. It is perhaps for this reason that while we have seen a large number of joint ventures in the life and non-life direct segment, we have not seen even a single joint venture being formed to provide reinsurance business. In case the Insurance Act is amended to allow for setting up of a branch office of foreign reinsurers, then the branch office can leverage the financial strength of its parent to provide reinsurance cover within the country.

The reinsurance business involves spreading of risks to the reinsurers situated in different jurisdictions. Currently the reinsurance premium for the risks is ceded abroad leaving little control by the Authority on such placements. By allowing foreign reinsurers to set-up branches, the IRDA will have a better control over the working of the reinsurers. The IRDA shall ensure that the premiums collected by the branches of foreign reinsurers are invested in India as well as make available to them the technical skills for assessing the risk."

85. Replying to a further query as to why Lloyd's is proposed to be allowed to enter Indian insurance market when GIC has been performing fairly well in developing reinsurance business, the Ministry in a post evidence reply, stated as under:—

"Lloyd's is a society of underwriters based in London (UK) whose members are authorized to issue protection notes, cover notes, or other documents granting insurance cover to others on behalf of underwriters. Lloyd's is one of the world's largest insurer/reinsurer but is unable to start its business in India because of the current provisions of the Insurance Act. In case Lloyd's is allowed to enter the Indian market, it will introduce an element of competition in the reinsurance sector which currently is dominated by the GIC, the national reinsurer. This will make GIC to offer variety of reinsurance solutions in a cost efficient manner as well offer choice to the direct insurers. This will be to the overall benefit of the reinsurance market. It is with this intention Lloyd's and branches

of foreign reinsurers are proposed in the Insurance Laws (Amendment) Bill."

86. Asked as to how, Lloyd's, not being a company, would operate in India, the Ministry, in their post evidence submission, stated as under:—

"Lloyd's are proposed to be treated as a 'Foreign Company' for starting operations in joint venture with Indian Companies. Lloyd's is the world's leading, specialist insurance market. Lloyd's underwriters are known throughout the world for devising tailored, innovative solutions to complex problems. A member or a group of members form a syndicate. A syndicate's underwriting and other activities are managed on behalf of its members by a managing agent. The Lloyd's market ratings have remained stable since the end of 2001, rated A, with a stable outlook, by rating agencies Standard's and Poor's, A.M. Best and Fitch. At the end of 2006, the net assets of Lloyd's Central Fund, which serves as security for Lloyd's policies, stood at 1454 million pound (plus subordinated loan notes of 501 mn. pound.) In 2007, there were 2128 members (1019 corporate + 1109 individual), 47 managing agents running 71 syndicates and 171 accredited brokers in the Lloyd's market.

It may also be mentioned here that even today the Indian insurance companies/reinsurance companies are placing some part of their business with members of Lloyd's. In such case the amount of reinsurance premium is remitted outside the country. If Lloyd's is permitted to carry on I/Ri the reinsurance premium would be retained within the country as per the Act/regulations of the IRDA to be framed in this regard."

87. Regarding the proposal to allow branches of foreign reinsurers to operate in India, CII in their written memorandum stated as under:—

"CII welcomes the move to allow a branch of a foreign reinsurance company as opposed to a subsidiary, to being allowed to operate as an insurer in India. However, the liabilities of the reinsurer should not be limited to locally held assets. If necessary, the international entity's balance sheet should be available to meet claims."

88. A written suggestion received from ICICI Lombard General Insurance Company Limited States as follows with regard to branch office operations of foreign reinsurers:—

"Indian insurers should be allowed to open up branches overseas on reciprocal basis to accept reinsurance from foreign insurance companies."

89. Further expressing reservation over the implication of the provisions with respect to reinsurance, an insurance company (ICICI Lombard General Insurance Company Limited) in a post-evidence submission have stated as follows:—

"The Insurance Amendment Bill, 2008 has introduced the definition of re-insurance, which was not existent in the Insurance Act, 1938. The newly introduced definition under section 2(16B) reads as under:—

're-insurance' means the insurance of all or part of one insurer's risk by another insurer who accepts the risk for a mutually acceptable premium;

The Insurance Amendment Bill, 2008 has further modified the definition of 'Insurer' under section 2(9) as under:—

'insurer' means—

(a) an Indian Insurance Company, or

(b) a statutory body established by an Act of Parliament to carry on insurance business, or

(c) an insurance co-operative society, or

(d) a foreign company engaged in re-insurance business through a branch established in India.

A conjoined reading of both the provisions gives an impression that an Insurer can only re-insure its risks with the entities stated at clauses (a) to (d) of section 2(9).

In comparison with the contemporary status of the Indian insurance companies re-insuring their risks with foreign re-insurers, the proposed expression allows the insurance companies to do re-insurance only with that foreign re-insurance company, which is engaged in re-insurance business through a branch established in India.

Further a qualification has been imposed on those foreign re-insurers, who wish to have a branch in India clause 12 of the Insurance Amendment Bill, 2008.

No insurer, as defined in sub-clause (d) of clause 9 of section 2, shall be registered unless he has net owned funds of not less than rupees five thousand crore.

In this context it is submitted that the insurers at present:—

(a) Other than ceding risk to the re-insurers, derive experience and expertise from re-insurers for evaluation of risks and sharing of contract wordings.

(b) Under section 101A of the Insurance Act, 1938, it is obligatory to cede a given portion of every risk written by insurers to GIC Re (*i.e.* 30 % maximum).

(c) beyond which the Insurers in India cede the risk to other Indian insurance companies and foreign re-insurers.

(d) Internationally, there are specialized re-insurers for specific kind of risks.

(e) There are many assets in India including National assets such as ONGC, Air India, IOCL, which requires specialized understanding of risk and very high 'sum insured'.

In view of the above and the proposed amendment, limiting the Indian insurance companies to re-insure their risks only with those foreign re-insurance companies, which—

(i) Is engaged in re-insurance business through a branch established in India, and

(ii) Has net owned funds of not less than rupees five thousand crore.

Might affect the Indian insurance industry on the following attributes:—

(a) Given the quantum and value of assets and diverse nature of industry in India, the need for global capacity is critical to provide cover to the customers.

(b) Opportunity to Indian insurers to have competitive cost of insurance without compromising on quality of security.

(c) The cost of insurance for Indian customers may increase in the absence of access to foreign re-insurers.

(d) In the business of insurance, as claims can create high volatility than any other business, it is prudent to distribute the risk across entities/countries.

In view of the above, it is submitted that the Committee may consider not limiting the scope/opportunity for Indian insurers to approach the global re-insurance market to spread the risk and derive competitive advantage on cost and coverage."

90. Another suggestion received from an expert on the proposed amendment to allow branches of foreign reinsurers to operate in India, states as follows:—

> Foreign insurance companies, who are also in reinsurance business like AIG, Allianz, Munich Re, Tokio Marine, QBE have formed joint ventures with Indian insurers such as TATA AIG, Bajaj Allianz, HDFC ERGO, IFFCO Tokio and Raheja QBE respectively. Allowing foreign reinsurers separately to set up branch offices in India will only ensure flight of policyholder's money out of the country. Therefore, at best, only those reinsurers should be allowed to set up branches which have no joint ventures with Indian insurers.

91. Asked to clarify on this, the Ministry, in one of their written replies, stated as follows:—

> "In case of branch office operations, there will be no requirement for a joint venture with an Indian company. The branch office can leverage the financial strength of its parent to provide reinsurance cover within the country. It may be useful here to compare the banking sector where a number of foreign banks are operating in the country through branches under the regulations of RBI. The same model is proposed to be replicated for insurance companies also. Since, currently the Act does not permit the entry of reinsurance business in the branch mode, it would require suitable amendments to the Insurance Act, 1938 to provide for regulations and supervision by IRDA. The branch office will always have access to global capital of the parent reinsurer as the parent would continue to be legally responsible for the liabilities of its branch and reduce chance of default on valid claims. The company will be required to pay taxes on the India related business it generates. Further, the proposed section 27(E) prohibits an insurer to directly or indirectly invest outside India the funds of the policyholder. Thus, the amount received as premium by these branches would need to be invested in India as per the guidelines of IRDA and will serve the interests of the country. In the year 2007-08 business worth Rs. 2000 crore was placed outside India by Indian insurers. Allowing the branch network would help in rather retaining this much business in India."

92. As seen from the deposition of the Chairman, GIC before the Committee, presently there is no bar on foreign re-insurance companies carrying on re-insurance business in the country without any licence or opening a branch nor is there any regulation to control the transactions of foreign re-insurers. This is contrary to the situation

faced by GIC in transacting international business, where the company is subjected to a number of cross checks and regulations.

93. The amendment proposals of the Bill seek to permit foreign re-insurers to enter the Indian re-insurance sector through branch offices, as also by way of forming joint ventures with Indian companies with FDI upto 49%. According to the Ministry, the 'capacity of the Indian reinsurer (GIC) is insufficient to meet the re-insurance needs' in the country, and the branch offices of foreign insurers, proposed to be allowed, are expected to leverage the financial strength of the parent company in providing re-insurance covers. According to the Chairman, GIC, however, the company is confident of its status and capacity in meeting the insurance needs. These contrarian views on the capacity of the Indian re-insurer apart, the Committee note that the critical issues relating to the amendment proposals that need to be addressed would pertain to the regulation of the operations of foreign re-insurers/ branches of re-insurers, which, as pointed out by the Chairman, GIC is an area with serious shortcomings at present. ***Though the Ministry has clarified that the proposals of section 27(E), which prohibits 'an insurer to directly or indirectly invest outside India, the funds of the policyholder' would apply to the branches of foreign re-insurers as well, the Committee still feel it to be necessary to make this aspect abundantly clear in the provisions of the Bill.*** **Apart from providing for investments of the funds of the policyholders within the country in clear terms in the statute, the regulatory reach *vis-à-vis* the operations of foreign re-insurers/branches of foreign re-insurers should also, as proposed and agreed to by the Ministry, cover *inter alia the aspects of prescribing an assigned capital to the branches of re-insurers that would remain invested in government securities or such other specified investments, registration within the national regulatory environment and not in an 'offshore insurance market', prescribing the minimum net shareholders fund of the parent re-insurer, committing the re-insurers to depute sufficiently skilled staff in the branch offices, and ensuring effective supervision of the branch offices by IRDA.***

94. On the specific issue of allowing entry of Lloyds of London, which operates through numerous syndicates, the Committee would take note of the point made by the Chairman, GIC that in China, Lloyds operates as a company; and that only such syndicates which have underwriting desks in the country should be allowed to carry on reinsurance business. ***The Committee, in this regard, desire that the procedural modalities followed in countries such as China for enabling Lloyds to undertake re-insurance business should be looked into and the regulatory framework firmed up so as to not leave any shortcomings or scope for ambiguity.***

(E) Dematerialization of insurance policies

95. The Committee have received many suggestions indicating the need for issuing electronic policies and dematerialization. In this regard, ICICI Lombard, in their memorandum submitted to the Committee stated as below:—

> "It is submitted that though the proposed bill recognizes maintenance of electronic record; nothing has been specified for online issuance of policies.
>
> It is suggested that issuance of the insurance policy in electronic form should also be recognized."

96. Further CII have also advocated the need for electronic insurance of policies, by stating as under:—

> "We may be moving to era of electronic policy issuance and dematerialization. This will reduce the cost of operations and is necessary to aid financial inclusion. Hence endorsement of electronic policy may be given as an enabling feature in the amendment."

97. While replying a query raised by the Committee on increasing insurance coverage in distant areas, a representative from the CII stated as under:—

> "There are two possibilities which are enabling changes if we can do that, that will help us. One is that the distribution channel currently whether it is a agency or through the bank insurance route. The foot print of that particular channel whatever it is, it is still limited and to increase the foot print, I mean that electronic channels essentially the telecom channels, if they are activated, there is nothing exactly preventing that but there is a procedural issue where wet signature needs to be taken from each customer is something which is preventing. If that is enabled, a continuous premium payment through the mobile phone technology is possible. That is one thing."

98. Further, an insurance company (Bharti Axa General Insurance Company Limited) in a post-evidence submission have stated as follows on the need for greater technological advances in the field of insurance:—

> "In view of the technological and telecom convergence and in order to provide efficient service to the customers, we submit that the

following change be brought in to promote web and telecom based marketing of insurance products through internet and mobile telephony. As there is a unique identity of each customer either *via* logging in through the computer ID or mobile phone number, the stipulated regulation of a physical proposal form signed by the customer needs to be dispensed with. Normal practices adopted in the banking industry can be copied by the insurance sector as well. As telemarketing has become the order of the day, and we need to reach out to the masses to increase the penetration of insurance business, we request the following:—

(a) Tele-calling can be made by outsourced agencies as well who are trained, rather than only the employees of the company doing the telemarketing activity.

(b) In case of telesales, the physical proposal forms need not be insisted upon, has the recorded conversation may serve as proof for the proposal to be contract.

(c) The norms in respect of distance marketing should be user friendly and also taking into account the protection of policy holder rather than cumbersome provisions.

(d) Acceptance of digital signatures needs to be made an acceptable way of accepting an insurance proposal.

As per the present provisions/regulations many of the activities of an insurance company cannot be outsourced. We would like to submit that considering the international practices across the globe and in order to bring in cost effectiveness, customer centricity, speedy transaction resolutions and specialization we feel many areas can be outsourced. The subsequent reduction in cost will result in lower premium being charged to the customer.

99. One of the written suggestions received from ICICI Lombard General Insurance, with regard to the provisions pertaining to mode of payment and refunds, as provided in section 64V(B) (3) states as follows:—

"It is submitted that the intent of the section is to ensure advance payment of the premium, however by specifying the nature of instruments which could be accepted by the insurance company, would unnecessarily restrict the implementation of technological advancement in the field of payment and settlement in the insurance sector. Hence it is suggested that provision specifying the mode of payment and refund should be removed."

100. Asked as to whether the Government agrees with the above suggestion, the following written reply was furnished:—

> "Sub-sections 2 and 3 of sections 64 VB have to be retained in the best interests of the policyholders' protection. However, the clause as it stands requires payments (including refunds) to be made in cash or by cheque or by Postal Orders. It is necessary to enable transfer of moneys by making use of technological advancement such as credit cards, ECS etc. To this extent, the suggestion is accepted and it is now suggested that the following amendments be considered.
>
> (1) In section 64 VB (2), the last 8 words starting with the word 'in cash…..ending with the word the insurer…..' be deleted.
>
> (2) In section 64 VB (3), in the 3rd sentence the words 'by a crossed…… Money Order' be deleted."

101. The Committee express agreement with the views expressed by the stakeholders, particularly from the private sector that electronic issuance of policies and maintenance of records would be a beneficial feature. Allowing issuance of insurance policies in a dematerialised form can prove to be effective in increasing the spread of insurance, besides lessening costs, procedural formalities and lapsation of policies. Dematerialisation of insurance policies may also go a long way in benefitting policyholders by ensuring speedy transactions, particularly in the field of health insurance where the claims need to be settled on urgent basis.

102. The suggestion for allowing all forms of electronic modes of payments (including refunds) having been accepted, the Committee expect that appropriate provisions to this effect are incorporated in the Bill. As effective usage of technological advancements can play a key role in faster spread of insurance and thereby help in achieving greater financial inclusion, the Committee would recommend bringing in appropriate amendments in the statute/regulations *inter alia* for allowing online issuance of insurance policies through digital signatures.

PART-II

CLAUSE BY CLAUSE EXAMINATION

1. Clause 3(iii): Definition of health insurance [Insertion of new sub-section 6(B) in section 2 of the Act]

1.1 Clause 3 seeks to amend section 2 of the Act to substitute, amend, insert the definitions of actuary, health insurance business, Indian insurance company, insurance co-operative society, insurer, regulation, re-insurance, Securities Appellate Tribunal and omit certain redundant clauses from definitions.

1.2 Clause 3(iii) of the Bill seeking to define 'health insurance' provides as follows:—

> "(iii) after clause (6B), the following clause shall be inserted, namely:—
>
> '(6C) "health insurance business" means the effecting of contracts which provide for sickness benefits or medical, surgical or hospital expense benefits, whether in-patient or out-patient on an indemnity, reimbursement, service, prepaid, hospital or other plans basis including assured benefits, long term care, overseas travel cover and personal accident cover;'."

1.3 On this Clause the following suggestions have been made:—

Confederation of Indian Industry (CII)

> "In the definition of health insurance business, travel should be included in Health only if it has health insurance element associated with it. With the introduction of definition of health insurance business as a separate class, the definition of miscellaneous insurance business in section 2(13B) should also be amended to specifically exclude health insurance business. General insurance companies provide insurance cover for both domestic as well as overseas travel. Hence, the word 'overseas' may be deleted to include domestic travels as well.

General Insurance Council

General insurance companies provide insurance cover for both domestic as well as overseas travel. Hence, the word 'overseas' may be deleted to include domestic travels as well."

1.4 Asked to furnish their comments on the above suggestions, the Ministry, in their written reply, submitted as below:—

"13(b) 'miscellaneous insurance business' means the business of effecting contracts of insurance which is not principally or wholly of any kind or kinds included in clauses (6A),(11) and (13A)."

A reading of the above sections will show that health insurance business is part of miscellaneous insurance business which is included in general insurance business. Therefore, insurer having a licence for general insurance business will be able to carry out health insurance business without the requirement of a separate license.

The health insurance policies/contracts provide sickness benefits which is available within the territory of India. The reference to overseas travel cover indicates that this cover can be extended to the period of overseas travel. However, to bring more clarity on this the necessary revision of the clause may be considered in consultation with Ministry of Law and Justice.

Further, Bharti Axa Life Insurance Company Limited, in their memorandum stated that: 'Health Insurance policies sold by life insurance may be included within the definition of life insurance business by including the following sub-clause in section 2(11) 'the granting of health insurance covers or riders'."

1.5 In this regard, the Ministry has submitted as follows:—

"Section 2(11) reads as under:

Life insurance business' means the business of effecting contracts of insurance upon human life...

This definition implies offering of health insurance cover. However, to make health insurance explicitly inclusive in the definition of life insurance, the suggestion can be accepted."

1.6 While the Committee agree with the proposal for separately defining 'health insurance business' with the incorporation of

sub-section 6(B) of Section 2 of the Act, as pointed out by the insurance companies and agreed to by the Ministry, ***the definition proposed needs to be revised to clearly stipulate that health insurance policies would cover sickness benefits on account of domestic as well as international travel.*** **The Ministry has also agreed to revise the definition of 'life insurance business' in the Act, with a view to clearly stipulate that life insurers too could offer health insurance cover.** ***The Committee desire that the modifications in the provisions, as agreed to, are carried out.***

2. Clause 3(iv): Definition of Indian insurance company (Substitution of sub-section 7A of section 2 of the Insurance Act)

2.1 The amendment proposal *vide* clause 3(iv) of the Bill, which seeks to change the definition of Indian insurance company, reads as under:—

'(7A) "Indian insurance company" means any insurer, being a company which is limited by shares, and,—

(a) which is formed and registered under the Companies Act, 1956 as a public company or is converted into such a company within one year of the commencement of Insurance Laws (Amendment) Act, 2008;

(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 forty-nine per cent. paid-up equity capital of such Indian insurance company;

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

Explanation— For the purposes of this clause, the expression "foreign company" shall mean a company or body established or incorporated under a law of any country outside India and includes Lloyd's established under the Lloyd's Act, 1871 (United Kingdom).'

2.2 Amendments to section (7A)(b), of the Act in terms of the proposals of clause 3(4) seek to increase the extent of Foreign Direct Investment (FDI) in insurance companies from 26 to 49 per cent. The Amendment proposals also seek to change the definition of 'foreign company' which is presently in consonance with section 2(23A) of the

Income Tax Act, 1961. The definition proposed includes a company or body established or incorporated under a law of any country outside India and Lloyd's of UK has also been included to be treated as a foreign company. The issue of allowing FDI upto 49 per cent has been discussed at length in the earlier Section of the Report (Part–I). On the proposed definition of 'foreign company' a suggestion received from a law firm, specifically on – the proposal to include Lloyd's as a foreign company states as under:—

> "The proposed definition of 'foreign company' does not include the members of Lloyd's, who actually transact the insurance and reinsurance business. Lloyd's does not itself carry on any business. Therefore the proposed definition does not address the unique structure of Lloyd's. Lloyd's was granted the status of a corporation under the Lloyd's Act, 1871 thereby allowing it to own property and to sue and be sued in its own name. Lloyd's by itself is not an insurer. It is merely a statutory corporation which provides a marketplace or platform for and supervises the carrying on of reinsurance business by its members. It has a legal personality separate from its members. The members who may be individuals, limited companies, Scottish Limited partnerships or UK limited liability partnerships are grouped into syndicates and transact insurance on their own account through the agency of the Lloyd's managing agent that manages the syndicate. Therefore, a specific reference may be made to the members of Lloyd's, as it is them who carry on the insurance/ reinsurance business."

2.3 Responding to the above suggestion, the Ministry, in their written submission, stated as under:—

> "Lloyd's which is registered as a society under the Lloyd's Act, 1871 has been included in the explanation to the definition of Indian insurance company which explains the expression "foreign company" for the purpose of defining an Indian insurance company. Further, only that insurer who is an Indian Insurance company as defined in the Insurance Act can carry out insurance business. Therefore Lloyd's which is registered as a society is treated on par with a "foreign company" eligible for participation in the Indian joint venture insurance company. Lloyd's is a Society of underwriters based in London (U.K.) whose members are authorized to issue protection notes, cover notes, or other documents granting insurance cover to others on behalf of underwriters. Lloyd's is one of the world's largest insurer/re-insurer but it is unable to start its business in India because the Insurance Act, 1938 does not permit any insurer

other than an "Indian insurance company" itself or in joint venture with 'foreign company" (as defined in Income Tax Act) to carry on any class of insurance business in India. It is, therefore, proposed to make an amendment in Section 2 (7A) of the Insurance Act to facilitate entry of Lloyd's in Indian insurance sector. Lloyd's would have to abide by other regulatory restrictions under the insurance enactments and IRDA regulations. Lloyd's would also be permitted to open branches for reinsurance business in India in case the proposal to permit foreign re-insurers opening branch offices in India is accepted.

Keeping in view the observation of the Hon'ble Standing Committee on Finance that the amendment as proposed may not allow Lloyd's to effectively transact business we may redraft the relevant provisions in consultation with the IRDA and Ministry of Law. The amendment may involve Sec. 2(7A) to include the words 'members of the Society of Lloyd's' in place of "Lloyd's". Further, Lloyd's ' would have to abide by the regulatory restrictions under the insurance enactments and the IRDA regulations as per Section 2C."

2.4 Elaborating further on the proposal to treat Lloyd's as a foreign company, as envisaged in the Bill, the Secretary, Department of Financial Services, while deposing before the Committee, stated as under:—

"Sir, Lloyd's is a market place. Incidentally it is one of the funny things in the world that it is not a corporation or a company, it is a market place. That market place operates for reinsurance purposes. So, the point that was taken at the time was that since it is not a company, Lloyd's will come in as a market place, in that kind of a structure as they operate in the UK."

2.5 As dealt with in elaboration in the earlier section of the Report (Part- I), the proposal to substitute Sub section 7A of Section 2 seeking to increase foreign direct investment further upto 49 per cent in insurance companies, seems to have been decided upon without any sound and objective analysis of the status of the insurance sector following liberalisation. Further, the possibility of effectively tapping the alternate route of the domestic market for meeting the capital requirements of the sector has not been seriously assessed. The Committee, in this regard, would once again emphasise on the Government to consider formulating appropriate rules/regulations/ guidelines for enabling the insurance companies to tap the domestic market for meeting the capital requirements and also retain the capital for the long term development of the country.

2.6 While the proposed definition of 'foreign company' in the context of the insurance sector, as distinct from the definition of the term in the Income tax Act would be appropriate, the Committee would also recall the views and reservations expressed on the proposal to include Lloyd's of London within the purview of the definition of the term by way of an explanation under Clause 3 (iii). As per the submission made to the Committee by the Chairman, GIC (Part-I Overview of the Report) Lloyds operates in China as a company and only such of the syndicates of Lloyds having Indian representation/ underwriting desks in India could be considered for operating in the Indian reinsurance sector. The fact that issues of concern have been expressed on the proposal by a public sector general insurer is indicative of shortcomings in the consultation process followed in formulating the policy proposals. ***The Committee, therefore, desire that the formulation of the 'Explanation' under the definition of foreign company is revisited and revised in the light of the views expressed by the chairman, GIC.***

3. Clause 3(v) — Minimum Paid-up Capital (Substitution of Sub Section (b) in Section 2 (8A)

3.1 Clause 3(v) of the Bill provides as under:—

"(v) in clause (8A),—

(I) for sub-clause (b), the following sub-clause shall be substituted, namely:—

"(b) having a minimum paid-up capital of rupees one hundred crores in case of life insurance or general insurance business and rupees fifty crores in case of health insurance business;";

(II) in sub-clause (d), after the words ''general insurance business'', the words ''or health insurance business'' shall be inserted;"

3.2 By way of explaining the rationale behind the proposal prescribing the minimum paid-up capital requirement of Rs. 50 crore for health insurance companies, the Ministry, in their written submission stated as under:—

"The capital requirements for a health insurance company has been proposed to be reduced from Rs. 100 crore to Rs. 50 crore in order to facilitate growth of the health insurance in the country with a view to reduce entry barrier to a sector which is a priority

sector in the insurance space. At present there are three stand alone health insurance companies namely:—

Health Insurer	Initial Paid-up capital	Paid-up Capital as on 31.3.2010	Net-worth as on 31.3.2010
Star Health and Allied Insurance Company Limited	Rs. 105 crore	Rs. 164.33 crore	Rs. 309.5 crore
Apollo Munich Health Insurance Company Limited	Rs. 110 crore	Rs. 129.3 crore	Rs. 89.54 crore
Max Bupa Health Insurance Company Limited	Rs. 151 crore	Rs. 151 crore	Rs. 151 crore

It may be noted that the proposed Rs. 50 crore paid-up capital requirements is the minimum requirement and the stand alone health insurance companies will continue to be governed by the existing solvency margin requirements of 150%. The companies are required to fund their operations by infusing fresh capital as per regulations and the interests of the policyholders are protected."

3.3 An insurance company (Cholamandalam MS General Insurance Company Ltd.) in their memorandum have submitted as follows on the provisions of this Clause:

"Minimum paid up Capital needs to be enhanced to Rs. 500 crore/ Rs. 300 crore for Life/General and Rs. 150 crore for Health Insurance to ensure that only serious players enter Insurance Sector."

3.4 Asked whether Rs. 50 crore capital would be adequate for health insurance companies, Bharti Axa General Insurance Company, ICICI Lombard General Insurance Company and GIPSA in their written submissions, have *inter alia,* stated as under:—

"Considering the infrastructure and the service parameters required to reach the rural masses, the minimum capital requirement for heath companies could be increased to 100 crore.

In view of the present market scenario and the conditions stated below, capital requirement for a standalone health insurance company lesser than a general insurance company may not be

effective. The success of the health insurance business would depend on the extent of awareness and credibility amongst the customer groups. This would entail substantially large startup investments in creating a wide spread distribution structure necessitating the need for high capital requirement. Further the investments into this category of insurance business would need to be sustained over a longer period of time to obtain the desired objectives. The infrastructure requirement for heath insurance business is bigger than any other general insurance business both for policy servicing and claim servicing. This fact associated with the retail character of the business may require a relatively bigger establishment. The contemporary market requirement may demand the health insurance companies to involve themselves in the mass health insurance policies promoted by various State Governments and the Central Government of India. Besides the statutory requirement of social, rural obligation of insurance companies may require them to focus on undertaking rural distribution in competition with other established general insurance companies. Such an environment may create pressure upon the health insurance companies for capital. In view of the above, the Health Insurance Companies may be required to infuse more capital consequent to their constitution to enable themselves to set up necessary business infrastructure to carry out the business."

3.5 As against the minimum capital requirement of Rs. 100 crore for life and non-life insurance companies, the Bill proposes to allow an insurance company to start exclusive health insurance business with a minimum paid up capital of Rs. 50 crore. While the Ministry has argued that providing a lower capital requirement for health insurance would enable in removing the entry barrier to this sector so as to increase penetration of health insurance, given the rapidly rising costs of medical treatment as also the reservations expressed by the private insurance companies on the adequacy of capital requirement proposed, the Committee do not find this to be wholly convincing. The Committee are of the view that for providing adequate health cover to the larger section of the population, an insurance company needs to be fully equipped with the modern infrastructure and other facilities, for which the stipulation of Rs. 50 crore capital may be inadequate. As also suggested by the private insurers, the Committee, would therefore, recommend that the Government keep the minimum capital amount for starting a health insurance company at Rs. 100 crore.

4. Clause 3(vi) — Definition of Insurer (Substitution of Sub-Section 9 of Section 2 of the Insurance Act)

4.1 Clause 3(vi) of the proposed Bill seeks to substitute the following for Sub-Section (9) of Section 2 of the Insurance Act:—

'(9) "insurer" means —

(a) an Indian Insurance Company, or

(b) a statutory body established by an Act of Parliament to carry on insurance business, or

(c) an insurance co-operative society, or

(d) a foreign company engaged in re-insurance business through a branch established in India;'

4.2 The K. P. Narasimhan Committee, in their report on the provisions of the Insurance Act, 1938 had recommended that Section 2 (8) of the Insurance Act which defines the term 'insurance company' may be omitted, as the same had become redundant. Another suggestion made by Max New York Life Insurance Co. Ltd. in their written memoranda on the proposed amendment states as below:—

"The amendment to section 2(9)—definition of "insurer"—necessitates consequent amendment to section 2(8) which continues to have reference to association or partnerships is suggested."

4.3 Asked to express their views on incorporation of the above mentioned suggestions, the Ministry, in their written submission have stated as below:—

"Yes. Section 2 (8) defining 'insurance company' may be proposed for deletion as it has become redundant."

4.4 With the modified definition of the term, 'insurer' proposed under Clause 3(vi) to mean *inter alia* 'an Indian Insurance Company, or a statutory body established by an Act of Parliament to carry on insurance business' etc., the existing definition of insurance company as contained in Section 2(8) of the Act would be redundant, as observed by the K.P. Narasimhan Committee. The Committee, therefore, expect that Section 2(8) of the Act defining the term is deleted as agreed to.

5. **Clauses 4, 5 and 6 relating to operation of insurers in Special Economic Zones (SEZs) – (i) Substitution of new section for Section 2C providing for prohibition of transaction of insurance business by certain persons; (ii) amendment of Section 2CA providing for power of Central Government to apply provisions of this Act to SEZs; and (iii) insertion of new Section 2CB in Section 2CA of the Act providing for prohibition of insurance of properties in India with foreign insurers except with the permission of Authority.**

5.1 Clauses 4, 5 and 6 seek to provide as under:—

"Clause 4.—This clause seeks to substitute section 2C of the Act so as to prohibit insurance business without registration but provide relaxation to special economic zone and regulate re-insurance through its branch office by a foreign insurer.

Clause 5.—This clause seeks to amend section 2CA of the Act to exempt from application of the provisions of the Act to the foreign insurers also in special economic zone.

Clause 6.—This clause seeks to insert a new section 2CB in the Act to prohibit insurance of the properties in India, ship, vessel, aircraft registered in India from foreign insurer except the properties situated in special economic zones. It also proposes a penalty of five crore of rupees for contravention of this provision."

5.2 Clauses 4, 5 and 6 of the Bill read as follows:—

4. "For section 2C of the Insurance Act, the following section shall be substituted, namely:—

2C. Save as otherwise provided under this Act, no insurer shall begin to carry on any class of insurance business in India unless it is registered under this Act:

Provided that an insurer, being an Indian insurance company, insurance cooperative society or a body corporate incorporated under the law of any country outside India not being of the nature of a private company carrying on the business of insurance, may carry on any business of insurance in any special economic zone as defined in clause (za) of section 2 of the Special Economic Zones Act, 2005:

Provided further that a foreign insurer registered under law of any country may be notified by the Authority to carry on the business of re-insurance in India through its branch office as per the terms and conditions specified by the regulation.

5. In section 2CA of the Insurance Act,—

(i) in clause (a), for the words, brackets, letters and figures "a body corporate referred to in clause (c) of sub-section (1) of section 2C", the words "a body corporate incorporated under the law of any country outside India not being a private company" shall be substituted;

(ii) in clause (b), for the words, brackets, letters and figures "a body corporate referred to in clause (c) of sub-section (1) of section 2C", the words "a body corporate incorporated under the law of any country outside India not being of the nature of a private company" shall be substituted.

6. 2CB. (1) No person shall take out or renew any policy of insurance in respect of any property in India, except a property situated in any Special Economic Zone as defined in clause (za) of section 2 of the Special Economic Zones Act, 2005, or any ship or other vessel or aircraft registered in India with an insurer whose principal place of business is outside India save with the prior permission of the Authority.

(2) If any person contravenes the provision of sub-section (1), he shall be punishable with penalty which may extend to five crore rupees."

5.3 Asked to clarify the implications of the provisions of Clause 4 whereby body corporates incorporated under the law of any country outside India will be allowed to carry on the business of insurance/ re-insurance without registration from the competent authority, and the justification for the proposal, the Ministry, in their written submission, stated as under:—

"Amendments proposed to Section 2C of the Act must be read along-with the amendments proposed to Section 2CA of the Act. Section 2C prohibits the conduct of any class of insurance business in India by any entity not registered under Section 3 of the Insurance Act. The intention of the provisos of the proposed amendment is to permit unregistered foreign entities to conduct insurance business in SEZ only and to permit reinsurance business in India to be conducted by branches of foreign reinsurers subject to terms and conditions as per the regulations to be framed by the IRDA.

It is further submitted that section 2CA as amended empowers the Central Government to either not apply or apply any of the provisions of the Act to any entities including foreign entities. In view of this power reserved to Central Government, it may not be necessary to make a proviso in regard to opposing application of section 2C to foreign entities to operate in SEZ."

5.4 Questioned also as to why allowing unregistered entities to conduct business in SEZs was considered to be beneficial, the Ministry, in a written reply, stated as under:—

"The amendment to Section 2C of the Insurance Act pertaining to SEZ has its genesis in the Special Economic Zones Act, 2005 which allows special dispensation to the insurance business carried out in these areas. It grants exemption to risks located in Special Economic Zones to compulsorily buy insurance from Indian insurance companies.

The nature of relaxations for carrying out insurance business in SEZs could relate to various statutory and regulatory requirements. This could be (1) non-observance of the 26% FDI cap applicable to Indian insurance companies, (2) no obligatory cessions, (3) no compliance of rural and social sector obligations, (4) allowing companies to invest outside the country, and (5) no mandatory infrastructure investment in Government and infrastructure areas."

5.5 Asked further whether the policy measures would not result in a dual regulatory mechanism, the Ministry, furnished the following written reply:

"Clauses 4, 5 and 6 are as per the Government of India's SEZ policy."

5.6 Queried on the rationale behind the policy decision to allow foreign companies to operate in SEZs while foreign banks were not given or proposed a similar dispensation the Ministry, in their written submission, stated as below:—

"Section 2C prohibits the conduct of any class of insurance business in India by any entity not registered under Section 3 of the Insurance Act. The intention of the provisos of the proposed amendment is to permit unregistered foreign entities to conduct insurance business in SEZ only and to permit reinsurance business in India to be conducted by branches of foreign reinsurers subject to terms and conditions as per the regulations to be framed by the IRDA. Thus the final decision on the matter rests with the Central Government. Moreover, the amendment to Section 2C of the Insurance Act

pertaining to SEZ has its genesis in the Special Economic Zones Act, 2005 which allows special dispensation to the insurance business carried out in these areas. The nature of relaxations for carrying out insurance business in SEZs could relate to various statutory and regulatory requirements. This could be (1) non-observance of the 26% FDI cap applicable to Indian insurance companies, (2) no obligatory cessions, (3) no compliance of rural and social sector obligations (4) allowing companies to invest outside the country and (5) no mandatory infrastructure investment in Government and infrastructure areas.

It is further submitted that section 2CA as amended empowers the Central Government to either not apply or apply any of the provisions of the Act to any entities including foreign entities."

5.7 Queried on the policy proposal, particularly the concerns expressed on dual control of insurance companies in SEZs and non SEZ areas by the Central Government and IRDA, the Chairman, IRDA, while tendering evidence before the Committee on 1 December, 2010, stated as follows:

"With regard to the point raised about the activities of insurance companies in SEZs and the regulatory ambit which such companies may be forced under, I may submit that this has not been a proposal of the IRDA as such. This is a proposal which emanated perhaps from the concerns of the Ministry of Commerce. From our point of view, as a regulator I do feel uncomfortable of having insurance companies operating in India under different sets of regulations. That is certainly a point of discomfort and it might be a needless arbitrage which is being permitted. However, this is only an enabling provision to enable that in the event if the Government so wish they may acting as sovereign decide to exempt the operations of certain or all provisions of the Insurance Act. But in my humble view, it would not be a good practice to have two different regulatory regimes in India though there are countries, for example notably Singapore where they have one regulatory architecture for companies operation and selling insurance within the country of Singapore and they have a different regulatory architecture for companies which no doubt are based in Singapore but which give insurance cover for activities outside the country of Singapore… Though in my personal opinion it is an awkward position for a country of the size of India to be in and there is in my view an element of risk in such an arrangement."

5.8 In this regard, arguing for parity in regulation of foreign insurers and Indian insurers as in the case of foreign banks, a representative of ICICI General Insurance Company Limited, while deposing before the Committee, stated as under:

> "This Bill provides for the insurance companies to come into SEZs. The way it is drafted, it says body corporate incorporated under the law of any country outside India not being in the nature of a private company carrying on the business of insurance can carry out any insurance business in any SEZ of India. Our submission is that actually it is all right for companies to come into SEZ, but they should comply with the same standards of regulation which the Indian companies have to comply in terms of distribution of products and the capital requirement, and only with those countries which have reciprocal arrangements with India which is typically in banking. We allow banks of other countries to come in which countries which allow us to go into those markets. So, similar conditions could be brought into this clause also."

5.9 A few other suggestions received on this clause, State as under:—

> "Cholamandalam MS General Insurance Companies Ltd. in their written submission have stated that SEZ's exemption can be deleted as most of the countries prohibit insuring of risks located within their own countries with Foreign Insurers, even if the risk is located in SEZ.
>
> Further, the Insurance Brokers Association of India, In their written memorandum, have stated that section 2(CB), proposed to be inserted in the Act, tries to make exception in the case of special economic zone where various insurers have been permitted to extend covers. This provision would go against the principle that no insurance company can carry on business in India without recognition from the IRDA. This will also run counter to the new provision being sought to be introduced in the Insurance Act which is available under GIBNA now proposed to be eliminated from that Act and to be introduced under the Insurance Act stating that no Indian property would be offered for insurance to a non-Indian insurer. There should not be any discrimination between insurance companies in offering their products in normal and special economic zones. An incidental issue would be where a foreign insurer fails to carry out his obligations in terms of a policy, whose jurisdiction will be invoked by the client to take care of his interest."

5.10 A point made in this regard by an individual expert, reads as follows:—

> "As per amended Section 2C, any foreign insurer, without registering itself with the IRDA, can carry on insurance business in Special Economic Zones. The implication of this concession will be evident if seen along with sections 63 and 64. Section 63 deals with information to be filed by foreign insurers planning to procure insurance business in India and section 64 prescribes the annual returns to be filed by them. These two sections are now proposed to be deleted. Since the provision that, only an Indian Insurance Company can carry on insurance business in India, has been dropped while amending Section 2C, any foreign insurer can freely operate in Special Economic Zones without even filing its name and address with the IRDA and need not also file any periodic returns. So, when a concession in respect of Special Economic Zones is being given, sections 63 and 64 should not have been omitted."

5.11 Responding to this suggestion, the Ministry furnished following written reply:—

> "We may agree with the suggestion and make necessary changes in the clauses in consultation with Ministry of Law and Justice."

5.12 Clause 5 of the Bill seeks to empower Central Government to apply provisions of the Insurance Act to Special Economic Zones. The provisions of existing Section 2CA of the Insurance Act are as follows:—

> "The Central Government may, by notification, direct that any of the provisions of this Act,—
>
> (a) Shall not apply to insurer, being an Indian Insurance Company, insurance co-operative society or a body corporate referred to in clause (c) of sub-section (1) of section 2C, carrying on the business of insurance, in any Special Economic Zone as defined in clause (za) of section 2 of the Special Economic Zones Act, 2005; or
>
> (b) Shall apply to any insurer being an Indian Insurance Company, insurance co-operative society or a body corporate referred to in clause (c) of sub-section (1) of section 2C, carrying on the business of insurance, in any Special Economic Zone as defined in clause (za) of section 2 of the Special Economic Zones Act, 2005 only with such exceptions, modifications and adaptations as may be specified in the notification."

5.13 On the amendment proposals of clause 5, the following suggestion has been made by CII:—

> "As provisions of this Act is not applicable to foreign insurers, Indian Companies to have equal opportunity at par with the foreign companies in respect of SEZ in India."

5.14 The Chairman, GIPSA put forth his views on regulation of companies in SEZs while tendering oral evidence on 1 December, 2010, which is as follows:—

> "There was a question on Special Economic Zone in the country, and the Members wanted to know as to why the foreign companies would be allowed to do business without subject to the Indian regulations. I think, we would also support the view that the companies operating in the Special Economic Zone should also be governed by the Indian regulations. There should be a level playing field for the Indian companies…My point of view was that foreign companies should not be allowed. Only companies, which are subject to the Indian regulations, should be allowed to do business there."

5.15 Clause 6 seeks to insert section 2CB in place of section 25 of the General Insurance Business (Nationalisation) Act, 1972 which is being omitted *vide* Clause 108 of the Bill. The provisions of section 25 read as under:—

> "25. (1) No person shall take out or renew any policy of insurance in respect of any property in India or any ship or other vessel or aircraft registered in India with an insurer whose principal place of business is outside India save with the prior permission of the Central Government.
>
> (2) If any person contravenes any provision of sub-section (1), he shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both."

5.16 Asked to furnish the reasons for giving special treatment to the properties situated in SEZs which are allowed to be insured with foreign insurers without the permission of Authority, the Ministry, in their written reply, submitted as under:—

> "Amendments proposed to section 2C of the Act must be read along-with the amendments proposed to section 2CA of the Act. section 2C prohibits the conduct of any class of insurance business

in India by any entity not registered under section 3 of the Insurance Act. The intention of the provisos of the proposed amendment is to permit unregistered foreign entities to conduct insurance business in SEZ only and to permit reinsurance business in India to be conducted by branches of foreign reinsurers subject to terms and conditions as per the regulations to be framed by the IRDA.

It is further submitted that section 2CA as amended empowers the Central Government to either not apply or apply any of the provisions of the Act to any entities including foreign entities. In view of this power reserved to Central Government, it may not be necessary to make a proviso in regard to opposing application of section 2C to foreign entities to operate in SEZ.

Further, we may add a new section 2CB which would incorporate the provisions of GIBNA Act which specify that taking or renewal of any policy of insurance outside India in respect of any property situated in India would only be with the prior permission of IRDA with enhanced penalties for non-compliance. Amendment may be carried out in consultation with the Ministry of Law."

5.17 The provisions of clause 4 of the Bill enable foreign insurers to operate in India in SEZs without being subjected to regulatory control of IRDA, clause 5 bestows discretion on the Central Government to make any of the specified provisions of the Insurance Act applicable to insurers operating in SEZs, and clause 6 of the Bill provides an exemption to SEZ properties from the application of the existing section 25 of the General Insurance Business (Nationalisation) Act, 1972, which prohibits insurance of properties with foreign insurers. Additionally, clause 72 of the Bill proposes to delete section 63 and 64 of the Act, which require foreign insurers to file information and annual returns with IRDA. Thus, with the amendments proposed under clauses 4, 5, and 6 combined with the omissions proposed under clause 72, foreign insurers would possibly exercise unfettered freedom in operating in SEZs. The Committee note in this regard that the SEZ policy enunciated with respect to insurance sector is different from that of the banking sector, as currently, foreign banks, which operate in India under the supervision of RBI are not allowed any special dispensation in SEZs.

5.18 The Committee note in this regard that the Insurance regulator, IRDA as well as GIPSA have expressed serious reservations on the policy stance enunciated inter-alia **on the ground that**

foreign insurers would be at an advantage over their domestic counterparts in the matter of regulations. Also, the stakeholders from the private sector too have expressed reservations and concerns over the amendment proposals under the clause.

5.19 The Committee are, therefore, of the view that the intention of the Government to permit unregistered foreign entities to operate in SEZs would not serve the purpose of developing a well regulated insurance market in India and place domestic capital at the risk of being taken out of the country. Further, allowing free access to foreign insurers in SEZs would be discriminatory for Indian insurers.

6. Clause 8 – Amendment of section 3 of the Insurance Act (Registration of insurers)

6.1 Clause 8 seeks to amend Section 3 of the Insurance Act to regulate the manner of making application for registration of insurers by regulations and provides for appeal to Securities Appellate Tribunal (SAT) against the refusal of registration by the Authority and suspension or cancellation of registration in certain cases.

6.2 Clause 8 reads as under:—

In section 3 of the Insurance Act,—

(i) for sub-section (2), the following sub-section shall be substituted, namely:—

"(2) Every application for registration shall be made in such manner and shall be accompanied by such documents as may be specified by regulations.";

(ii) in sub-section (2A), in clause (d), the figures "32" shall be omitted;

(iii) for sub-section (2C), the following sub-section shall be substituted, namely:—

"(2C) Any person aggrieved by the decision of the Authority refusing registration may, within thirty days from the date on which a copy of the decision is received by him, appeal to the Securities Appellate Tribunal.";

(iv) sub-section (2D) shall be omitted;

(v) for sub-sections (3), (4), (5) and (5A), the following sub-sections shall be substituted, namely:—

"(3) In the case of any insurer having joint venture with a person having its principal place of business domiciled outside India, the Authority shall withhold registration or cancel registration already made if it is satisfied that in the country in which such person has been debarred by law or practice of that country to carry on insurance business.

(4) The Authority may suspend or 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,—

(a) if the insurer fails, at any time, to comply with the provisions of section 64VA as to the excess of the value of his assets over the amount of his liabilities, or

(b) if the insurer is in liquidation or is adjudged as an insolvent, or

(c) if the business or a class of the business of the insurer has been transferred to any person or has been transferred to or amalgamated with the business of any other insurer, or

(d) if the insurer makes default in complying with, or acts in contravention of, any requirement of this Act or of any rule or any regulation or order made or, any direction issued there under, or

(e) if the Authority has reason to believe that any claim upon the insurer arising in India under any policy of insurance remains unpaid for three months after final judgment in regular court of law, or

(f) if the insurer carries on any business other than insurance business or any prescribed business, or

(g) if the insurer makes a default in complying with any direction issued or order made, as the case may be, by the Authority under the Insurance Regulatory and Development Authority Act, 1999, or

(h) if the insurer makes a default in complying with, or acts in contravention of, any requirement of the Companies Act, 1956 or the General Insurance Business (Nationalisation) Act, 1972 or the Foreign Exchange Management Act, 1999 or the Prevention of Money Laundering Act, 2002, or

(i) if the insurer fails to pay the annual fee required under section 3A, or

(j) if the insurer is convicted for an offence under any law for the time being in force, or

(k) if the insurer being a co-operative society set up under then relevant State laws or, as the case may be, the Multi-State Co-operative Societies Act, 2002, contravenes the provisions of law as may be applicable to the insurer.

(5) When the Authority suspends or cancels any registration under clause (a), clause (d), clause (e) or clause (f) of sub-section (4), it shall give notice in writing to the insurer of its decision, and the decision shall take effect on such date as it may specify in that behalf in the notice, such date not being less than one month nor more than two months from the date of the receipt of the notice in the ordinary course of transmission.

(5A) When the Authority suspends or cancels any registration under clauses (b), (c), (i), clause (j) or (k) of sub-section (4), the suspension or cancellation, as the case may be, shall take effect on the date on which notice of the order of suspension or cancellation is served on the insurer.".

(vi) for sub-section (5C), the following sub-section shall be substituted, namely:—

"(5C) Where a registration is suspended or cancelled under clause (a), clause (d), clause (e), clause (f) or clause (g) of sub-section (4), the Authority may at its discretion revive the registration, if the insurer within six months from the date on which the suspension or cancellation took effect 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 had an application under sub-section (4) of section 3A

accepted, or satisfies the Authority that no claim upon him such as is referred to in clause (e) of sub-section (4) remains unpaid or that he has complied with any requirement of this Act or the Insurance Regulatory and Development Authority Act, 1999, or of any rule or any regulation, or any order made thereunder or any direction issued under those Acts, 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 the Authority."

6.2 In a written memorandum submitted to the Committee, the General Insurance Council made the following suggestion on the amendments proposed *vide* clause 8 (v) (3) of the Bill:—

> "Our concern is section 3 (3). The proposed amendment can cause unnecessary hardship to the policyholders and penalize a good Indian company due to an overseas event. It is suggested that the words "shall withhold registration or cancel registration" should be replaced by "may withhold registration or cancel registration"."

6.3 Responding to the above suggestion, the Ministry stated following in one of their written replies stated as follows:—

> "The above suggestion to change the word "shall" to "may" can be accepted. It is suggested that section 3(4)(c) of the Bill be modified to add the words "unless approved by the Authority" after the words "of any other insurer". It is also suggested that reference to clause (i) in sub-section 5A of section 3 of the Bill be shifted to sub-section 5 of section 3 of the Bill in order to give appropriate notice to the insurer before suspending or cancelling his license. Accordingly section 5C will also include reference to '(i)'. Further it is suggested that sub-section (3) of section 3 of the Bill may be extended to cover branch offices of foreign re-insurers. Necessary amendments in the relevant clauses will be carried out in consultation with the Ministry of Law."

6.4 Further, an insurance company (Bharti Axa Life Insurance Company Ltd.) in their written memorandum have suggested substitution of the following for the existing section 3 (5C) of the Insurance Act:—

> "Since the existing section 3A(4) provides for renewal of registration after the due date upon payment of such fees, it is suggested that revival of cancellation of registration on account of non-payment of fees be also included for the purposes of revival."

6.5 When asked to furnish their comments on the above suggestion, the Ministry in their written reply stated as follows:—

> "It is proposed to amend section 3(5C) to provide for revival of registration in case of cancellation for non payment of fees."

6.6 The Committee note that the new section 3 which relates to registration, suspension or cancellation of registration of insurers inter-alia **provides for cancellation of the license of an insurance company in the event of a foreign partner of a joint venture being debarred from carrying on insurance business in the parent country, non-payment of fees etc. The insurance companies have proposed modifying the provisions to be of an enabling nature for the Authority (IRDA) to decide by taking into consideration the factors involved in entirety. This has been agreed to by the Ministry. The Committee, accordingly, desire that the provisions proposed are suitably modified to address the concerns expressed.**

7. Clause 12: Requirement as to capital (Substitution of new Section for section 6 of the Insurance Act)

7.1 Clause 12 seeks to substitute section 6 of the Act to provide for capital of rupees fifty crore for exclusive health insurance business and minimum net owned funds of rupees five thousand crore for a foreign re-insurer opening a branch in India.

7.2 Clause 12 of the Bill providing for requirement of capital for insurers, reads as under:—

> "For section 6 of the Insurance Act, the following section shall be substituted, namely:—
>
> 6. (1) No insurer not being an insurer as defined in sub-clause (d) of clause (9) of section 2, carrying on the business of life insurance, general insurance, health insurance or re-insurance in India or after the commencement of the Insurance Regulatory and Development Authority Act, 1999, shall be registered unless he has,—
>
> (i) a paid-up equity capital of rupees one hundred crore, in case of a person carrying on the business of life insurance or general insurance; or
>
> (ii) a paid-up equity capital of rupees fifty crore, in case of a person carrying on exclusively the business of health insurance; or

(iii) a paid-up equity capital of rupees two hundred crore, in case of a person carrying on exclusively the business as a re-insurer.

(2) No insurer, as defined in sub-clause (d) of clause (9) of section 2, shall be registered unless he has net owned funds of not less than rupees five thousand crore."

7.3 On the issue of minimum capital to be kept by the insurance companies, the K. P. Narasimhan Committee had recommended that the first and second provisos to the existing section 6 may be amended to read as under:—

"Provided that in determining the paid-up equity capital specified under clause (i) or clause (ii), any preliminary expenses incurred in the formation and registration of the insurer shall be excluded.

Provided further that an insurer carrying on business of health insurance or agriculture insurance exclusively shall be required to maintain such minimum paid-up equity capital as may be prescribed by the Central Government."

7.4 Asked to furnish the reasons for not incorporating either of the above suggestions in the Bill, the Ministry, in their written reply, submitted following:

"This suggestion can be accepted. With regard to the second proviso suggested by the KPN Committee, it is submitted that the capital requirements have been specified in section 6 (1) of the Bill. However, the suggestion may be accepted to provide flexibility to the Central Government to raise capital by notification."

7.5 Questioned on the rationale of the minimum capital requirements for companies engaged in life, general and health insurance as proposed in the Bill, the Ministry submitted the following written reply:

"As per section 6 no insurer can carry on the business of life insurance, general insurance or reinsurance in India unless he has a paid up equity capital of rupees one hundred crore in case of life insurance or general insurance business and rupees 200 crore for the reinsurance business. This is the minimum requirement at the time of registration with the IRDA for starting the Insurance business. However, it has been observed that even though the minimum capital stipulated is Rs. 100 crore/200 crore, in actual practice most of the companies have raised more than the stipulated capital.

The companies are required to increase the capital in proportion to the business growth and to meet the solvency stipulations.

Section 3(2)(a) of the Insurance Act requires that an application of registration needs to be accompanied by amongst other things financial soundness, general character and background of the promoters/management, likelihood of future business, only to ensure and maintain the quality of applicants who seek to enter the insurance sector. Further, IRDA (Registration of Companies) Regulations, 2000 ensure that only serious players with sound financial track record enter the insurance sector. Even if the insurers are registered they are subject to the 'fit and proper' and solvency requirements.

However, regarding raising the minimum capital required it may be mentioned that in other Acts of Parliament such as Export-Import Bank of India Act, 1981, Industrial Development Bank of India Act, 1964, Industrial Finance Corporation Act, 1958 and NABARD Act, 1981, it has been provided for the initial authorized/paid up capital with further provision for enhancing by notification to be issued by the Central Government.

In view of this it is suggested that the Committee may consider recommending raising the cap by Central Government by notification rather than by making amendments in the substantive act. This flexibility would ensure that in times to come if the Government in consultation with the IRDA thinks that the capital requirement is too low to ensure protection of policyholder's interest the requirement may be raised."

7.6 Further, in response to a suggestion made on the need to review the requirement of minimum paid-up capital every 5 years, the Ministry, in one of their written replies, stated as below:—

"The minimum paid-up capital requirement is not only for the purpose of providing adequate financial strength to the venture but also a criterion to eliminate non-serious players. With inflation the value of the rupee goes down and the threshold needs to be revised after a certain period of time. A review after 5 years can certainly be considered. At the time of review after a certain period the issue of indexing the capital requirement with the prevailing exchange rate may be considered. However, this would be possible if the minimum capital requirement is not covered in the Act and powers are given to the Government to notify the enhanced limits from time to time."

7.7 Asked further, whether it would not be prudent to empower the Central Government to raise the paid-up equity capital only after due consideration by Parliament, the Ministry, in their written submission, stated as below:—

> "Regarding raising the minimum capital required further, based on the development of the insurance sector, a suggestion was made to raise the cap by Central Government by notification rather then by making amendments in the substantive Act. This flexibility would ensure that in times to come if the Government in consultation with the IRDA thinks that the capital requirement is too low to ensure protection of policyholder's interest the requirement may be raised. There is no budgetary implication and hence no need for appropriation by Parliament."

7.8 A minimum capital of Rs. 50 crore of health insurance, Rs. 100 crore for life or general insurance and Rs. 200 crore for reinsurance business with the caveat that foreign reinsurers having net worth of Rs. 5000 crore only would be allowed to set up branches in India has been proposed in terms of the amendment proposals of clause 12. The Ministry, having agreed with the observations of the KPN Committee for excluding any preliminary expenses that may be incurred in the formation and registration of insurers in meeting the stipulated capital requirement, the Committee expect that appropriate modifications to this effect are carried out in the amendment proposals under the clause.

7.9 With regard to the minimum capital proposed for health insurers, the Committee reiterate the observation made in the earlier section of the report for reconsidering and hiking the prescribed amount so as to give sufficient cushioning to the insurance companies in providing benefits to the policyholders at large.

7.10 Although the Ministry have made out a case for entrusting the Central Government with the authority to change the minimum capital required for different insurance businesses by notifying such change as and when needed, *inter alia* on the ground that the issue does not involve budgetary implications, the Committee do not find this to be tenable. Stipulating the capital requirements of insurance businesses is a policy measure which may have implications on the share holding pattern of the insurer in terms of domestic promoters capital *vis-à-vis* foreign promoters capital, public sector character of Government owned companies etc., which need to be necessarily considered by the Parliament. The Committee, therefore, recommend that any change in the stipulation of capital structure of the insurance

companies may be made only by moving an amendment to this effect in the principal Act.

8. Clause 13: Capital structure, voting rights, maintenance of record of shareholders etc. (Amendment of sub-section 3 of section 6A of the Insurance Act)

8.1 This clause seeking to amend Section 6A of the Act to regulate the capital structure, voting rights, maintenance of records of the shareholders, etc., of life, general, health insurance and reinsurance companies and to omit certain redundant provisions, reads as under:—

"In section 6A of the Insurance Act,—

(i) for sub-section (1), the following sub-section shall be substituted, namely:—

(1) No public company limited by shares having its registered office in India, shall carry on life insurance business or general insurance business or health insurance business or re-insurance business, unless it satisfies the following conditions, namely:—

(i) that the capital of the company shall consist of equity shares each having a single face value and such other form of capital, as may be specified by regulations;

(ii) that the voting rights of shareholders are restricted to equity shares;

(iii) that, except during any period not exceeding one year allowed by the company for payment of calls on shares, the paid-up amount is the same for all shares, whether existing or new:

Provided that the conditions specified in this sub-section shall not apply to a public company which has, before the commencement of the Insurance (Amendment) Act, 1950, issued any shares other than ordinary shares each of which has a single face value or any shares the paid-up amount whereof is not the same for all of them for a period of three years from such commencement.";

(ii) in sub-section (2), after the words "paid up amount of the", the word "equity"shall be inserted;

(iii) for sub-section (4), the following sub-section shall be substituted, namely:—

(4) A public company as aforesaid which carries on life insurance business, general and health insurance business and reinsurance business—

(a) shall, in addition to the register of members maintained under the Companies Act, 1956, maintain a register of shares in which the name, occupation and address of the beneficial owner of each share shall be entered including any change of beneficial owner declared to it within fourteen days from the receipt of such declaration;

(b) shall not register any transfer of its shares—

(i) unless, in addition to compliance being made with the provisions of section 108 of the Companies Act, 1956, 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;

(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 unless the previous approval of the Authority has been obtained for the transfer;

(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 the paid-up equity capital of the insurer, unless the previous approval of the Authority has been obtained for the transfer.

Explanation.—For the purposes of this sub-clause, the expressions "group" and "same management" shall have the meanings respectively assigned to them in the Competition Act, 2002.".

(iv) sub-sections (6), (7), (8), (9) and (10) shall be omitted;

(v) in sub-section (11), the words, brackets and figures "except those of sub-sections (7), (8) and (9)" shall be omitted;

(vi) in sub-section (11), clause (ii) shall be omitted; and

(vii) in the Explanation, in sub-clause (c) of clause (ii), the words "managing agent" shall be omitted."

8.2 Expressing reservation over the fact that the existing sub-section (3) of section 6A of the Insurance Act was not proposed to be deleted with the Amendments proposed to section 6A, Bharti Axa Life Insurance Company Ltd., in their written submission, have stated as under:—

> "Sub-section (3) States that "No public company as aforesaid which carries on life insurance business shall, after the commencement of the Insurance (Amendment) Act, 1950 (47 of 1950), issue any shares other than ordinary shares of the nature specified in sub-section (1). Section 6A(1) is proposed to be amended to allow other forms of capital. Subsection (3) is therefore in conflict with 6A (1) and therefore needs to be deleted."

8.3 While furnishing the response on the above suggestion, the Ministry, in a written reply stated as follows:—

> "The regulatory environment of the financial sector increasingly feels the need for enabling forms of capital other than equity capital in the interest of maintaining and sustaining solvency requirement particularly in volatile times. For instance in the banking sector, Tier-II capital is also recognized as "capital" subject to certain conditions. It would be necessary to create an enabling provision to introduce such forms of capital in the insurance sector particularly in an environment where capital is increasingly scarce. For this reason we may agree as suggested for deletion of sub-section 3 so as not to contradict the proposed amendment to sec 6A(1). The relevant clauses will be redrafted in consultation with the Ministry of Law."

8.4 The Committee observe that though the proposed sub-section 1 (i) of section 6A seeks to enable the insurers to raise 'such other form of capital as may be specified' apart from equity capital, the existing sub-section (3) of the section in terms of which no insurance company can issue shares other than equity shares, has not been

proposed to be deleted. Enabling the insurance companies to raise other forms of capital apart from equity akin to banks would be beneficial to the companies in meeting the business and solvency margin requirements. The Committee, therefore, expect that sub-section 3 of section 6A, which is in contradiction with the amendment proposals of the Clause and is redundant is deleted.

9. Clause 14: Manner of divesting excess shareholding by promoter in certain cases (Omission of section 6AA of the Insurance Act)

9.1 Clause 14 seeks to omit section 6AA of the Act relating to manner of divesting of the excess shareholding by promoters in certain cases.

9.2 Section 6AA of the Insurance Act provides following:—

"6AA. Manner of divesting excess shareholding by promoter in certain cases.— (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 equity 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 re-insurance in which the promoters hold more than twenty-six per cent of the paid-up equity 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 equity capital or such excess paid-up equity capital as may be prescribed, after a period of ten years from the date of the 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, 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 the regulations made by the Authority."

9.3 Clause 14 provides for its omission as follows:—

"Section 6AA of the Insurance Act shall be omitted."

9.4 By way of giving the rationale for the proposed deletion, the Ministry, in their written reply, explained as below:

> "Section 6AA stipulates that the Indian promoters will have to bring down the promoters equity to 26 per cent within 10 years after the commencement of the venture (or such time as may be prescribed by Government of India). But now since it is proposed to raise FDI to 49 per cent the existing provisions may go against the Indian promoters, therefore, it is proposed to delete the existing provision (Section 6AA) of the Insurance Act on manner of divesting excess shareholding by Indian promoter."

9.5 While tendering evidence before the Committee, a representative of an insurance company (Bajaj Allianz Life Insurance Company Limited), emphasised the need for retaining this section, by stating as follows:—

> "The second point relates to section 6AA, which is essentially divestment of shareholding. In the present Insurance Bill it is proposed that this section which talks about compulsory divestment after ten years should actually be deleted. Here, I have suggested that this provision of compulsory dilution after ten years should actually stay as it is and in fact the Act should specify what should be the time frame after ten years in which the dilution should happen. The reason for this is that, I feel, the shareholding of the insurance companies should be widespread, especially among the retail shareholders and since the profitability of the industry is not very good as of now, the time frame for dilution should actually be three years of increase of FDI or fifteen years from inception, whichever is earlier and this is subject to at least three continuous years of profitability of the company. So, the objective is that when we do dilution of the profitable company, this will not lead to crowding in of the lot of IPOs together and retail investors will only participate in the IPOs of the profitable companies."

9.6 The Committee note that the proposal to omit section 6AA of the Insurance Act, which stipulates that the Indian promoters shareholding in an insurance company will have to brought down to 26% within 10 years of the commencement of the venture or such time as may be prescribed emanates from the proposal to hike the FDI limit to 49%. The emphasis made by the Committee has been on tapping alternate means for meeting the capital requirements of the Insurance sector rather than seeking to hike the FDI limit. Also, as pointed out by a private insurer, retaining the existing provisions of section 6AA would enable the shareholding of an insurance company becoming more wide spread. The Committee would, therefore, suggest that the

provisions of section 6AA be retained so as to enable diversification of ownership of insurance companies and also be in the interest of retail shareholders. The Committee would further recommend that such divestment of shares would be done at any time even before it is necessary after 10 years.

10. Clause 15: Provision for securing compliance with requirements relating to capital structure (Amendment of section 6B of the Insurance Act)

10.1 Clause 15 seeks to amend section 6B of the Act to include general, health insurance business and re-insurance for compliance with the stipulations of capital structure and empower the Authority to regulate the same.

10.2 Section 6B of the Insurance Act, 1938 containing provisions for securing compliance with the requirements relating to capital structure reads as under:—

"(1) For the purpose of enabling any public company carrying on life insurance business to bring its capital structure into conformity with the requirements of section 6A, an officer appointed in this behalf by the Central Government may, notwithstanding anything contained in the Indian Companies Act, 1913 (7 of 1913),—

(a) examine any scheme proposed for the purpose aforesaid by the directors of the company:

Provided that—

(i) the scheme has been placed before a meeting of the shareholders for their opinion and has been forwarded to the officer together with the opinion of the shareholders thereon, and

(ii) the scheme does not involve any diminution of the liability of the shareholders in respect of unpaid up share capital;

(b) invite objections and suggestions in respect of the scheme so proposed; and

(c) after considering such objections and suggestions to the scheme so proposed, sanction it with such modifications as he may consider necessary or desirable.

(2) Any shareholder or other person aggrieved by the decision of the officer sanctioning a scheme under sub-section (1) may, within ninety days of the date of the order sanctioning the scheme, prefer an appeal to the High Court within whose jurisdiction the registered office of the insurer is situate for the purpose of modifying or correcting any such scheme for the purpose specified in sub-section (1).

(3) The decision of the High Court where an appeal has been preferred to it under sub-section (2), or of the officer aforesaid where no such appeal has been preferred, shall be final and binding on all the shareholders and other persons concerned.

(4) The provisions of this section shall, on and from the commencement of the Insurance (Amendment) Act, 1968, also apply to insurers carrying on general insurance business."

10.3 Clause 15 of the Bill reads as under:—

"In Section 6B of the Insurance Act,—

(i) in sub-section (1),—

(a) for the words "life insurance business", the words "life or general or health insurance or re-insurance business" shall be substituted; and

(b) for the words "Central Government", the word "Authority" shall be substituted;

(ii) sub-section (4) shall be omitted."

10.4 In their report, the K. P. Narasimhan Committee had *inter alia* recommended for deletion of section 6B of the Insurance Act. However, the Ministry while proposing to retain the said section has stated as under in their written submission:—

"6B is an important provision which would enable suitable schemes to be evolved to bring capital structures in conformity with the provisions of the Act in certain circumstances where the capital structure has deviated from stipulations and this would be particularly prudent to retain in the context of volatility in markets, introduction of new forms of capital, increase in catastrophic risks brought about by climate change, etc. For these reasons, Government had accepted the recommendation of the LIC to retain clause 6B.

Further, since the Securities Appellate Tribunal is going to be the appellate authority against the orders of the IRDA we may consider

appointing SAT as the appellate as against the High Court to prefer an appeal if the shareholder or a person is aggrieved by the decision of the Authority regarding compliance with the capital requirements. Accordingly, in case the Standing Committee makes a recommendation to this effect, sections 6B(2) and (3) will be amended to provide an appeal to SAT instead of High Court."

10.5 The Committee note that the K. P. Narsimhan Committee had recommended omitting the existing section 6B, which stipulates the provisions for securing compliance on the part of insurance companies with the requirements of capital structure etc. and leave the issue to be dealt with under the regulations. In view of the importance of the provisions, however, the Ministry has sought to retain the section in the Act. As the Securities Appellate Tribunal (SAT) is to function as the appellate body under the Insurance Act, the Ministry has also proposed that appeals on the decisions under the provisions of section 6B may lie with the SAT instead of the High Court. The Committee express agreement with the proposals of the Ministry and accordingly recommend that section 6B be retained in the Act and appropriate modifications made for preferring appeals relating to the provisions to the SAT.

11. Clause 17: Separation of Accounts and funds (Amendment of section 10 of the Insurance Act)

11.1 Clause 17 seeks to amend section 10 of the Act to empower the Authority to regulate the separation of accounts and funds of insurers.

11.2 Clause 17 reads as under:—

"In section 10 of the Insurance Act,—

(i) in sub-section (1), for the words "prescribed in this behalf", the words "specified by the regulations" shall be substituted;

(ii) after sub-section (2A), the following sub-section shall be inserted, namely:—

"(2AA) Where the insurer carries on the business of general insurance, all receipts due in respect of each sub-clause of such insurance business shall be carried to and shall form a separate fund, the assets of which shall be kept separate and distinct from other assets of the insurer and every insurer shall submit to the Authority the necessary details of such funds as may be required by the Authority from time to time and such funds shall not be applied directly or indirectly

save as expressly permitted under this Act or regulations made thereunder.".

11.3 The suggestion received from a private sector insurer on the amendment proposed to Section 10 regarding separation of accounts and funds reads as follows:—

"…..the existing provisions are quite adequate since

(a) Separation of accounts is already in practice.

(b) Separating of funds is not required.

(c) As prevalent in banking/NBFC industries, mandatory transfer of a portion of profits to statutory reserves can be prescribed which can be utilised in case of liquidation to benefit the leftover liabilities to policy holders.

Therefore insertion of Clause 2AA to Section 10 is not relevant to General Insurance Business and hence needs to be deleted."

11.4 When asked whether the Ministry agrees with the view expressed, the Ministry furnished the following reply:

"Sec. 10 (2AA) of the Bill is relevant as this section gives power to the Authority to keep assets of each sub-class separate and distinct. Further this section gives power to frame regulations to determine the manner in which these funds shall be applied. For this if Committee recommends the word "general" be deleted so that this section becomes applicable to life, general, health and reinsurance."

11.5 The existing Section 10(2) of the Insurance Act provides as follows:—

"Where the insurer carries on the business of life insurance all receipts due in respect of such business, shall be carried to and shall form a separate fund to be called the life insurance fund the assets of which shall, after the expiry of six months from the commencement of the Insurance (Amendment) Act, 1946, be kept distinct and separate from all other assets of the insurer and the deposit made by the insurer in respect of life insurance business shall be deemed to be part of the assets of such fund; and every insurer shall, within the time limited in sub-section (1) of Section 15 in regard to the furnishing of the statements and accounts referred to in Section 11, furnish to the Controller a statement showing in detail such assets as at the close of

every calendar year duly certified by an auditor or by a person qualified to audit under the law of the insurer's country.

Provided that such statement shall, in the case of an insurer to whom Section 11 applies, be set out as a part of the balance-sheet mentioned in Clause (a) of sub-section (1) of that section.

Provided further that an insurer may show in such statement all the assets held in his life department, but at the same time showing any deductions on account of general reserves and other liabilities of that department.

Provided also that the Authority may call for a statement similarly certified or such assets as at any other date specified by him to be furnished within a period of three months from the date with reference to which the statement is called for."

11.6 The Law Commission of India, in their 190th Report, had suggested the following amendments in Section 10(2) of the Act:—

"In Section 10(2) the words "after the expiry of six months from the commencement of Insurance (Amendment) Act, 1946" and the words "under the law of the insurer's country" should be deleted as being redundant."

11.7 Queried as to why the Government has not accepted the above recommendation of the Law Commission, the Ministry, in their written reply submitted as follows:—

"The suggestion may be accepted and necessary amendments will be carried out in consultation with the Ministry of Law."

11.8 The Committee note that while the intention of formulating the new sub-section 2AA of Section 10 of the Insurance Act is to mandate the insurers to maintain class-wise statements of accounts and funds, the wording of the section leaves the impression that the section applies only to general insurance companies. The Committee express agreement with the subsequent proposal made by the Ministry for deleting the word, 'general' from the section so as to make it clear that the provision would apply to other classes of insurance business as well i.e. life, health and re-insurance business. Although, the Law Commission has recommended deleting certain provisions of section 10(2) relating to the 'life insurance fund' as being redundant, the same have not been proposed in the Bill. As agreed to, the Committee expect

that the provisions, pointed out as being redundant by the Law Commission are omitted from the Act.

12. Clause 20: Actuarial report and abstract—Amendment of Section 13 of the Insurance Act

12.1 This clause seeks to amend Section 13 of the Insurance Act to omit the provisions relating to actuarial investigation and empower the Authority to regulate the insurance business through actuaries by deleting the sub-section 3 of Section 13 which requires the Principal Officer of the insurer that full and accurate particulars of every policy under which there is a liability either actual or contingent, are furnished to the actuary for the purpose of investigation.

12.2 A private insurance company (Shriram Life Insurance Company Ltd.) in their memorandum submitted to the Committee have expressed reservation over the proposed deletion of sub-section 3 of Section 13, as the section offers the desired comfort level to the Actuary carrying out the valuation. The Company has, therefore, proposed that this sub-section should not be omitted.

12.3 Questioned on the necessity expressed for retaining the Sub Section, the Ministry, in a written reply, informed as follows:—

> "The omission of sub-section 3 is based on the recommendation of the LCI which had proposed such omission as such a provision was mandated in the regulations. However, the issue was taken up with the IRDA who is of the view that sub-section 3 is a weighty section and is necessary to mandate the principal officer of the company to give full and complete data to the appointed actuary. The suggestion, therefore, may be accepted. Accordingly, the amendments will be carried out in the relevant clauses in consultation with the Ministry of Law."

12.4 While the amendment proposal under Clause 20 seeks to omit sub-section 3 of Section 13 of the Act, which mandates the insurers to file particulars of policies with the actuaries for the purpose of investigation for coverage under IRDA's regulations, following a re-thinking on the matter at the behest of the Committee, the Ministry has purposed to retain the section in the Act. As the aspect about the obligation of the Principal Officer of an insurance company to furnish full and accurate information to the actuaries is needed to be appropriately stipulated in the Act, the Committee expect that the sub-section is retained and the amendment proposal of the Clause modified accordingly.

13. Clause 21: Record of Policies and claims (Amendment of Section 14 of the Insurance Act)

13.1 This Clause, which seeks to substitute Section 14 of the Act to provide for maintenance of records of policies and claims electronically also reads as under:—

> "Every insurer, in respect of all business transacted by him, shall maintain–
>
> (a) a record of policies, in which shall be entered, in respect of every policy issued by the insurer, the name and address of the policy-holder, the date when the policy was effected and a record of any transfer, assignment or nomination of which the insurer has notice, and
>
> (b) a record of claims, every claim made together with the date of the claim, the name and address of the claimant and the date on which the claim was discharged, or, in the case of a claim which is rejected, the date of rejection and the grounds thereof."

13.2 The amendments proposed do not explicitly provide for maintenance of record of policies and claims electronically also, as recommended by the Law Commission. Questioned in this regard, the Ministry, in reply, stated as below:—

> "The Law Commission had recommended that the register of insurance claims and policies should also be maintained in electronic form and that the word 'register' be substituted with the word 'record' since the term encompass both register and records in the electronic form. However, maintenance of records only in the electronic form could leave scope for manipulation of record. It is proposed that the section be amended with the marginal noting as "Record of insurance claims and policies" which would clearly indicate that the insurance companies are not necessarily mandated to keep the records of the agents in electronic form only but that they are able to maintain the register of claims and policies in electronic form also. The notes on clauses will also be amended in the light of the above suggestion."

13.3 The Committee express agreement with the view point expressed by the Ministry that enabling the companies to maintain the records of claims and policies only in electronic form could leave scope for manipulation. The Committee, therefore, desire that the amendments proposed to section 14 under clause 21 are suitably modified to specify

that the companies are not mandated to maintain the records in electronic form only.

14. Clause 28: Investment of assets (Amendment of Sections 27, 27A, 27B, 27C and 27D of the Act)

14.1 Clause 28 seeks to substitute sections 27, 27A, 27B, 27C and 27D of the Act to provide for broad guidelines for investment by insurers and prohibit investment of funds outside India. The objective is to make the investment provisions more effective.

14.2 Clause 28, providing for investment of assets, *inter alia* reads as under:—

"For sections 27, 27A, 27B, 27C and 27D of the Insurance Act, the following sections shall be substituted, namely:—

"27. (1) Every insurer shall invest and at all times keep invested assets equivalent to not less than the sum of—

(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 as may be specified in the regulations subject to the limitations, conditions and restrictions specified therein.

(2) In the case of an insurer carrying on general insurance business, twenty per cent. of the assets in Government Securities, a further sum equal to not less than ten per cent.

of the assets in Government Securities or other approved securities and the balance in any other investment in accordance with the regulations of the Authority and subject to such limitations, conditions and restrictions as may be specified by the Authority in this regard.

Explanation— In this section, the term "assets" means all the assets of insurer at their carrying value but does not include any assets specifically held against any fund or portion thereof in respect of which the Authority is satisfied that such fund or portion thereof, as the case may be, is regulated by the law of any country outside India or miscellaneous expenditure or in respect of which the Authority is satisfied that it would not be in the interest of the insurer to apply the provisions of this section.

(3) For the purposes of sub-sections (1) and (2), any specified assets shall, subject to such conditions, if any, as may be specified, be deemed to be assets invested or kept invested in approved investments specified by regulations.

(4) In computing the assets referred to in sub-sections (1) and (2) —

(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 Authority 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 sections (1) and (2) and where any direction has been issued under this proviso copies thereof shall be laid before each house of Parliament as soon as may be after it is issued…

27A. (1) No insurer carrying on life insurance business shall invest or keep invested any part of his controlled fund and no insurer carrying on general business shall invest or keep invested any part of his assets otherwise than in any of the approved investments as may be specified by the regulations subject to such limitations, conditions and restrictions therein.

(2) Notwithstanding anything contained in sub-section (1) or (2) of section 27, an insurer may, subject to the provisions contained in the next succeeding sub-sections, invest or keep invested any part of his controlled fund or assets 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 or fifteen per cent. of the assets referred to in sub-section (2) as the case may be;

(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 lndia, and all such investments, including investments in which any director is interested, are reported without delay to the Authority 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 or assets as referred to in sub-section (2) of section 27,—

(a) invest in the shares of any one banking company, or

(b) invest in the shares or debentures of any one company, more than the percentage specified by the regulations.

(4) An insurer shall not out of his controlled fund or assets as referred to in sub-section (2) of section 27 invest or keep invested in the shares or debentures of any private limited company.

(5) All assets forming the controlled fund or assets as referred to in sub-section (2) , of section 27, not being Government securities or other approved securities in which assets are to be invested or held invested in accordance with this section, shall (except for a part thereof not exceeding one-tenth of the

controlled fund or assets as referred to in sub-section (2) thereof 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.

(6) If at any time the Authority considers any one or more of the investments of an insurer to be unsuitable or undesirable, the Authority 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 Authority.

(7) 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 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 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

(b) 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 Authority 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 Authority is satisfied that it would not be in the interest of the insurer to apply the provisions of this section…

27E. No insurer shall directly or indirectly invest outside India the funds of the policy-holders."

14.3 On the definition of the term, 'controlled fund' (provided in the Explanation), the recommendations of the K.P. Narasimhan Committee read as follows:—

"Controlled investible funds" means all the funds belonging to the policyholders in the case of an insurer carrying on life insurance business, or attributable to policies in the case of an insurer carrying on general insurance business (including health and agriculture insurances), as the case may be, and such part of the funds of shareholders as may be required to support the control level of solvency as may be determined by the Authority by way of regulations."

14.4 Questioned as to why the definition of the term has not been drafted so as to be in consonance with the recommendation of the K.P. Narsimhan Committee, the Ministry, in a written reply, stated:—

"The KPN Committee's revised definition of Controlled Fund was based on the arguments of separation of policyholder's funds and that part of the shareholder's funds tracking the solvency margin and the statutory rationale for applying the pattern of investments only for the above funds.

In this connection it may be mentioned that the IRDA has already notified in the foot note to revised Form Nos. 3A and 3B in its Investment Regulations that the application of the pattern of investments shall be only to the policyholders fund and that part of the shareholders funds representing the solvency margin. To that extent the KPN Committee's suggestion to replace the "controlled fund" by "controlled investible fund" is already incorporated.

However, it may be observed that the present definition of "Controlled Fund" is long-winding and also redundant to the extent that it bifurcates insurers into life insurers and other insurers who are also doing life insurance business. We all know that we have only life insurers doing life insurance business or miscellaneous/health insurance business. We do not have any other insurer carrying on life insurance business and therefore referred to other insurance companies on life insurance business.

In view of the above, it is proposed to revise the definition of the "controlled fund" to mean all funds pertaining to the life insurance business. The explanation will be redrafted in consultation with the Ministry of Law for "controlled fund" to mean "all funds appertaining to insurance business in India".

14.5 Since it has been proposed to prohibit investments outside the Country under Section 27E, it has also been suggested to the Committee that such of the sub sections of section 27, which contain references to investments outside India also need to be deleted. It has been suggested in this regard, as follows:

"Since investments outside the country out of policy holders funds is prohibited under section 27E; the following deletions are suggested to be made:—

(a) Sub-section 4(b) be deleted.

(b) The second proviso to sub-section (4) also contains references to investments outside India. This may be deleted.

The words 'whether made before or after the commencement of the Insurance (Amendment) Act, 1950' may also be deleted".

14.6 Responding to the above suggestion, the Ministry, in a written reply stated as follows:—

"The necessary amendments relate to section 27 and would be carried out in consultation with the Ministry of Law."

14.7 The Committee note that the definition of 'controlled fund', as proposed, apart from being long-winding would also be inappropriate to the extent that it seeks to bifurcate insurers into life insurers and other insurers doing life insurance business. As only life insurers undertake life insurance business or miscellaneous/health insurance business, the Ministry have proposed to re-draft the definition to mean 'all funds pertaining to the life insurance business'. The Committee desire that the definition of the term is suitably revised as agreed to.

Although investments outside the country out of policy holders fund would be prohibited in terms of the new section 27E, certain provisions under the section, which contain references to investments outside the country that would be redundant and are ought to be deleted have not been proposed for omission. The Committee trust that the infirmities in the provisions are rectified as agreed to by the Ministry.

15. Clause 30: Loans or advances to subsidiaries of insurance companies (Amendment of Section 29 of the Insurance Act)

15.1 This clause seeks to substitute Section 29 of the Act to provide for granting of loans or advances to subsidiaries of insurance companies with the prior approval of the Authority.

15.2 The provisions of the Clause are as under:—

For section 29 of the Insurance Act, the following section shall be substituted, namely:—

"29. (1) No insurer shall grant loans or temporary advances either on hypothecation of property or on personal security or otherwise, except loans on life policies issued by him within their surrender value, to any director, manager, actuary, auditor or officer of the insurer, if a company or to any other company or firm in which any such director, manager, actuary or officer holds the position of a director, manager, actuary, officer or partner:

Provided that nothing contained in this sub section shall apply to loans made by an insurer to a banking company, if the previous approval of the Authority is obtained for such loans:

Provided further that nothing in this section shall prohibit a company from granting such loans or advances to a subsidiary company or to any other company of which the company granting the loan or advance is a subsidiary company if the previous approval of the Authority is obtained for such loan or advance.

(2) The provisions of section 220 of the Companies Act, 1956 shall not apply to a loan granted to a director of an insurer being a company, if the loan is one granted on the security of a policy on which the insurer bears the risk and the policy was issued to the director on his own life, and the loan is within the surrender value of the policy.

(3) Subject to the provisions of sub-section (1), no insurer shall grant —

(a) any loans or temporary advances either on hypothecation of property or on personal security or otherwise, except such loans as may be specified by regulations including the loans sanctioned to the fulltime employees of the insurer as per the scheme duly approved by its Board of Directors;

(b) temporary advances to any insurance agent to facilitate the carrying out of his functions as such except in cases where such advances do not exceed in the aggregate the renewal commission earned by him during the year immediately preceding.

(4) Where any event occurs given rise to circumstances, the existence of which at the time of grant of any subsisting loan or advance would have made such grant a contravention of this section, such loan or advance shall, notwithstanding anything in any contract to the contrary, be repaid within three months from the occurrence of such event.

(5) In case of default in complying with the provisions of sub-section (4), the director, manager, auditor, actuary, officer or insurance agent concerned shall, without prejudice to any other penalty which he may incur, cease to hold office under, or to act for, the insurer granting the loan on the expiry of three months."

15.3 The suggestions made by some insurance companies (Cholamandalam MS General Insurance Companies Ltd. and Bharti Axa Life Insurance Company Ltd.) in their written memorandum submitted to the Committee, on the amendment proposals under the Clause read as follows:—

"(i) This needs to be reviewed to exempt loans given to employees as part of their Salary Package.

(ii) Since section 220 of Companies Act speaks about filing of financial statements with registrar of companies, it is suggested that reference to section 220 of Companies Act, 1956 to be changed to section 295 of Companies Act, 1956."

15.4 While submitting comments on these suggestions, the Ministry, in their written reply, have stated as follows:

"The necessary changes as suggested will be carried out in consultation with the Ministry of Law."

15.5 While the amendments proposed to section 29 in terms of clause 30 seek to prohibit granting of loans to Directors etc. of insurance companies, reference has been drawn to the incorrect section of the Companies Act, 1956 *i.e.* section 220, instead of the correct section 295, which contains provisions relating to loans to key personnel of companies. The Committee expect that the infirmity in the provision as drafted is rectified. The Committee also expect that the suggestion

made by the insurers for exempting the applicability of the provisions in case of loans given to employees as part of the salary package is appropriately addressed.

16. Clause 37: Rural and Social Sector Obligations (Amendment) of Section 32B

16.1 Clause 37 seeks to amend section 32B of the Act relating to insurance business in rural and social sectors.

16.2 Section 32B of the Insurance Act relates to insurance business in rural or social sector. The provisions of this Section are as under:

> "Every insurer shall, after the commencement of the Insurance Regulatory and Development Authority Act, 1999, undertake such percentages of life insurance business and general insurance business in the rural or social sector, as may be specified, in the Official Gazette by the Authority, in this behalf."

16.3 Clause 37 of the Bill seeks to amend the above section as follows:—

> " In section 32B of the Insurance Act, for the words 'rural or social sector, as may be specified in the Official Gazette by the Authority', the words 'rural and social sectors, as may be specified by regulations' shall be substituted."

16.4 A suggestion received from the National Federation of Insurance Field Workers of India in this regard, States as follows:

> "It is proposed to insert the words 'rural and social sectors, as may be specified by regulations'. It should be "rural and social sectors, as may be specified in the official gazette by the Authority".

16.5 Elaborating on this, a representative of the above organization, stated while tendering evidence stated:—

> "On the point of rural and social sector we feel it should continue to be gazetted so that the commitment of the companies for the rural and social sectors is there because there is a suggestion that it should not be gazetted. It is because today if you examine the IRDA reports, there are a lot of penalties being paid by the private companies on the non-obligations of the rural and social sectors. So, when such is the State there should not be any scope for the neglect of rural and social sectors. After the advent of the private companies whatever apprehension we had, the focus on rural and social sectors is only diminishing because in the competition with

these private companies, the Life Insurance Corporation is also forced to go behind so many other aspects where the rural and social sectors stands neglected. So, we feel that this protection should be there and the basic concept of Life Insurance industry that it is peoples' money for social security and peoples' money for peoples' welfare in the long term should remain the focus so that India grows is what we like to place before you."

16.6 Further, in reply to a query on whether the Public Sector insurance companies agree with the view that social obligations of the insurers should be specified in the Act and not by way of regulations, GIPSA in a post evidence reply stated as below:

"The provision has been probably kept as part of the Regulations rather than the Act as the same are revised frequently."

16.7 The Committee express agreement with the proposal to replace the term, 'rural or social sector' in section 32 B pertaining to insurance business in these sectors. Nevertheless, the Committee have reservations on the second part of the amendment proposal to the section whereby rural and social sector obligations of insurers would no longer be notified in the official gazette, which is the current practice and instead, confined to regulations. As covered in the earlier section of the report (Overview) various stakeholders, including the GIPSA and CII have pointed out serious shortcomings in the prevailing practice of formulating, undertaking and overseeing the pursuance of rural and social sector obligations by the insurers. As suggested by the employees associations, the Committee desire that rural and social sector obligations of insurance companies may continue to be specified in the Official gazette by IRDA instead of being left to be dealt with in the regulations.

17. Clause 38: Obligation of insurer in respect of insurance business in third party risks of motor vehicles. (Insertion of new Section 32 D)

17.1 Clause 38 seeks to insert section 32D in the Act for making it obligatory on all insurers to underwrite third party risks of motor vehicles.

17.2 Provisions of Clause 38 of the Bill are as under:—

"After section 32C of the Insurance Act, the following section shall be inserted, namely:—

"32D. Every insurer carrying on general insurance business shall, after the commencement of the Insurance Laws (Amendment) Act,

2008, underwrite such minimum percentage of insurance business in third party risks of motor vehicles as may be specified by regulations: Provided that nothing in this section shall apply to an insurer carrying on the health insurance or re-insurance business only.''.

17.3 Under the provisions of the Motor Vehicles Act, it is compulsory that all vehicles should have valid third party motor insurance. As such insurance is mandatory, there is a necessity for creating an obligation on insurers to underwrite third party insurance in an equitable manner. Due to the sensitive nature of the premium for this insurance, as it closely affects the economics of the commercial transport sector, the tariff for this premium continues to be regulated even though it has not always been possible to price this product in a commercially acceptable manner. For this reason, the pricing of this product has always been low and, as a consequence, there are very high and adverse claim ratios. To some extent, the IRDA sought to mitigate this problem while enabling the issuance of third party motor insurance by creating a pool mechanism.

17.4 In Japan, the tariff pricing mechanism operates on a no-profit-no-loss basis and in Japanese system, the damages payable to any third party are carefully defined.

17.5 The third party motor insurance is a very important financial instrument as well as a measure of social security. It was noted that Public Sector Insurance Companies had a large loss making motor portfolio whereas the private insurance companies were reluctant in offering third party motor insurance. It was suggested by the IRDA that since the third party motor insurance is compulsory under MV Act 1988, an obligation may be imposed on all the insurers to have a proportionate share of third party motor business. Thus, on the recommendation of the IRDA, the Government inserted a provision in the Insurance Act for obligatory underwriting of third party risks of motor vehicles on the pattern of provisions for obligatory underwriting of insurance in rural areas and social sectors. The IRDA will issue necessary regulations to ensure that the insurers comply with provisions of the Insurance Act failing which stiff penalty would be made applicable. The regulations will also take into account the realities about enforcement on part of vehicle owners.

17.6 On this clause, CII, in their written memorandum, have expressed their view as under:

"As the motor third party insurance is structurally different from the other obligatory products for the insurance companies (such as products under Social and Rural obligations) motor third party

business may not be made obligatory for the insurance companies as prescribed in the Bill. The primary difference between the structures is that the price and the wordings of motor third party products is standardized and prescriptive (Tariff). Making the product obligatory under the operation of the current statute would be damaging for the Indian general insurance industry at large, especially when the present prescription of premium of the policy is grossly inadequate causing severe loss to the insurance companies. It is suggested that the current provision which makes motor third party obligatory for insurance companies may be deleted or on the alternative, the current provision may be modified to the extent of decontrolling the price of the product."

17.7 While deposing before the Committee, a representative of a private insurance company (ICICI Lombard) submitted as follows in respect of Motor third party insurance:—

"Since April 2007, the IRDA has constituted an Industry Pool to host all TP policies written for commercial vehicles. During the Financial Year 2007-08, the pool is projected to accumulate claims (Rs. 3,700 crore) significantly higher than the premium collected (Rs. 2,400 crore). The deficit makes the portfolio unattractive for insurers. Corrections of pricing deficit will weed out the challenges faced in this portfolio for all stakeholders. Motor third party insurance obligatory for insurers (Sec. 32D). Penalty of Rs. 25 crore in case of breach of obligatory insurance. [Section 105B].

- The objective of obligation is to ensure that buyers of third party liability insurance do not face any supply side constraint from insurers.
- Current regulatory provisions which bar insurers from declining a third party liability cover to a vehicle owner are sufficient to ensure supply.
- Motor third party insurance, in terms of acceptability of risks, depends upon of its categorization such as:
    - Ownership (Private or commercial),
    - Segment (two wheeler, private car or commercial vehicle)
    - Sub-segments (Passenger carrying, Goods carrying, Special types etc.)
    - Geographical location of the vehicle
    - Usage (urban, rural, highway, mountainous, mining etc.)

- Prescription of a general obligation may not be useful for achievement of the objective.
- Prescription of obligation detailing Ownership, Segments, Sub-segments, Geographical location, Usage would be equitable but may not be possible so far as implementation and regulatory monitoring is concerned."

17.8 The representatives further stated as follows:—

"If you see global experience, these covers are obligatory for the insured to take, but not obligatory for the insurance companies to provide. The other challenge in India is that these covers are unlimited in amount and unlimited in time which is creating a huge bleed for the general insurance industry. If you look at the pool amount, the pool typically is losing about Rs. 1,500 crore a year. So, the point in making it obligatory is that if the idea is to provide the cover, it is already happening through the pool mechanism. The large issue for the industry and hence the consumer at large is the cost that is there for this pool. So, our recommendation was that the obligatory nature of different policies may not be required given the current situation that is there on the ground.

The other thing that happens with the obligatory is that for these types of policies, there are various types of covers. For example, there could be difference on the ownership which could be private or commercial segment in terms of two wheeler, private car or commercial vehicles, geographic. So, trying to create an obligatory model, we would not be able to address all these sub-segments because for sub-segments, if you create obligations, it will be very difficult to monitor. If you have a generic obligatory nature, then it will be difficult to monitor the sub-segment wise obligation. So, rather than have an obligation, the current approach and thereafter determining of the prices would probably be the most appropriate solution for the market."

17.9 In response to a question as to who should fulfil the obligation of providing sufficient third party insurance coverage to the public, the Company, in a post evidence submission stated as below:—

"An industry pool constituted by IRDA has been in operation since April 2007 to underwrite the motor third party insurance policies with respect to the commercial vehicles in the country. The operation of the pool over last few years has addressed the supply side

constraints. At the same time it has resulted in significant losses for the insurance industry. In view of the same, a few alternative models are suggested as under:—

(a) Market driven pricing: The nature of third party liability risks insurers of assigning coverage of unlimited value, which leads to unlimited potential exposure for them. Tariff driven pricing always lag the cost of servicing the portfolio.

(b) Industry wide "Declined risk pool": A declined risk is one which is usually declined by insurance companies since they feel that covering such risks would adversely impact their financials. Therefore risks, which are mandated to be covered by law but are not readily underwritten by insurance companies, can be considered to belong to a declined risk category. Under the present market conditions the declined risk can be variously defined as :

A specific case where the vehicle owner is unable to obtain the mandatory third party liability cover

A specific case where the commercial vehicle owner is unable to obtain the mandatory third party liability cover

A pool can be created to cover all risks falling under the category of risks defined above as declined risks. All the policies of the declined risks category can be ceded into the pool and claims related to such policies would be claimed from the pool. The practice is prevalent in variations of Compulsory Auto Liability Insurance in Japan, Taiwan and Singapore.

(c) Drivers Third Party liability cover policy: An alternative would be to address the claims related to injuries and deaths through a legal liability cover for drivers. Since in almost all accidents the courts necessarily render a finding of rash and negligent driving by the driver, it may be appropriate to have a separate legal liability cover for drivers wherein such claims shall be covered by the driver's insurance policy. In such a scenario, almost all the claims would be covered by the driver's insurance policy as against owner's legal liability cover. The basic purpose is to bring in a sense of collective responsibility with the driver and the concerned insurer picking up some part of the liability as the accidents normally take place due to the careless, negligent and rash driving of the drivers. This is the practice prevalent in the USA."

17.10 Asked as to why it was felt necessary to make third party motor insurance obligatory for the insurers and not for the vehicle owners or drivers, the Ministry in reply stated as under:—

> "Policyholders are the Owners of the vehicles. It is the third party risk of the owner which is compulsorily required to be covered under Section 146 of the MV Act 1988. Third party motor insurance is compulsory for the benefit of the common pedestrian and users of the road, who in case of accident may not be able to get compensation from the owners of the vehicle. The owner for instance, may plead insolvency, or inability to pay, wherein the compulsory insurance comes to his help."

17.11 The Chairman, GIPSA, while tendering evidence before the Committee, presented his views on the proposed changes in respect of motor third party insurance, as under:—

> "I would just mention only one point, if you do not mistake me. There is compulsory motor vehicle insurance in this country and the pricing of the commercial vehicle motor insurance today is fixed by the regulator. It is an administered price system. This is a business, which the public sector companies have being doing for many years; and we have been incurring major losses. A few years back, a pooling mechanism was put in place whereby the losses in this business would be shared by all companies including the private sector companies. There is a regulation in the Amendment Bill, which allows for some quota of motor vehicle business to be done by all companies similar to rural social sector obligations.
>
> Our feeling is that this alone is not enough. There must be a pooling mechanism to continue so long as the pricing is administered by the regulator. Otherwise, the burden of the commercial vehicle insurance losses would be only on the public sector companies."

17.12 A point made by an insurance company (Bajaj Allianz General Insurance Company Limited) in this regard States as follows:—

> "This section is meaningful only if there is a mechanism to ensure that all vehicles which are required to take compulsory third party insurance actually take such insurance. With one-time road tax being levied at the time of purchase of vehicle, the system of ensuring valid insurance at the time of tax renewal is no longer in vogue."

17.13 Expressing their views in this regard, the Ministry, in a written reply stated:—

> "Under the MV Act, the responsibility to monitor that no vehicle plies on the road without a valid insurance lies with the RTAs. It is perhaps true that the system of life time motor vehicles tax has impacted monitoring compliance with this requirement of the MV Act relating to insurance. However, it is for the Ministry of Road Transport and Highways to decide whether they should bring back the system of annual taxes or reduce the duration from life time to enable the RTAs to effectively monitor compliance with the provisions of the MV Act."

17.14 The Committee observe that the proposed Section 32D, which casts an obligation on the insurers to provide Third Party motor insurance cover has not found favour with various stakeholders. While the CII has *inter-alia* pointed out that third party insurance policies can be made compulsory only if the pricing is left to be decided by the companies, as per GIPSA, for making third party insurance obligatory, it would be essential to continue with the existing 'third party pool'. A point made by yet another insurance company rightly highlights the shortcomings in the mechanism of monitoring compliance with the requirements of the Motor Vehicles Act, 1988. The Committee are of the view that ensuring compliance with the requirements under the Motor Vehicles Act by making it obligatory to provide third party cover would be in the interest of all the road users. Yet, the onus would be on the Government to effectively address the issues raised and concerns expressed by the insurers, which relate *inter-alia* to the pricing of such products, which could be done in a manner that would ensure that the companies are not unduly burdened and the larger interest of the public is not harmed. Till such time these issues are resolved, sharing of liability by the insurers through the mechanism of common pool would be the best recourse.

18. Clause 39: Power of investigation and inspection by Authority (Amendment of Section 33 of the Insurance Act)

18.1 This clause seeks to substitute Section 33 of the Act to provide for coverage of intermediary or insurance intermediary for investigation and inspection by the Authority.

18.2 The provisions of Clause 39 (8) read as under:—

> "No order made under this section other than an order made under clause (b) of sub-section (6) shall be capable of being called in question in any court."

18.3 On this sub clause, a written suggestion received from a private insurance company (Shriram Life Insurance Company Ltd.) States as below:—

> "The sub-section (8) brings the provision that no order made under this section shall be eligible to be called in question in any court. It is necessary to provide for an Appellate Authority."

18.4 Replying to above suggestion, the Ministry, in their written submission, stated as below:—

> "The suggestion of having an appellate authority may be agreed to and the necessary amendments in the relevant clauses would be made in consultation with the Ministry of Law."

18.5 The Committee note that the provisions of Section 33, as proposed do not provide for a mechanism of appeal on the orders issued by the Authority consequent to inspection and investigation of the affairs of an insurance intermediary. The Committee expect that the provisions proposed are suitably modified to provide for a mechanism of appeal in such cases.

19. Clause 47: Power of Authority to prepare scheme of amalgamation (Amendment of Section 37A of the Act)

19.1 This Clause seeks to substitute Sub Section (4) of Section 37A of the Insurance Act, 1938. The existing Sub Section (4) of Section 37A reads as under:—

> "The scheme shall thereafter be placed before the Central Government for its sanction and the Central Government may sanction the scheme without any modification or with such modifications as if may consider necessary; and the scheme as sanctioned by the Central Government shall come into force on such date as the Central Government may specify in this behalf; Provided that different dates may be specified for different provisions of the scheme."

19.2 The amendments proposed to the Section *vide* Clause 47 of the Bill provides for the following:—

> "(4) The scheme shall thereafter be placed before the Central Government for its sanction and the Central Government may sanction the scheme without any modification or with such modifications as it may consider necessary, and the scheme as sanctioned by the Central Government shall come into force on

such date as the Central Government may notify in this behalf in the Official Gazette:

Provided that different dates may be specified for different provisions of the scheme.

(4A) Every policy-holder or shareholder or member of each of the insurers, before amalgamation, shall have the same interest in, or rights against the insurer resulting from amalgamation as he had in the company of which he was originally a policy-holder or shareholder or member:

Provided that where the interests or rights of any shareholder or member are less than his interest in, or rights against, the original insurer, he shall be entitled to compensation, which shall be assessed by the Authority in such manner as may be specified by regulations.

(4B) The compensation so assessed shall be paid to the shareholder or member by the insurance company resulting from such amalgamation.

(4C) Any member or shareholder aggrieved by the assessment of compensation made by the Authority under sub-section (4A) may within thirty days from the publication of such assessment prefer an appeal to the Securities Appellate Tribunal.".

19.3 In this regard, the Law Commission of India had recommended adding the following in Section 37A(4) after the words "in this behalf":—

"in the Official Gazette with such constitution, with such property, powers, rights, interests, authorities and privileges and with such liabilities, duties and obligations as may be specified in the order."

19.4 Questioned as to why the amendment proposed to the Section was not in consonance with the recommendation of the Law Commission, the Ministry informed:—

"We may agree with the suggestion and redraft the relevant clause in consultation with the Ministry of Law".

19.5 The Committee desire that the provisions of Clause 47 seeking to amend Section 37A(4) of the Act are re-drafted to provide for notifying the scheme of amalgamation of insurance companies in the official gazette, so as to be in consonance with the recommendation of the Law Commission of India.

20. Clause 48: Assignment and transfer of insurance policies, Nomination by Policy-holders, Prohibition of payment by way of commission or otherwise for procuring business (Substitution of new Sections for Sections 38, 39 and 40 of the Insurance Act)

20.1 Clause 48 seeks to substitute Sections 38, 39 and 40 of the Act dealing with assignment and transfer of insurance policies to make a clear distinction between absolute and conditional assignments of life policies. It also provides for a clear distinction between a beneficial nominee and a collector nominee by order to provide timely and adequate benefits to the policy-holders. It also empowers the Authority to regulate payment of commission for procuring business.

20.2 The changes proposed in Sections 38, 39 and 40 of the Insurance Act *vide* the proposals of Clause 48 read as under:—

"38. (1) A transfer or assignment of a policy of insurance, wholly or in part, whether with or without consideration, may be made only by an endorsement upon the policy itself or by a separate instrument, signed in either case by the transferor or by the assignor or his duly authorised agent and attested by at least one witness, specifically setting forth the fact of transfer or assignment and the reasons thereof, the antecedents of the assignee and the terms on which the assignment is made.

(2) An insurer may, accept the transfer or assignment, or decline to act upon any endorsement made under sub-section (1), where it has sufficient reason to believe that such transfer or assignment is not *bona fide* or is not in the interest of the policy-holder or in public interest.

(3) The insurer shall, before refusing to act upon the endorsement, record in writing the reasons for such refusal and communicate the same to the policy-holder not later than thirty days from the date of the policy-holder giving notice of such transfer or assignment.

(4) Any person aggrieved by the decision of an insurer to decline to act upon such transfer or assignment may within a period of thirty days from the date of receipt of the communication from the insurer containing reasons for such refusal, prefer a claim to the Authority.

(5) Subject to the provisions in sub-section (2), the transfer or assignment shall be complete and effectual upon the execution of such endorsement or instrument duly attested but except, where the transfer or assignment is in favour of the insurer,

shall not be operative as against an insurer, and shall not confer upon the transferee or assignee, or his legal representative, any right to sue for the amount of such policy or the moneys secured thereby until a notice in writing of the transfer or assignment and either the said endorsement or instrument itself or a copy thereof certified to be correct by both transferor and transferee or their duly authorised agents have been delivered to the insurer:

Provided that where the insurer maintains one or more places of business in India, such notice shall be delivered only at the place where the policy is being serviced or attached.

(6) The date on which the notice referred to in sub-section (5) is delivered to the insurer shall regulate the priority of all claims under a transfer or assignment as between persons interested in the policy; and where there is more than one instrument of transfer or assignment the priority of the claims under such instruments shall be governed by the order in which the notices referred to in sub-section (5) are delivered:

Provided that if any dispute as to priority of payment arises as between assignees, the dispute shall be referred to the Authority.

(7) Upon the receipt of the notice referred to in sub-section (5), the insurer shall record the fact of such transfer or assignment together with the date thereof and the name of the transferee or the assignee and shall, on the request of the person by whom the notice was given, or of the transferee or assignee, on payment of such fee as may be specified by regulations, grant a written acknowledgement of the receipt of such notice; and any such acknowledgement shall be conclusive evidence against the insurer that he has duly received the notice to which such acknowledgment relates.

(8) Subject to the terms and conditions of the transfer or assignment, the insurer shall, from the date of the receipt of the notice referred to in sub-section (5), recognize the transferee or assignee named in the notice as the absolute transferee or assignee entitled to benefit under the policy, and such person shall be subject to all liabilities and equities to which the transferor or assignor was subject at the date of the transfer or assignment and may institute any proceedings in relation to the policy, obtain a loan under the policy or surrender the policy without obtaining the consent of the transferor or assignor or making him a party to such proceedings.

Explanation.— Except where the endorsement referred to in sub-section (1) expressly indicates that the assignment or transfer is conditional in terms of sub-section (10) hereunder, every assignment or transfer will be deemed to be an absolute assignment or transfer and the assignee or transferee, as the case may be, will be deemed to be the absolute assignee or transferee respectively.

(9) Any rights and remedies of an assignee or transferee of a policy of life insurance under an assignment or transfer effected prior to the commencement of the Insurance Laws (Amendment) Act, 2008 shall not be affected by the provisions of this section.

(10) Notwithstanding any law or custom having the force of law to the contrary, an assignment in favour of a person made upon the condition that —

(a) the proceeds under the policy will become payable to the policy-holder or the nominee or nominees in the event of either the assignee/or transferee predeceasing the insured; or

(b) the insured surviving the term of the policy, shall be valid:

Provided that a conditional assignee shall not be entitled to obtain a loan on the policy or surrender a policy.

(11) In the case of the partial assignment or transfer of a policy of insurance under sub-section (1), the liability of the insurer shall be limited to the amount secured by partial assignment or transfer and such policy-holder shall not be entitled to further assign or transfer the residual amount payable under the same policy.

39. (1) The holder of a policy of life insurance on his own life may, when effecting the policy or at any time before the policy matures for payment, nominate the person or persons to whom the money secured by the policy shall be paid in the event of his death:—

Provided that, where any nominee is a minor, it shall be lawful for the policy-holder to appoint any person in the manner laid down by the insurer, to receive the money secured by the policy in the event of his death during the minority of the nominee.

(2) Any such nomination in order to be effectual shall, unless it is incorporated in the text of the policy itself, be made by

an endorsement on the policy communicated to the insurer and registered by him in the records relating to the policy and any such nomination may at any time before the policy matures for payment be cancelled or changed by an endorsement or a further endorsement or a will, as the case may be, but unless notice in writing of any such cancellation or change has been delivered to the insurer, the insurer shall not be liable for any payment under the policy made *bona fide* by him to a nominee mentioned in the text of the policy or registered in records of the insurer.

(3) The insurer shall furnish to the policy-holder a written acknowledgment of having registered a nomination or a cancellation or change thereof, and may charge such fee as may be specified by regulations for registering such cancellation or change.

(4) A transfer or assignment of a policy made in accordance with Section 38 shall automatically cancel a nomination:

Provided that the assignment of a policy to the insurer who bears the risk on the policy at the time of the assignment, in consideration of a loan granted by that insurer on the security of the policy within its surrender value, or its re-assignment on repayment of the loan shall not cancel a nomination, but shall affect the rights of the nominee only to the extent of the insurer's interest in the policy:

Provided further that the transfer or assignment of a policy, whether wholly or in part, in consideration of a loan advanced by the transferee or assignee to the policy-holder, will not cancel the nomination but shall affect the rights of the nominee only to the extent of the interest of the transferee or assignee, as the case may be, in the policy:

Provided also that the nomination, which has been automatically cancelled consequent upon the transfer or assignment, the same nomination shall stand automatically revived when the policy is reassigned by the assignee or retransferred by the transferee in favour of the policy-holder on repayment of loan other than on a security of policy to the insurer.

(5) Where the policy matures for payment during the lifetime of the person whose life is insured or where the nominee or, if there are more nominees than one, all the nominees die before the policy matures for payment, the amount secured

by the policy shall be payable to the policyholder or his heirs or legal representatives or the holder of a succession certificate, as the case may be.

(6) Where the nominee or if there are more nominees than one, a nominee or nominees survive the person whose life is insured, the amount secured by the policy shall be payable to such survivor or survivors.

(7) Subject to the other provisions of this section, where the holder of a policy of insurance on his own life nominates his parents, or his spouse, or his children, or his spouse and children, or any of them, the nominee or nominees shall be beneficially entitled to the amount payable by the insurer to him or them under sub-section (6) unless it is proved that the holder of the policy, having regard to the nature of his title to the policy, could not have conferred any such beneficial title on the nominee.

(8) Subject as aforesaid, where the nominee, or if there are more nominees than one, a nominee or nominees, to whom sub-section (7) applies, die after the person whose life is insured but before the amount secured by the policy is paid, the amount secured by the policy, or so much of the amount secured by the policy as represents the share of the nominee or nominees so dying (as the case may be), shall be payable to the heirs or legal representatives of the nominee or nominees or the holder of a succession certificate, as the case may be, and they shall be beneficially entitled to such amount.

(9) Nothing in sub-sections (7) and (8) shall operate to destroy or impede the right of any creditor to be paid out of the proceeds of any policy of life insurance.

(10) The provisions of sub-sections (7), (8) and (9) shall apply to all policies of life insurance maturing for payment after the commencement of the Insurance Laws (Amendment) Act, 2008.

(11) Every policyholder shall have an option to indicate in clear terms whether the person or persons being nominated by the policyholder is/are a beneficiary nominee(s) or a collector nominee(s):

Provided where the policyholder fails to indicate whether the person being nominated is a beneficiary nominee or a collector nominee it will be deemed that the person nominated is a beneficiary nominee.

Explanation.—For the purposes of this sub-section,—

(a) the expression 'beneficiary nominee' means a nominee who is entitled to receive the entire proceeds payable under a policy of insurance subject to other provisions of this Act; and

(b) the expression 'collector nominee' means a nominee other than a beneficiary nominee who is liable to make payment of the benefits arising out of policy to the beneficiary nominee or legal heirs of policyholders or representative.

(12) The collector nominee shall make payment of the benefits arising out of policy to the beneficiary nominee or legal heirs or representative of the policyholder in accordance with the regulations made by the Authority.

(13) Where a policyholder dies after the maturity of the policy but the proceeds and benefit of his policy has not been made to him because of his death, in such a case, his nominee shall be entitled to the proceeds and benefit of his policy.

(14) The provisions of this section shall not apply to any policy of life insurance to which section 6 of the Married Women's Property Act, 1874, applies or has at any time applied:

Provided that where a nomination made whether before or after the commencement of the Insurance Laws (Amendment) Act, 2008, in favour of the wife of the person who has insured his life or of his wife and children or any of them is expressed, whether or not on the face of the policy, as being made under this section, the said section 6 shall be deemed not to apply or not to have applied to the policy."

40. (1) No person shall, pay or contract to pay any remuneration or reward, whether by way of commission or otherwise for soliciting or procuring insurance business in India to any person except an insurance agent or an intermediary or insurance intermediary in such manner as may be specified by regulations.

(2) No insurance agent or intermediary or insurance intermediary shall receive or contract to receive commission or remuneration in any form in respect of policies issued in India, by an insurer except in accordance with the regulations specified in this regard.

(3) Without prejudice to the provisions of section 102 in respect of a contravention of any of the provisions of the preceding sub-sections or the regulations framed in this regard, by an insurer, any insurance agent or intermediary or insurance intermediary who contravenes the said provisions shall be liable to a penalty which may extend to rupees one lakh.''

20.3 By way of furnishing the rationale for bringing in the changes as proposed in the Section dealing with assignment and transfer of policies as per Clause 48, the Ministry informed the Committee:—

> "Assignment of an insurance policy is an instrument to transfer right of one person over the policy to another so that the transferee has the same right or interest as that of the transferor. Currently, Section 38 of the Insurance Act, 1938 provides provisions for assignment and transfer of policies. Sub-section (2) sets out that once a transfer or assignment is made in the manner prescribed by section 38(1) of the Insurance Act, 1938, the assignment is complete and effectual on the execution of endorsement or by a separate instrument. However, such assignment is not binding as against the insurer unless and until intimation in writing of the assignment has been delivered to the insurer in the prescribed manner. Once the notice is received by the insurer by virtue of sub-section (4), the insurer is bound to record the fact of transfer or assignment together with the date thereof and the name of the transferee. Hence, by operation of law, the insurer is bound to accept the transfer or assignment if notice is given to the insurer and the procedure followed. The proposed amendment aims at providing certain safeguards in the case of assignments and the policyholder has to disclose the reasons for assignment, the antecedents of the assignee and the exact terms on which the assignment is made. There will be an obligation upon the insurer to get the credentials of the assignee verified at the cost of the insured. If the insurer is not satisfied that the assignment is bona fide, he may decline to register the assignment and communicate the reasons thereto to the policyholder."

20.4 On the amendment proposals, a private insurance company (Max New York Life Insurance Co. Ltd.) stated that 'in case both the insured and the nominee die, the legal heirs of policyholder would be entitled to policy money if nominee is only a collector nominee'. Further, 'this section provides that the collector nominee shall make payment of the benefits in accordance with the law of succession. It is suggested that there is no need to issue regulations in this regard'.

20.5 When asked to express their views on this suggestion, the Ministry informed the Committee:—

> "This issue will be discussed with the Ministry of Law and if required necessary amendments may be carried out in the Bill."

20.6 The insurance company has also suggested that the Bill may specify certain types of assignments, which may not be permitted *e.g.* those which are speculative in nature and amount to insurance trading, with a view to preventing moral hazard. Responding to this, the Ministry in their written reply, have stated as under:—

> "The proposed sub-section 2 of Section 38 of the Insurance Laws (Amendment) Bill, 2008 provides that an insurer may, accept the transfer or assignment or decline to act upon any endorsement where it has sufficient reason to believe that such transfer or assignment is not bonafide or is not in the interest of the policyholder. This section will empower the insurer to use due diligence to identify assignments/transfers which are speculative/ or involves moral hazard. In light of the above, it may not be necessary to prescribe the types of assignments that may be allowed/ debarred."

20.7 The CII, in their memorandum submitted to the Committee made the following suggestions in regard to Section 38:—

> "In Section 38(2) the words "is not in the interest of the policyholder or in the public interest" are not conclusive and it may not be possible for the insurer to argue whether interests of the Policyholders are violated in a particular case of assignment, hence, we suggest that the above words may be further extended by appending "or for the purpose of trading of policy", this may expressly prohibit trading of a life insurance policy…
>
> Section 38(5) concludes with the words "whether the policy is being serviced or attached", as the word 'attached' is redundant, misleading and hence, should be removed."

20.8 As per yet another suggestion of an insurance company, Section 39(13) of the Insurance Act needs to be reworded as follows:—

> "Where a policyholder dies after the maturity of the policy but the proceeds and benefit of his policy has not been made to him because of his death, in such a case, the legal heirs of the deceased life assured shall be entitled to the proceeds and benefit of his policy."

20.9 Asked whether the Ministry expresses agreement with the above mentioned suggestion, the written reply furnished in this regard states as follows:—

> "..... the issue of receipt of policy benefits by heirs or the nominee of the policy holder was discussed by LCI and it was of the view that there is a need to draw a clear distinction between a beneficial nominee and a collector nominee. An option may be given to the policyholder to clearly express whether the nominee will collect the money on behalf of the legal representatives or whether the nominee will be the absolute owner of the monies in which case such nominee will be the beneficial nominee. Accordingly it was recommended to add sub-clause 13 in order to address a conflict between the Indian Succession Act and the nomination facility provided for in insurance policies. However, in case there is any conflict arising out of this amendment, the section may be reworded in consultation with Ministry of Law."

20.10 Section 40 relating to commission payable to agents is being sought to be replaced by a new section as per which, the commissions payable will now be specified by the Authority by way of regulations. The existing sub-sections are, therefore, not being done away with but are being recast so that there is greater flexibility on part of the Authority to specify commissions which could vary depending on the product, the line and the sophistication of the market. As per the submission of the Ministry, the power to regulate commissions could contribute to stability in the cost of management across industry and reduce distortions. The objective is to increase competition in the market with corresponding disclosures and inspections to ensure that the policyholders interests are at all times protected. Further, the commission payouts is stated to influence the professional growth of intermediaries, owing to which, the need for regulatory oversight on such payouts is said to arise.

20.11 With regard to the proposed omission of section 40A, the Life Insurance Agents' Federation of India, in their memorandum submitted to the Committee have expressed the following view:—

> "The relevant parts of this Section on which we want to draw your attention are **40(2).**
>
> **Sec. 40(2)** of the Act defines the limit for the commissions payable to the insurance agents on first year premiums and the renewal premiums on policies affected through them.
>
> These Sections are being omitted without any specific substitute section in the proposed Insurance Laws (Amendment) Bill 2008.

Whereas the amendment bill has not mentioned specific details in the substitute section on commission limits with this amendment, the statutory protection and guarantee of the commission payable to the agents which is available in the act would be taken away…..by this amendment the class of Agents, and the persistency of the Agency as a career, shall suffer by loosing the statutory protection given to them by the Insurance Act 1938. Consequently, the policyholders shall also be victim to this amendment. For these and other reasons, we strongly request to retain sec. 40(2) of the Insurance Act 1938.

Clause 49 of the bill seeks to omit section 40A of the Insurance Act 1938 so as to omit the provisions relating to limitation of expenditure on commission. This also provides for the payment of commission to insurance agents at the rates specified in the act. By omission of this clause, there is no clarity as to the commission payable to the agents. Further there is no alternate provision made in the proposed bill.

Our views that this section defines the upper limit that any insurance company can spend on commission to their agents and should remain as it is. If this amendment takes place, it will not only demoralise the agency force but also lakhs of agents will be deprived of the statutory protection embedded in the Act. Therefore we strongly request you to retain the section 40A with Insurance Act 1938 only and the Regulator should not be empowered."

20.12 The provisions of existing section 40(2) of the Act, read as under:—

"(2) No insurance agent shall be paid or contract to be paid by way of Commission or as remuneration in any form an amount exceeding, in the case of life insurance business, forty per cent. of the first year's premium payable on any policy or policies effected through him and five per cent. of a renewal premium, payable on such a policy or, in the case of business of any other class, fifteen per cent. of the premium:

Provided that insurers, in respect of life insurance business only, may pay, during the first ten years of their business to their insurance agents fifty-five per cent. of the first year's premium payable on any policy or policies effected through them and six per cent. of the renewal premiums payable on such policies:

Provided further that nothing in this sub-section shall apply in respect of any policy of life insurance issued after the 31st day of

December, 1950, or in respect of any policy of general insurance issued after the commencement of the Insurance (Amendment) Act, 1950."

20.13 The Committee note that the amendments proposed to section 38 and 39 in terms of clause 48 seek to recognise two types of assignment of policies *i.e.* absolute and conditional assignment, and two categories of nominees, namely 'beneficial' and 'collector' nominee. Though the amendment proposals are aimed at providing an additional safeguard to policyholders in case of assignment of policies, concerns have been expressed, *inter-alia* on possible conflict of the proposed provisions with the law of succession in the event of both the policy-holder and nominee(s) passing away. It has also been felt to be essential to specifically provide for prohibiting 'trading of policies' in the Act. While the Ministry has sought to address the issue of possible contradiction of the provisions with the Indian Succession Act, the suggestion to specifically provide for prohibiting 'speculative assignment of policies' has not found favour on the ground that the insurers would verify and prevent such assignments. Curbing any attempt to encourage trading of policies being a necessity, the Committee feel that the Act should specifically debar speculative assignments instead of leaving the issue to the discretion of the insurers. The Committee, accordingly recommend that appropriate modifications be carried out in the provisions of sections 38 and 39 to address the concerns expressed.

20.14 With regard to the amendments proposed to the existing section 40(2), which seeks to do away with the stipulations on the percentage of premium payable to the agents as commission, and leave the matter to be decided by way of regulations to be framed by IRDA, serious reservations have been expressed, which, in the opinion of the Committee are not totally unfounded. While the intention of moving the amendment proposals is to enable in effectively regulating commissions, and reduce distortions, the Committee note that the agency force, particularly in the life insurance sector has been, and continues to be a very large self-employed group instrumental in propagating the importance of insurance as a means of social security, and in serving the interest of the policyholders. The Committee are of the view in this regard that the statutory protection on payment of commission to agents should not be done away with. If not the actual quantum of commission entitled for, which could be left to be decided in the regulations, the minimum amount or percentage of premium, the agents would be entitled to as commission could be specified in the Act.

21. Clause 49: Omission of Section 40A of the Insurance Act

21.1 Clause 49 of the Bill, seeks to omit section 40A of the Insurance Act to omit the provisions relating to limitation of expenditure on commission. Clause 49 reads as under:—

"Section 40A of the Insurance Act shall be omitted."

21.2 Section 40A of the current statute reads as under:—

"As per section 40A, "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."

21.3 An issue placed before the Committee has been that the proposed omission of section 40A would be detrimental to the interest of a large number of agents and their source of livelihood. In this regard, the Ministry, in their post evidence submission, furnished the following reply:—

"As per clause 49 the manner of payment and regulation of commission is proposed to be removed from the Insurance Act (section 40(1) and 40A) and the same is proposed to be prescribed by Regulations to be issued by IRDA. The Insurance Act, 1938 currently prescribes a graded commission payment structure for life companies. It has been felt that more flexibility in the structure of commission payment is required which will help competition. The intention of the proposed clause is to formulate regulations for commission payment to agents for flexibility through an amended Section integrating 40(1) and 40A."

21.4 On the issue of limits on commission for each policy or overall expenses, an insurance company (Bajaj Allianz Life Insurance Company Ltd.) in their memorandum stated as below:—

> "The Act continues to prescribe limits on commissions although, under the amendment, this is left to IRDA to decide. The basic issue here is, "should there be limits on each policy or whether IRDA should only regulate overall expenses or commissions?" As millions of policies are issued, despite best efforts by companies, it may not be possible to ensure compliance at each policy level and take compliance risk. The Act therefore should only allow the Authority to prescribe limits on expenses and commissions at aggregate levels by lines or classes of business or for the insurer in its entirety. The regulator may be empowered to ask for disclosure of commissions to policyholders in lieu of per policy limits. An alternate view would be to dispense with regulated limits on expenses and commissions altogether and leave it to the Board of Directors of the companies to decide. This would mean deleting sections 40, 40A of the Act."

21.5 When queried on this issue, the Ministry, in a written reply clarified by stating as below:—

> "The objective of any regulation in this regard is to increase competition in the market with corresponding disclosures and inspections to ensure that the policyholder's interests are at all times protected. The power to regulate management expenses including commission could contribute to stability in the cost of management across industry and reduce distortions. The limit of expenditure which may be prescribed would vary depending on the product, the line and the sophistication of the market.
>
> Further, the power to prescribe a limit on the expenses of management should be provisioned for in the Bill with IRDA being suitably empowered to specify the limits on expenses in the regulations framed by it. If the Committee recommends the relevant provisions will be incorporated in consultation with Law department."

21.6 The Committee note that the proposal to omit a Section 40A, which stipulates the maximum amount of commission payable to an insurance agent on different types of life insurance policies, *i.e.* a policy with immediate annuity or a deferred annuity with single premium, renewal premium etc., is intended to effectively

empower IRDA to monitor payment of commission. However, in line with the observation made on the amendment proposals of Clause 48 [Amendment of Section 40(2)], the Committee feel that the statutory protection presently provided on payment of commission to agents should not be done away with. The Committee, therefore, desire that the existing provisions of Section 40A are suitably modified to provide for guaranteed payment of commission to the agents for different classes of business, and empower IRDA to frame detailed regulations *inter-alia* with a view to bringing in transparency in commission payments. This would also be in the interest of the policy holders.

21.7 The Committee also note from the submissions of the Ministry that the Act, at present, does not adequately empower IRDA to prescribe limits on the expenses of management of an insurance company. The Committee, in this regard, express agreement with the proposal made by the Ministry for incorporating suitable provisions empowering the IRDA to specify the limit on management expenses of insurance companies.

22. Clause 51: Prohibition of rebating (Amendment of Section 41 of the Insurance Act, 1938)

22.1 Clause 51 seeks to substitute sub-section (2) of Section 41 of the Act with the objective of raising the penalty so as to make it an effective deterrent against rebating. The amendment proposals under the Clause provide as under:—

> "In section 41 of the Insurance Act, for sub-section (2), the following sub-section shall be substituted, namely:—
>
> "(2) Any person making default in complying with the provisions of this section shall be liable for a penalty which may extend to five lakh rupees.".

22.2 Life Insurance Agents Federation of India has expressed the following view with regard to the proposed amendment:—

> "From the date of commencement of this Act, there has not been a single case to be punished under this Section. On the contrary it has created a lot of misunderstanding among agents and policy holders, hence we propose that instead of penalty some other way out should be found to stop rebating like making agency a full time profession."

22.3 In this regard, CII in their memorandum have argued for making rebating legal. The suggestion made reads as follows:—

> "As many insurance companies today have a direct selling channel through web, call centre or otherwise, it should be permissible for the companies to pass on the commission (part or full) built into the product to the policyholder as this is in the interest of the policyholder. Similarly, as it is the discretion of an agent whether to further provide the share of his commission to another person, it is submitted that the same be legalized and the prohibition of rebates be removed for both companies and agents."

22.4 Asked to furnish their comments, the Ministry in one of their written replies submitted as below:—

> "The objective of raising the penalty is to prevent prospects from being lured into buying insurance policies by financial allurements. The prospect should understand his need and take an insurance policy based on his requirement rather than purchasing insurance policies for other considerations. Therefore it will not be proper to allow the agent to share the commission he earns which he may use to sell policies which do not meet the prospect's requirements. The penalty may be made more stringent in case Committee recommends or make any suggestion to stop rebating."

22.5 The Committee note that while the amendments proposed to section 41 in terms of Clause 51 seek to enhance the penalty applicable in cases where policies are sought to be sold to prospective customers not on the basis of the virtues of the policies as such, but through monetary incentives, a case has also been made out for legalizing 'rebating', that is, sharing of agent's commission with others. The Committee are of the view that selling insurance policies by way of financial allurements is unethical, and the practice needs to be effectively deterred. The Committee, therefore, express agreement with the proposal to raise the penalty in such cases to Rs. 5 lakh. The Committee would also suggest that the adequacy of the penalty amount proposed to serve as a deterrent be re-assessed and the amount enhanced, if felt necessary.

23. Clause 52: Regulation of appointment of insurance agents by insurers in respect of eligibility, disqualification and other aspects. (Amendment of Section 42 of the Insurance Act)

23.1 Clause 52 seeks to substitute section 42 of the Act to regulate the appointment of insurance agents by insurers in respect of eligibility, disqualification and other aspects.

23.2 The existing Section 42 of the Insurance Act empowers the Authority or an officer authorized by it in this behalf to issue license to act as an insurance agent in the manner determined by regulations made by it.

Clause 52 of the Bill reads as under:—

For Section 42 of the Insurance Act, the following section shall be substituted, namely:—

"(1) An insurer may appoint any person to act as insurance agent for the purpose of soliciting and procuring insurance business:

Provided that such person does not suffer from any of the disqualifications mentioned in sub-section (3).

(2) No person shall act as an insurance agent for more than one life insurer and one general insurer.

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

(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 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 proceeding relating to any policy of insurance or the winding up of an insurer 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 insured;

(e) that in the case of an individual, who does not possess the requisite qualifications or practical training or

passed the examination, as may be specified by the regulations;

(f) that in the case of a company or firm making, a director or a partner or one or more of its officers or other employees so designated by it and in the case of any other person the chief executive, by whatever name called, or one or more of his employees designated by him, do not possess the requisite qualifications or practical training and have not passed such an examination as required under clauses (e) and (g);

(g) that he has not passed such examination as may be specified by the regulations;

(h) that he has violated the code of conduct specified by the regulations.

(4) Any person who acts as an insurance agent in contravention of the provision of this Act, shall be liable to a penalty which may extend to ten thousand rupees and any insurer or any person acting on behalf of an insurer, who appoints any person as an insurance agent not permitted to act as such or transacts any insurance business in India through any such person shall be liable to penalty which may extend to one crore rupees.".

23.3 The K. P. Narasimhan (KPN) Committee, in paragraph 7.9 of its report has observed, that in reference to Section 42 of the Insurance Act, 1938, the present system of licensing of insurance agents by the IRDA has served no useful purpose. Therefore, the Committee recommended amending the provisions.

23.4 Suggestions placed before the Committee by the insurers (ICICI Lombard General Insurance, Cholamandalam MS General Insurance Companies Ltd.) as well as the General Insurance Council, on this clause, are stated as below:—

"(i) In view of the fact that insurance companies are vicariously liable for the acts of its agent, it is suggested that complete freedom should be given to insurance companies for issues relating to appointment, training and commission etc. for its agents. Further requirement for training should be removed for pre underwritten products and Insurers should be allowed to choose agents based on its own criteria's. A reference may be made in the preamble of the act to the report of the Goverdhan Committee to facilitate the structure of insurance

intermediation and distribution as recommended by the committee. Further in view of the fact that when an agent mis-sells a policy the insurance company is not absolved of its liability under the policy so issued, proposed penalty is quite stringent on insurance companies and would not serve any constructive purpose and should be removed.

(ii) Proposed clause 52 (2) restricting one insurance agent for one life insurer and one general insurer may be relaxed at least to the extent that one bank can be an agent for more than one health insurer or in respect of term life only etc. Specifically this section may be relaxed for bank, who can distribute any number of mutual funds. Such restriction for one agency for Banks may affect the penetration of insurance sector in India. It is also possible to restrict agents to handle specific lines of business for different insurers.

(iii) The role of agents to work for single/multiple insurers should be left to regulations to be framed by IRDA."

23.4A In this regard, the Ministry, in their written reply have informed that a Committee has been formed by IRDA to consider the issues involved in entirety.

23.5 Suggestions received from others as well (CII, National Federation of Insurance Field Workers of India and Shriram Life Insurance Company Limited), in this regard, State as under:—

(i) Though insurance companies have been given right to grant license to insurance agents, however in view of the fact that insurance companies are vicariously liable for the acts of its agent, it is suggested that complete freedom should be given to insurance companies for issues relating to appointment training and commission etc. for its agents. Further requirement for training should be removed for pre-underwritten products and Insurers should be allowed to choose agents based on its own criteria's. A reference may be made in the preamble of the act to the report of the Goverdhan Committee to facilitate the structure of insurance intermediation and distribution as recommended by the Committee, so that at the time of conflict a reference/ interpretation of intent can be drawn from the report of the Committee.

(ii) There is a proposal to allow the Insurer to appoint agents. This will lead to unregulated appointments. Therefore the present provision of 'Licensing of Insurance agents by the

Authority or an officer authorized by it' should remain. Otherwise it will dilute the system of licensing and lead to complaints. In view of this the omission in Clause (10) under Section 2 should not be done. Clause (10) should remain as it is. Hence submission proposed in Section 42(D) of the section should also be changed."

(iii) Clause 52 seeks to amend Section 42 which pertains to the appointment of insurance agents. Earlier the rule was that the agent who is appointed by the company should acquire the requisite qualification like training and passing the test within a period of one year of appointment. This condition was changed in the year 2000 and passing the test and training became a pre-condition for becoming an agent. This prompted a large bank of insurance agents who are good students, pass the examination fast and take up agency license but they failed totally in the sales front and got their agency terminated, thus increasing the number of termination of agents. The previous condition of allowing one year time to acquire this qualification was better since the insurance company would have utilized this time for judging whether the person concerned would be a good insurance salesman and then only would have nominated him for the required training and test. The persons possessing insurance qualification from Insurance Institute of India (III) or Institute of Insurance and Risk and Management (IIRM) can be exempted from this requirement of practical training/test for the purpose of becoming a agent, because the above mentioned qualification allow the persons to acquire the knowledge of all that is covered in the syllabus of pre-licensing examination."

23.6 The response/clarification furnished by the Ministry on the issues raised reads as under:—

"In the Bill, the appointment of agents is proposed to be done by insurance companies subject to the agents meeting the qualifications specified by IRDA. Further, under the existing legislation, IRDA is empowered to take disciplinary action against agents under Section 42(4) of the Insurance Act, 1938 which is essentially to protect the policy-holders interests. With the amendment in the Bill proposing appointment of agents by the insurance companies, it is necessary to empower the Authority to penalize the companies in the event their agents do not abide by the Code of Conduct. If the Committee agrees, we may incorporate the same in consultation with Ministry of Law."

23.7 Licenses of Agents/Corporate Agents are issued by the Insurers as per the provisions of Section 42 of Insurance Act, 1938 and IRDA (Licensing of Insurance Agents) Regulations, 2000, IRDA (Licensing of Corporate Agents) Regulations, 2002 and various circulars/guidelines issued in this respect. As per procedure the Insurer sponsors the candidates to attend 50 hours mandatory training from an accredited institute (in-house, private, online offline) who then appears for examination conducted by the Insurance Institute of India at about 150 offline and 150 online locations. After successful completion of the examination, the candidate after paying Rs. 250/- to the Insurer may be issued Agency license.

23.8 On the issue of training imparted to agents an insurance company (ICICI Lombard General Insurance Company Limited), in their memorandum submitted to the Committee, stated as follows:—

> "Insurance agents solicit business on behalf of Insurance Companies and derive commission for the same subject to prescribed Statutory/ Regulatory cap. Insurer is held responsible for all the acts, deeds and things done by the Insurance agent. Training and licensing of the Insurance Agents are governed under the Insurance Act, 1938. Insurance Regulatory and Development Authority (IRDA) in the year 2007 had constituted a committee namely Goverdhan Committee (Chaired by Mr. N.M Goverdhan, former Chairman of LIC of India), to recommend effective modes and modalities of insurance distribution in India. As per the recommendations of the Goverdhan Committee categorization of agents may be done with varying level of training and licensing requirements. General insurance products are either simple and standardized products (such as motor, PA etc.) or are too complicated (engineering, liabilities, credit etc.). Instead of generalized training, specialized training may be prescribed only for persons opting for distributing complicated products. There is no training requirement for those who distribute off the shelf standardized products. The responsibility of training and licensing may be trusted with the Insurers who is ultimately responsible for the act of the agent. Recommendations of Goverdhan Committee may be implemented on categorization of insurance agents."

23.9 Asked about the methodology followed by IRDA in the matter of imparting training to prospective Agents, conducting qualifying test/ examinations for Agents and their absorption by Insurance Companies, the Ministry, in a written submission, stated as follows:—

> "The training facility is available both online and offline. On 14th October 2010, 2446 in-house accredited centers (Insurers) and

519 private centers totaling to 2965 are available as off line centers. For on-line training 17 web sites have been accredited which includes 2 in-house portals (Insurers). The online Agent Training Institutes (ATIs) are given accreditation for one year whereas the offline ATIs are given three years. In view of the complaints received against online training institutes that they are generating training certificates from backend of the server without giving requisite training to the candidates, we are constrained to renew the accreditation only for one year to monitor them very closely.

At present the training course for pre-recruitment examination for agents has been compiled by Insurance Institute of India, which is available in their book IC-33 for Life Insurance and IC-34 for General Insurance. These books are based on the syllabus prescribed by IRDA. IRDA proposes to take the services of CII London for further development of this course.

IRDA has notified guidelines for imparting accreditation to Agent Training Institutes and on the basis of the same the accreditation is granted. In October 2007, the mandatory training hours for prospective agents were reduced from 100 to 50 hours. In view of this the accreditation to private Training Institutes was stopped. The in-house ATI continue to get the accreditation. The revision of offline training guidelines is under process, whereas the guidelines for online training which were first notified on 24 May 2005 have been revised on 1st June 2010. The validation of offline is for three years at present and for online the same is for one year. The new guidelines for online ATIs are under examination and therefore validity of the present accreditation for online Training Institutes was extended till 30th June, 2011.

Insurance Institute of India (III) is a professional body established in the year 1995 and the governing body of the III is nominated by the public sector insurers. The III was recognised as the 'Examination Body' by the IRDA under IRDA (Licensing of Insurance agents) Regulations, 2000 for conducting 'pre recruitment examination' (PRE). The III was taking assistance of National Stock Exchange (NSE), which was promoted by public sector financial institutions and conducting online financial certification modules, in conducting on-line PRE since 2001. NSE is replaced by NSE-IT, which is a wholly owned subsidiary of NSE, to support III in conducting on-line PRE from the year 2006. In view of the malpractices observed at the on-site locations of private institutions conducting on-line PRE, it was decided by III in the year 2006 that only NSE-IT services would be utilised in conducting on-line PRE.

In view of the malpractices observed at the off-line PRE locations, it was decided by III in the year 2007, in consultation with IRDA, to move completely to on-line basis of conducting PRE to minimise scope of malpractice. In this regard IRDA has set a time limit of 31-03-2011 to III and NSE-IT to shift to on-line basis of conducting PRE completely."

23.10 On Section 42 (4) of the Insurance Act, the Law Commission of India, has inter-alia recommended that the nationality of the person should be expressly mentioned as a requisite qualification for becoming an insurance agent. Responding to a question posed in this regard, the Ministry in a written submission, stated as follows:—

"This issue can be addressed by the IRDA while framing regulations under the relevant provisions of the Act."

23.11 Regulation 3(2) of the IRDA (Licensing of insurance agents) Regulations, 2000 deals with issue or renewal of license to insurance agents. The Law Commission has also stated that Regulation 3 (2) must provide that in addition to satisfying the requisite qualification, licence would be issued only if the person does not attract any of the disqualifications under Section 42 (4). In this regard, the Ministry, in their written submission, have assured that these 'suggestions would be taken care of while framing the regulations'.

23.12 Asked whether failure on the part of insurance agents to render necessary assistance to the policyholders or claimants of beneficiaries in complying with the requirements for settlement of claims by the insurer could be incorporated as a condition/reason for suspension/ cancellation of licence, the Ministry, in their written reply, submitted as under:—

"Presently the appointment of agents is proposed to be done by insurance companies subject to them meeting the qualifications specified by the IRDA. Further, under the existing system, the IRDA is empowered to take disciplinary action against agents if their actions violate the specified code of conduct, which is essentially to protect the interest of the policyholder. With the amendment in the Bill proposing appointment of agents by the insurance companies, if the committee recommends, the Authority may be empowered to apply stringent penalties on the companies' management in the event their agents not abiding by the code of conduct. We may make necessary changes in the Bill to provide for stringent penalties on insurance companies to meet such exigencies. The relevant sections will be amended in consultation with the Ministry of Law."

23.13 The LCI had recommended that it would be appropriate to amend Section 42 (5) to provide that a designated person authorised by the IRDA can exercise the power to cancel a licence. Any person aggrieved of the decision could file an appeal against such cancellation to the appropriate authority. Regulation 9 of the IRDA (Licensing of insurance agents) Regulations, 2000 is required to be amended to empower the designated officer to cancel the licence of an agent who deliberately contravenes the provisions of the Act. The Ministry in this regard, has informed that the matter would be 'taken care of by the IRDA at the time of framing regulations'.

23.14 Reservations have been expressed, both by the insurance companies, and the agents' associations on the amendment proposals of Clause 52, which *inter-alia* seek to empower the insurance companies to appoint agents and do away with the system of licensing of agents by the regulator, IRDA. While the insurance companies have sought to be empowered not only to appoint agents but also to be provided with the freedom to address issues relating to training, payment of commissions etc., as per the agents' associations, appointment of agents by the insurers would dilute the system of licensing and lead to complaints. The issues raised before the Committee in regard to appointment and training of agents centre *inter alia* on providing complete freedom to insurance companies in appointing, training, payment of commission etc., doing away with the system of one insurance agent/agency for one insurer, implementation of the recommendations of the Goverdhan Committee on the modes and modalities of insurance distribution etc. As informed, a separate Committee has been constituted by the IRDA to address these issues. As observed by the K.P Narsimhan Committee, and as is also evident from the submissions made before the Committee, the existing system of training and licensing of agents is mired with serious shortcomings, which need to be addressed. The Committee are of the view in this regard that the existing system of registration of agents needs to be overhauled *inter alia* with a view to holding the insurers liable for the acts of agents and instill responsibility on the agents in ensuring better distribution of products, increasing awareness, and curbing misselling so as to be in the interest of the policyholders. It would also be essential to restructure the existing system of training in the light of the need for appropriately assessing the capability of agents in selling different types of insurance products suited to the necessities of the customers. The Committee, while desiring that suitable measures are taken towards this end would, nevertheless, also point out that doing away with the role presently played by IRDA in the matter of qualifying and granting licences to insurance agents, as proposed, is inappropriate and fraught with the danger of leading to ineffective regulation of the profession,

particularly in instances of unscrupulous act on the part of the agents as also insurance companies. The Committee, therefore, recommend that the provisions of Section 42 are revised *inter alia* with the purpose of not doing away with the role presently being played by IRDA in licensing and cancelling the licenses of insurance Agents.

23.15 The Committee also note that the Law Commission had recommended modifying the existing regulations of IRDA to clearly provide for issuing licenses to Agents only after ascertaining the fulfillment of the qualification criteria, and empowering the designated officer of IRDA to cancel an Agent's license in the event of contravention of the provisions of the Act. The Committee expect that the recommendations of the Law Commission are duly addressed by carrying out appropriate changes in the regulations.

24. Clause 53: Omission of Section 42A, 42B and 42C relating to regulation of principal agents, chief agents and special agents

24.1 Clause 53 seeks to omit Sections 42A, 42B and 42C of the Act relating to registration and regulation of principal agents, chief agents and special agents.

24.2 Clause 53 of the Bill reads as under:—

"Sections 42A, 42B and 42C of the Insurance Act shall be omitted."

24.3 Sections 42A, 42B and 42C deal with aspects relating to registration and regulation of employment of principal agents, chief agents and special agents.

24.4 In their memorandum submitted before the Committee, National Federation of Insurance Field Workers of India, has expressed views against proposed Clause 53, stated as below:—

"The amendment to Section 42A which was done in 2002, went a step further to curb the unethical functioning in the form of Multi Level Marketing. Under Sec. 42A an important amendment was inserted *vide* Sub-Section 9 – **'No Insurer shall, on or after the commencement of the Insurance (Amendment) Act 2002 appoint or transact any insurance business in India through any Principal Agents, Chief Agent, Special Agent'.** This part of the Section 42A needs to be retained in order to stop the unethical activity of procuring Insurance business through multi level marketing and through unfair means. Insurance agency has been developed to procure life Insurance business and render professional service.

In the absence of this specific clause, the law would not stop the appointment of Principal, chief agents and special agents paving the way for exploitation of agents unsupervised sales force, creating instability due to contractual system of working and non-accountability (Company will blame the agents and will not own up any accountability). In most private companies and LIC today, even when Section 42A is in place the insurers have been appointing Principal Agent/Chief Agent/Special Agent by camouflaging the names and agency scheme. If these provisions are omitted the Insurers will have a field day and the ultimate sufferers will be the hapless policyholders and agents. The Chief Life Insurance Advisor (CLIA) Scheme of LIC is one such camouflaged scheme in blatant violation of Section 42A of Insurance Act. Through this scheme the Agents have appointed their spouse and children as their supervised agents and diverting their procured insurance business in order to earn extra commission facilitated by the CLIA Scheme. The scheme of Chief Life Insurance Advisor 2008 is contrary to the law of land, unfair, unethical and non-tenable in the eye of law and in total violation of the spirit of the Amendment in Insurance Act of 1938, brought out in 2002."

24.5 Questioned whether the Ministry agree with the views expressed, in their written reply, the Ministry stated as below:—

"The system of principal agents, chief agents and special agents is no longer in vogue and hence the relevant sections were proposed to be deleted."

24.6 Asked to detail the measures taken to curb the practice of chain marketing arrangements followed by insurance companies, particularly in the recent years, the Ministry in a written submission, stated as below:—

"Some of the corporate agencies and referrals are operating on Multi-Level Marketing (MLM) model. In insurance, MLM companies are operating under the guise of corporate agencies and referrals through different names. They are engaging independent, unsalaried sales people and unregulated firms in insurance in a chain system to procure and solicit insurance business. MLM is growing insidiously in the Indian Life Insurance market destroying the credibility of the industry and the viability of legitimate distribution channels. In view of this the IRDA has conducted On- Site Inspections and initiated disciplinary proceedings against the 10 corporate agents, one channel development associate and 3 insurers.

In order to streamline the process of licensing of corporate agents IRDA has laid down that the Insurer should submit a checklist and compliance certificate to the IRDA and obtain prior approval of the IRDA before granting and renewing the corporate agency licenses. Since 24th June, 2010 IRDA has accorded prior approval for grant/ renewal to 25 applicants out of 46 applications received. In all other cases renewal has been refused on various grounds. The IRDA also issued a circular no. IRDA/CAGTS/CIR/LCE/093/06/2010 dated 7th June, 2010 in terms of which all the insurers are directed to inspect its corporate agents before 30th September, 2010 and to submit a copy of inspection report to the IRDA. The IRDA will analyse reports received by Insurers and initiate action against those who are found to have violated the provisions of Insurance Act, 1938, IRDA (Licensing of Corporate Agents) Regulations, 2002, guidelines and circulars issued in this regard."

24.7 The Committee note that the amendments proposed under Clause 53 are intended to omit Section 42A, B and C of the extant Act, which deal with registration and regulation of Principal agents, Chief agents and Special agents, a practice which has been debarred with the amendments made in the Act in 2002. While the Ministry has sought to justify the dropping of the provisions, as the system is no longer in vogue, as per the agents associations, the practice continues to be prevalent, albeit surreptitiously. The Ministry has also admitted that 'Multi Level Marketing (MLM) is growing insidiously in the Indian Life Insurance market and destroying the credibility of the industry and the viability of legitimate distribution channels'. In the light of the Ministry's own submission on this practice, which is a bane for the insurance sector, the Committee express the opinion that it would be appropriate to build in appropriate provisions in the statute for effectively deterring such practices.

25. Clause 54: Issue of license to intermediary or insurance intermediary (Amendment of Section 42D of the Insurance Act)

25.1 Clause 54 seeks to amend section 42D of the Act to provide for registration in place of licensing of intermediary or insurance intermediary by the Authority.

25.2 The provisions of Clause 54 of the Bill are as under:—

In section 42D of the Insurance Act,—

(i) For the words "licence" and "licence issued", wherever they occur, the words "registration" and "registration made", shall respectively be substituted.

(ii) in sub-section (1), in clause (a) of the proviso, for the word, brackets and figure "sub-section (4)", the word, brackets and figure "sub-section (3)" shall be substituted;

(iii) in sub-section (3), for the words, letters, brackets and figures "in clauses (b), (c), (d), (e) and (f) of sub-section (4) of section 42", the following shall be substituted, namely:—

'in clauses (b), (c), (d), (e) and (g) of sub-section (3) of section 42.'

25.3 By way of giving the rationale for seeking to amend Section 42D of the Act, the Ministry in a written submission stated as below:—

"42D of the Act has been amended to provide for registration of insurance intermediaries as defined in sec. 2(f) of the IRDA Act. It has also been proposed that IRDA Act be amended to include agents in the definition of intermediaries in the IRDA Bill. It is absolutely essential that these intermediaries are properly regulated by a system of registration by the Authority. About 40% of the general insurance business is conducted through insurance intermediaries and 16% of the life insurance business is conducted by insurance intermediaries and therefore they need to be regulated."

24.4 A private insurer (Bharti Axa Life Insurance Company Ltd.) has, in their written memorandum furnished to the Committee stated as below:—

"Section 42D is applicable to all intermediaries including insurance agents. The word "intermediary" has been amended to include insurance agents. Since the provisions on appointment of agents are covered under section 42, insurance agents may be exempted from the provisions of section 42D. Otherwise there will be duplication of provisions for insurance agents."

25.5 Questioned on the issue raised, the Ministry furnished the following written reply:—

"The appointment of agents is proposed to be done by insurance companies subject to them meeting the qualifications and complying with the code of conduct specified by the IRDA. Section 42D provides registration of all intermediaries including the agents. In view of the suggestion given above, we may delete the reference of agents in the definition of intermediaries under section 2 of the Insurance Regulatory and Development Authority Act, 1999. However, corporate agents be included in the definition of

intermediaries and they be required to be registered under section 42 of Insurance Act. Necessary amendments may be carried out in the relevant sections in consultation with the Ministry of Law."

25.6 Sub-sections (8) and (9) of Section 42D of the Insurance Act read as under:—

"(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 who appoints as an intermediary or an insurance intermediary or any person not licensed to act as such or transacts any insurance business in India through any such person, shall be punishable with fine.

(9) Where the person contravening sub-section (8) 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."

25.7 The Law Commission of India had, in their 190th Report, recommended that the details of the fine that could be imposed also need to be specified in the Act. Replying to a query posed in this regard, the Ministry, in their written submission, stated as under:—

"In terms of the proposed section 42(4) of the Bill, in case of contravention of the provisions of the Act, an insurance agent is liable to a penalty which may extend to rupees ten thousand and any insurer or a person acting on behalf of a insurer who appoints a person as an insurance agent not permitted to act as such or who transacts any insurance business in India through such a person, is in turn liable to a penalty which may extend to rupees one crore. On the same principle, if the committee recommends, penalties be imposed on the insurance intermediary and the insurer. The necessary amendments to the relevant clauses will be made in consultation with the IRDA and the Ministry of Law."

25.8 The Committee note that the amendments proposed to Section 42D in terms of Clause 54, which seek to provide for registration of insurance intermediaries is inconsistent to the extent that it covers agents as well. As per the amendments proposed separately under the Clause 52 (Amendment of Section 42), the process of registration of insurance agents has been sought to be done away with, and the insurance companies bestowed with the power to appoint agents.

In this regard, the Committee has recommended reviewing the amendments proposed to Section 42 with a view to continuing with the role presently played by IRDA in the matter of registration/licensing of Agents. The Committee, therefore, desire that the amendments proposed to Section 42D to provide for registration of insurance intermediaries are finalised in the light of these observations made earlier. The Committee also expect that the recommendation of the Law Commission for specifying the fine that would be applicable on the insurance intermediaries as well as the companies for violation of the provisions of Section 42D, which has not been covered in the amendment proposals, is suitably addressed.

26. Clause 56: Record of insurance agents (Amendment of Section 43 of the Insurance Act)

26.1 Clause 56 seeks to substitute Section 43 of the Act to enable the insurers to keep the records electronically.

26.2 The amendments proposed, *vide* Clause 56 of the Bill, provide for the following:—

For Section 43 of the Insurance Act, the following Section shall be substituted, namely:—

> "43. (1) Every insurer and every person who acting on behalf of an insurer employs insurance agents shall maintain a record showing the name and address of every insurance agent appointed by him and the date on which his appointment began and the date, if any, on which his appointment ceased.
>
> (2) The record prepared by the insurer under sub-section (1), shall be maintained for a period of five years.".

26.3 When pointed out that this Clause does not appear to enable for maintenance of records in electronic form, the Ministry, in their written submission, stated as below:—

> "The Law Commission had recommended that the register of insurance agents should also be maintained in electronic form and that the word 'register' be substituted with the word 'record' to encompass both register and records in the electronic form. However, as the Authority felt that maintenance of records only in the electronic form could leave scope for manipulation of record, it is proposed that the section be amended with the marginal noting as "Record of insurance agents" which would clearly indicate that the insurance companies are not necessarily mandated to keep the

records of the agents in electronic form only but that they are able to maintain the register of agents in electronic form also."

26.4 Further a suggestion has also been received from Insurance Brokers Association of India, regarding maintenance of records of agents, which States as follows:—

"the records under sub-section (1) shall be maintained for five years. …..It can be stated that the records are to be maintained for a period of 5 years from the date he/she ceases to be an agent."

26.5 In this regard, the Ministry, in a written reply, stated as below:—

"This suggestion can be accepted and the clause can be amended to add the words "from the date of cessation" after the words "five years" in consultation with the Ministry of Law."

26.6 The Committee expect that the amendment proposed to Section 43 of the Act (Clause 56) is suitably modified to specify that the records of agents are to be maintained for a period of five years 'from the date of cessation' of the engagement of an agent by an insurance company.

27. Clause 57: Omission of Section 44 relating to prohibition of cessation of payments of commission

27.1 Clause 57 of the Bill seeking to omit Section 44 of the Act relating to prohibition of cessation of payments of commission to agents States as under:—

"Section 44 of the Insurance Act shall be omitted."

27.2 Provisions of Section 44 of the existing Act, read as below:—

"(1) Notwithstanding anything to the contrary contained in any contract between any person and an insurance agent, providing for the forfeiture or stoppage of payment of renewal commission to such insurance agent no such person shall, in respect of life insurance business transacted in India, refuse payment to an insurance agent of commission due to him on renewal premium under the agreement by reason only of the termination of his agreement, except for fraud:—

Provided that—

(a) such agent ceases to act for the insurer concerned after the Central Government has notified in the Official

Gazette that it is satisfied that the circumstances in which the said insurer is placed are such as to justify the agent's ceasing to act for him; or

(b) such agent has served the insurer continually and exclusively in respect of life insurance business for at least five years and policies assuring a total sum of not less than fifty thousand rupees effected through him for the insurer were in force on a date one year before his ceasing to act as such agent for the insurer, and that the commission on renewal premiums due to him does not exceed four per cent. in any case; or

(c) such agent has served the insurer continually and exclusively for at least ten years and after his ceasing to act as such agent he does not directly or indirectly solicit or procure insurance business for any other person.

Explanation.— For the purposes of this sub-section, service of an insurance agent under a chief agent of the insurer, whether before or after the commencement of the Insurance (Amendment) Act, 1950, shall be deemed to be service under the insurer.

(2) Any commission payable to an insurance agent, under the provisions of Clauses (b) and (c) of the proviso to sub-section (1) shall, notwithstanding the death of the agent, continue to be payable to his heirs for so long as such commission would have been payable had such insurance agent been alive.

44A. For the purposes of ensuring compliance with the provisions of Sections 40A, 40B, 40C, 42B and 42C the Authority may by notice—

(a) require from an insurer, principal agent, chief agent or special agent such information, certified if so required by an auditor or actuary, as he may consider necessary;

(b) require an insurer, principal agent, chief agent or special agent to submit for his examination at the principal place of business of the insurer in India any book of account, register or other document, or to supply any statement which may be specified in the notice;

(c) examine any officer of an insurer or a principal agent, chief agent or special agent on oath, in relation to any such information, book, register, document or statement

and administer the oath accordingly, and an insurer, principal agent, chief agent or special agent shall comply with any such requirement within such time as may be specified in the notice."

27.3 The suggestions made by Life Insurance Agents Federation of India, National Federation of Insurance Field Workers of India as also an expert, on the omission of Section 44, as proposed, are stated as below:—

"Section 44 was introduced in the Insurance Act, 1938:—

(i) **44(1)**, apparently to protect the Agent from loosing his earned but deferred income and inserting sub-sections (a), (b) and (c) to protect the Insurers from the liability of payment of renewal commission not before the latent period of 5 years.

(ii) **44(2)**, apparently to protect the heirs of the Agent from loosing their rights to the renewal commission.

The reminiscence of the deletion of this Sec. 44 shall be felt by the country in the year 2020-25, when we are destined to be the 3rd growing economy behind USA and China. The economic prosperity shall come with its own problems of intra mismatch, big population, high unemployment etc. We shall be a Democratic country of 150 crore people of which about 50 crore shall be in the impatient age group of 20-30 and seeking for employment. We advocate for the **Insurance Agency as a whole time career and as a respectable source of employment,** provided the profession gets protection by such Sections as Sec. 44 and the Government takes other measures towards professionalizing the Agency Career (for which we have a separate panel of people working on the scheme).

We strongly request you to stop the omission of the Sec. 44 of the Insurance Act 1938 and scrap the Clause 57 of the Insurance Laws Amendment Bill, 2008.

(iii) There is a proposal to omit this Section. This omission of Section 44 of Insurance Act will deprive the agents of their hard earned commissions. This will encourage companies to even withhold commissions by terminating the agents on flimsy grounds. This was the style of functioning of many companies prior to Nationalisation. This will lead to exploitation of work force who have to work on commissions after spending and ensuring productivity. In order to protect

the Insurers interest it can be added that if an Agent joins another Insurer then the Renewal commissions can be stopped.

Based upon a few decades of experience, Section 44 was introduced in 1950 as a measure to give partial protection to the renewal commission of agents. It is now proposed to drop this Section, based on just two years' experience. There does not appear to be any logic behind this step which would only show the IRDA, in poor light. The Regulator has not only to be strictly impartial between different sections of the industry, but should also appear to be so. This move, to withdraw the protection provided to agents, is sure to affect the image of impartiality.

Another aspect has also to be noted. The number of agents just dropping out is many times greater than the number of agents moving from one company to another. If the companies, which complain about their agents being lured away by rival companies, take proper action to prevent drop out of agents, there would be no need to worry about a few agents moving to rival companies. The problem of agency drop out is to be tackled by the IRDA, with the cooperation of all companies, not by amending the insurance Act.

With the Bill seeking to omit the entire section, the protection given to the family of the deceased agent, in the form of hereditary commission, also gets removed. So the proposed amendment is not only unfair, but will not also stand the test of law."

27.4 Responding to the above suggestions, the Ministry in one of their replies stated as below:—

"As per Clause 48 of the Bill Section 40 will provide for regulations to be framed by IRDA on commissions paid and received. In view of this it was considered necessary to omit Section 44 which provided for the manner of cessation of payment of commissions or remuneration. This will be taken care of by the regulation to be framed by IRDA as per Section 40."

27.5 While deposing before the Committee, a representative of the Life Insurance Agents Federation of India, submitted as follows on the proposed changes on issue of appointment, training and commission of agents etc.:—

"There are certain provisions, especially, Sections 40, 41, 44 and 45 and it is not to be delegated to anybody else. We have seen in the

last 10 years of privatization about the regulation as to how it is misused and misinterpreted. We have full faith that whenever a regulator wants any change in the regulation or agent condition or commission, then they are always welcome in Parliament. Let this responsibility be only with the Parliament. We have seen it in only 10 years, and we do not know what will happen in the next 15 years…Today about Rs. 20 thousand crore of LIC commission plus fate of 30 lakh insurance agents will be vested in some individual body, which is not safe. This is what we feel about it."

27.6 The Committee find substantial credence in the submissions of the agents' association that the proposal to do away with Section 44 of the Act, which guarantees payment of commission/renewal commission to agents, or their legal heirs leaves the possibility of working against the interest of the large number of agents in the country. The Committee, therefore, express the view that the matter should not be totally left to be dealt with under the regulations, and the statutory safeguard on payment of commission to the agents and their legal heirs should be continued with.

28. Clause 58: Policy not to be called in question on ground of misstatement after five years (Amendment of Section 45 of the Insurance Act)

28.1 Clause 58 seeks to substitute Sections 44A and 45 of the Act to provide that no policy of life insurance shall be called in question on any ground after the period of five years. It also provides that the policy can be called in question by the insurer within the period of five years only in case of fraud.

28.2 The provisions of the existing Section 45 of the Insurance Act are as follows:—

"45. Policy not to be called in question on ground of mis-statement after two years. No policy of life insurance effected before the commencement of this Act shall after the expiry of two years from the date of commencement of this Act and no policy of life insurance effected after the coming into force of this Act shall after the expiry of two years from the date on which it was effected, be called in question by an insurer on the ground that a statement made in the proposal for insurance or in any report of a medical officer, or referee, or friend of the insured, or in any other document leading to the issue of the policy, was inaccurate or false unless the insurer shows that such statement was on a material matter or suppressed facts which it was material to disclose and that it was fraudulently

made by the policyholder and that the policyholder knew at the time of making it that the statement was false or that it suppressed facts which it was material to disclose:

Provided that nothing in this section shall prevent the insurer from calling for proof of age at any time if he is entitled to do so, and no policy shall be deemed to be called in question merely because the terms of the policy are adjusted on subsequent proof that the age of the life insured was incorrectly stated in the proposal."

28.3 Clause 58 of the Bill seeks to amend Section 45 of the Insurance Act, as under:—

"(1) No policy of life insurance shall be called in question on any ground whatsoever after the expiry of five years from the date of the policy, *i.e.,* from the date of issuance of the policy or the date of commencement of risk or the date of revival of the policy or the date of the rider to the policy, whichever is later.

(2) A policy of life insurance may be called in question at any time within five years from the date of issuance of the policy or the date of commencement of risk or the date of revival of the policy or the date of the rider to the policy, whichever is later, on the ground of fraud:

Provided that the insurer will have to communicate in writing to the insured or the legal representatives or nominees or assignees of the insured the grounds and materials on which such decision is based.

Explanation I.—For the purposes of this sub-section, the expression 'fraud' means any of the following acts committed by the insured or by his agent, with the intent to deceive the insurer or to induce the insurer to issue a life insurance policy:

(a) the suggestion, as a fact of that which is not true and which the insured does not believe to be true;

(b) the active concealment of a fact by the insured having knowledge or belief of the fact;

(c) any other act fitted to deceive; and

(d) any such act or omission as the law specially declares to be fraudulent.

Explanation II.—Mere silence as to facts likely to affect the assessment of the risk by the insurer is not fraud, unless the

circumstances of the case are such that regard being had to them, it is the duty of the insured or his agent, keeping silence to speak, or unless his silence is, in itself, equivalent to speak.

(3) Notwithstanding anything contained in sub-section (2), no insurer shall repudiate a life insurance policy on the ground of fraud if the insured can prove that the mis-statement of or suppression of a material fact was true to the best of his knowledge and belief or that there was no deliberate intention to suppress the fact or that such mis-statement of or suppression of a material fact are within the knowledge of the insurer.

Explanation.—A person who solicits and negotiates a contract of insurance shall be deemed for the purpose of the formation of the contract, to be the agent of the insurer.

(4) A policy of life insurance may be called in question at any time within five years from the date of issuance of the policy or the date of commencement of risk or the date of revival of the policy or the date of the rider to the policy, whichever is later, on the ground that any statement of or suppression of a fact material to the expectancy of the life of the insured was incorrectly made in the proposal or other document on the basis of which the policy was issued or revived or rider issued:

Provided that the insurer will have to communicate in writing to the insured or the legal representatives or nominees or assignees of the insured the grounds and materials on which such decision to repudiate the policy of life insurance is based:

Provided further that in case of repudiation of the policy on the ground of misstatement or suppression of a material fact, and not on the ground of fraud, the premiums collected on the policy till the date of repudiation shall be paid to the insured or the legal representatives or nominees or assignees of the insured within a period of ninety days from the date of such repudiation.

Explanation.—For the purposes of this sub-section, the mis-statement of or suppression of fact will not be considered material unless it has a direct bearing on the risk undertaken by the insurer, the onus is on the insurer to show that had the insurer been aware of the said fact no life insurance policy would have been issued to the insured.

(5) Nothing in this section shall prevent the insurer from calling for proof of age at any time if he is entitled to do so, and no policy shall be deemed to be called in question merely because the terms of the policy are adjusted on subsequent proof that the age of the life insured was incorrectly stated in the proposal."

28.4 As per the submission of the Ministry, the rationale for this amendment proposal emanates from the recommendations of the Law Commission of India, which in its 190th Report examined this issue and recommended as under:—

"5.1.24 The Law Commission is of the firm view that there should be no unilateral repudiation of a life insurance policy by an insurer. Accordingly, S. 45 of the Act requires to be amended to expressly State this position. Further, the Law Commission accepts in principle the suggestion by the LIC that if a policy of life insurance has been in force continuously for a period, no repudiation on any ground should thereafter be permitted. Although the Law Commission in its consultative paper has suggested that this period should be three years, taking into account the view of LIC (which still controls nearly 90 per cent of the life insurance business in this country) that this period should be 6-8 years, the Law Commission finally recommends that this period should be fixed at 5 years, *i.e.* five years after the coming into force of the policy, *i.e.* the date of issuance of the policy or the date of commencement of the policy or the date of the revival of the policy or the date of the rider to the policy whichever is later…In other words, no insurer should be permitted to repudiate a life insurance policy on any ground whatsoever, five years after the coming into force of the policy, *i.e.,* the date of issuance of policy or the date of commencement of the policy or the date of the revival of the policy or the date of the rider to the policy whichever is later."

28.5 Many stakeholders have opposed this amendment, as it is perceived to be not in the interest of the policyholder. The National Federation of Insurance Field Workers of India, in their memorandum submitted before the Committee stated as below:—

"We strongly oppose this amendment which is completely anti-policyholder and intended to help the private insurance companies to turn down the genuine claims of the policyholder. The existing provision of 2 years should be retained. Only on the basis of fraud the policies should be questionable within 2 years. The insurer should take the safeguards and adequate check measures at the

time of entry and not at the time of settling claims. This will only encourage selection of sub-standard lives through aggressive marketing and then repudiation of death claims and harassment of widows and children. This will defeat the very purpose of life insurance. At the time of opening the insurance sector, it was promised that the service to the policyholders will be improved and made more liberal. In fact, this is just the reverse, making the existing law more stringent."

28.6 Life Insurance Agents' Federation of India, in their memorandum, have stated as follows on the proposed amendment:—

"Sec. 45 gives a protection to the heirs of the policyholders from the action of the learned and highly paid officials of the Insurer from declining Death Claims on flimsy grounds, if the death occurs after completion of two years of the policy; but gives enough space to the insurer to protect itself from wrong, malicious design—if any—either by the policyholder or his soliciting Agent. During the regime of this Sec. 45 the LIC has made tremendous financial growth. We shall like to draw your attention on the Death Claims Statistics for the year 2008-09, a period when the Sec. 45 prevails, and kindly note that the private insurers have repudiated the death claims to the extent of 9.97% whereas LIC has repudiated as much as 1.33% only.

Clause 58 seeks to extend this period of 2 years as per Sec. 45 of the Insurance Act 1938 to 5 years during which the policy can be called to question. It can be easily inferred that this extension shall give more leeway to the above kind of Insurers to repudiate higher percentage of the death claims raised by the mostly shy, semi literate/ ill literate, inwardly looking and mostly exploited class the – widows; to whose benefit the conception of Life Insurance was born. Besides, the LIC has withstood it for last 55 years.

Hence, we pray to stop the amendment to Sec. 45 of the Insurance Act 1938 as proposed in the Clause 58 of the Insurance Laws Amendment Bill 2008."

28.7 While deposing before the Committee, a representative of All India Insurance Employees Association opined as follows:—

"On Section 45 of the Insurance Act, the change is not in the interest of the policyholders. At present a policy cannot be called into question beyond two years. Now it is proposed to increase that period to five years. As it is even within these two years, we find that quite a lot of policies are being repudiated. To give some small

figures in the private sector on individual policies 9.97 per cent of the claims have been repudiated. In the Group Insurance, 3.39 per cent of the claims have been repudiated as against LIC's 1.33 per cent of the claims which have been repudiated. What we find is that something very strange where insurance company like Bharti Axa on a number of claims which have been repudiated amount to 44.83 per cent. Tata AIG has repudiated 27.78 per cent. Met Life– 22.27 per cent and SBI Life – 15 per cent of the claims have been repudiated. All this has happened within two years and if this is increased to five years, we feel that it will be more harmful to the interest of the policy holders and a still larger claims can be repudiated. We strongly feel that this Section should not be amended."

28.8 When pointed out that the amendments proposed would go against the interest of policyholders, the Ministry, in their written reply, stated as below:—

"As informed by the IRDA the average life span is 15-17 years for Unit Linked Insurance Policies and 17 for other traditional policies. The proposed amendment *vide* clause 58 is largely in favour of the policyholder because in the existing provision, a claim could be repudiated at any point during the tenure of the policy as opposed to the proposal in the Bill, where there is no demarcation between early or non-early claims and repudiation of claims can be done only within 5 years, on grounds of fraud or misstatement. Where a claim is repudiated on the ground of fraud, the onus of disproving that there was no fraud lies upon the beneficiaries of the claim. However where a claim is to be repudiated on the basis of misstatement, the onus is proposed to be vested upon the insurance company to substantiate that it was a misstatement.

As per section 45 of the Insurance Act 1938, repudiation of an insurance policy by insurer can be done at any time upto 2 years, if material facts in the proposal form are false. Further, the policy is not to be called in question by the insurer on ground of misstatement after 2 years unless the insurer shows that it was done knowingly or fraudulently. However, as per practice only when a claim is lodged that the insurer questions the statements made at the time of taking the policy. Thus, in the existing provision, a claim could be repudiated at any point during the tenure of the policy on grounds of fraud as opposed to the proposal in the Bill, where claims can be repudiated only within 5 years, on grounds of fraud or misstatement. As the existing provisions of section 45 allow the insurer to repudiate a claim at any point

during the term of a policy for misstatement, while the proposed change disallows the life insurers to repudiate a claim after 5 years, the proposed Section 45 is in the interest and welfare of the policyholders."

28.9 In response to yet another suggestion made by an insurance company (Shriram Life Insurance Company Limited) that sub clause 3 of clause 58 needs to be redrafted to cover cases where the insured may not be alive to prove his innocence in case of a 'death claim' and only the nominee has to prove policyholders' innocence in this matter, the Ministry, in their written reply, further stated as follows:—

"In the event of fraud, it is a fact that the onus of disproving now vests with the beneficiaries, in the absence of life assured who is no more. This purpose of this clause is to dissuade the incidence of frauds. For revision of the clause the matter may be discussed with the Ministry of Law for suitable amendments to the relevant clauses."

28.10 The Insurance Company further suggested as follows in respect of Clause 58:—

"The period of two years provided in the erstwhile Section 45 has been increased to five years. This will go as a benefit to the insurer. In case of revival of policies some protection is needed to provide the claimant atleast the paid up value of the policy which has been acquired prior to revival even in case the claim is repudiated by the insurer on the basis of willful misstatement of the policyholder.

Section 45(5)—Adjustment of policy terms on account of correcting the age. Section 45(5) states that no policy shall be deemed to be called in question merely because the subsequent proof shows the age of the life assured was incorrectly stated in the proposal. Our experience shows that in some cases the age is grossly understated at the time of taking the policy. This happens particularly in respect of non-medical insurance. We suggest that the regulator is allowed to make suitable regulations if the real age of the policyholder is found to be beyond the insurable age as provided in the plan and in the rules of the insurer."

28.11 Similar views have been expressed by CII on the need for providing for making changes in the policy due to misstatement of age which reads as follows:—

"The proposed amendment provides for 'adjustments' being made to policies at any time in case of misstatement of Age. In case the

actual age of the Life Assured if found to be beyond the age boundaries stipulated for the product, insurers should also be permitted to make the policy void and forfeit all premiums received in its favour."

28.12 The Committee note that while in terms of the existing Section 45 of the Insurance Act, a policy can not be questioned by an insurer after two years of its commencement on grounds of misstatement of material facts, it can still be repudiated by the insurer at any point during the term of the policy on grounds of fraud. The amendment proposal seeking to stipulate a time frame of five years for questioning a policy on any ground, including furnishing of false information, suppression of facts etc. would thus be in the interest of the policyholders. With a view to serve the interest of the policyholders better, the Committee, however, feel that the period during which a policy can be repudiated on any ground, including misstatement of facts etc., should, be confined to about three years from the commencement of the policy as originally proposed by the Law Commission, instead of five years as proposed in the Bill. The Committee also expect that the infirmities in the proposed Section 58(3) relating to payment of policy maturity amount to the nominee of a deceased policyholder etc. are addressed for rectification, as agreed to by the Ministry.

29. Clause 86: Surveyors or Loss Assessors (Substitution of Section 64UM of the Insurance Act)

29.1 Clause 86 seeks to substitute section 64UM of the Act to empower the Authority to regulate the functions, code of conduct, etc., of surveyors and loss assessors.

29.2 Clause 86 of the Bill, which seeks to substitute section 64 UM of the Act provides as under:—

"64UM. Save as otherwise provided in this section and the regulations made thereunder, no person shall act as a surveyor or loss assessor in respect of general insurance business."

29.3 The existing provisions of 64UM provide for licensing of surveyors and Loss Assessors by IRDA.

29.4 The Institute of Insurance Surveyors and Loss Assessors (IISLA) in their memorandum, have made out a case for suitably amending the provisions of Clause 86, to enable independent

surveyors and loss assessors to function in the interest of policyholders. The views expressed by the Institute are stated as below:—

> "…..The private Insurance companies with foreign collaboration are violating rules and regulations of Insurance Act – 64 UM as they are getting Insurance claim assessment done by their employees instead of licensed independent Surveyor/Loss Assessor. It is understood that there is proposal to dilute the provisions of the Act, by moving away the licensing to regulations and to increase certain limits prescribed in the Act. The proposed amendment if accepted, will adversely affect the independent practicing surveyor's fraternity across India. The general public who buys the insurance policies would be put to great hardship if the employees of insurance companies or firms which indulge in contract survey are empowered to assess the claims, instead by a neutral person like INDEPENDENT LICENCED PRACTISING SURVEYOR. To avoid such dilution of Act by provisions which will be detrimental to the interests of insured clientele across India, we request you to recommend to:
>
> (1) retain the licensing of SLAs within the ambit of 64 UM.
>
> (2) incorporate suitable words to allow only practitioners in the profession of SLAs, *i.e.* employees or firms/companies not to be allowed to be licenced."

29.5 Elaborating their view point further, the IISLA have stated as follows:—

> "The existing Section 64UM is getting interpreted differently to suit their own (insurer's) interests, or at least not in tune with the spirit of such enactment, is the feeling of this body of Insurance Surveyors and Loss Assessors. The problems now faced are:
>
> (i) Licensed Surveyor is to be an independent practitioner and not an employee of insurer:—
>
> The very spirit of enactment of 64UM was and is to enable just and reasonable assessment of loss by an entity of qualified, licensed and unattached (not belonging to the insured or insurer) independent surveyor. This provision is sought to be diluted by misinterpretation or seeking amendment by the vested interests (mainly private insurance companies), and/or by the regulator.

(ii) The no survey limit is sought to be enhanced to keep pace with inflation:—

The objective of specifying such 'no-survey' limit was to prevent possible hardship to the insured clientele, in settling the claims of straight forward and obvious in nature, and definitely not intended to include claims in Motor portfolio, since at that time the total cost of a motor car was much less than this limit of 'no survey'.

Obviously, the 'no survey limit' was imposed for the convenience of insurers to settle genuine claims, as the resources required for loss assessment such as (i) qualified licenced surveyors' availability; and (ii) to communicate with the surveyor, get him on the job and deliver the service required for claim settlement decision by the insurer was apprehended as not commensurate with the quantum of claim to be paid. This was the cost mentioned in the enactment and not the mere fee payable to the surveyor, which even now is about less than or about 5% of the claim amount.

And now in the present scenario of instant communication, and quick or 'no time elapsed' situation in data transfer, besides abundant availability of qualified licenced independent surveyors across the country, this concept of 'no survey limit', has no place and needs to be discarded as redundant feature of claim assessment process.

(iii) Licensed Surveyors as employees of insurance companies:—

This is most disturbing trend that has manifested with privatization of the General Insurance industry. The principle of neutral and non belonging entity to either of the insurance contract is compromised in allowing such cadre of loss assessors. The licensed surveyor is regulated by the Act, regulations formed thereunder, while the same licensed surveyors gets into employment of insurance or any other company, the service rules and business interests of that company take precedence or overrides the conduct and service rules of such employee. Such an employee can not be treated as approved Surveyor, as envisaged in the Act and/or regulations.

We should note that in a similar professional Institute like ICAI (on the lines of which IISLA is sought to be modelled and nurtured), the practicing CA is eligible to certify the accounts of any company, but if he joins any company as its

employee, he will not be entitled to certify the accounts of any company including that of his employer.

(iv) Corporate Surveyor:—

This again is the manifestation of vested interests in the general insurance industry. The main objective of opening up of the insurance sector for private players was to achieve more penetration by capturing the potential in the semi urban and rural areas for the business of general insurance. In practice however, the private players confined their operations to the Metros, and big cities only. In order to penetrate into the market and to maintain their share of market, the insurers entered often into cut-throat competition by extending/ incurring business procurement costs beyond permitted limit (15 – 17.5%), by almost double and more (often touching about 35% of premium income). The very same players have also entered into MOU with the automobile dealers agreeing to pay more than required charges towards labour, and painting charges of automobiles. The astonishing factor is that the PSUs have also joined the fray and they have also started to encourage similar agreements with the repairers/ automobile dealers.

The insurers patronizing such corporate companies enter into bulk outsourcing of survey jobs, which ultimately leads to sub letting and contract surveying. The approved body of surveyors (IISLA), is not against the Surveying firms as such, but it is that sub letting part (which amounts to contract surveying) that the body is apprehensive about, since such a practice would make this service, a business and not a profession any more. The licensing of firms/companies can be continued as envisaged provided that all the directors/ partners are the eligible and qualified licence holders, and these directors/partners do not practice separately on their individual licence, and that none of their work is sub let or outsourced to 'another entity' whether such 'another entity' is licensed or not.....In order to keep unique nature and identity of the entity of Approved Surveyor, and to avoid any scope for ambiguity and/or misinterpretation and even misuse, Section 64 UM of Insurance Act should not be diluted and should be supplemented with certain wording and provisions to strengthen the spirit of the Act and equitable loss assessment practice in claim management of the insured clientele at large, besides having appropriate checks and balance of management of huge resources public funds of insurance.

29.6 The Institute has *inter-alia* suggested revising Section 64UM of the Act to read as follows:—

> (2) No claim in respect of a loss which has occurred in India and requiring to be paid or settled in India 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 Authority, 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 Independent Licensed (Practicing) surveyor and loss assessor (hereafter referred to as "approved surveyor or loss assessor").

29.7 Additional points, put forth by the Institute before the Committee are as follows:—

> "Moving the control of Surveyor empowerment from the ambit of the Act to that of Regulator is detrimental to the unique identity of the profession, which will be on least of priorities of the Regulator functions.
>
> The Government has already promoted IISLA, which has on its board representatives/nominees of Ministry of Finance (GOI), Nominee of IRDA, and Chairman of GI Council as *ex officio* Director. So the institution or body of Independent Surveyors is already under the close supervisory governance of the regulator and Government. Hence, it would be prudent to retain licensing and empowerment aspects of the Surveyor profession in the Act itself, with the above suggested amendments of reinforcement or strengthening the concept of Independent Surveyor in the field of loss assessment in the general insurance industry."

29.8 Asked to State their views on the suggestions made by IISLA, the Ministry, in one of their written submission stated as under:—

> "The suggestions may be taken care at the time of formulation of regulations as proposed *vide* Clause 86 of the Bill."

29.9 Responding to a question posed to a private insurance company (ICICI Lombard General Insurance Company Limited) on the amendment proposals of the Clause providing for IRDA to govern issues relating to licensing of surveyors and loss assessors, the company stated:—

> "Presently the Surveyors and the Loss Assessors are members of and are administratively governed by the Indian Institute of

Surveyors and Loss Assessors. The code of conduct of the surveyors are governed by the Insurance Surveyors and Loss Assessors (Licensing, Professional Requirements and Code of Conduct) Regulations, 2000. The governing provision in the Insurance Act, 1938 *i.e.* Section 64UM has been proposed to be modified under the Insurance Amendment Bill, 2008. The amended provision while removes all the statutory prescriptions pertaining to insurance Surveyors and Loss Assessors, requires IRDA to make appropriate regulations to govern the qualification, licensing, professional requirements, Code of Conduct and the procedure for survey of losses. So far as the independence of insurance surveyors are concerned, the prevailing provisions adequately safeguards the independence of the surveyors while protecting the interests of the policyholders."

29.10 Some of the issues prevailing in the general insurance industry, which are harmful to the policyholders interest, as highlighted before the Committee include, employment of surveyors by the insurance companies, which may not ensure impartiality with regard to settling claims, undertaking contract surveying by insurers etc. The amendments proposed under Clause 48 seek to do away with the existing statutory prescriptions pertaining to licensing insurance surveyors and loss assessors etc. and leave these issues to be addressed by way of regulations. The Committee, in this regard, find merit in the suggestion that only licensed and independent surveyors and loss assessors should be allowed to survey claims so as to be in the interest of the policyholders. The Committee, therefore, recommend modifying the amendments proposed under the Clause to provide for only independent and licensed surveyors to practice the profession. Further, measures need to be taken to strengthen the professional body of surveyors and loss assessors *i.e.* IISLA to function as a regulatory body for this profession.

30. Clauses 92, 93 and 94: Penalty for failure to comply with Sections 3, 27, 27A, 27B, 27D, 27E, 32B, 32C and 32D

30.1 Clauses 92, 93 and 94 of the Bill seek to provide as under:—

"Clause 92.—This clause seeks to substitute sections 103 and 104 of the Act to enhance the fine not exceeding twenty-five crore rupees and with imprisonment which may extend to ten years in case a person carries on business of insurance without obtaining a certificate of registration. It also enhances the penalty for contravention of provisions relating to investment of controlled fund or assets.

Clause 93.—This clause seeks to amend section 105 of the Act to enhance the penalty not exceeding one crore rupees in case any executive of the insurer wrongfully obtains or withholds the property under the Act.

Clause 94.—This clause seeks to substitute sections 105B and 105C of the Act to enhance penalty in case an insurer fails to comply with the obligations for rural or social sector or third party insurance for motor vehicles to not exceeding twenty-five crore rupees. It further provides for powers of adjudication to the Authority and provides penalty for contravention where there is no separate penalty provided in the Act."

30.2 Clause 92, 93 and 94 of the Bill read as under:—

92. For sections 103 and 104 of the Insurance Act, the following sections shall be substituted, namely:—

"103. If a person carries on the business of insurance without obtaining a certificate of registration under section 3, he shall be liable to a fine not exceeding rupees twenty-five crores and with imprisonment which may extend to ten years.

104. If a person fails to comply with the provisions of section 27, section 27A, section 27B, section 27D and section 27E, he shall be liable to a penalty not exceeding twenty-five crore rupees.".

93. In section 105 of the Insurance Act, for the words "not exceeding two lakh rupees for each such failure", the words "not exceeding one crore rupees " shall be substituted.

For sections 105B and 105C of the Insurance Act, the following sections shall be substituted, namely:—

"105B. If an insurer fails to comply with the provisions of section 32B, section 32C and section 32D, he shall be liable to a penalty not exceeding twenty-five crore rupees.

105C. (1) For the purpose of adjudication under sub-section (2) of section 2CB, sub-section (4) of section 34B, sub-section (2) of section 40A, sub-section (2) of section 41, sub-section (4) of section 42, section 102, section 104, section 105 and section 105B, the Authority, shall appoint any officer not below the rank of a Joint Director to be an adjudicating officer for holding an inquiry in the prescribed manner after giving any person concerned a reasonable opportunity of being heard.

(2) Upon receipt of the inquiry report from the officer so appointed, the Authority after giving an opportunity of being heard to the person concerned may impose any penalty provided in sections aforesaid.

(3) While holding an inquiry, the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which in the opinion of the adjudicating officer, may be useful for or relevant to the subject matter of the inquiry and if on such inquiry, is satisfied that the person has failed to comply with the provisions of any of the sections specified in sub-section (1), he may recommend such penalty as he thinks fit in accordance with the provisions of any of those sections.

105D. While recommending the quantum of penalty under section 105C, the adjudicating officer and while imposing such penalty, the Authority shall have due regard to the following factors, namely:—

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to the policyholders as a result of the default; and

(c) the repetitive nature of default."

30.3 A suggestion received from an Insurance Company (Cholamandalam MS General Insurance Company Ltd.) States as follows with regard to Clause 92:—

"Penalties prescribed are very stiff and need to be moderated to a maximum of Rs. 1 crore per annum. In case of violation IRDA be empowered to:—

(a) Make Public the name of the company in leading newspapers.

(b) Take cognizance of all the penalties paid by the Insurer at the time of renewal of registration.

Suspend the operations of the Insurer for a specified period after considering the magnitude of the violation. This would be in line with the provisions of Japan FSA."

30.4 Asked to furnish their views in this regard, the Ministry, in their written submission, stated as follows:—

"After examining the provision of the insurance legislation which prescribed penalties and other related provisions, the Law

Commission recommended the enhancement of all the penalties prescribed under sections 102-105C so as to make them highly deterrent, with a minimum penalty to be indicated in each of these provisions. IRDA also concurred with the recommendations of the Law Commission that in the event of violation of any of the provisions of the insurance legislations, the penalties to be levied, be enhanced.

As regards publishing names of insurers who have been penalized in leading newspapers, the Authority may consider it as part of the "name and shame" strategy. This however should not be made part of the provisions of the Act, but could be left to regulatory discretion."

30.5 Further, yet another insurance company (Bajaj Allianz General Insurance Company Limited) and the Insurance Brokers Association of India have made the following suggestions with regard to the penalty proposed *vide* Clause 93:—

"The proposed amendment increases the fine from Rs. 5 lakhs to Rs. 25 crores. This is a very steep increase and may result in harassment and creating fear in the minds of insurers. It is suggested that fine be limited to reasonable levels.

The quantum proposed in many cases running into crores does not seem to be particularly relevant to the type of breach which is sought to be controlled. Very often, the proposed Bill mentions quantum at Rs. 10 crores, Rs. 25 crores, Rs. 50 crores etc. which in many cases would be a significant portion of the capital of insurance company itself and in case of insurance intermediaries many times the capital they are required to bring in."

30.6 Expressing their views on the above suggestions, the Ministry, in their written replies, stated as under:—

"It may be mentioned that the penalties prescribed are the maximum limits; however, the imposition of penalty would be commensurate with the offence. Furthermore, effective regulation of the management of policyholders' funds and shareholders' funds is mandatory for ensuring the orderly growth and development of the insurance industry and any contravention thereof should be viewed stringently."

30.7 The Committee note that while the penalties proposed for acts of violation of the statutory stipulations relating *inter-alia* to registration requirements, investments, meeting rural and social sector

obligations, etc. are said to be formulated on the basis of the recommendations of the Law Commission, as per the insurers, the penalties proposed under the Clause are too steep, and may not even be commensurate with the capital base of the insurance companies, intermediaries etc. It has, therefore, been suggested that the penalties proposed need to be rationalised. Apart from rationalizing the penalties, it has also been suggested that measures such as making public, the names of the violating companies, taking cognizance of the penalty paid at the time of renewal of registration of insurers, suspending operations of the insurers for a specified period etc. could be considered as other alternate means for deterring the insurers from violating the statutory stipulations. The Committee are of the view that while the penalties should help in effectively deterring acts of violation, at the same time, they should also be rational and justifiable *vis-à-vis* the nature of the offence. The Committee, accordingly, recommend revisiting the monetary penalties proposed under the Clause *inter-alia* in the light of the views expressed on this count by the insurance companies.

31. Clause 98: Appeal to Securities Appellate Tribunal (Substitution of new Section for Section 110)

31.1 Clause 98 seeks to substitute section 110 of the Act to provide for appeal to the Securities and Appellate Tribunal against the decision of the Authority and omit certain redundant provisions.

31.2 The provisions of Clause 98 are as under:—

"For section 110 of the Insurance Act, the following section shall be substituted, namely:—

"110. (1) Any person aggrieved—

(a) by an order of the Authority made on and after the commencement of the Insurance Laws (Amendment) Act, 2008, or under this Act, the rules or regulations made thereunder, or

(b) by an order made by the Authority by way of adjudication under this Act, may prefer an appeal to the Securities Appellate Tribunal having jurisdiction in the matter.

(2) Every Appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order made by the Authority is received by him and it

shall be in such a form and be accompanied by such fees as may be prescribed:—

Provided that the Securities Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

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

(4) The Securities Appellate Tribunal shall make available copy of order made by it to the Authority and parties.

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

(6) The procedure for filing and disposing of an appeal shall be such as may be prescribed.

(7) The provision contained in section 15U, section 15V, section 15W, section 15Y and section 15Z of the Securities and Exchange Board of India Act, 1992 shall apply to the appeals arising out of the provisions of this Act, as they apply to the appeals under the Securities and Exchange Board of India Act, 1992."

31.3 Further Clause 3(xi) of the Bill defines the Securities Appellate Tribunal (SAT) to mean the SAT established under Section 15K of the SEBI Act, 1992.

31.4 Section 15K of the SEBI Act reads as under:—

(1) "The Central Government shall, by notification, establish one or more appellate Tribunals to be known as the Securities Appellate Tribunal to exercise the jurisdiction, powers and authority conferred on such Tribunal by or under this Act.

(2) The Central Government shall also specify in the notification referred to in sub-section (1) the matters and places in relation to which the Securities Appellate Tribunal may exercise jurisdiction."

31.5 When pointed out that insurance being a specialized activity, persons having substantial and specialised knowledge in insurance law should have representation in Securities Appellate Tribunal (SAT), the Ministry, in a written submission stated as under:—

> "The proposed amendment to Insurance Laws, *inter-alia*, includes making the Securities Appellate Tribunal (SAT) as the Appellate Tribunal in respect of appeals emanating from IRDA orders. However, as it exists now there is no provision for appointing Members of SAT with experience of insurance related matters. As per Section 15M of SEBI Act, SAT consists of Presiding Officer and two Members. The Presiding Officer should be a sitting or retired Judge of Supreme Court or a sitting or retired Chief Justice of a High Court. A person shall not be qualified for appointment as Member of SAT unless he is a person of ability, integrity and standing who has shown capacity in dealing with problems relating to securities markets and has qualification and experience of corporate law, securities laws, finance, economics or accountancy. Broadly, the above qualifications are sufficient to have a reasonable understanding of the insurance related issues as well. However, as and when SAT becomes the Appellate Authority under Insurance Laws while making appointment to the post of members care could be taken to appoint people with practical experience relating to insurance. As and when SAT becomes the Appellate Authority under laws other than securities laws, there could be the requirement for increasing the number of members. The specific requirements on qualification etc. could be taken care of at that point of time."

31.6 In this regard, an insurance company (Shriram Life Insurance Company Limited), in their memorandum stated as follows in regard to the proposal for making SAT the Appellate Authority in cases pertaining to Insurance Sector:—

> "Our suggestion is that for everything there should be an appellate authority. For every decision there should be an appellate authority. In some decisions SAT has been allowed to be the appellate authority, but on some decisions there is no appellate authority."

31.7 As of now, persons having special knowledge in the field of security markets, corporate law, securities laws, finance, economics or accountancy are appointed as Members of SAT. The Committee are of the view that once SAT is made the Appellate Authority for insurance matters as proposed in the Bill, it would be

necessary to review the composition of SAT as well as the qualifications prescribed for the Members so as to provide for considering persons with special knowledge in the field of insurance as well for appointment.

32. Clause 105 (xiii) and (xiv): Amendment of Section 114A of the Insurance Act relating to power of Authority to make regulations

32.1 Section 114A bestows power on the Authority to frame regulations for the purposes of the Insurance Act, 1938.

32.2 The existing provisions of sub-section (m) and (n) of Section 114A pertaining to IRDA's regulation making power in respect of qualifications, training of agents etc. read as under:—

> "(m) the requisite qualifications and practical training to act as an insurance agent under Clause (e) of sub-section (4) of section 42;
>
> (n) the passing of examination to act as an insurance agent under Clause (f) of sub-section (4) of section 42."

32.3 The amendment proposals of Clause 105 (xiii) and (xiv) provide as under:—

> "(xiii) for clause (m), the following clause shall be substituted, namely:—
>
> (m) the requisite qualifications or practical training or examination to be passed for appointment as an insurance agent under clause (e) of sub-section (3) of section 42;";
>
> (xiv) clause (n), shall be omitted."

32.4 The Committee note that the existing regulation making power of IRDA which includes prescribing the qualifications and practical training to act as an insurance agent as also the examination required to be taken by insurance agents would be diluted with the amendment proposals. The amendments proposed to sub-sections (m) and (n) of section 144(A) seek to provide the Authority with the power to frame regulations relating to the requisite qualifications or practical training or examination to be passed for appointment as an insurance agent. The emphasis made by the Committee has been on IRDA to continue to play a key and effective role in developing and regulating the profession of insurance agents. The Committee, therefore,

recommend that the existing provisions of sub-sections (m) and (n) of section 144(A) be retained in the Act.

33. Clause 107: Enhancement of equity capital of General Insurance companies [Insertion of a new Section after Section 10A of the General Insurance Business (Nationalisation) Act]

33.1 Clause 107 seeks to amend the General Insurance Business (Nationalisation) Act, 1972 to insert section 10A to empower the Central Government to allow public sector General Insurance companies to raise money from the market to meet their capital requirements.

33.2 Clause 107 seeks to provide for the following:—

In the General Insurance Business (Nationalisation) Act, 1972, after section 10A, the following section shall be inserted, namely:—

"10B. The General Insurance Corporation and the insurance companies specified in section 10A may, raise their capital for increasing their business in rural and social sectors, to meet solvency margin and such other purposes, as the Central Government may empower in this behalf."

33.3 In response to a query as to whether the incorporation of Section 10A as proposed, would imply that, in future, the companies would be entitled to raise money from the market to meet their capital requirements which may possibly result in decline of Government shareholding to the extent of the Companies becoming a minority partner and thereby affecting the public sector character of the companies, the Ministry of Finance (Department of Financial Services) in a written reply stated *inter-alia* as under:—

"In the coming scenario, GIPSA companies may be required to raise their Capital for various reasons and for this purpose, suitable provisions has been incorporated in GIBNA, 1972 empowering the Central Government to allow the Companies to do so. Keeping in view the fact that the Public Sector General Insurers may ask the Government to raise capital for various purposes such as for increasing penetration in rural areas, covering social sectors, for diversification and expansion and for meeting solvency margins, it is necessary to provide enabling provision for raising of capital if required. This enhancement may either come from the government budget or from the market. At any point the stake of government is not envisaged to come below 51%."

33.4 While tendering evidence, the Chairman GIPSA, submitted as follows on the proposed amendment:—

> "The idea is again the market is going to grow. If the public sector companies have to continue their dominant position in the market, they would certainly need capital at a future point of time. I think, that is why the Government is taking an authority to make appropriate disinvestment at the right time.
>
> I understand that there is an assurance from the Government that the Government holding would not go below 51 per cent."

33.5 When asked further whether the Government would favour amending the clause to reflect the position, that is, at any point the stake of the Government would not be envisaged to come below 51%; the Ministry in their written submission, stated as below:—

> "The suggestion can be accepted and necessary changes in the relevant clauses can be made in consultation with the Ministry of Law."

33.6 The Committee, while agreeing with the amendment proposal enabling the general insurance companies and GIC to raise capital from the market to meet future capital requirements, expect that the aspect, reflecting the fact that the Government's shareholding would not be allowed to come below 51 per cent at any point is suitably incorporated and specified in the section as agreed to.

34. Clause 109: Amendment of Section 2 of IRDA Act, 1999—Insertion of the words 'insurance agents, third party administrator' in definition of 'intermediary or insurance intermediary'

34.1 Clause 109 seeks to amend section 2 of the Insurance Regulatory and Development Authority Act, 1999 in order to substitute "Insurance Regulatory and Development Authority" to "Insurance Regulatory and Development Authority of India".

34.2 Provisions of Clause 109 read as under:—

> "In section 2 of the Insurance Regulatory and Development Authority Act, 1999, in sub-section (1),—
>
> (i) in clause (b), after the words "Development Authority", the words, "of India", shall be inserted;
>
> (ii) in clause (f), after the words "insurance consultants", the words, "Insurance agents, third party administrator" shall be inserted."

34.3 The term, "insurance agent" has been defined in Section 2 (10) of the Insurance Act, as follows:—

> "insurance agent means an insurance agent licensed under section 42 who receives or agrees to receive payment by way of commission or other remuneration in consideration of his soliciting or procuring insurance business [including business relating to the continuance, renewal or revival of policies of insurance]"

Further Section 2 (10B) of the Insurance Act, provides as under:—

> [(10B) "intermediary or insurance intermediary" shall have the meaning assigned to it in clause (f) of sub-section (1) of section 2 of the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999);]

34.4 With regard to the definition of 'insurance agents' as proposed, the Chairman IRDA, while tendering evidence before the Committee, stated as follows:—

> "The last important change is that the Act recognises intermediary called an agent, and that agent is licensed by the IRDA subject to such qualification and examinations as the IRDA may prescribe. We have proposed that the agent should be differentiated, that is, an individual agent and a company, which might act as an agent, which is a corporate agent. For instance, right now the banks operate as corporate agents of insurance companies. We have suggested that we should have two categories of agents, that is, agents and corporate agents. The agent would be licensed by the insurance companies subject, of course, to such qualification and examination as the IRDA may prescribe, and the corporate agent would be licensed by the IRDA."

34.5 On being asked whether the above suggestion has been incorporated by IRDA, the Ministry, in their post evidence submission stated as under:—

> "Insurance Agent is defined under Section 2(10) of the Insurance Act, 1938. Section 2(1)(B) of the Insurance Act defines intermediary to have the same meaning as in Section 2(1)(f) of the IRDA Act, 1999. Intermediary is defined under Section 2(1)(B) of the IRDA Act and it is proposed in the Bill to include the word 'agent' in that definition. Section 42(D) which provides for registration of intermediaries and the new proposed amendments would necessarily include agents also under this section. To address the issue raised in the query, Section 2(1)(f) can be amended to include

Corporate agents instead of agents which would mean all agents except individuals. Thus registration would only be required in the case of Corporate agents and not in the case of individuals. Necessary amendments may be carried out in the relevant section in consultation with Ministry of Law."

34.6 The Committee note that the definition of 'intermediary or insurance intermediary' as proposed to be included in Section 2 (1) (f) of IRDA Act, 1999 under Clause 109 covers individual agents. In terms of the amendments proposed in Section 42 of the Act, registration/ licensing of agents by IRDA is sought to be done away with and insurance companies bestowed with the power to register/license agents. The IRDA has, accordingly suggested modifying the definition of 'intermediary or insurance intermediary' as proposed so as to differentiate 'Corporate Agents' such as banks etc. who would be registered by the Authority from other 'agents' who would be registered/ licensed by the insurance companies. The suggestion has been agreed to by the Ministry. The emphasis made by the Committee has been on IRDA continuing with its current role in the matter of registration/ licensing of agents and thereby ensuring effective regulation of the profession of agents. The Committee, therefore, while agreeing with the proposal for differentiating agents into 'Corporate Agents' and 'Agents' do not approve of the proposal to do a way with the role presently played by IRDA in registering/licensing individual insurance agents.

APPENDIX I

NOTE OF DISSENT

Shri Moinul Hasan, MP

I am not in agreement with the recommendations of the Committee on Clause 107 of the Insurance Laws (Amendment) Bill, 2008 and hence submit our note of dissent.

The recommendations of the Committee are as follows:—

"33.6 The Committee, while agreeing with the amendment proposal enabling the general insurance companies and GIC to raise capital from the market to meet future capital requirements, expect that the aspect, reflecting the fact that the Government's shareholding would not be allowed to come below 51 per cent at any point is suitably incorporated and specified in the section as agreed to."

The General Insurance Corporation has a capital of Rs. 430 crore which is much above the requirement of Rs. 200 as per the IRDA Act. The GIC has reserves and surplus of Rs. 8596 crore as on 31st March, 2010. It also has assets of Rs. 43842 crore as on 31.3.2010. It has maintained a solvency margin of 3.71% much above the limit prescribed by the IRDA. The four companies are also adequately capitalized and together have Reserves and Surplus of Rs. 14544 crore and an asset have of Rs. 90149 crore. These companies have also maintained solvency margins consistently higher than what is prescribed by IRDA. With sound financials, the GIC and four companies are capable of generating internal resources for expansion. Sub-section 1 (i) of Section 6A of Insurance Act allows insurance companies to raise capital other than equity capital. Therefore we do not agree with the proposal that these companies be allowed to raise capital from the market through disinvestment.

Therefore, we suggest the replacement of the recommendation on Clause 107 by the following:—

The Committee does not see any reasonable ground for allowing the general insurance companies and GIC to raise capital from the market through disinvestment. The Committee recommends

that these companies be permitted to raise capital in case of need in accordance with sub section 1 (i) of Section 6A of the Insurance Act. The Committee expects this would be properly specified in the proposed amendment.

Sd/-

(MOINUL HASSAN)

APPENDIX I

NOTE OF DISSENT

Shri Moinul Hasan, MP

The Insurance Laws (Amendment) Bill, 2008 intends to bring about wide ranging changes in the insurance laws. These changes would have impact on the public sector as well as the national economy. So we scrutinized the Bill in a very detailed manner. While we generally agree with most of the recommendations of the committee on the proposed amendments, we differ with the views of the committee on the issue of amendment to be General Insurance Business Nationalisation Act 1972. The amendment proposed under clause 107 will have serious implications on the character of the public sector general insurance companies. This clause provide for the following:—

> "In the General Insurance Business (Nationalisation) Act, 1972, after section 10A, the following section shall be inserted, namely:—
>
> "10B. The General Insurance Corporation and the insurance companies specified in section 10A may, raise their capital for increasing their business in rural and social sectors, to meet solvency margin and such other purposes, as the Central Government may empower in this behalf."

The question that we have to look into is; what is the necessity of increasing the capital of these companies; are they inadequately capitalized so as to affect fulfilling their rural and social obligations. Here we need to carefully look into the submissions made by the Ministry of Finance, GIPSA< and the All India Insurance Employees' Association on the proposed amendment.

As noted in the Report of the Committee, the Ministry of Finance (Department of Financial Services) in a written reply stated *inter-alia* as under:—

'In the coming scenario, GIPSA may be required to raise their Capital for various reasons and for this purpose, suitable provisions has been

incorporated in GIBNA 1972 empowering the Central Government to allow the companies to do so. Keeping in view the fact that the Public Sector General Insurers may ask the Government to raise capital for various purposes such as for increasing penetration in rural areas, covering social sector, for diversification and expansion and for meeting solvency margins, it is necessary to provide enabling provision for raising of capital if required. This enhancement may either come from the government budget or from the market. At any point of time stake of government is not envisaged to come below 51%.'

The Report also notes the evidence of the Chairman GIPSA as follows on the proposed amendment:—

> "The idea is again the market is going to grow. If the public sector companies have to continue their dominant position in the market, they would certainly need capital at a future point of time. I think, that is why the Government is taking an authority to make appropriate disinvestment at the right time.
>
> I understand that there is an assurance from the Government that the Government holding would not go below 51 per cent."

The All India Insurance Employees' Association has opposed the proposed amendment. The written submission made by this Association is as follows:—

> "The General Insurance Corporation is very sound financially. It has large asset base and reserves. It is capable of meeting the capital needs through internal resources. Similarly, the four companies are also financially very sound. They have assets worth Rs. 78198 crore and reserves of Rs. 13254 crore as on 31st March 2008. They have been regularly generating profits and making huge dividend pay outs to the government. Therefore, we firmly believe that these national institutions do not require approaching the capital markets to raise funds for their expansion. Privatising these successful institutions does not serve any national interest. Rather than this measure to privatise, the government must seriously consider the merger of the four companies into a single monolithic corporation on the lines of LIC, as suggested by the Parliamentary Committee on Public Undertakings. This would help them to serve the social and rural sector and fulfill the objectives of a public sector with greater amount of success."

A close scrutiny of the statements of the Ministry of Finance and the Chairman, GIPSA makes it clear that the General Insurance Corporation and the four public sector companies do not have any need for capital at present. Both these statements vaguely point out to such a need arising out in the future and clear indications are given that the purpose of this enabling provision is to divest the equity of these companies. The All India Insurance Employees' Association has argued against the proposed amendment quoting the strong financials of the public sector companies.

Therefore, it is necessary to look into the financials of the companies and find out if they are capable of generating internal resources or is there any real need for these companies to raise capital from the market for their expansion.

The General Insurance Corporation has a capital of Rs. 430 which is much above the requirement of Rs. 200 as per the IRDA Act. The GIC has reserves and surplus of Rs. 8596 crore as on 31st March 2010. It also has assets of Rs. 43842 crore as on 31.3.2010. It has maintained a solvency margin of 3.71% much above the limit prescribed by the IRDA.

The financial strength of the four public sector companies as at 31st March 2010 can be seen from the following table:—

Name of the Company	Share Capital	Reserves and Surplus	Solvency Margin Ratio	Total Investments	Total Assets
National	100	1483	1.6	14179	18000
New India	200	7230	3.55	26203	36833
Oriental	100	1829	1.56	13808	18106
United India	150	4002	3.41	13448	17210

All figures in Rs. crores except Solvency Margin Ratio.
(IRDA Annual Report 2009-10).

The GIC and the four companies have sound financials. They have generated the capital through their internal resources and there was no infusion of additional capital from the government funds since nationalization of these companies. The real strength of these companies

is also demonstrated through the build up of huge reserves and surplus and their large asset base. If the fair value of the assets (current market price) is taken, the value of these assets is much larger. These companies have also maintained solvency margins consistently higher than what is prescribed by IRDA.

Such strong financials demonstrate the ability of these companies to generate resources internally if the need so arise. Notwithstanding this if they required additional capital in future; various options are available to them other than divestment of equity. Such options are provided under Clause 13 of the Bill under discussion that seeks to amend Sub-Section 3 of Section 6A of the Insurance Act. On this amendment the recommendation of the committee is as follows:—

> "The Committee observe that though the proposed sub section 1 (i) of Section 6A seeks to enable the insurers to raise 'such other form of capital as may be specified' apart from equity capital, the existing sub section 30 of the Section in terms of which no insurance company can issue shares other than equity shares, has not been proposed to be deleted. Enabling the insurance companies to raise other forms of capital apart from equity akin to banks would be beneficial to the Companies in meeting the business and solvency margin requirements. The Committee, therefore, expects that sub-section 3 of Section 6A, which is in contradiction with the amendment proposals of the Clause and is redundant is deleted."

This provision of raising capital other than divesting equity is available to the GIC and the four companies in case they need to add further capital in future. This provision along with the sound financials of the public sector companies makes it clear that there is no justifiable reason to amend the GIBNA 1972.

Considering all these aspects, it becomes clear that the proposed enabling provision by amending the GIBNA is made only to invest the shares of the profitable and important companies in the public sector. This is neither in the interests of the public sector insurance industry nor the Indian economy. Rather than this measure, the government should look to consolidate the public sector general insurance industry on the lines suggested by the Parliamentary Committee on Public Undertakings.

We strongly see no reason for this amendment and therefore record our dissent to the proposed amendment.

Sd/-

(MOINUL HASSAN)

MINUTES OF THE THIRD SITTING OF THE STANDING COMMITTEE ON FINANCE

The Committee sat on Thursday, the 7 October, 2010 from 1130 hrs. to 1400 hrs.

PRESENT

Shri Yashwant Sinha — *Chairman*

MEMBERS

Lok Sabha

2. Dr. Baliram (Lalganj)
3. Shri C.M. Chang
4. Shri Bhakta Charan Das
5. Shri Khagen Das
6. Shri Gurudas Dasgupta
7. Shri Nishikant Dubey
8. Shri Bhartruhari Mahtab
9. Shri Mangani Lal Mandal
10. Shri Manicka Tagore
11. Dr. M. Thambidurai

Rajya Sabha

12. Shri Raashid Alvi
13. Shri Piyush Goyal
14. Shri Moinul Hassan
15. Shri Mahendra Mohan
16. Shri Mahendra Prasad
17. Dr. K.V.P. Ramachandra Rao

SECRETARIAT

1.	Shri A.K. Singh	—	*Joint Secretary*
2.	Shri T. G. Chandrasekhar	—	*Additional Director*
3.	Shri Ramkumar Suryanarayanan	—	*Deputy Secretary*

WITNESSES

Ministry of Finance (Department of Financial Services)

1. Shri R. Gopalan, Secretary
2. Shri Rakesh Singh, Additional Secretary
3. Shri Tarun Bajaj, Joint Secretary
4. Shri Lalit Kumar, Director
5. Shri A. Giridhar, Executive Director, IRDA
6. Ms. Babita Rayudu, OSD (Legal), IRDA

2. The Committee heard the representatives of the Ministry of Finance (Department of Financial Services) in connection with the examination of the Insurance Laws (Amendment) Bill, 2008. Major issues discussed included, the rationale of the proposed hike in Foreign Direct Investment (FDI) in insurance sector from 26 to 49 percent, operation of foreign insurance companies in India, implications of the provision relating to raising additional capital by public sector general insurance companies, necessity of FDI in enabling insurance penetration and launching of new innovative products, implications of the proposal to allow branches of foreign re-insurance companies to operate in India, and permitting foreign insurance companies to operate in Special Economic Zones (SEZs), social sector obligations of insurance companies etc. The Chairman directed the representatives to furnish written replies to the questions posed by Members within ten days.

The witnesses then withdrew.

A verbatim record of the proceedings was kept.

MINUTES OF THE NINTH SITTING OF THE STANDING COMMITTEE ON FINANCE (2010-11)

The Committee sat on Tuesday, the 21st December, 2010 from 1115 hrs. to 1715 hrs.

PRESENT

Shri Yashwant Sinha — *Chairman*

MEMBERS

Lok Sabha

2. Shri Sudip Bandyopadhyay
3. Shri Khagen Das
4. Shri Gurudas Dasgupta
5. Shri Nishikant Dubey
6. Shri Bhartruhari Mahtab
7. Shri Magunta Sreenivasulu Reddy
8. Shri Sarvey Sathyanarayana
9. Shri Manicka Tagore
10. Dr. M. Thambidurai
11. Shri Anjan Kumar M. Yadav

Rajya Sabha

12. Shri Raashid Alvi
13. Shri Vijay Jawaharlal Darda
14. Shri Piyush Goyal
15. Shri Moinul Hassan
16. Shri Mahendra Mohan
17. Dr. Mahendra Prasad
18. Dr. K.V.P. Ramachandra Rao

SECRETARIAT

1.	Shri A.K. Singh	—	*Joint Secretary*
2.	Shri T. G. Chandrasekhar	—	*Additional Director*
3.	Shri Ramkumar Suryanarayanan	—	*Deputy Secretary*

PART- I
(1115 hrs. to 1345 hrs.)

WITNESSES

Confederation of Indian Industry (CII)

1. Shri Sanjiv Bajaj, MD, Bajaj Finance Services Ltd.
2. Shri Antony Jacob, Chief Executive Officer, Apollo Munich Health Insurance Company Ltd.
3. Shri Rajesh Relan, MD, Metlife Indian Insurance Co. Ltd.
4. Shri S. Narayanan, MD and CEO, Iffco-Tokio General Insurance Co. Ltd.
5. Shri Joydeep Roy, Chief Executive, L&T General Insurance Company Ltd.
6. Dr. P. Nandagopal, MD and CEO India First Life Insurance Company Ltd.
7. Shri Gaurav Garg, CEO and Managing Director, Tata AIG General Insurance Co. Ltd.
8. Shri Ranjit Gupta, President – Insurance, Bajaj Finance Services Ltd.

US-India Business Council (USIBC)

1. Mr. Rajesh Sud, Managing Director India, Max New York Life.
2. Mr. Rajiv Mathur, Director Legal and Compliance, Max New York Life.
3. Mr. Saibal Roy Choudhury, Associate Director, Metlife.
4. Mr. Shrirang Samant, Country Head and Chief Representative – India, The Travelers Companies, Inc.
5. Mr. Sunil Mehta, Country Head and CEO, AIG India.
6. Mr. Chandan Sinha, President , Insurance, Religare Enterprises.
7. Ms. Shailaja Lall, Principal Associate, Amarchand Mangaldas.
8. Ms. Nivedita Mehra, Program Director, U.S.—India Business Council.

2. The Committee heard the representatives of the Confederation of Indian Industry (CII) and US-India Business Council (USIBC) in connection with the examination of the Insurance Laws (Amendment) Bill, 2008. Major issues discussed included, the fulfilment of objectives under the present 26% foreign equity, funds raised under the 26% foreign equity, need for raising the FDI limit in insurance sector to 49% from 26% and its impact, alternate source of raising the capital required for insurance companies, performance of private insurance companies in the fields like infrastructure, rural areas etc., road map of private insurance companies for the next 10 years particularly in targeting the most marginalized section of the people, changes anticipated in management and operational control of the companies, reciprocity for Indian insurance companies to venture out internationally, defintion of 'health insurance' and adequacy of equity fixed for it, need to permit foreign insurance companies to operate in Special Economic Zones (SEZs), appointment and regulation of insurance agents, surveyors and loss assessors, and generation of direct and indirect employement in insurance sector. The Chairman directed the representatives to furnish written replies to the questions posed by Members within seven days.

PART – II
(1445 to 1715)

3. *** *** *** *** ***

WITNESSES

4. *** *** *** *** ***

The witnesses then withdrew.

A verbatim record of the proceedings was kept.

The Committee then adjourned.

MINUTES OF THE TENTH SITTING OF THE STANDING COMMITTEE ON FINANCE (2010-11)

The Committee sat on Wednesday, the 12th January, 2011 from 1130 hrs. to 1630 hrs.

PRESENT

Shri Yashwant Sinha — *Chairman*

MEMBERS

Lok Sabha

2. Dr. Baliram (Lalganj)
3. Shri Harishchandra Chavan
4. Shri Bhakta Charan Das
5. Shri Khagen Das
6. Shri Gurudas Dasgupta
7. Shri Nishikant Dubey
8. Shri Bhartruhari Mahtab
9. Shri Mangani Lal Mandal
10. Shri Rayapati Sambasiva Rao
11. Shri G.M. Siddeshwara
12. Shri Manicka Tagore
13. Dr. M. Thambidurai
14. Shri Anjan Kumar M. Yadav

Rajya Sabha

15. Shri Raashid Alvi
16. Shri Vijay Jawaharlal Darda

17. Shri Moinul Hassan
18. Shri Mahendra Mohan
19. Dr. Mahendra Prasad
20. Shri Y.P. Trivedi

SECRETARIAT

1. Shri A.K. Singh — *Joint Secretary*
2. Shri T. G. Chandrasekhar — *Additional Director*

PART-I
(1130 hrs. to 1400 hrs.)

WITNESSES

2. *** *** *** *** ***

The witnesses then withdrew.

A verbatim record of proceedings was kept.

PART-II
(1500 hrs. to 1630 hrs.)

WITNESSES

Ministry of Finance (Department of Financial Services)

1. Shri R. Gopalan, Secretary
2. Shri Rakesh Singh, Additional Secretary
3. Shri Tarun Bajaj, Joint Secretary
4. Shri Lalit Kumar, Director

3. The Committee took evidence of the representatives of the Ministry of Finance (Department of Financial Services) in connection with the examination of the Insurance Laws (Amendment) Bill, 2008. Major issues discussed included justification for raising Foreign Direct Investment (FDI) from 26 to 49 per cent, penetration of insurance in rural areas after the opening up of the sector, observations of KPN Committee on raising the extent of foreign shareholding in Indian insurance companies, adequacy of domestic capital to finance capital needs of the insurance sector, lesser number of insurance products launched in public sector than in private sector, payment of commission to agents, rural and social sector obligations of insurance companies, new products introduced in

the field of life and health insurance companies, level playing field between Indian insurance companies and foreign insurers in Special Economic Zones (SEZs) etc. The Chairman then directed the representatives to furnish replies to the points raised during the sitting within one week.

The witnesses then withdrew.

A verbatim record of proceedings was kept.

The Committee then adjourned.

MINUTES OF THE SIXTH SITTING OF THE STANDING COMMITTEE ON FINANCE

The Committee sat on Thursday, the 08th December, 2011 from 1500 hrs. to 1615 hrs.

PRESENT

Shri Yashwant Sinha — *Chairman*

MEMBERS

Lok Sabha

2. Shri Shivkumar Udasi Chanabasappa
3. Shri Harishchandra Deoram Chavan
4. Shri Bhakta Charan Das
5. Shri Nishikant Dubey
6. Shri Chandrakant Khaire
7. Shri Bhartruhari Mahtab
8. Shri Prem Das Rai
9. Dr. Kavuru Sambasiva Rao
10. Shri Rayapati S. Rao
11. Shri Magunta Sreenivasulu Reddy
12. Shri G.M. Siddeshwara
13. Shri Yashvir Singh
14.. Shri R. Thamaraiselvan
15. Dr. M. Thambidurai

Rajya Sabha

16. Shri S.S. Ahluwalia
17. Shri Raashid Alvi
18. Shri Vijay Jawaharlal Darda

19. Shri Moinul Hassan
20. Shri Satish Chandra Misra
21. Shri Mahendra Mohan
22. Dr. Mahendra Prasad
23. Dr. K.V.P. Ramachandra Rao
24. Shri Yogendra P. Trivedi

SECRETARIAT

1. Shri A.K. Singh — *Joint Secretary*
2. Shri R.K. Jain — *Director*
3. Shri Ramkumar Suryanarayanan — *Deputy Secretary*

2. The Committee took up the following draft Reports for consideration and adoption:—

(i) The Insurance Laws (Amendment) Bill, 2008;

(ii) The Banking Laws (Amendment) Bill, 2011; and

(iii) The National Identification Authority of India Bill, 2010.

3. The Committee adopted the above draft reports with some minor modifications/changes as suggested by Members. The Committee authorised the Chairman to finalise the Reports in the light of the modifications suggested and present these Reports to Parliament.

The Committee then adjourned.

As introduced in the Rajya Sabha
on the 22nd December, 2008

Bill No. LXXII of 2008

THE INSURANCE LAWS (AMENDMENT) BILL, 2008

A

Bill

further to amend the Insurance Act, 1938, the General Insurance Business (Nationalisation) Act, 1972 and the Insurance Regulatory and Development Authority Act, 1999.

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

CHAPTER I

Preliminary

Short title and commencement.

1. *(1)* This Act may be called the Insurance Laws (Amendment) Act, 2008.

(2) 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.

CHAPTER II

AMENDMENTS TO THE INSURANCE ACT, 1938

4 of 1938.

2. In the Insurance Act, 1938 (hereafter in this Chapter referred to as the Insurance Act), throughout the Act, for the words and figures "the Indian Companies Act, 1913", wherever they occur, the words and figures "the Companies Act, 1956" shall be substituted.

7 of 1913.

1 of 1956.

Substitution of references to certain expressions by certain other expressions.

3. In section 2 of the Insurance Act,—

Amendment of section 2.

(i) for clauses (1) and (1A), the following clauses shall be substituted, namely:—

'*(1)* "actuary" means actuary as defined in clause (a) of sub-section *(1)* of section 2 of the Actuaries Act, 2006;

35 of 2006.

(1A) ''Authority'' means the Insurance Regulatory and Development Authority of India established under sub-section *(1)* of section 3 of the Insurance Regulatory and Development Authority Act, 1999;';

41 of 1999.

(ii) clause (5A) shall be omitted;

(iii) after clause (6B), the following clause shall be inserted, namely:—

'*(6C)* "health insurance business" means the effecting of contracts which provide for sickness benefits or medical, surgical or hospital expense benefits, whether in-patient or out-patient on an indemnity, reimbursement, service, prepaid, hospital or other plans basis including assured benefits, long term care, overseas travel cover and personal accident cover;';

(iv) for clause (7A), the following clause shall be substituted, namely:—

'*(7A)* "Indian insurance company" means any insurer, being a company

which is limited by shares, and,—

(a) which is formed and registered under the Companies Act, 1956 as a public company or is converted into such a company within one year of the commencement of Insurance Laws (Amendment) Act, 2008; 1 of 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 forty-nine per cent. paid-up equity capital of such Indian insurance company;

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

Explanation.— For the purposes of this clause, the expression "foreign company" shall mean a company or body established or incorporated under a law of any country outside India and includes Lloyd's established under the Loyd's Act, 1871 (United Kingdom);';

(v) in clause (8A),—

(I) for sub-clause (b), the following sub-clause shall be substituted, namely:—

"(b) having a minimum paid-up capital of rupees one hundred crores in case of life insurance or general insurance business and rupees fifty crores in case of health insurance business;";

(II) in sub-clause (d), after the words ''general insurance business'', the words ''or health insurance business'' shall be inserted;

(vi) for clause (9), the following clause shall be substituted, namely:—

'*(9)* "insurer" means—

(a) an Indian Insurance Company, or

(b) a statutory body established by an Act of Parliament to carry on insurance business, or

(c) an insurance co-operative society, or

(d) a foreign company engaged in re-insurance business through a branch established in India;';

(vii) in clause (10), the words and figures "licensed under section 42" shall be omitted;

(viii) in clause (11), in sub-clause (c), for the words "annuities payable out of any fund", the words "benefit payable out of any fund'' shall be substituted;

(ix) clauses (12), (13) and (15) shall be omitted;

(x) in clause (16), for the words, brackets, figures and letter "clauses (13) and (13A) of section 2 of the Indian Companies Act, 1913", the words, brackets and figures "sub-clauses (iii) and (iv) of sub-section *(1)* of section *3* of the Companies Act, 1956" shall be substituted;

7 of 1913.

1 of 1956.

(xi) after clause (16), the following clauses shall be inserted, namely:—

'*(16A)* "regulations" means the regulations framed by the Insurance Regulatory and Development Authority of India established under the Insurance Regulatory and Development Authority Act, 1999;

41 of 1999.

(16B) "re-insurance" means the insurance of all or part of one insurer's risk by another insurer who accepts the risk for a mutually acceptable premium;

(16C) ''Securities Appellate Tribunal'' means the Securities Appellate Tribunal established under section 15K of the Securities and Exchange Board of India Act, 1992;'; 15 of 1992.

(xii) clause (17) shall be omitted.

Substitution of new section for section 2C.

4. For section 2C of the Insurance Act, the following section shall be substituted, namely:—

Prohibition of transaction of insurance business by certain persons.

"2C. Save as otherwise provided under this Act, no insurer shall begin to carry on any class of insurance business in India unless it is registered under this Act:

Provided that an insurer, being an Indian insurance company, insurance co-operative society or a body corporate incorporated under the law of any country outside India not being of the nature of a private company carrying on the business of insurance, may carry on any business of insurance in any special economic zone as defined in clause (za) of section 2 of the Special Economic Zones Act, 2005: 28 of 2005.

Provided further that a foreign insurer registered under law of any country may be notified by the Authority to carry on the business of re-insurance in India through its branch office as per the terms and conditions specified by the regulation.".

Amendment of section 2CA.

5. In section 2CA of the Insurance Act,—

(i) in clause (a), for the words, brackets, letters and figures "a body corporate referred to in clause (c) of sub-section *(1)* of section 2C", the words "a body corporate incorporated under the law of any country

outside India not being a private company" shall be substituted;

(ii) in clause (b), for the words, brackets, letters and figures "a body corporate referred to in clause (c) of sub-section *(1)* of section 2C", the words "a body corporate incorporated under the law of any country outside India not being of the nature of a private company" shall be substituted.

Insertion of new section 2CB.

6. After section 2CA of the Insurance Act, the following section shall be inserted, namely:—

Properties in India not to be insured with foreign insurers except with the permission of Authority.

"2CB. *(1)* No person shall take out or renew any policy of insurance in respect of any property in India, except a property situated in any Special Economic Zone as defined in clause (za) of section 2 of the Special Economic Zones Act, 2005, or any ship or other vessel or aircraft registered in India with an insurer whose principal place of business is outside India save with the prior permission of the Authority. 28 of 2005.

(2) If any person contravenes the provision of sub-section *(1)*, he shall be punishable with penalty which may extend to five crore rupees.".

Omission of section 2E.

7. Section 2E of the Insurance Act shall be omitted.

Amendment of section 3.

8. In section 3 of the Insurance Act,—

(i) for sub-section *(2)*, the following sub-section shall be substituted, namely:—

"*(2)* Every application for registration shall be made in such manner and shall be accompanied by such documents as may be specified by regulations.";

(ii) in sub-section (2A), in clause (d), the figures "32" shall be omitted;

(iii) for sub-section *(2C)*, the following sub-section shall be substituted, namely:—

"*(2C)* Any person aggrieved by the decision of the Authority refusing registration may, within thirty days from the date on which a copy of the decision is received by him, appeal to the Securities Appellate Tribunal.";

(iv) sub-section *(2D)* shall be omitted;

(v) for sub-sections *(3)*, *(4)*, *(5)* and *(5A)*, the following sub-sections shall be substituted, namely:—

"*(3)* In the case of any insurer having joint venture with a person having its principal place of business domiciled outside India, the Authority shall withhold registration or cancel registration already made if it is satisfied that in the country in which such person has been debarred by law or practice of that country to carry on insurance business.

(4) The Authority may suspend or 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,—

(a) if the insurer fails, at any time, to comply with the provisions of section 64VA as to the excess of the value of his assets over the amount of his liabilities, or

(b) if the insurer is in liquidation or is adjudged as an insolvent, or

(c) if the business or a class of the business of the insurer has been transferred to any person or has been transferred to or amalgamated with the business of any other insurer, or

(d) if the insurer makes default in complying with, or acts in contravention of, any requirement of this Act or of any rule or any regulation or order made or, any direction issued thereunder, or

(e) if the Authority has reason to believe that any claim upon the insurer arising in India under any policy of insurance remains unpaid for three months after final judgment in regular court of law, or

(f) if the insurer carries on any business other than insurance business or any prescribed business, or

(g) if the insurer makes a default in complying with any direction issued or order made, as the case may be, by the Authority under the Insurance Regulatory and Development Authority Act, 1999, or

41 of 1999.

(h) if the insurer makes a default in complying with, or acts in contravention of, any requirement of the Companies Act, 1956 or the General Insurance Business (Nationalisation) Act, 1972 or the Foreign Exchange Management Act, 1999 or the Prevention of Money Laundering Act, 2002, or

1 of 1956.

57 of 1972.

42 of 199.

15 of 2002.

(i) if the insurer fails to pay the annual fee required under section 3A, or

(j) if the insurer is convicted for an offence under any law for the time being in force, or

(k) if the insurer being a co-operative society set up under the relevant State laws or, as the case may be, the Multi-State Co-operative

Societies Act, 2002, contravenes the provisions of law as may be applicable to the insurer. 39 of 2002.

(5) When the Authority suspends or cancels any registration under clause (a), clause (d), clause (e) or clause (f) of sub-section *(4)*, it shall give notice in writing to the insurer of its decision, and the decision shall take effect on such date as it may specify in that behalf in the notice, such date not being less than one month nor more than two months from the date of the receipt of the notice in the ordinary course of transmission.

(5A) When the Authority suspends or cancels any registration under clauses (b), (c), (i), clause (j) or (k) of sub-section *(4)*, the suspension or cancellation, as the case may be, shall take effect on the date on which notice of the order of suspension or cancellation is served on the insurer.".

(vi) for sub-section (5C), the following sub-section shall be substituted, namely:—

"(5C) Where a registration is suspended or cancelled under clause (a), clause (d), clause (e), clause (f) or clause (g) of sub-section *(4)*, the Authority may at its discretion revive the registration, if the insurer within six months from the date on which the suspension or cancellation took effect 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 had an application under sub-section *(4)* of section 3A accepted, or satisfies the Authority that no claim upon him such as is referred to in clause (e) of sub-section (4) remains unpaid or that he has complied with any requirement of this Act or the Insurance Regulatory and Development Authority Act, 1999, or of any rule or any regulation, or any order made 41 of 1999.

thereunder or any direction issued under those Acts, 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 the Authority.".

Substitution of new section for section 3A.

9. For section 3A of the Insurance Act, the following section shall be substituted, namely:—

Payment of annual fee by insurer.

"3A. *(1)* An insurer who has been granted a certificate of registration under section 3 shall pay such annual fee to the Authority in such manner as may be specified by the regulations.

(2) Any failure to deposit the annual fee shall render the certificate of registration liable to be cancelled.".

Substitution of new section for section 4.

10. For section 4 of the Insurance Act, the following section shall be substituted, namely:—

Minimum limits for annuities and other benefits secured by policies of life insurance.

"4. The insurer shall pay or undertake to pay on any policy of life insurance or a group policy issued, a minimum annuity and other benefits as may be determined by regulations excluding any profit or bonus provided that this shall not prevent an insurer from converting any policy into a paid-up policy of any value or payment of surrender value of any amount.".

Amendment of section 5.

11. In section 5 of the Insurance Act,—

(i) in sub-section *(2)*, both the provisos shall be omitted;

(ii) sub-section *(3)* shall be omitted.

Substitution of new section for section 6.

12. For section 6 of the Insurance Act, the following section shall be substituted, namely:—

Requirement as to capital.

"6. *(1)* No insurer not being an insurer as defined in sub-clause (d) of clause (9) of section 2, carrying on the business of life

insurance, general insurance, health insurance or re-insurance in India or after the commencement of the Insurance Regulatory and Development Authority Act, 1999, shall be registered unless he has,— 41 of 1999.

(i) a paid-up equity capital of rupees one hundred crore, in case of a person carrying on the business of life insurance or general insurance; or

(ii) a paid-up equity capital of rupees fifty crore, in case of a person carrying on exclusively the business of health insurance; or

(iii) a paid-up equity capital of rupees two hundred crore, in case of a person carrying on exclusively the business as a re-insurer.

(2) No insurer, as defined in sub-clause (d) of clause (9) of section 2, shall be registered unless he has net owned funds of not less than rupees five thousand crore.".

Amendment of section 6A.

13. In section 6A of the Insurance Act,—

(i) for sub-section *(1)*, the following sub-section shall be substituted, namely:—

"*(1)* No public company limited by shares having its registered office in India, shall carry on life insurance business or general insurance business or health insurance business or re-insurance business, unless it satisfies the following conditions, namely:—

(i) that the capital of the company shall consist of equity shares each having a single face value and such other form of capital, as may be specified by regulations;

(ii) that the voting rights of shareholders are restricted to equity shares;

(iii) that, except during any period not exceeding one year allowed by the company for payment of calls on shares, the paid-up amount is the same for all shares, whether existing or new:

Provided that the conditions specified in this sub-section shall not apply to a public company which has, before the commencement of the Insurance (Amendment) Act, 1950, issued any shares other than ordinary shares each of which has a single face value or any shares the paid-up amount whereof is not the same for all of the them for a period of three years from such commencement.";

47 of 1950.

(ii) in sub-section *(2)*, after the words "paid-up amount of the", the word "equity" shall be inserted;

(iii) for sub-section *(4)*, the following sub-section shall be substituted, namely:—

"*(4)* A public company as aforesaid which carries on life insurance business, general and health insurance business and re-insurance business—

(a) shall, in addition to the register of members maintained under the Companies Act, 1956, maintain a register of shares in which the name, occupation and address of the beneficial owner of each share shall be entered including any change of beneficial owner declared to it within fourteen days from the receipt of such declaration;

1 of 1956.

(b) shall not register any transfer of its shares—

(i) unless, in addition to compliance being made with the provisions of section 108 of the

Companies Act, 1956, 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; 1 of 1956.

(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 unles the previous approval of the Authority has been obtained to the transfer;

(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 the paid-up equity capital of the insurer, unless the previous approval of the Authority has been obtained for the transfer.

Explanation.—For the purposes of this sub-clause, the expressions "group" and "same management" shall have the meanings respectively assigned to them in the Competition Act, 2002.". 12 of 2003.

(iv) sub-sections *(6), (7), (8), (9)* and *(10)* shall be omitted;

(v) in sub-section *(11)*, the words, brackets and figures "except those of sub-sections *(7), (8)* and *(9)*" shall be omitted;

(vi) in sub-section *(11)*, clause (ii) shall be omitted; and

(vii) in the Explanation, in sub-clause (c) of clause (ii), the words "managing agent" shall be omitted.

Omission of section 6AA.

14. Section 6AA of the Insurance Act shall be omitted.

Amendment of section 6B.

15. In section 6B of the Insurance Act,—

(i) in sub-section (1),—

(a) for the words "life insurance business", the words "life or general or health insurance or re-insurance business" shall be substituted; and

(b) for the words "Central Government", the word "Authority" shall be substituted;

(ii) sub-section (4) shall be omitted.

Omission of sections 6C, 7, 8 and 9.

16. Sections 6C, 7, 8 and 9 of the Insurance Act, shall be omitted.

Amendment of section 10.

17. In section 10 of the Insurance Act,—

(i) in sub-section (1), for the words "prescribed in this behalf", the words "specified by the regulations" shall be substituted;

(ii) after sub-section (2A), the following sub-section shall be inserted, namely:—

"*(2AA)* Where the insurer carries on the business of general insurance, all receipts due in respect of each sub-clause of such insurance business shall be carried to and shall form a separate fund, the assets of which shall be kept separate and distinct from other assets of the insurer and every insurer shall submit to the Authority the necessary details of

such funds as may be required by the Authority from time to time and such funds shall not be applied directly or indirectly save as expressly permitted under this Act or regulations made thereunder.".

Substitution of new section for Section 11.

18. For section 11 of the Insurance Act, the following section shall be substituted, namely:—

Accounts and balance-sheet.

"11. *(1)* Every insurer, on or after the commencement of the Insurance Laws (Amendment) Act, 2008, 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 that year, balance-sheet, a profit and loss account, a separate account of receipts and payments, a revenue account in accordance with the regulations as may be specified.

(2) Every insurer shall keep separate accounts relating to funds of shareholders and policy-holders.

(3) Unless the insurer is a company as defined in clause (10) of Section 2 of the Companies Act, 1956, 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 case of an insurance co-operative society by the person in-charge of the society 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.". 1 of 1956.

Substitution of new section for Section 12.

19. For Section 12 of the Insurance Act, the following section shall be substituted, namely:—

Audit.

"12. The balance-sheet, profit and loss account, revenue account and profit and loss appropriation account of every insurer, in respect of all insurance business transacted by him, shall, unless they are subject to audit under the Companies Act, 1956, be audited annually by an auditor, and the auditor shall in the audit of all such accounts have the powers of, exercise the functions vested in, and discharge the duties and be subject to the liabilities and penalties imposed on, auditors of companies by Section 233 of the Companies Act, 1956.".

1 of 1956.

Amendment of Section 13.

20. In Section 13 of the Insurance Act,—

(i) for sub-section *(1)*, the following sub-section shall be substituted, namely:—

"*(1)* Every insurer carrying on life insurance business shall, once at least every year 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:

Provided that the Authority may, having regard to the circumstances of any particular insurer, allow him to have the investigation made as at a date not later than two years from the date as at which the previous investigation was made:

Provided further that every insurer, on or after the commencement of the Insurance Regulatory and Development Authority Act, 1999, shall cause an abstract of the report of the actuary to be made in the manner specified by the regulations.";

41 of 1999.

(ii) sub-section *(3)* shall be omitted;

(iii) for sub-section *(4)*, the following sub-section shall be substituted, namely:—

"*(4)* There shall be appended to every such abstract a statement prepared in such form and in such manner as may be specified by the regulations:

Provided that, if the investigation referred to in sub-sections *(1)* and *(2)* is made annually by any insurer, the statement need not be appended every year but shall be appended at least once in every three years.";

(iv) for sub-section *(6)*, the following sub-section shall be substituted, namely:—

"*(6)* The provisions of this section relating to the life insurance business shall apply also to any such sub-class of insurance business included in the class "Miscellaneous Insurance" and the Authority may authorise such modifications and variations of regulations as may be necessary to facilitate their application to any such sub-class of insurance business:

Provided that, if the Authority is satisfied that the number and amount of the transactions carried out by an insurer in any such sub-class of insurance business is so small as to render periodic investigation and valuation unnecessary, it may exempt that insurer from the operation of this sub-section in respect of that sub-class of insurance business.".

Substitution of new section for Section 14.

21. For Section 14 of the Insurance Act, the following section shall be substituted, namely:—

Record of policies and claims.

"14. Every insurer, in respect of all business transacted by him, shall maintain—

(a) a record of policies, in which shall be entered, in respect of every policy

issued by the insurer, the name and address of the policy-holder, the date when the policy was effected and a record of any transfer, assignment or nomination of which the insurer has notice, and

(b) a record of claims, every claim made together with the date of the claim, the name and address of the claimant and the date on which the claim was discharged, or, in the case of a claim which is rejected, the date of rejection and the grounds thereof.".

Substitution of new section for Section 15.

22. For Section 15 of the Insurance Act, the following section shall be substituted, namely:—

Submission of returns.

"15. *(1)* The audited accounts and statements referred to in Section 11 or sub-section *(5)* of Section 13 and the abstract and statement referred to in Section 13 shall be printed, and four copies thereof shall be furnished as returns to the Authority within six months from the end of the period to which they refer.

(2) Of the four copies so furnished one shall be signed in the case of a company by the chairman and two directors and by the principal officer of the company and, if the company has a managing director by that managing director and one shall be signed by the auditor who made the audit or the actuary who made the valuation, as the case may be.".

Omission of Section 16.

23. Section 16 of the Insurance Act shall be omitted.

Omission of Sections 17 and 17A.

24. Sections 17 and 17A of the Insurance Act shall be omitted.

Amendment of Section 20.

25. In Section 20 of the Insurance Act,—

(i) for sub-section *(1)*, the following sub-section shall be substituted, namely:—

"(1) Every return furnished to the Authority or certified copy thereof shall be kept by the Authority and shall be open to inspection; and any person may procure a copy of any such return, or of any part thereof, on payment of such fee as may be specified by regulations.";

(ii) in sub-section *(2)*, the words "or Section 16" shall be omitted;

(iii) in sub-section *(3)*, for the words "one rupee", the words "such fee as may be specified by regulations" shall be substituted.

Amendment of Section 21.

26. In Section 21 of the Insurance Act,—

(i) in clause (d) of sub-section *(1)*, the words and figures ''or Section 16'' shall be omitted;

(ii) for sub-section *(2)*, the following sub-section shall be substituted, namely:—

"*(2)* The Securities Appellate Tribunal may, on the application of an insurer and after hearing the Authority, cancel any order made by the Authority under clause (d) of sub-section *(1)* or may direct the acceptance of such a return which the Authority has declined to accept, if the insurer satisfies the Tribunal that the action of the Authority was in the circumstances unreasonable:

Provided that no application under this sub-section shall be entertained unless it is made before the expiration of four months from the date when the Authority made the order or declined to accept the return.".

Amendment of Section 22.

27. In Section 22 of the Insurance Act,—

(i) in sub-section *(1)*, the words "or an abstract of a valuation report furnished under clause (c) of sub-section *(2)* of Section 16" shall be omitted;

(ii) in sub-section (2), the words "or, as the case may be, of sub-section (2) of Section 16" shall be omitted.

Substitution of new sections for Sections 27, 27A, 27B, 27C and 27D.

28. For Sections 27, 27A, 27B, 27C and 27D of the Insurance Act, the following sections shall be substituted, namely:—

Investment of assets.

"27. *(1)* Every insurer shall invest and at all times keep invested assets equivalent to not less than the sum of —

(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 as may be specified in the regulations subject to the limitations, conditions and restrictions specified therein.

(2) In the case of an insurer carrying on general insurance business, twenty per cent. of the assets in Government Securities, a further sum equal to not less than ten per cent. of the assets in Government Securities or other approved securities and the balance in any other investment in accordance with the regulations of the Authority and subject to such limitations, conditions and restrictions as may be specified by the Authority in this regard.

Explanation.— In this section, the term "assets" means all the assets of insurer at their carrying value but does not include any assets specifically held against any fund or portion thereof in respect of which the Authority is satisfied that such fund or portion thereof, as the case may be, is regulated by the law of any country outside India or miscellaneous expenditure or in respect of which the Authority is satisfied that it would not be in the interest of the insurer to apply the provisions of this section.

(3) For the purposes of sub-sections *(1)* and *(2)*, any specified assets shall, subject to such conditions, if any, as may be specified, be deemed to be assets invested or kept invested in approved investments specified by regulations.

(4) In computing the assets referred to in sub-sections *(1)* and *(2)* —

(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 Authority 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-sections *(1)* and *(2)* and where any direction has been issued under this proviso copies thereof shall be laid before each house of Parliament as soon as may be after it is issued.

47 of 1950.

(5) Where an insurer has accepted re-insurance in respect of any policies of life insurance issued by another insurer and maturing for payment in India or has ceded re-insurance 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 the liability involved in such cession.

(6) The Government securities and other approved securities in which assets are under sub-section *(1)* or *(2)* to be invested and kept invested shall be held by the insurer free of

any encumbrance, charge, hypothecation or lien.

(7) 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 Authority, and the instrument of trust under this sub-section shall be executed by the insurer with the approval of the Authority 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.

Further provisions regarding investments.

27A. *(1)* No insurer carrying on life insurance business shall invest or keep invested any part of his controlled fund and no insurer carrying on general business shall invest or keep invested any part of his assets otherwise than in any of the approved investments as may be specified by the regulations subject to such limitations, conditions and restrictions therein.

(2) Notwithstanding anything contained in sub-section *(1)* or *(2)* of Section 27, an insurer may, subject to the provisions contained in the next succeeding sub-sections, invest or keep invested any part of his

controlled fund or assets 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 or fifteen per cent. of the assets referred to in sub-section *(2)* as the case may be;

(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 lndia, and all such investments, including investments in which any director is interested, are reported without delay to the Authority 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 or assets as referred to in sub-section *(2)* of Section 27,—

(a) invest in the shares of any one banking company, or

(b) invest in the shares or debentures of any one company, more than the percentage specified by the regulations.

(4) An insurer shall not out of his controlled fund or assets as referred to in sub-section *(2)* of Section 27 invest or keep invested in the shares or debentures of any private limited company.

(5) All assets forming the controlled fund or assets as referred to in sub-section (2), of Section 27, not being Government securities or other approved securities in which assets are to be invested or held invested in accordance with this section, shall (except for

a part thereof not exceeding one-tenth of the controlled fund or assets as referred to in sub-section *(2)* thereof 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.

(6) If at any time the Authority considers any one or more of the investments of an insurer to be unsuitable or undesirable, the Authority 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 Authority.

(7) 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 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

(b) 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 Authority 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 Authority is satisfied that it would not be in the interest of the insurer to apply the provisions of this section.

Provisions regarding investments of assets of insurer carrying general insurance business.

27B. *(1)* All assets of an insurer carrying on general insurance business 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 section 27.

(2) 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.

(3) Without prejudice to the powers conferred on the Authority by sub-section *(5)* of section 27A 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)* of section 27 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.

62 of 1968.

Investment by insurer in certain cases.

27C. An insurer may invest not more than five per cent. in aggregate of his controlled fund or assets as referred to in sub-section *(2)*

of section 27 in the companies belonging to the promoters, subject to such coditions as may be specified by regulations.

Manner and condition of investment.

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

(2) The Authority may give specific directions for the time, manner and other conditions subject to which the funds of policy-holders shall be invested in the infrastructure and social sector as may be specified by regulations and such regulations shall apply uniformly to all the insurers carrying on the business of life insurance, general insurance, or health insurance or re-insurance in India on or after the commencement of the Insurance Regulatory and Development Authority Act, 1999. 41 of 1999.

(3) 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 direction under this sub-section shall be issued unless the insurer concerned has been given a reasonable opportunity of being heard.

Prohibition for investment of funds outside india.

27E. No insurer shall directly or indirectly invest outside India the funds of the policy-holders.".

Substitution of new section for section 28, section 28A and section 28B.

29. For section 28, section 28A and section 28B of the Insurance Act, the following section shall be substituted, namely:—

"28. Every insurer shall submit to the Authority returns giving details of investments made, in such form, time and manner including its authentication as may be specified by the regulations.". Statement and return of investment of assets.

30. For section 29 of the Insurance Act, the following section shall be substituted, namely:— Substitution of new section for section 29.

"29. *(1)* No insurer shall grant loans or temporary advances either on hypothecation of property or on personal security or otherwise, except loans on life policies issued by him within their surrender value, to any director, manager, actuary, auditor or officer of the insurer, if a company or to any other company or firm in which any such director, manager, actuary or officer holds the position of a director, manager, actuary, officer or partner: Prohibition of loans.

Provided that nothing contained in this sub-section shall apply to loans made by an insurer to a banking company, if the previous approval of the Authority is obtained for such loans:

Provided further that nothing in this section shall prohibit a company from granting such loans or advances to a subsidiary company or to any other company of which the company granting the loan or advance is a subsidiary company if the previous approval of the Authority is obtained for such loan or advance.

(2) The provisions of section 220 of the Companies Act, 1956 shall not apply to a loan granted to a director of an insurer being a company, if the loan is one granted on the security of a policy on which the insurer bears the risk and the policy was issued to the director on his own life, and the loan is within the surrender value of the policy. 1 of 1956.

(3) Subject to the provisions of sub-section *(1)*, no insurer shall grant—

(a) any loans or temporary advances either on hypothecation of property or on personal security or otherwise, except such loans as may be specified by regulations including the loans sanctioned to the fulltime employees of the insurer as per the scheme duly approved by its Board of Directors;

(b) temporary advances to any insurance agent to facilitate the carrying out of his functions as such except in cases where such advances do not exceed in the aggregate the renewal commission earned by him during the year immediately preceding.

(4) Where any event occurs given rise to circumstances, the existence of which at the time of grant of any subsisting loan or advance would have made such grant a contravention of this section, such loan or advance shall, notwithstanding anything in any contract to the contrary, be repaid within three months from the occurrence of such event.

(5) In case of default in complying with the provisions of sub-section *(4)*, the director, manager, auditor, actuary, officer or insurance agent concerned shall, without prejudice to any other penalty which he may incur, cease to hold office under, or to act for, the insurer granting the loan on the expiry of three months.".

Substitution of section 30.

31. For section 30 of the Insurance Act, the following section shall be substituted, namely:—

Liability of directors, etc., for loss due to contraven-

"30. If by reason of a contravention of any of the provisions of section 27, 27A, 27B, 27C, 27D or section 29, any loss is sustained by the insurer or by the policy-holders, every

director, manager or officer who is knowingly a party to such contravention shall, without prejudice to any other penalty to which he may be liable under this Act, be jointly and severally liable to make good the amount of such loss.". tion of section 27, 27A, 27B, 27C, 27D or 29.

32. In section 31 of the Insurance Act, for sub-section *(1)*, the following sub-section shall be substituted, namely:— Amendment of section 31.

"*(1)* None of the assets in India of any insurer shall, except in so far as assets are required to be vested in trustees under sub-section *(7)* of section 27, be kept otherwise than in the name of a public officer approved by the Authority, or in the corporate name of the undertaking, if a company or as the case may be an insurance co-operative society.".

33. In section 31A of the Insurance Act,— Amendment of section 31A.

(a) in sub-section *(1)*, in clause *(c)*—

(I) in sub-clauses (i) and (ii) to the proviso, the following shall be substituted, namely:—

"*(i)* the payment of commission to an insurance agent, in respect of insurance business procured by or through him;";

(II) clause (iii) to the proviso shall be omitted;

(b) in sub-section *(3)*, for the words, letter and figure ''or in section 86B of the Indian Companies Act, 1913'', the words ''or in the provision relating to assignment of office under the Companies Act, 1956'' shall be substituted.

7 of 1913.

1 of 19356.

Substitution of new section for section 31B.

34. For section 31B of the Insurance Act, the following section shall be substituted, namely:—

Power to restrict payment of excessive remuneration.

"31B. No insurer shall in respect of insurance business transacted by him, shall pay to any person by way of remuneration, whether by way of commission or otherwise in excess of such sum as may be specified by the regulations.".

Omission of section 32.

35. Section 32 of the Insurance Act shall be omitted.

Amendment of section 32A.

36. In section 32A of the Insurance Act,—

(i) in sub-section *(1)*, the words, figures and letter, ''specified in sub-clause *(b)* of clause *(9)* of section 2 and,'' shall be omitted.

(ii) sub-sections *(2)* and *(3)* shall be omitted.

Amendment of section 32B.

37. In section 32B of the Insurance Act, for the words "rural or social sector, as may be specified in the Official Gazette by the Authority", the words "rural and social sectors, as may be specified by regulations" shall be substituted.

Insertion of new section 32D.

38. After section 32C of the Insurance Act, the following section shall be inserted, namely:—

Obligation of insurer in respect of insurance business in third party risks of motor vehicles.

"32D. Every insurer carrying on general insurance business shall, after the commencement of the Insurance Laws (Amendment) Act, 2008, underwrite such minimum percentage of insurance business in third party risks of motor vehicles as may be specified by regulations:

Provided that nothing in this section shall apply to an insurer carrying on the health insurance or re-insurance business only.''.

Substitution of new section for section 33.

39. For section 33 of the Insurance Act, the following section shall be substituted, namely:—

"33. *(1)* The Authority may, at any time, if it considers expedient to do so by order in writing, direct any person (hereafter in this section referred to as "Investigating Officer") specified in the order to investigate the affairs of any insurer or intermediary or insurance intermediary, as the case may be, and to report to the Authority on any investigation made by such Investigating Officer:

Power of investigation and inspection by Authority.

Provided that the Investigating Officer may, wherever necessary, employ any auditor or actuary or both for the purpose of assisting him in any investigation under this section.

(2) Notwithstanding anything to the contrary contained in section 235 of the Companies Act, 1956, the Investigating Officer may, at any time, and shall, on being directed so to do by the Authority, cause an inspection to be made by one or more of his officers of the books of account of any insurer or intermediary or insurance intermediary, as the case may be, and the Investigating Officer shall supply to the insurer or intermediary or insurance intermediary, as the case may be, a copy of the report on such inspection.

1 of 1956.

(3) It shall be the duty of every manager, managing director or other officer of the insurer including a service provider, contractor of an insurer where services are outsourced by the insurer, or intermediary or insurance intermediary, as the case may be, to produce before the Investigating Officer directed to make the investigation under sub-section *(1)*, or inspection under sub-section *(2)*, all such books of account, registers, other documents and the database in his custody or power and to furnish him with any statement and information relating to the affairs of the insurer or intermediary or insurance intermediary, as the case may be,

as the Investigating Officer may require of him within such time as the said Investigating Officer may specify.

(4) Any Investigating Officer, directed to make an investigation under sub-section *(1)*, or inspection under sub-section *(2)*, may examine on oath, any manager, managing director or other officer of the insurer including a service provider or contractor where the services are outsourced by the insurer or intermediary or insurance intermediary, as the case may be, in relation to his business.

(5) The Investigating Officer shall, if he has been directed by the Authority to cause an inspection to be made, make a report to the Authority on such inspection.

(6) On receipt of any report under sub-section *(1)* or sub-section *(5)*, the Authority may, after giving such opportunity to the insurer or intermediary or insurance intermediary, as the case may be, to make a representation in connection with the report as, in the opinion of the Authority, seems reasonable, by order in writing,—

(a) require the insurer, to take such action in respect of any matter arising out of the report as the Authority may think fit; or

(b) cancel the registration of the insurer or intermediary or insurance intermediary, as the case may be; or

(c) direct any person to apply to the court for the winding up of the insurer or intermediary or insurance intermediary, as the case may be, if it is a company, whether the registration of the insurer or intermediary or insurance intermediary, as the case may be, has been cancelled under clause *(b)* or not.

(7) The Authority may by the regulations made by it specify the minimum information to be maintained by insurers or intermediary or insurance intermediary, as the case may be, in their books, the manner in which such information shall be maintained, the checks and other verifications to be adopted by insurers or intermediary or insurance intermediary, as the case may be, in that connection and all other matters incidental thereto as are, in its opinion, necessary to enable the Investigating Officer to discharge satisfactorily his functions under this section.

Explanation.— For the purposes of this section, expression "insurer" shall include in the case of an insurer incorporated in India—

(a) all its subsidiaries formed for the purpose of carrying on the business of insurance exclusively outside India; and

(b) all its branches whether situated in India or outside India.

(8) No order made under this section other than an order made under clause *(b)* of sub-section *(6)* shall be capable of being called in question in any court.

(9) All expenses of, and incidental to, any investigation made under this section shall be defrayed by the insurer or intermediary or insurance intermediary, as the case may be, shall have priority over the debts due from the insurer and shall be recoverable as an arrear of land revenue.".

Amendment of section 34B.

40. In section 34B of the Insurance Act, for sub-section *(4)*, the following sub-section shall be substituted, namely:—

"*(4)* If any person in respect of whom an order is made by the Authority under sub-section *(1)* or under the proviso to sub-section *(2)*,

contravenes the provisions of this section, he shall be liable to a penalty of one lakh rupees for each day during which such contravention continues or one crore rupees, whichever is less.".

Amendment of section 34C.

41. In section 34C of the Insurance Act, for sub-section *(1)*, the following sub-section shall be substituted, namely:—

"*(1)* If the Authority is of opinion that in the public interest or in the interest of an insurer or his policy-holders it is necessary so to do, it may, from time to time, by order in writing, appoint, in consultation with the Central Government with effect from such date as may be specified in the order, one or more persons to hold office as additional directors of the insurer:

Provided that the number of additional directors so appointed shall not, at any time, exceed five or one-third of the maximum strength fixed for the Board by the articles of association of the insurer, whichever is less.".

Amendment of section 34E.

42. In section 34E of the Insurance Act, for the word ''Controller'', the word ''Authority'' shall be substituted.

Omission of section 34G.

43. Section 34G of the Insurance Act shall be omitted.

Amendment of section 34H.

44. In section 34H of the Insurance Act,—

(i) in sub-section *(1)*, for the words "an officer authorised by the Authority", the words "a Deputy Director" shall be substituted;

(ii) in sub-sections *(7)* and *(8)*, for the words "Central Government", the words "Securities Appellate Tribunal" shall be substituted.

45. In section 35 of the Insurance Act,— Amendment of section 35.

(i) for sub-section *(1)*, the following sub-section shall be substituted, namely:—

"*(1)* Notwithstanding anything contained in any other law for the time being in force, no insurance business of an insurer shall be transferred to or amalgamated with the insurance business of any other insurer except in accordance with a scheme prepared under this section and approved by the Authority.";

(ii) in sub-section *(3)*, for clauses (b) and (c), the following clauses shall be substituted, namely:—

"*(b)* balance-sheets in respect of the insurance business of each of the insurers concerned in such amalgamation or transfer, prepared in such forms may be specified by regulation;

(c) actuarial reports and abstracts in respect of the life insurance business of each of the insurers so concerned, prepared in conformity with the regulations specified in this regard.".

46. For section 36 of the Insurance Act, the following section shall be substituted, namely:— Substitution of new section for section 36.

"36. When any application under sub-section *(3)* of section 35 is made to the Authority, the Authority shall cause, a notice of the application to be given to the holders of any kind of policy of insurer concerned alongwith 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 it may direct, and, after hearing the directors and considering the objections of the policy-holders and any other persons whom it considers entitled to be Sanction of amalgamation and transfer by Authority.

heard, may approve the arrangement, and shall make such consequential orders as are necessary to give effect to the arrangement.".

Amendment of section 37A.

47. In section 37A of the Insurance Act, for sub-section *(4)*, the following sub-sections shall be substituted, namely:—

"*(4)* The scheme shall thereafter be placed before the Central Government for its sanction and the Central Government may sanction the scheme without any modification or with such modifications as it may consider necessary, and the scheme as sanctioned by the Central Government shall come into force on such date as the Central Government may notify in this behalf in the Official Gazette:

Provided that different dates may be specified for different provisions of the scheme.

(4A) Every policy-holder or shareholder or member of each of the insurers, before amalgamation, shall have the same interest in, or rights against the insurer resulting from amalgamation as he had in the company of which he was originally a policy-holder or shareholder or member:

Provided that where the interests or rights of any shareholder or member are less than his interest in, or rights against, the original insurer, he shall be entitled to compensation, which shall be assessed by the Authority in such manner as may be specified by regulations.

(4B) The compensation so assessed shall be paid to the shareholder or member by the insurance company resulting from such amalgamation.

(4C) Any member or shareholder aggrieved by the assessment of compensation made by the Authority under sub-section *(4A)*

may within thirty days from the publication of such assessment prefer an appeal to the Securities Appellate Tribunal.".

Substitution of new sections for sections 38, 39 and 40.

48. For sections 38, 39 and 40 of the Insurance Act, the following sections shall be substituted, namely:—

Assignment and transfer of insurance policies.

"38. *(1)* A transfer or assignment of a policy of insurance, wholly or in part, whether with or without consideration, may be made only by an endorsement upon the policy itself or by a separate instrument, signed in either case by the transferor or by the assignor or his duly authorised agent and attested by at least one witness, specifically setting forth the fact of transfer or assignment and the reasons thereof, the antecedents of the assignee and the terms on which the assignment is made.

(2) An insurer may, accept the transfer or assignment, or decline to act upon any endorsement made under sub-section *(1)*, where it has sufficient reason to believe that such transfer or assignment is not *bona fide* or is not in the interest of the policy-holder or in public interest.

(3) The insurer shall, before refusing to act upon the endorsement, record in writing the reasons for such refusal and communicate the same to the policy-holder not later than thirty days from the date of the policy-holder giving notice of such transfer or assignment.

(4) Any person aggrieved by the decision of an insurer to decline to act upon such transfer or assignment may within a period of thirty days from the date of receipt of the communication from the insurer containing reasons for such refusal, prefer a claim to the Authority.

(5) Subject to the provisions in sub-section *(2)*, the transfer or assignment shall

be complete and effectual upon the execution of such endorsement or instrument duly attested but except, where the transfer or assignment is in favour of the insurer, shall not be operative as against an insurer, and shall not confer upon the transferee or assignee, or his legal representative, any right to sue for the amount of such policy or the moneys secured thereby until a notice in writing of the transfer or assignment and either the said endorsement or instrument itself or a copy thereof certified to be correct by both transferor and transferee or their duly authorised agents have been delivered to the insurer:

Provided that where the insurer maintains one or more places of business in India, such notice shall be delivered only at the place where the policy is being serviced or attached.

(6) The date on which the notice referred to in sub-section *(5)* is delivered to the insurer shall regulate the priority of all claims under a transfer or assignment as between persons interested in the policy; and where there is more than one instrument of transfer or assignment the priority of the claims under such instruments shall be governed by the order in which the notices referred to in sub-section *(5)* are delivered:

Provided that if any dispute as to priority of payment arises as between assignees, the dispute shall be referred to the Authority.

(7) Upon the receipt of the notice referred to in sub-section *(5)*, the insurer shall record the fact of such transfer or assignment together with the date thereof and the name of the transferee or the assignee and shall, on the request of the person by whom the notice was given, or of the transferee or assignee, on payment of such fee as may be

specified by regulations, grant a written acknowledgement of the receipt of such notice; and any such acknowledgement shall be conclusive evidence against the insurer that he has duly received the notice to which such acknowledgment relates.

(8) Subject to the terms and conditions of the transfer or assignment, the insurer shall, from the date of the receipt of the notice referred to in sub-section *(5)*, recognise the transferee or assignee named in the notice as the absolute transferee or assignee entitled to benefit under the policy, and such person shall be subject to all liabilities and equities to which the transferor or assignor was subject at the date of the transfer or assignment and may institute any proceedings in relation to the policy, obtain a loan under the policy or surrender the policy without obtaining the consent of the transferor or assignor or making him a party to such proceedings.

Explanation.—Except where the endorsement referred to in sub-section *(1)* expressly indicates that the assignment or transfer is conditional in terms of sub-section *(10)* hereunder, every assignment or transfer will be deemed to be an absolute assignment or transfer and the assignee or transferee, as the case may be, will be deemed to be the absolute assignee or transferee respectively.

(9) Any rights and remedies of an assignee or transferee of a policy of life insurance under an assignment or transfer effected prior to the commencement of the Insurance Laws (Amendment) Act, 2008 shall not be affected by the provisions of this section.

(10) Notwithstanding any law or custom having the force of law to the contrary, an assignment in favour of a person made upon

the condition that —

(a) the proceeds under the policy will become payable to the policy-holder or the nominee or nominees in the event of either the assignee/or transferee predeceasing the insured; or

(b) the insured surviving the term of the policy, shall be valid:

Provided that a conditional assignee shall not be entitled to obtain a loan on the policy or surrender a policy.

(11) In the case of the partial assignment or transfer of a policy of insurance under sub-section *(1)*, the liability of the insurer shall be limited to the amount secured by partial assignment or transfer and such policy-holder shall not be entitled to further assign or transfer the residual amount payable under the same policy.

Nomination by policy-holder.

39. *(1)* The holder of a policy of life insurance on his own life may, when effecting the policy or at any time before the policy matures for payment, nominate the person or persons to whom the money secured by the policy shall be paid in the event of his death:

Provided that, where any nominee is a minor, it shall be lawful for the policy-holder to appoint any person in the manner laid down by the insurer, to receive the money secured by the policy in the event of his death during the minority of the nominee.

(2) Any such nomination in order to be effectual shall, unless it is incorporated in the text of the policy itself, be made by an endorsement on the policy communicated to the insurer and registered by him in the records relating to the policy and any such nomination may at any time before the policy

matures for payment be cancelled or changed by an endorsement or a further endorsement or a will, as the case may be, but unless notice in writing of any such cancellation or change has been delivered to the insurer, the insurer shall not be liable for any payment under the policy made *bona fide* by him to a nominee mentioned in the text of the policy or registered in records of the insurer.

(3) The insurer shall furnish to the policy-holder a written acknowledgment of having registered a nomination or a cancellation or change thereof, and may charge such fee as may be specified by regulations for registering such cancellation or change.

(4) A transfer or assignment of a policy made in accordance with section 38 shall automatically cancel a nomination:

Provided that the assignment of a policy to the insurer who bears the risk on the policy at the time of the assignment, in consideration of a loan granted by that insurer on the security of the policy within its surrender value, or its re-assignment on repayment of the loan shall not cancel a nomination, but shall affect the rights of the nominee only to the extent of the insurer's interest in the policy:

Provided further that the transfer or assignment of a policy, whether wholly or in part, in consideration of a loan advanced by the transferee or assignee to the policy-holder, will not cancel the nomination but shall affect the rights of the nominee only to the extent of the interest of the transferee or assignee, as the case may be, in the policy:

Provided also that the nomination, which has been automatically cancelled consequent upon the transfer or assignment, the same

nomination shall stand automatically revived when the policy is reassigned by the assignee or retransferred by the transferee in favour of the policy-holder on repayment of loan other than on a security of policy to the insurer.

(5) Where the policy matures for payment during the lifetime of the person whose life is insured or where the nominee or, if there are more nominees than one, all the nominees die before the policy matures for payment, the amount secured by the policy shall be payable to the policy-holder or his heirs or legal representatives or the holder of a succession certificate, as the case may be.

(6) Where the nominee or if there are more nominees than one, a nominee or nominees survive the person whose life is insured, the amount secured by the policy shall be payable to such survivor or survivors.

(7) Subject to the other provisions of this section, where the holder of a policy of insurance on his own life nominates his parents, or his spouse, or his children, or his spouse and children, or any of them, the nominee or nominees shall be beneficially entitled to the amount payable by the insurer to him or them under sub-section *(6)* unless it is proved that the holder of the policy, having regard to the nature of his title to the policy, could not have conferred any such beneficial title on the nominee.

(8) Subject as aforesaid, where the nominee, or if there are more nominees than one, a nominee or nominees, to whom sub-section *(7)* applies, die after the person whose life is insured but before the amount secured by the policy is paid, the amount secured by the policy, or so much of the amount secured by the policy as represents the share of the

nominee or nominees so dying (as the case may be), shall be payable to the heirs or legal representatives of the nominee or nominees or the holder of a succession certificate, as the case may be, and they shall be beneficially entitled to such amount.

(9) Nothing in sub-sections *(7)* and *(8)* shall operate to destroy or impede the right of any creditor to be paid out of the proceeds of any policy of life insurance.

(10) The provisions of sub-sections *(7)*, *(8)* and *(9)* shall apply to all policies of life insurance maturing for payment after the commencement of the Insurance Laws (Amendment) Act, 2008.

(11) Every policy-holder shall have an option to indicate in clear terms whether the person or persons being nominated by the policy-holder is/are a beneficiary nominee(s) or a collector nominee(s):

Provided where the policy-holder fails to indicate whether the person being nominated is a beneficiary nominee or a collector nominee it will be deemed that the person nominated is a beneficiary nominee.

Explanation.—For the purposes of this sub-section,—

(a) the expression 'beneficiary nominee' means a nominee who is entitled to receive the entire proceeds payable under a policy of insurance subject to other provisions of this Act; and

(b) the expression 'collector nominee' means a nominee other than a beneficiary nominee who is liable to make payment of the benefits arising out of policy to the beneficiary nominee or legal heirs of policy-holders or representative.

(12) The collector nominee shall make payment of the benefits arising out of policy to the beneficiary nominee or legal heirs or representative of the policy-holder in accordance with the regulations made by the Authority.

(13) Where a policy-holder dies after the maturity of the policy but the proceeds and benefit of his policy has not been made to him because of his death, in such a case, his nominee shall be entitled to the proceeds and benefit of his policy.

(14) The provisions of this section shall not apply to any policy of life insurance to which section 6 of the Married Women's Property Act, 1874, applies or has at any time applied: 3 of 1874.

Provided that where a nomination made whether before or after the commencement of the Insurance Laws (Amendment) Act, 2008, in favour of the wife of the person who has insured his life or of his wife and children or any of them is expressed, whether or not on the face of the policy, as being made under this section, the said section 6 shall be deemed not to apply or not to have applied to the policy.

Prohibition of payment by way of commission or otherwise for procuring business.

40. *(1)* No person shall, pay or contract to pay any remuneration or reward, whether by way of commission or otherwise for soliciting or procuring insurance business in India to any person except an insurance agent or an intermediary or insurance intermediary in such manner as may be specified by regulations.

(2) No insurance agent or intermediary or insurance intermediary shall receive or contract to receive commission or remuneration in any form in respect of policies issued in India, by an insurer except

in accordance with the regulations specified in this regard.

(3) Without prejudice to the provisions of section 102 in respect of a contravention of any of the provisions of the preceding sub-sections or the regulations framed in this regard, by an insurer, any insurance agent or intermediary or insurance intermediary who contravenes the said provisions shall be liable to a penalty which may extend to rupees one lakh.''.

Omission of section 40A.

49. Section 40A of the Insurance Act shall be omitted.

Substitution of new sections for sections 40B and 40C.

50. For section 40B and section 40C of the Insurance Act, the following sections shall be substituted, namely:—

Limitation of expenses of management in life insurance business.

"40B. Every insurer transacting life insurance business in India shall furnish to the Authority, the details of expenses of management in such manner and form as may be specified by regulations.

Limitation of expenses of management in general, health insurance and re-insurance business.

40C. Every insurer transacting general insurance, health insurance or re-insurance business shall submit to the Authority, the details of expenses of management in such manner and form as may be specified by regulations.".

Amendment of section 41.

51. In section 41 of the Insurance Act, for sub-section *(2)*, the following sub-section shall be substituted, namely:—

"*(2)* Any person making default in complying with the provisions of this section shall be liable for a penalty which may extend to five lakh rupees.".

Substitution of new section for section 42.

52. For section 42 of the Insurance Act, the following section shall be substituted, namely:—

Appointment of insurance agents.

"*(1)* An insurer may appoint any person to act as insurance agent for the

purpose of soliciting and procuring insurance business:

Provided that such person does not suffer from any of the disqualifications mentioned in sub-section *(3)*.

(2) No person shall act as an insurance agent for more than one life insurer and one general insurer.

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

(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 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 proceeding relating to any policy of insurance or the winding up of an insurer 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 insured;

(e) that in the case of an individual, who does not possess the requisite

qualifications or practical training or passed the examination, as may be specified by the regulations;

(f) that in the case of a company or firm making, a director or a partner or one or more of its officers or other employees so designated by it and in the case of any other person the chief executive, by whatever name called, or one or more of his employees designated by him, do not possess the requisite qualifications or practical training and have not passed such an examination as required under clauses (e) and (g);

(g) that he has not passed such examination as may be specified by the regulations;

(h) that he has violated the code of conduct specified by the regulations.

(4) Any person who acts as an insurance agent in contravention of the provision of this Act, shall be liable to a penalty which may extend to ten thousand rupees and any insurer or any person acting on behalf of an insurer, who appoints any person as an insurance agent not permitted to act as such or transacts any insurance business in India through any such person shall be liable to penalty which may extend to one crore rupees.".

Ommission of sections 42A, 42B and 42C.

53. Sections 42A, 42B and 42C of the Insurance Act shall be omitted.

Amendment of section 42D.

54. In section 42D of the Insurance Act,—

(i) For the words "licence" and "licence issued", wherever they occur, the words "registration" and "registration made", shall respectively be substituted.

(ii) in sub-section *(1)*, in clause (a) of the proviso, for the word, brackets and figure

"sub-section *(4)*", the word, brackets and figure "sub-section *(3)*" shall be substituted;

(iii) in sub-section *(3)*, for the words, letters, brackets and figures "in clauses (b), (c), (d), (e) and (f) of sub-section *(4)* of section 42", the following shall be substituted, namely:—

"in clauses (b), (c), (d), (e) and (g) of sub-section *(3)* of section 42.".

Substitution of new section for section 42E.

55. For section 42E of the Insurance Act, the following section shall be substituted, namely:—

Condition for intermediary or insurance intermediary.

"42E. Without prejudice to the provisions contained in this Act, the Authority may, by regulations made in this behalf, specify the requirements of capital, form of business and other conditions, to act as an intermediary or an insurance intermediary.".

Substitution of new section for section 43.

56. For section 43 of the Insurance Act, the following section shall be substituted, namely:—

Record of insurance agents.

"43. *(1)* Every insurer and every person who acting on behalf of an insurer employs insurance agents shall maintain a record showing the name and address of every insurance agent appointed by him and the date on which his appointment began and the date, if any, on which his appointment ceased.

(2) The record prepared by the insurer under sub-section *(1)*, shall be maintained for a period of five years.".

Omission of section 44.

57. Section 44 of the Insurance Act shall be omitted.

Substitution of new sections for sections 44A and 45.

58. For sections 44A and 45 of the Insurance Act, the following sections shall be substituted, namely:—

"44A. For the purposes of ensuring compliance with the provisions of sections 40, 40B, 40C the Authority may, by notice— Power to call for information.

(a) require from an insurer such information, certified if so required by an auditor or actuary, as he may consider necessary;

(b) require an insurer to submit for his examination at the principal place of business of the insurer in India, any book of account, register or other document, or to supply any statement which may be specified in the notice;

(c) examine any officer of an insurer on oath, in relation to any such information, book, register, document or statement and the insurer, shall comply with any such requirement within such time as may be specified in the notice."

45. *(1)* No policy of life insurance shall be called in question on any ground whatsoever after the expiry of five years from the date of the policy, *i.e.*, from the date of issuance of the policy or the date of commencement of risk or the date of revival of the policy or the date of the rider to the policy, whichever is later. Policy not be called in question on ground of misstatement after five years.

(2) A policy of life insurance may be called in question at any time within five years from the date of issuance of the policy or the date of commencement of risk or the date of revival of the policy or the date of the rider to the policy, whichever is later, on the ground of fraud:

Provided that the insurer will have to communicate in writing to the insured or the legal representatives or nominees or assignees of the insured the grounds and materials on which such decision is based.

Explanation I.— For the purposes of this sub-section, the expression 'fraud' means any of the following acts committed by the insured or by his agent, with the intent to deceive the insurer or to induce the insurer to issue a life insurance policy:

(a) the suggestion, as a fact of that which is not true and which the insured does not believe to be true;

(b) the active concealment of a fact by the insured having knowledge or belief of the fact;

(c) any other act fitted to deceive; and

(d) any such act or omission as the law specially declares to be fraudulent.

Explanation II.—Mere silence as to facts likely to affect the assessment of the risk by the insurer is not fraud, unless the circumstances of the case are such that regard being had to them, it is the duty of the insured or his agent, keeping silence to speak, or unless his silence is, in itself, equivalent to speak.

(3) Notwithstanding anything contained in sub-section *(2)*, no insurer shall repudiate a life insurance policy on the ground of fraud if the insured can prove that the mis-statement of or suppression of a material fact was true to the best of his knowledge and belief or that there was no deliberate intention to suppress the fact or that such mis-statement of or suppression of a material fact are within the knowledge of the insurer.

Explanation.—A person who solicits and negotiates a contract of insurance shall be deemed for the purpose of the formation of the contract, to be the agent of the insurer.

(4) A policy of life insurance may be called in question at any time within five

years from the date of issuance of the policy or the date of commencement of risk or the date of revival of the policy or the date of the rider to the policy, whichever is later, on the ground that any statement of or suppression of a fact material to the expectancy of the life of the insured was incorrectly made in the proposal or other document on the basis of which the policy was issued or revived or rider issued:

Provided that the insurer will have to communicate in writing to the insured or the legal representatives or nominees or assignees of the insured the grounds and materials on which such decision to repudiate the policy of life insurance is based:

Provided further that in case of repudiation of the policy on the ground of misstatement or suppression of a material fact, and not on the ground of fraud, the premiums collected on the policy till the date of repudiation shall be paid to the insured or the legal representatives or nominees or assignees of the insured within a period of ninety days from the date of such repudiation.

Explanation.—For the purposes of this sub-section, the mis-statement of or suppression of fact will not be considered material unless it has a direct bearing on the risk undertaken by the insurer, the onus is on the insurer to show that had the insurer been aware of the said fact no life insurance policy would have been issued to the insured.

(5) Nothing in this section shall prevent the insurer from calling for proof of age at any time if he is entitled to do so, and no policy shall be deemed to be called in question merely because the terms of the policy are adjusted on subsequent proof that the age of the life insured was incorrectly stated in the proposal.".

Omission of sections 47A and 48.

59. Sections 47A and 48 of the Insurance Act shall be omitted.

Substitution of new section for section 48A.

60. For section 48A of the Insurance Act, the following section shall be substituted, namely:—

Insurance agent or intermediary or insurance intermediary not to be directors in insurance company.

"48A. No insurance agent or intermediary or insurance intermediary shall be eligible to be or remain a director in insurance company:

Provided that any director holding office at the commencement of the Insurance Laws (Amendment) Act, 2008 shall not become ineligible to remain a director by reason of this section until the expiry of six months from the date of commencement of the said Act:

Provided further that the Authority may permit an agent or intermediary or insurance intermediary to be on the Board of an insurance company subject to such conditions or restrictions as it may impose to protect the interest of policy-holders or to avoid conflict of interest.".

Amendment of section 49.

61. In section 49 of the Insurance Act, in sub-section *(1)*,—

(i) for the words "being an insurer specified in sub-clause (a) *(ii)* or sub-clause *(b)* of clause (9) of section 2" shall be omitted;

(ii) for the words "or to the Central Government under section 11 of the Indian Life Insurance Companies Act, 1912" shall be omitted. 7 of 1912.

Substitution of new sections for sections 52 and 52A.

62. For sections 52 and 52A of the Insurance Act, the following sections shall be substituted, namely:—

"52. No insurer shall commence any business upon the dividing principle, that is

to say, on the principle that the benefit secured by a policy is not fixed but depends either wholly or partly on the result of a distribution of certain sums amongst policies becoming claims within certain time-limits, or on the principle that the premiums payable by a policy-holder depend wholly or partly on the number of policies becoming claims within certain time-limits:

Prohibition of business on dividing principle.

Provided that nothing in this section shall be deemed to prevent an insurer from allocating bonuses to holders of policies of life insurance as a result of a periodical actuarial valuation either as reversionary additions to the sums insured or as immediate cash bonuses or otherwise.

52A. *(1)* If at any time the Authority has reason to believe that an insurer carrying on life insurance business is acting in a manner likely to be prejudicial to the interests of holders of life insurance policies, it may, after giving such opportunity to the insurer to be heard appoint an Administrator to manage the affairs of the insurer under the direction and control of the Authority.

When Administrator for management of insurance business may be appointed.

(2) The Administrator shall receive such remuneration as the Authority may direct and the Authority may at any time cancel the appointment and apoint some other person as Administrator.".

63. In section 52BB of the Insurance Act,—

Amendment of section 52BB.

(a) in sub-section *(2)*, for the words "the Central Government and the Central Government", the words "Securities Appellate Tribunal and the Securities Appellate Tribunal" shall be substituted;

(b) in sub-section *(3)*, for the words "Central Government", the words "Securities Appellate Tribunal", shall be substituted;

(c) in sub-section *(10)*, in clause (a), the words "or the Central Government" shall be omitted.

Substitution of section 52D.

64. For section 52D of the Insurance Act, the following section shall be substituted, namely:—

Termination of appointment of Administrator.

"52D. If at any time, it appears to the Authority that the purpose of the order appointing the Administrator has been fulfilled or that, for any reason, it is undesirable that the order of appointment should remain in force, the Authority may cancel the order and thereupon the Administrator shall be divested of the management of the insurance business which shall, unless otherwise directed by the Authority, again vest in the person in whom it was vested immediately prior to the appointment of Administrator or any other person appointed by the insurer in this behalf.".

Amendment of section 52E.

65. In Section 52E the words "Central Government" are to be replaced by the word "Authority".

Amendment of section 52F.

66. In section 52F of the Insurance Act, for the words "punishable with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both", the words "liable to penalty of rupees ten thousand each day during which such failure continues or rupees ten lakh, whichever is less" shall be substituted.

Amendment of section 52G.

67. In section 52G of the Insurance Act, in sub-section *(2)*, the words "Central Government or" shall be omitted.

Omission of sections 52H to 52N.

68. Sections 52H to 52N (both inclusive) of the Insurance Act, shall be omitted.

Amendment of section 53.

69. In section 53 of the Insurance Act,—

(a) in sub-section *(1)*, the following

Explanation shall be inserted at the end, namely:—

"*Explanation*.—For the purpose of sections 53 to 61A, "Tribunal" means National Company Law Tribunal constituted under sub-section (1) of section 10FB of the Companies Act, 1956.";

1 of 1956.

(b) In sub-section *(2)*, in clause (b), sub-clause (i) shall be omitted.

Amendment of section 58.

70. In section 58 of the Insurance Act, for sub-section *(4)*, the following sub-section shall be substituted, namely:—

"*(4)* An order of the Tribunal confirming a scheme under this section whereby the memorandum of a company is altered with respect to its objects shall as respects the alteration have effect as if it were an order confirmed under section 15 of the Companies Act, 1956, and the provisions of section 17 of that Act shall apply accordingly.".

1 of 1956.

Omission of section 59.

71. Section 59 of the Insurance Act, shall be omitted.

Omission of sections 62, 63 and 64.

72. Sections 62 to 64 (both inclusive) of the Insurance Act, shall be omitted.

Amendment of heading.

73. In Part II A of the Insurance Act, for the heading "Insurance Association of India, Councils of the Association and Committees thereof" the following heading shall be substituted, namely:—

"LIFE INSURANCE COUNCIL AND GENERAL INSURANCE COUNCIL AND COMMITTEES THEREOF.".

Omission of sections 64A and 64B.

74. Sections 64A and 64B of the Insurance Act, shall be omitted.

Substitution of new sections for sections 64C and 64D.

75. For sections 64C and 64D of the Insurance Act, the following sections shall be substituted, namely :—

Councils of Life Insurance and General Insurance.

"64C. On and from the date of commencement of the Insurance Laws (Amendment) Act, 2008,—

(a) the existing Life Insurance Council, a representative body of the insurers, who carry on the life insurance business in India; and

(b) the existing General Insurance Council, a representative body of insurers, who carry on general, health insurance business and re-insurance in India, shall be deemed to have been constituted as the respective Councils under this Act.

Authorisation to represent in Councils.

64D. It shall be lawful for any member of the Life Insurance Council or the General Insurance Council to authorise any of its officer to act as the representative of such member at any meeting of the Council concerned.".

Substitution of new section for section 64F.

76. For section 64F of the Insurance Act, the following section shall be substituted, namely:—

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) four representatives of members of the Life Insurance Council elected in their individual capacity by the members in such manner as may be laid down in the bye-laws of the Council;

(b) an eminent person not connected with insurance business, nominated by the Authority; and

(c) three persons to represent insurance agents, intermediaries and policyholders respectively as may be nominated by the Authority:

Provided that one of the representatives as mentioned in clause (a) shall be elected as

the Chairperson of the Executive Committee of the Life Insurance Council.

(2) The Executive Committee of the General Insurance Council shall consist of the following persons, namely:—

(a) four representatives of members of the General Insurance Council elected in their individual capacity by the members in such manner as may be laid down in the bye-laws of the Council;

(b) an eminent person not connected with insurance business, nominated by the Authority; and

(c) four persons to represent insurance agents, third party administrators, surveyors and loss assessors and policy-holders respectively as may be nominated by the Authority:

Provided that one of the representatives as mentioned in clause (a) shall be elected as the Chairperson of the Executive Committee of the General Insurance Council.

(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 Life Insurance Council or the General Insurance Council, the Authority 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) Each of the said Executive Committees may make bye-laws for the transaction of any business at any meeting of the said Committee.

(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.

(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 appointed by the Executive Committee concerned:

Provided that each Secretary appointed by the Executive Committee concerned shall exercise all such powers and do all such acts as may be authorised in this behalf by the Executive Committee concerned.".

Amendment of section 64G.

77. In section 64G of the Insurance Act, in sub-section *(2)*, for the words "by nomination by the Authority", the words "in such manner as may be laid down in the bye-laws of the Council concerned" shall be substituted.

Omission of section 64-I.

78. Section 64-I of the Insurance Act, shall be omitted.

Amendment of section 64J.

79. In section 64J of the Insurance Act, for sub-section *(2)*, the following sub-section shall be substituted, namely:—

"*(2)* For the purpose of enabling it to effectively discharge its functions, the Executive Committee of the Life Insurance Council may collect such fees as may be laid down in the bye-laws made by the Council from the insurers carrying on life insurance business.".

Amendment of section 64L.

80. In section 64L of the Insurance Act, for sub-section *(2)*, the following sub-section shall be substituted, namely:—

''*(2)* For the purpose of enabling it to effectively discharge its functions, the Executive Committee of the General Insurance Council may collect such fees as

may be laid down in the bye-laws made by the Council from the insurers carrying on general insurance business.''.

Amendment of section 64N.

81. In section 64N of the Insurance Act, for the words "the Central Government may prescribe", the words "the Authority may specify" shall be substituted.

Amendment of section 64R.

82. In section 64R of the Insurance Act, in sub-section *(1)*,—

(a) for clause (c), the following clause shall be substituted, namely:—

"*(c)* keep and maintain up to date a copy of list of all insurers who are members of the either Council.".

(b) in clause (d), for the words "with the previous approval of the Authority make regulations for", the words "make bye laws for" shall be substituted.

Omission of section 64S and 64T.

83. Sections 64S and 64T of the Insurance Act, shall be omitted.

Omission of sections 64U to 64UL.

84. Sections 64U to 64UL (both inclusive) of the Insurance Act, shall be omitted.

Insertion of new section 64ULA.

85. After section 64UL of the Insurance Act, the following section shall be inserted, namely:—

Transitional provisions.

"64ULA. *(1)* Notwithstanding anything contained in this Part, until the rates, advantage and terms and conditions laid-down by the Advisory Committee under section 64UC are de-notified by the Authority with effect from such date as the Authority may by notification in the Official Gazette determine, and the rates, advantages and terms and conditions are decided by the insurer concerned, the rates, advantages and terms and conditions notified by the Advisory Committee shall continue to be in force and shall always be deemed to have

been in force and any such rates, advantages and terms and conditions shall be binding on all the insurers.

(2) The Authority shall, in consultation with the Central Government, prepare a scheme for the existing employees of the Tariff Advisory Committee on its dissolution, keeping in view the interests of such employees on such terms and conditions as it may, by order, determine.

Substitution of new section for section 64UM.

86. For section 64UM of the Insurance Act, the following section shall be substituted, namely:—

Surveyors or loss assessors.

"64UM. Save as otherwise provided in this section and the regulations made thereunder, no person shall act as a surveyor or loss assessor in respect of general Insurance business.''.

Substitution of new sections for sections 64V and 64VA.

87. For sections 64V and 64VA of the Insurance Act, the following sections shall be substituted, namely:—

Assets and liabilities how to be valued.

"64V. *(1)* For the purpose of ascertaining compliance with the provisions of section 64VA, assets shall be valued at value not exceeding their market or realisable value and certain assets may be excluded by the Authority in the manner as may be specified by the regulations made in this behalf.

(2) A proper value shall be placed on every item of liability of the insurer in the manner as may be specified by the regulations made in this behalf.

(3) Every insurer shall furnish to the Authority along with the returns required to be filed under this Act, a statement, certified by an Auditor, approved by the Authority, in respect of general insurance business or an actuary approved by the Authority in respect of life insurance business, as the case may

be, of his assets and liabilities assessed in the manner required by this section as on the 31st day of March of each year within such time as may be specified by regulations.

Sufficiency of assets.

64VA. *(1)* Every insurer and re-insurer shall at all times maintain an excess of value of assets over the amount of liabilities of, not less than fifty per cent. of the amount of minimum capital as stated under section 6 and arrived at in the manner specified by the regulations.

(2) An insurer or re-insurer, as the case may be, who does not comply with sub-section *(1)*, shall be deemed to be insolvent and may be wound-up by the court on an application made by the Authority.

(3) The Authority shall by way of regulation made for the purpose, specify a level of solvency margin known as control level of solvency on the breach of which the Authority shall act in accordance with the provisions of sub-section *(4)* without prejudice to taking of any other remedial measures as deemed fit:

Provided that if in respect of any insurer the Authority is satisfied that either by reason of an unfavourable claim experience or because of a sharp increase in the volume of new business, or for any other reason, compliance with the provisions of this sub-section will cause undue hardship to the insurer, it may direct that for such period and subject to such conditions as it may specify, the provisions of this sub-section shall apply to that insurer with such modifications provided that such modifications shall not result in the control level of solvency being less than what is stipulated under sub-section *(1)*.

(4) If, at any time, an insurer or re-insurer does not maintain the required control level

of solvency margin, he shall, in accordance with the directions issued by the Authority, submit a financial plan to the Authority, indicating a plan of action to correct the deficiency within a specified period not exceeding six months.

(5) An insurer who has submitted a plan, as required under sub-section *(4)*, the Authority shall propose modifications to the plan, if the Authority considers the same inadequate, and in such an eventuality, the Authority shall give directions, as may be deemed necessary, including direction in regard to transacting any new business, or, appointment of an administrator or both.

(6) An insurer or re-insurer, as the case may be, who does not comply with the provisions of sub-section *(4)* shall be deemed to have made default in complying with the requirements of this section.

(7) The Authority shall be entitled at any time to take such steps as it may consider necessary for the inspection or verification of the assets and liabilities of any insurer or re-insurer, or for securing the particulars necessary to establish that the requirements of this section have been complied with as on any date, and the insurer or re-insurer, as the case may be, shall comply with any requisition made in this behalf by the Authority, and in the event of any failure to do so within two months from the receipt of the requisition, the insurer or re-insurer, as the case may be, shall be deemed to have made default in complying with the requirements of this section.

(8) In applying the provisions of sub-section *(1)* to any insurer or re-insurer, as the case may be, who is a member of a group, the relevant amount for that insurer shall be an amount equal to that proportion of the

relevant amount which that group, if considered as a single insurer, would have been required to maintain as the proportion of his share of the risk on each policy issued by the group bears to the total risk on that policy:

Provided that when a group of insurers ceases to be a group, every insurer in that group who continues to carry on any class of insurance business in India shall comply with the requirements of sub-section *(1)* as if he had not been an insurer in a group at any time:

Provided further that it shall be sufficient compliance of the provisions of the foregoing proviso if the insurer brings up the excess of the value of his assets over the amount of his liabilities to the required amount within a period of six months from the date of cessation of the group:

Provided also that the Authority may, on sufficient cause being shown, extend the said period of six months by such further periods as it may think fit, so, however that the total period may not in any case exceed one year.

(9) Every insurer shall furnish to the Authority return giving details of solvency margin in such form, time, manner including its authentication as may be specified by the regulations.".

Substitution of new section for section 64VC.

88. For section 64VC of the Insurance Act, the following section shall be substituted, namely:—

Restrictions on the opening of a new place of business.

''64VC. No insurer shall, after the commencement of the Insurance (Amendment) Act, 1968, open a new place of business or close a place in India or outside India or change otherwise than within the same city, town or village, the location of an

existing place of business situated in India or outside India, except in the manner as may be specified by regulations.''.

Omission of Part III and IIIA.

89. PART III and IIIA of the Insurance Act, shall be omitted.

Omission of Part IV.

90. PART IV of the Insurance Act, shall be omitted.

Amendment of section 102.

91. For section 102 of the Insurance Act, for the words "not exceeding five lakh rupees for each such failure and punishable with fine", the words " of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less" shall be substituted.

Substitution of new sections for sections 103 and 104.

92. For sections 103 and 104 of the Insurance Act, the following sections shall be substituted, namely:—

Penalty for carrying on insurance business in contravention of section 3.

"103. If a person carries on the business of insurance without obtaining a certificate of registration under section 3, he shall be liable to a fine not exceeding rupees twenty-five crores and with imprisonment which may extend to ten years.

Penalty for contravention of sections 27, 27A, 27B, 27D and 27E.

104. If a person fails to comply with the provisions of section 27, section 27A, section 27B, section 27D and section 27E, he shall be liable to a penalty not exceeding twenty-five crore rupees.".

Amendment of section 105.

93. In section 105 of the Insurance Act, for the words "not exceeding two lakh rupees for each such failure", the words "not exceeding one crore rupees " shall be substituted.

Substitution of new sections for sections 105B and 105C.

94. For sections 105B and 105C of the Insurance Act, the following sections shall be substituted, namely:—

Penalty for failure to comply with sections 32B, 32C and 32D.

"105B. If an insurer fails to comply with the provisions of section 32B, section 32C and section 32D, he shall be liable to a penalty not exceeding twenty-five crore rupees.

Power to adjudicate.

105C. *(1)* For the purpose of adjudication under sub-section *(2)* of section 2CB, sub-section *(4)* of section 34B, sub-section *(2)* of section 40A, sub-section *(2)* of section 41, sub-section *(4)* of section 42, section 102, section 104, section 105 and section 105B, the Authority, shall appoint any officer not below the rank of a Joint Director to be an adjudicating officer for holding an inquiry in the prescribed manner after giving any person concerned a reasonable opportunity of being heard.

(2) Upon receipt of the inquiry report from the officer so appointed, the Authority after giving an opportunity of being heard to the person concerned may impose any penalty provided in sections aforesaid.

(3) While holding an inquiry, the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which in the opinion of the adjudicating officer, may be useful for or relevant to the subject matter of the inquiry and if on such inquiry, is satisfied that the person has failed to comply with the provisions of any of the sections specified in sub-section *(1)*, he may recommend such penalty as he thinks fit in accordance with the provisions of any of those sections.

Factors to be taken into account by the adjudicating officer.

105D. While recommending the quantum of penalty under section 105C, the adjudicating officer and while imposing such penalty, the Authority shall have due regard to the following factors, namely:—

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to the policy-holders as a result of the default; and

(c) the repetitive nature of default."

Amendment of section 106A.

95. In section 106A of the Insurance Act, in sub-section *(2)*, clauses (a), (b) and (f) shall be omitted and in clause (d), the words 'or a provident society' shall be omitted.

Omission of section 107 and 107A.

96. Sections 107 and 107A of the Insurance Act shall be omitted.

Substitution of new section for section 109.

97. For section 109 of the Insurance Act, the following section shall be substituted, namely:—

Cognizance of Offence.

"109. No court shall take cognizance of any offence punishable under this Act or any rules or any regulations made thereunder, save on a complaint made by an officer of the Authority or by any person authorised by it.".

Substitution of new section for section 110.

98. For section 110 of the Insurance Act, the following section shall be substituted, namely:—

Appeal to Securities Appellate Tribunal.

"110. *(1)* Any person aggrieved—

(a) by an order of the Authority made on and after the commencement of the Insurance Laws (Amendment) Act, 2008, or under this Act, the rules or regulations made thereunder, or

(b) by an order made by the Authority by way of adjudication under this Act, may prefer an appeal to the Securities Appellate Tribunal having jurisdiction in the matter.

(2) Every Appeal under sub-section *(1)* shall be filed within a period of forty-five days from the date on which a copy of the order made by the Authority is received by him and it shall be in such a form and be accompanied by such fees as may be prescribed:

Provided that the Securities Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

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

(4) The Securities Appellate Tribunal shall make available copy of order made by it to the Authority and parties.

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

(6) The procedure for filing and disposing of an appeal shall be such as may be prescribed.

(7) The provision contained in section 15U, section 15V, section 15W, section 15Y and section 15Z of the Securities and Exchange Board of India Act, 1992 shall apply to the appeals arising out of the provisions of this Act, as they apply to the appeals under the Securities and Exchange Board of India Act, 1992.

15 of 1992.

Omission of section 110E.

99. Section 110E of the Insurance Act, shall be omitted.

Omission of sections 110G and 110H.

100. Sections 110G and 110H of the Insurance Act, shall be omitted.

Insertion of new section 110AA.

101. After section 110H of the Insurance Act, the following section shall be inserted, namely:—

Penalty to be recoverable as arrear of land revenue.

''110AA. Any penalty imposed by the Authority under this Act shall be recoverable as an arrear of land revenue.''.

Amendment of section 111.

102. In section 111 of the Insurance Act, the words "provident societies", wherever they occur, shall be omitted.

Substitution of new section for section 113.

103. For section 113 of the Insurance Act, the following section shall be substituted, namely:—

Acquisition of surrender value by policy.

"113. *(1)* A policy of life insurance shall acquire surrender value as per the norms specified by the regulations.

(2) Every policy of life insurance shall contain the formula as approved by the Authority for calculation of guaranteed surrender value of the policy.

(3) Notwithstanding any contract to the contrary, a policy of life insurance under a non-linked plan which has acquired a surrender value shall not lapse by reason of non-payment of further premiums but shall be kept in force to the extent of paid-up sum insured, calculated by means of a formula as approved by the Authority, and contained in the policy, and the reversionary bonuses that have already been attached to the policy:

Provided that a policy of life insurance under a linked plan shall be kept in force in the manner as may be specified by the regulations.

(4) The provisions of sub-section *(3)* shall not apply—

(i) where the paid-up sum insured by a policy, inclusive of attached bonuses, is less than the amount specified by the Authority or takes the form of annuity of amount less than the amount specified by the Authority; or

(ii) when the parties after the default has occurred in payment of the premium agree in writing to other arrangement.".

Amendment of section 114.

104. In section 114 of the Insurance Act, in sub-section *(2)*,—

(i) clauses (c) and (f) shall be omitted;

(ii) after clause (l), the following clauses shall be inserted, namely:—

"*(la)* the manner of inquiry under sub-section *(1)* of section 105C;

(lb) the form in which an appeal may be preferred under sub-section *(2)* and the fee payable in respect of such appeal and the procedure for filing and disposing of an appeal under sub-section *(6)* of section 110.".

Amendment of section 114A.

105. In section 114A of the Insurance Act, in sub-section *(2)*,—

(i) for clauses (a) and (aa), the following clause shall be substituted, namely:—

"*(a)* manner of making application for registration and documents to be accompanied under sub-section *(2)* of section 3;";

(ii) for clause (d), the following clause shall be substituted, namely:—

"*(d)* such annual fee to the Authority and manner of payment under sub-section *(1)* of section 3A;";

(iii) after clause (d), the following clauses shall be inserted, namely:—

"*(da)* such minimum annuity and other benefits to be secured by the insurer under section 4;

(db) such equity capital and such forms of capital including hybrid capital required under sub-section *(I)* of section 6A;";

(iv) after clause (e), the following clause shall be inserted, namely:—

"*(ea)* separation of account of all receipts and payments in respect of each classes and sub-classes of insurance business as required under sub-section *(1)* and sub-section *(2A)* of section 10; and its waiver under the said section;";

(v) in clause (f), for the words "under sub-section *(1A)* of section 11", the words "under sub-section *(1)* of section 11" shall be substituted;

(vi) for clause (g), the following clause shall be substituted, namely:—

"(g) the manner in which an abstract of the report of the actuary to be specified and the form and manner in which the statement referred to in section 13 shall be appended;";

(vii) for clause (h), the following clause shall be substituted, namely:—

"*(h)* the fee for procuring a copy of return or any part thereof under sub-section (I) of section 20;";

(viii) for clause (i), the following clause shall be substituted, namely:—

"*(i)* investment of assets and further provisions regarding investments by an insurer and investment by insurers in certain cases under sections 27, 27A, 27B, 27C and time, manner and other conditions of investment of assets under section 27D;";

(ix) for clauses (ia), (ib), (ic), (id) and (ie), the following clauses shall be substituted, namely:—

"*(ia)* the form in which a return giving details of investments made, time and manner including its authentication under section 28;

(ib) the loans including the loans sanctioned to the full-time employees of the insurer under clause (a) of sub-section *(3)* of section 29;

(ic) the sum to be paid by the insurer to any person under section 31B;

(id) the obligation of insurer in respect of rural or social or unorganised sector and backward classes under section 32B and 32C;

(ie) the minimum percentage of insurance business in third party risks of motor vehicles under section 32D;";

(x) for clause (j), the following clause shall be substituted, namely:—

"*(j)* the minimum information to be maintained by insurers or intermediary or insurance intermediary, as the case may be, in their books, the manner in which such information shall be maintained, the checks and other verifications in that connection and all other matters incidental thereto under sub-section *(7)* of section 33;";

(xi) after clause (j), the following clauses shall be inserted, namely:—

"*(ja)* the form in which balance-sheets in respect of the insurance business of each of the insurers concerned and the manner in which actuarial reports and abstracts in respect of the life insurance business are to be prepared under

clauses (b) and (c) of sub-section *(3)* of section 35;

(jb) the manner of assessment of compensation under the proviso to sub-section *(4A)* of section 37A;

(jc) the fee to be charged by the insurer under sub-section *(3)* of section 39;

(jd) the manner of payment of benefits under sub-section *(12)* of section 39;

(je) the manner and amount of remuneration or reward to be paid or received by way of commission or otherwise to an insurance agent or an intermediary or insurance intermediary under section 40;

(jf) the manner and form of expenses of management under section 40B and 40C.";

(xii) clauses (k) and (l), shall be omitted;

(xiii) for clause (m), the following clause shall be substituted, namely:—

"*(m)* the requisite qualifications or practical training or examination to be passed for appointment as an insurance agent under clause (e) of sub-section *(3)* of section 42;";

(xiv) clause (n), shall be omitted;

(xv) for clause (o), the following clause shall be substituted, namely:—

"*(o)* the code of conduct under clause (h) of sub-section *(3)* of section 42;";

(xvi) clause (p), shall be omitted;

(xvii) clause (va), shall be omitted;

(xviii) in clause (vb), the words, brackets and figure "sub-section *(2)* of" shall be omitted;

(xix) clause (w), shall be omitted;

(xx) for clause (y), the following clause shall be substituted, namely:—

"*(y)* the manner of exclusion of certain assets under sub-section *(1)*, the manner of valution of liabilities under sub-section *(2)* and time for furnishing statement under sub-section *(3)* of section 64V;";

(xxi) for clause (za), the following clause shall be substituted, namely:—

"*(za)* the matters specified under sub-section *(1)* of section 64VA relating to sufficiency of assets;";

(xxii) after clause (zaa), the following clauses shall be inserted, namely:—

"*(zab)* the form, time, manner including authentication of the return giving details of solvency margin under sub-section *(9)* of section 64VA;

(zac) the manner of opening and closing places of business under section 64VC;":

(xxiii) after clause *(zb)*, the following clause shall be added, namely:—

"*(zba)* the norms for surender value of life insurance policy under sub-section (1) of section 113;";

Omission of the Fifth, the Sixth and the Eighth Schedule.

106. In the Insurance Act, the Fifth Schedule, the Sixth Schedule and the Eighth Schedule shall be omitted.

CHAPTER III

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

Insertion of a new section after section 10A.

107. In the General Insurance Business (Nationalisation) Act, 1972, after section 10A, the following section shall be inserted, namely:— 57 of 1972.

Enchancement of equity capital of General Insurance companies.

"10B. The General Insurance Corporation and the insurance companies specified in section 10A may, raise their capital for increasing their business in rural and social sectors, to meet solvency margin and such other purposes, as the Central Government may empower in this behalf.".

Omission of section 25.

108. Section 25 of the General Insurance Business (Nationalisation) Act, 1972 shall be omitted. 57 of 1972.

CHAPTER IV

AMENDMENT TO INSURANCE REGULATORY AND DEVELOPMENT AUTHORITY ACT, 1999

Amendment of section 2.

109. In section 2 of the Insurance Regulatory and Development Authority Act, 1999, in sub-section (1),— 41 of 1999.

(i) in clause (b), after the words "Development Authority", the words "of India", shall be inserted;

(ii) in clause (f), after the words "insurance consultants", the words "Insurance agents, third party administrator" shall be inserted.

Amendment of section 3.

110. In section 3 of the Insurance Regulatory and Development Authority Act, 1999, in sub-section *(1)*, after the words ''Development Authority'' the words ''of India'' shall be inserted. 41 of 1999.

Amendment of section 16.

111. In section 16 of Insurance Regulatory and Development Authority Act, 1999, in sub-section *(1)* clause (c) shall be omitted. 41 of 1999.

STATEMENT OF OBJECTS AND REASONS

The Insurance Act, 1938 (Insurance Act) provides for and regulates the insurance business in the country. However, with the enactment of the Insurance Regulatory and Development Authority Act, 1999 (the IRDA Act), the insurance business was opened up to the private sector. As a result of opening up of the insurance business, the number of insurance companies has increased from six nationalised companies in 1999 to forty-two insurance companies as on today. The IRDA Act paved the way for establishment of the Insurance Regulatory and Development Authority (IRDA) to protect the interest 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 General Insurance Business (Nationalisation) Act (GIBNA), 1972 nationalised the general insurance business in India and provided for the acquisition and transfer of shares of Indian general insurance companies, in order to serve better the need of the economy, by securing the development of general insurance business in the best interest of the public.

2. The Law Commission of India, at the request of IRDA, had reviewed these Acts and submitted its 190th report relating to the revision of the Insurance Act, 1938 and the Insurance Regulatory and Development Authority Act, 1999 to Government on 1st June, 2004. The report covered legal issues concerning repudiation of the life insurance policies; nominations; assignment and transfer of policies; merger of IRDA Act with the Insurance Act, 1938; setting up of the Grievance Redressal Authorities, Insurance Appellate Authority, amendment to definitions and deletion of redundant provisions. An expert committee under Shri K.P. Narsimhan (Ex-Chairman of the LIC) was set-up by the IRDA on the recommendation of the Law Commission. The KPN Committee examined various issues relating to Surveyors and Loss Assessors, Investments, Tariff, Shareholders and Policy-holders Funds and extent of Foreign Shareholdings in the Indian insurance companies and co-operative societies. It submitted its report to IRDA on 26th July, 2005. The reports submitted by the Law Commission and the KPN Committee were examined by IRDA and the IRDA forwarded its recommendations on amendment of insurance laws to the Government on 16th March, 2006. The recommendations have been considered and finalised by the Government in consultation with General Insurers Public Sector's Association (GIPSA) and General Insurance Corporation of India (GIC) to amend the Insurance Act, 1938, General Insurance Business

(Nationalisation) Act, 1972 and Insurance Regulatory and Development Authority Act, 1999.

3. The Insurance Laws (Amendment) Bill, 2008 proposes to amend the Insurance Act, 1938, the Insurance Regulatory and Development Authority Act, 1999 and the General Insurance Business (Nationalisation) Act, 1972. The said Bill, *inter alia*, seeks to:—

(i) define "health insurance business" and provides for a minimum paid-up equity capital of Rs. 50 crore in case of insurers carrying on exclusively the business of health insurance;

(ii) raise the foreign equity in Indian insurance company from 26% to 49% and maintain foreign direct investment cap at 26% for the Insurance Co-operative Societies;

(iii) permit foreign re-insurers to open branches only for re-insurance business in India;

(iv) facilitate entry of Lloyd's of London in insurance business in India as a foreign company in joint venture with Indian partners and also as branch of foreign re-insurer;

(v) provide for permanent registration of the insurers with annual renewal fee and right to cancel the registration on breach of conditions specified by the IRDA;

(vi) remove restriction on divestment by Indian promoters of insurance companies, which were required earlier to divest to 26% or such other, prescribed percentage in the manner and period prescribed by the Central Government;

(vii) remove requirements of deposits by insurers for registration in view of these being regulated by the IRDA on the basis of solvency margin;

(viii) provide obligatory underwritting of third party risks of motor vehicles on the pattern of insurance in rural areas and social sectors;

(ix) make provision for absolute and conditional assignments of life insurance policies;

(x) make provision for distinction between a beneficiary nominee and a collector nominee in life insurance policies;

(xi) entrust responsibility of appointing insurance agents to insurers and IRDA to regulate their eligibility, qualifications and other aspects;

(xii) make life insurance policy unchallengeable on whatsoever ground after five years of issue of the policy and limiting the grounds for challenge during the period within five years;

(xiii) delete provisions relating to Tariff Advisory Committee (TAC) in view of the detariffing of rates and premiums *w.e.f.* 1st January, 2007;

(xiv) provide for making Life Insurance Council and General Insurance Council as self-regulating bodies by empowering them to frame bye-laws for elections, meetings, levy and collection of fees from its members;

(xv) provide for fine up to Rs. 25 crore and imprisonment up to 10 years for carrying on insurance business without registration;

(xvi) provide for penalty of "not exceeding twenty-five crore rupees" in case an insurer fails to comply with the obligations for rural or social sector or third party insurance of motor vehicles;

(xvii) provide for powers of adjudication to the Authority and appeal to Securities Appellate Tribunal against the decisions of the Authority;

(xviii) provide for crediting sums realised by way of penalty to the Consolidated Fund of India;

(xix) bar courts from taking cognizance of any offence punishable under the Insurance Act, save on a complaint made by an officer of the IRDA;

(xx) delete redundant provisions and make consequential amendments to various provisions in the Insurance Act;

(xxi) allow insurance companies to raise newer capital through newer instruments on the pattern of banks;

(xxii) formulate regulations for payment of commission and control of management expenses;

(xxiii) formulate regulations for opening and closing of foreign branches and the closing of domestic branches of Indian insurers and norms for opening domestic branches;

(xxiv) address matters relating to the functions, code of conduct, etc., of surveyors and loss assessors in the existing regulations;

(xxv) allow nationalised general insurance companies to raise money from the market with the permission of the Central Government for increasing their business in rural and social sector, to meet solvency margin and such other purposes, as the Central Government may empower in this behalf; and

(xxvi) include "insurance agent" in the definition of "insurance intermediaries" in the IRDA Act.

4. The proposed amendments are aimed at bringing improvement and revision of the laws relating to insurance business in the changed scenario of private participation. It also incorporates certain provisions to provide IRDA with flexibility to discharge its functions effectively and efficiently.

5. The Bill seeks to achieve the above objects.

NEW DELHI;
The 4th December, 2008.

PAWAN KUMAR BANSAL

NOTES ON CLAUSES

Clause 2.—This clause seeks to substitute the words "Indian Companies Act, 1913" throughout the Insurance Act, 1938 (hereinafter referred to as the Act) with the words "the Companies Act, 1956".

Clause 3.—This clause seeks to amend section 2 of the Act to substitute, amend, insert the definitions of actuary, health insurance business, Indian insurance company, insurance co-operative society, insurer, regulation, re-insurance, Securities Appellate Tribunal and omit certain redundant clauses from definitions.

Clause 4.—This clause seeks to substitute section 2C of the Act so as to prohibit insurance business without registration but provide relaxation to special economic zone and regulate re-insurance through its branch office by a foreign insurer.

Clause 5.—This clause seeks to amend section 2CA of the Act to exempt from application of the provisions of the Act to the foreign insurers also in special economic zone.

Clause 6.—This clause seeks to insert a new section 2CB in the Act to prohibit insurance of the properties in India, ship, vessel, aircraft registered in India from foreign insurer except the properties situated in special economic zones. It also proposed a penalty of five crore of rupees for contravention of this provision.

Clause 7.—This clause seeks to omit section 2E of the Act relating to insurers, who enter into new contracts before commencement of the Act, as it has become redundant.

Clause 8.—This clause seeks to amend section 3 of the Act to regulate the manner of making application for registration of insurers by regulation and provide for appeal to Securities Appellate Tribunal against the refusal of registration by the Authority and suspension or cancellation of registration in certain cases.

Clause 9.—This clause seeks to substitute section 3A of the Act to provide for annual fee in place of annual renewal of registration of insurers by regulation.

Clause 10.—This clause seeks to substitute section 4 of the Act to provide for minimum limit for annuities and other benefits secured by policy of life insurance by regulations.

Clause 11.—This clause seeks to amend section 5 of the Act to omit redundant provisions.

Clause 12.—This clause seeks to substitute section 6 of the Act to provide for capital of rupees fifty crore for exclusive health insurance business and minimum net owned funds of rupees five thousand crore for a foreign re-insurer opening branch in India.

Clause 13.—This clause seeks to amend section 6A of the Act to regulate the capital structure, voting rights, maintenance of records of the shareholders, etc., of life, general, health insurance and re-insurance companies and to omit certain redundant provisions.

Clause 14.—This clause seeks to omit section 6AA of the Act relating to manner of divesting of the excess shareholding by promoters in certain cases.

Clause 15.—This clause seeks to amend section 6B of the Act to include general, health insurance business and re-insurance for compliance of capital structure and empower the Authority to regulate the same in place of the Central Government.

Clause 16.—This clause seeks to omit sections 6C, 7, 8 and 9 of the Act relating to capital structure, company limited by guarantee and deposits by the insurers before registration.

Clause 17.—This clause seeks to amend section 10 of the Act to empower the Authority to regulate the separation of accounts and funds of insurers.

Clause 18.—This clause seeks to substitute section 11 of the Act to empower the Authority to regulate preparation of annual accounts and balance-sheet by insurers.

Clause 19.—This clause seeks to substitute section 12 of the Act to provide audit of insurance business.

Clause 20.—This clause seeks to amend section 13 of the Act to omit the redundant provisions relating to actuarial investigation and empower the Authority to regulate the insurance business through actuaries.

Clause 21.—This clause seeks to substitute section 14 of the Act to provide for maintenance of records of policies and claims electronically also.

Clause 22.—This clause seeks to substitute section 15 of the Act to omit certain redundant provisions relating to submission of returns by insurers.

Clause 23.—This clause seeks to omit section 16 of the Act relating to returns by insurers established outside India.

Clause 24.—This clause seeks to omit sections 17 and 17A of the Act relating to exemption from certain provisions of the Indian Companies Act, 1913 and furnishing of balance sheet and accounts to Registrar of Companies and non-application of the Act to the preparation of accounts for the period prior to 1968.

Clause 25.—This clause seeks to amend section 20 of the Act to empower the Authority to regulate inspection and filing of copy of the returns of the insurers and fee.

Clause 26.—This clause seeks to amend section 21 of the Act to provide for appeal to the Security Appellate Tribunal by insurers against the final order of the Authority not accepting a return or other statement submitted to it.

Clause 27.—This clause seeks to amend section 22 of the Act to make consequential amendments relating to powers of the Authority.

Clause 28.—This clause seeks to substitute sections 27, 27A, 27B, 27C and 27D of the Act to provide for broad guidelines for investment by insurers and prohibit investment of funds outside India. The objective is to make the investment provisions more effective.

Clause 29.—This clause seeks to substitute sections 28, 28A and 28B to empower the Authority to regulate statements, returns of investment of assets.

Clause 30.—This clause seeks to substitute section 29 of the Act to provide for granting of loans or advances to subsidiaries of insurance companies with the prior approval of the Authority.

Clause 31.—This clause seeks to substitute section 30 of the Act to provide for liability of directors, managers or officers for loss sustained by insurer or policy-holders due to contravention of the provisions relating to investments.

Clause 32.—This clause seeks to amend section 31 of the Act to provide that none of the assets in India of any insurer shall be kept otherwise than in the name of a public officer approved by the Authority.

Clause 33.—This clause seeks to amend section 31A of the Act to omit redundant provisions relating to management of the insurance companies.

Clause 34.—This clause seeks to substitute section 31B of the Act to empower the Authority to regulate the payment of excessive remuneration.

Clause 35.—This clause seeks to omit section 32 of the Act relating to employment of managing agents.

Clause 36.—This clause seeks to amend section 32A of the Act to prohibit the common officer for insurers and prescribe a full-time officer.

Clause 37.—This clause seeks to amend section 32B of the Act to provide for insurance business in rural and social sector in place of rural or social sector.

Clause 38.—This clause seeks to insert section 32D in the Act for obligation on all insurers in respect of third party risks of motor vehicles.

Clause 39.—This clause seeks to substitute section 33 of the Act to provide for coverage of intermediary or insurance intermediary for investigation and inspection by the Authority.

Clause 40.—This clause seeks to amend section 34B to enhance the penalty of one lakh rupees for each day during which such contravention continues or one crore rupees, whichever is less, for contravention of the orders of the Authority for removal of managerial person from office.

Clause 41.—This clause seeks to amend section 34C of the Act to provide for consultation with the Central Government for appointment of Additional Directors of the insurers by the Authority in public interest.

Clause 42.—This clause seeks to amend section 34E of the Act to substitute the word "Controller" with the word "Authority".

Clause 43.—This clause seeks to omit section 34G of the Act relating to the power of the Authority to order closure of foreign branches of Indian insurance companies.

Clause 44.—This clause seeks to amend section 34H of the Act to designate Deputy Director of the Authority as authority for search and

seizure ordered by the Authority and substitute the Securities Appellate Tribunal in place of the Central Government.

Clause 45.—This clause seeks to amend section 35 of the Act to empower the Authority to regulate amalgamation and transfer of insurance business.

Clause 46.—This clause seeks to substitute section 36 of the Act relating to the sanction of amalgamation and transfer of insurance business by the Authority by omitting redundant provisions.

Clause 47.—This clause seeks to amend section 37A of the Act to provide for the scheme for amalgamation to be notified in the Official Gazette after approval of the Central Government. It also gives rights to policy-holder or shareholder or member of each of the insurers to file an appeal in the Securities Appellate Tribunal against the recommendation of the Authority for amalgamation.

Clause 48.—This clause seeks to substitute sections 38, 39 and 40 of the Act dealing with assignment and transfer of insurance policies to make a clear distinction between absolute and conditional assignments of life policies. It also provides for a clear distinction between a beneficial nominee and a collector nominee by order to provide timely and adequate benefits to the policy-holders. It also empowers the Authority to regulate payment of commission for procuring business.

Clause 49.—This clause seeks to omit section 40A of the Act to omit the redundant provisions relating to limitation of expenditure on commission.

Clause 50.—This clause seeks to substitute sections 40B and 40C of the Act to regulate management expenses of life, general and health insurers and re-insurers.

Clause 51.—This clause seeks to amend section 41 of the Act by enhancing the penalty from five hundred rupees up to five lakh rupees in case an insurer contravenes the provision relating to prohibition of rebates.

Clause 52.—This clause seeks to substitute section 42 of the Act to regulate the appointment of insurance agents by insurers in respect of eligibility, disqualification and other aspects.

Clause 53.—This clause seeks to omit sections 42A, 42B and 42C of the Act relating to registration and regulation of principal agents, chief agents and special agents.

Clause 54.—This clause seeks to amend section 42D of the Act to provide for registration in place of licensing of intermediary or insurance intermediary by the Authority.

Clause 55.—This clause seeks to substitute section 42E of the Act to regulate requirement of capital, form of business and other conditions for intermediary or insurance intermediary.

Clause 56.—This clause seeks to substitute section 43 of the Act to enable the insurers to keep the records electronically.

Clause 57.—This clause seeks to omit section 44 of the Act relating to shifting of agents from one insurer to another insurer.

Clause 58.—This clause seeks to substitute sections 44A and 45 of the Act to provide that no policy of life insurance shall be called in question on any ground after the period of five years. It also provides that the policy can be called in question by the insurer within the period of five years only in case of fraud.

Clause 59.—This clause seeks to omit sections 47A and 48 of the Act relating to claims on small life insurance policies and directors of insurers being companies.

Clause 60.—This clause seeks to substitute section 48A of the Act to prohibit insurance agents or insurance intermediaries from becoming director in any insurance company.

Clause 61.—This clause seeks to amend section 49 of the Act relating to restriction of dividends and bonuses in order to omit certain redundant provisions.

Clause 62.—This clause seeks to substitute sections 52 and 52A of the Act in order to omit redundant provisions in the section relating to prohibition of the business on dividing principle. It further provides for appointment of an Administrator by the Authority to manage the affairs of the insurer.

Clause 63.—This clause seeks to amend section 52BB of the Act to provide for appeal to the Securities Appellate Tribunal in place of the Central Government against the order of attachment of property by the Authority.

Clause 64.—This clause seeks to substitute section 52D of the Act to provide for termination of appointment of an Administrator by the Authority in place of the Central Government.

Clause 65.—This clause seeks to amend section 52E of the Act to provide for final decision on appointment of an Administrator in place of the Central Government by the Authority.

Clause 66.—This clause seeks to amend section 52F of the Act to provide the penalty of ten thousand rupees for each day of withholding the documents of property from the Administrator appointed by the Authority during which such failure continues or ten lakh rupees, whichever is less.

Clause 67.—This clause seeks to amend section 52G of the Act to omit the words "Central Government" as a consequential change.

Clause 68.—This clause seeks to omit sections 52H to 52N (both inclusive) of the Act relating to acquisition of the undertakings of the insurers in certain cases by the Central Government, being redundant.

Clause 69.—This clause seeks to amend section 53 of the Act to provide for insertion of *explanation* defining Tribunal under the Companies Act, 1956.

Clause 70.—This clause seeks to make consequential amendments in section 58 of the Act to substitute relevant sections of the Companies Act, 1956 in place of Indian Companies Act, 1913.

Clause 71.—This clause seeks to omit section 59 of the Act relating to return of deposits as such deposits by insurers before registration are proposed to be discontinued.

Clause 72.—This clause seeks to omit sections 62 to 64 (both inclusive) of the Act relating to special provisions for external insurance companies.

Clause 73.—This clause seeks to amend the heading in Part II of the Act.

Clause 74.—This clause seeks to omit sections 64A and 64B of the Act relating to incorporation of the Insurance Association of India and entry of names of the members in the register.

Clause 75.—This clause seeks to substitute sections 64C and 64D of the Act to provide for consequential amendment to the section dealing with the Life Insurance Council and General Insurance Council.

Clause 76.—This clause seeks to substitute section 64F of the Act relating to composition, function and operational issues of the Life

Insurance Council and the General Insurance Council to make them the self-regulatory organisations.

Clause 77.—This clause seeks to amend section 64G of the Act to empower the Executive Committees of Life Insurance Council and General Insurance Council to nominate members on casual vacancies by bye-laws.

Clause 78.—This clause seeks to omit section 64I of the Act relating to holding of examination for insurance agents by the Life Insurance Council.

Clause 79.—This clause seeks to amend section 64J of the Act to enable the Life Insurance Council to collect fee by bye-laws from council members.

Clause 80.—This clause seeks to amend section 64L of the Act to enable the General Insurance Council to collect fee by bye-laws from council members.

Clause 81.—This clause seeks to amend section 64N of the Act to empower the Authority to specify the manner for holding of joint meeting of the Executive Committees of the Life and General Insurance Councils.

Clause 82.—This clause seeks to amend section 64R of the Act to empower the Life Insurance Council and the General Insurance Council to make bye-laws for elections, meetings, levy and collection of fees, etc.

Clause 83.—This clause seeks to omit sections 64S and 64T of the Act relating to transitory provisions.

Clause 84.—This clause seeks to omit sections 64U to 64UL (both inclusive) of the Act relating to Tariff Advisory Committee and control of rates in view of the de-tariffing with effect from 01-01-2007.

Clause 85.—This clause seeks to insert a new section 64ULA in the Act to provide transitory provisions for continuation of rates, terms and conditions fixed by the Tariff Advisory Committee.

Clause 86.— This clause seeks to substitute section 64UM of the Act to empower the Authority to regulate the functions, code of conduct, etc., of surveyors and loss assessors.

Clause 87.—This clause seeks to substitute sections 64V and 64VA of the Act to empower the Authority to regulate valuation of the assets and procedure for calculation of solvency margin of insurers.

Clause 88.—This clause seeks to substitute section 64VC of the Act to empower the Authority to regulate opening and closing of places of business of insurers.

Clause 89.—This clause seeks to omit Part III and Part IIIA of the Act relating to provident societies, which are no longer permitted to underwrite the insurance business. It also omits the provisions relating to insurance co-operative societies.

Clause 90.—This clause seeks to omit Part IV of the Act relating to mutual insurance companies and life insurance societies, as they are not allowed to underwrite insurance business in India.

Clause 91.—This clause seeks to amend section 102 of the Act to enhance the penalty for default in complying with, or act in contravention of, the Act to one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

Clause 92.—This clause seeks to substitute sections 103 and 104 of the Act to enhance the fine not exceeding twenty-five crore rupees and with imprisonment which may extend to ten years in case a person carries on business of insurance without obtaining a certificate of registration. It also enhances the penalty for contravention of provisions relating to investment of controlled fund or assets.

Clause 93.—This clause seeks to amend section 105 of the Act to enhance the penalty not exceeding one crore rupees in case any executive of the insurer wrongfully obtains or withholds the property under the Act.

Clause 94.—This clause seeks to substitute sections 105B and 105C of the Act to enhance penalty in case an insurer fails to comply with the obligations for rural or social sector or third party insurance for motor vehicles to not exceeding twenty-five crore rupees. It further provides for powers of adjudication to the Authority and provides penalty for contravention where there is no separate penalty provided in the Act.

Clause 95.—This clause seeks to amend section 106A of the Act to provide for consequential amendments.

Clause 96.—This clause seeks to omit sections 107 and 107A of the Act being redundant.

Clause 97.—This clause seeks to substitute section 109 of the Act to provide that no court shall take cognizance of any offence punishable under the Act save on a complaint made by an officer of the Authority.

Clause 98.—This clause seeks to substitute section 110 of the Act to provide for appeal to the Securities and Appellate Tribunal against the decision of the Authority and omit certain redundant provisions.

Clause 99.—This clause seeks to omit section 110E of the Act being redundant.

Clause 100.—This clause seeks to omit sections 110G and 110H of the Act relating to appeals in view of the provision for appeal to Securities Appellate Tribunal.

Clause 101.—This clause seeks to insert a new section 110A in the Act to provide for recovery of penalties imposed by the Authority as arrears of land revenue.

Clause 102.—This clause seeks to amend section 111 of the Act to omit the words "provident society".

Clause 103.—This clause seeks to substitute section 113 of the Act to omit redundant provisions relating to acquisition of surrender value of life insurance policies.

Clause 104.—This clause seeks to amend section 114 of the Act to omit and insert the provisions relating to rule making powers in respect of which substantive provisions have been made in the Act.

Clause 105.—This clause seeks to amend section 114A of the Act to omit and insert the provisions relating to regulation making powers in respect of which substantive provisions have been made in the Act.

Clause 106.—This clause seeks to omit the Fifth Schedule, Sixth Schedule and Eighth Schedule from the Act being redundant.

Clause 107.—This clause seeks to amend the General Insurance Business (Nationalisation) Act, 1972 to insert section 10A to empower the Central Government to allow public sector General Insurance companies to raise money from the market to meet their capital requirements.

Clause 108.—This clause seeks to omit section 25 from the General Insurance Business (Nationalisation) Act, 1972 relating to properties in India not to be insured with foreign insurers except with permission of Central Government as the said provision has been kept in the Insurance Act, 1938.

Clause 109.—This clause seeks to amend section 2 of the Insurance Regulatory and Development Authority Act, 1999 in order to substitute

"Insurance Regulatory and Development Authority" to "Insurance Regulatory and Development Authority of India".

Clause 110.—This clause seeks to amend section 3 of the Insurance Regulatory and Development Authority Act, 1999 consequent upon the change of the name to Insurance Regulatory and Development Authority of India.

Clause 111.—This clause seeks to omit clause *(c)* of sub-section *(1)* of section 16 of the Insurance Regulatory and Development Authority Act, 1999 relating to imposition of levy by the Authority as a percentage of premium income of the insurers for Insurance Regulatory and Development Authority Fund.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause *104* of the Bill seeks to amend section 114 of the Insurance Act, 1938 which empowers the Central Government to make rules. The matters on which rules may be made, *inter alia*, relate to the manner of inquiry under sub-section *(1)* of section 105C and the form in which an appeal may be preferred under sub-section *(2)* and the fee payable in respect of such appeal and the procedure for filing and disposing of an appeal under sub-section *(6)* of section 110.

Clause *105* of the Bill seeks to amend section 114A of the Insurance Act, 1938 which empowers the Insurance Regulatory and Development Authority to make regulations consistent with the Act and the rules made thereunder, to carry out the purposes of the Act. The matters on which regulations may be made, *inter alia*, relate to (i) manner of making application for registration and documents under sub-section *(2)* of section 3; (ii) annual fee to the Authority and manner of payment under sub-section *(1)* of section 3A; (iii) minimum annuity and other benefits to be secured by the insurer under section 4 and equity capital and such forms of capital including hybrid capital required under sub-section *(1)* of section 6A; (iv) separation of account of all receipts and payments in respect of each classes and sub-classes of insurance business under sub-section *(1)* and sub-section *(2A)* of section 10; and its waiver under the said section; (v) the manner in which an abstract of the report of the actuary to be specified; (vi) the fee for procuring a copy of return under sub-section *(1)* of section 20; (vii) investment of assets and further provisions regarding investments by an insurer under sections 27, 27A, 27B, 27C; and time, manner and other conditions of investment of assets under section 27D; (viii) the form in which a return giving details of investments made under section 28; (ix) the loans including the loans sanctioned to the full time employees of the insurer under clause (a) of sub-section *(3)* of section 29; (x) the sum to be paid by the insurer to any person under section 31B; (xi) the obligation of insurer in respect of rural or social or unorganised sector and backward classes under sections 32B and 32C; (xii) the minimum percentage of insurance business in third party risks of motor vehicles under section 32D; (xiii) the minimum information to be maintained by insurers or intermediary or insurance intermediary in their books and all other matters incidental thereto under sub-section *(7)* of section 33; (xiv) the form in which balance-sheets in respect of the insurance business of each of the insurers concerned and the manner in which actuarial reports and abstracts in respect of the life insurance

business are to be prepared under clauses *(b)* and *(c)* of sub-section *(3)* of section 35; (xv) the manner of assessment of compensation under the proviso to sub-section *(4A)* of section 37A; (xvi) the fee to be charged by the insurer under sub-section *(3)* of section 39; (xvii) the manner of payment of benefits under sub-section *(12)* of section 39; (xviii) the manner and amount of remuneration or reward to be paid or received by way of commission or otherwise to an insurance agent or an intermediary or insurance intermediary under section 40; (xix) the manner and form of expenses of management under section 40B; (xx) the manner and form of expenses of management under section 40C; (xxi) the requisite qualifications or practical training or examination to be passed for appointment as an insurance agent under clause *(e)* of sub-section *(3)* of section 42; (xxii) the code of conduct under clause *(h)* of sub-section *(3)* of section 42; (xxiii) the manner of exclusion of certain assets, the manner of valuation of liabilities and time for furnishing statement under section 64V; (xxiv) the matters specified under sub-section *(1)* of section 64VA relating to sufficiency of assets; (xxv) the form, time, manner including authentication of the return giving details of solvency margin under sub-section *(9)* of section 64VA; (xxvi) the manner of opening and closing places of business under section 64VC; (xxvii) the norms for surrender value of life insurance policy under sub-section *(1)* of section 113.

2. The rules made under section 114 and the regulations made under section 114A of the Insurance Act, 1938, shall have to be laid, as soon as they are made, before both Houses of Parliament.

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

ANNEXURE

EXTRACTS FROM THE INSURANCE ACT, 1938
(4 OF 1938)

* * * * *

Definitions.

2. In this Act, unless there is anything, repugnant in the subject or context,—

(1) "actuary" means an actuary possessing such qualifications as may be specified by the regulations made by the Authority;

* * * * *

(IA) "Authority" means the Insurance Regulatory and Development Authority established under sub-section *(1)* of section 3 of the Insurance Regulatory and Development Authority Act, 1999; 41 of 1999.

* * * * *

(5A) "chief agent" means a person who, not being a salaried employees of an insurer, in consideration of any commission—

(i) performs any administrative and organising functions for the insurer, and

(ii) procures life insurance business for the insurer by employing or causing to be employed insurance agents on behalf of the insurer;

* * * * *

(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 equity capital of such Indian insurance company;

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

Explanation.—For the purposes of this clause, the expression "foreign company" shall have the meaning assigned to it under clause *(23A)* of section 2 of the Income-tax Act, 1961.

43 of 1961.

* * * * *

(8A) "insurance co-operative society" means any insurer being a co-operative society,—

(a) * * * *

(b) having a minimum paid-up capital, (excluding the deposits required to be made under section 7) of rupees one hundred crores;

* * * * *

(d) whose sole purpose is to carry on life insurance business or general insurance business in India;

(9) "insurer" means—

(a) any individual or unincorporated body of individuals or body corporate incorporated under the law of any country other than India, carrying on insurance business not being a person

specified in sub-clause *(c)* of this clause which—

(i) carries on that business in India, or

(ii) has his or its principal place of business or is domiciled in India, or

(iii) with the object of obtaining insurance business, employs a representative, or maintains a place of business, in India;

(b) any body corporate [not being a person specified in sub-clause (c) of this clause] carrying on the business of insurance, which is body corporate incorporated under any law for the time being in force in India, or stands to any such body corporate in the relation of a subsidiary company within the meaning of the Indian Companies Act, 1913, as defined by sub-section *(2)* of section 2 of that Act, and 7 of 1913.

(c) any person who in India as a standing contract with underwriters who are members of the Society of Lloyd's whereby such person is authorised within the terms of such contract to issue protection notes, cover notes, or other documents granting insurance cover to others on behalf of the underwriters, but does not include a principal agent, chief agent, special agent, or an insurance agent or a provident society as defined in Part III;

(10) "insurance agent" means an insurance agent licensed under section 42 who receives or agrees to receive payment by way of commission or other remuneration in consideration of his soliciting or procuring insurance business including business relating to the continuance, renewal or revival of policies of insurance;

* * * * *

(11) "life insurance business" means the business of effecting contracts of insurance upon human life, including any contract whereby the payment of money is assured on death (expect death by accident only) or the happening of any contingency dependent on human life, and any contract which is subject to payment of premiums for a term dependent on human life and shall be deemed to include—

* * * * *

(c) the granting of superannuation allowances and annuities payable out of any fund applicable solely to the relief and maintenance of persons engaged or who have been engaged in any particular profession, trade or employment or of the dependents of such persons;

(12) "manager" and "officer" have the meanings assigned to those expressions in clauses *(9)* and *(11)* respectively of section 2 of the Indian Companies Act, 1913;

7 of 1913.

(13) "managing agent" means a person, firm or company entitled to the management of the whole affairs of a company by virtue of an agreement with the company, and under the control and direction of the directors except to the extent, if any, otherwise provided for in the agreement, and includes any person, firm or company occupying such position by whatever name called.

Explanation.—If a person occupying the position of managing agent calls himself manager or managing director, he shall nevertheless be regarded as managing agent for the purposes of section 32 of this Act;

* * * * *

(15) "principal agent" means a person who, not being a salaried employee of an insurer, in consideration of any commission,—

(i) performs any administrative and organising functions for the insurer, and

(ii) procures general insurance business whether wholly or in part by employing or causing to be employed insurance agents on behalf of the insurer;

(16) "private company" and "public company" have the meanings respectively assigned to them in clauses *(13)* and *(13A)* of section 2 of the Indian Companies Act, 1913; 7 of 1913.

(17) "special agent" means a person who, not being a salaried employee of an insurer, in consideration of any commission, procures life insurance business for the insurer whether wholly or in part by employing or causing to be employed insurance agents on behalf of the insurer, but does not include a chief agent.

* * * * *

PART II

PROVISIONS APPLICABLE TO INSURERS

Prohibition of transaction of insurance business by certain persons.

2C. *(1)* Save as hereinafter provided, no person shall, after the commencement of the Insurance (Amendment) Act, 1950, being to carry on any class of insurance business in India and no insurer carrying of any class of insurance business in India shall after the expiry of one year from such commencement, continue to carry on any such business unless he is— 47 of 1950.

(a) a public company, or

(b) a society registered under the Co-operative Societies Act, 1912, or under any other law for the time being in force in any State relating to co-operative societies, or

2 of 1912.

(c) a body corporate incorporated under the law of any country outside India not being of nature of a private company:

Provided that the Central Government may, by notification in the Official Gazette, exempt from the operation of this section to such extent for such period and subject to such conditions as it may specify, any person or insurer for the purpose of carrying on the business of granting superannuation allowances and annuities of the nature specified in sub-clause *(c)* of clause *(11)* of section 2 or for the purpose of carrying on any general insurance business:

Provided further that in the case of an insurer carrying of any general insurance business no such notification shall be issued having effect for more than three years at any one time:

Provided also that no insurer other than an Indian insurance company shall being to carry on any class of insurance business in India under this Act on or after the commencement of the Insurance Regulatory and Development Authority Act, 1999:

41 of 1999.

Provided also an insurer, being an Indian Insurance Company, insurance co-operative society or a body corporate referred to in clause *(c)* of this sub-section carrying on the business of insurance, may carrying on any business of insurance in any Special Economic Zone as defined in clause *(za)* of section 2 of the Special Economic Zones Act, 2005.

28 of 2005.

(2) Every notification issued under sub-section *(1)* shall be laid before Parliament as soon as may be after it is issued.

(3) Notwithstanding anything contained in sub-section *(1)*, an insurance co-operative society may carry on any class of insurance business in India under this Act on or after the commencement of the Insurance (Amendment) Act, 2002. 42 of 2002.

Power of Central Government to apply provisions of this Act to Special Economic Zones.

2CA. The Central Government may, by notification, direct that any of the provisions of this Act,—

(a) shall not apply to insurer, being an Indian Insurance Company, insurance co-operative society or a body corporate referred to in clause *(c)* of sub-section *(1)* of section 2C, carrying on the business of insurance, in any Special Economic Zones as defined in clause *(za)* of section 2 of the Special Economic Zones Act, 2005; or 44 of 2005.

(b) shall apply to any insurer being an Indian Insurance Company, insurance co-operative society or a body corporate referred to in clause (c) of sub-section *(1)* of section 2C, carrying on the business of insurance, in any Special Economic Zone as defined in clause (za) of section of the Special Economic Zones Act, 2005 only with such exceptions, 44 of 2005. modifications and adaptations as may be specified in the notification.

* * * * *

This Act not to apply to certain insurers, ceasing to enter into new contracts before commence-ment of Act.

2E. The provisions of this Act shall not apply to an insurer as defined in paragraph *(i)* or (iii) of sub-clause *(a)* of clause *(9)* of section 2 in relation to any class of his insurance business where such insurer has ceased, before the commencement of this Act, to enter into any new contracts of that class of business.

3. *(1)* * * * * Registration.

(2) Every application for registration shall be made in such manner as may be determined by the regulations made by the Authority and shall be accompanied by—

(a) a certified copy of the memorandum and articles of association, where the applicant is a company and incorporated under the Indian Companies Act, 1913, for under the Indian Companies Act, 1882, or under the Indian Companies Act, 1866, or under any Act repealed thereby, or, in the case of any other insurer specified in sub-clause *(a)* (ii) or sub-clause *(b)*, of clause *(9)* of section 2, a certified copy of the deed of partnership or of the deed of constitution of the company, as the case may be, or in the case of an insurer having his principal place of business or domicile outside India, the document specified in clause *(a)* of section 63;

7 of 1913.
6 of 1882.
10 of 1866.

(b) the name, address and the occupation, if any, of the directors where the insurer is a company incorporated under the Indian Companies Act, 1913 or under the Indian Companies Act, 1882 or under the Indian Companies Act,1886 or under any Act repealed thereby, and in the case of an insurer specified in sub-clause *(a) (ii)* of clause *(9)* of section 2 of the names and addresses of the proprietors and of the manager in India, and in any other case the full address of the principal office of the insurer in India, and the names of the directors and the manager at such office and the name and address of some one or more persons resident in India authorised to accept any notice required to be served on the insurer;

7 of 1913.
6 of 1882.
10 of 1886.

(c) a statement of the class or classes of insurance business done or to be done, and

a statement that the amount required to be deposited by section 7 or section 98 before application for registration is made has been deposited together with a certificate from the Reserve Bank of India showing the amount deposited;

(d) where the provision of section 6 or section 97 apply, a declaration verified by an affidavit made by the principal officer of the insurer authorised in that behalf that the provisions of those sections as to paid-up equity capital or working capital have been complied with;

(e) in the case of an insurer having his principal place of business or domicile outside India, a statement verified by an affidavit made by the principal officer of the insurer setting forth the requirements (if any) not applicable to nationals of the country in which such insurer is constituted, incorporated or domiciled which are imposed by the laws or practice of that country upon Indian nationals as a condition of carrying on insurance business in that country;

(f) a certified copy of the published prospectus, 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 prospectus, forms and statements shall be complied with only in so far as the prospectus, forms and statements may be available;

(g) the receipt showing payment of fee as may be determined by the regulations which shall not exceed fifty thousand rupees for each class of business as may be specified by the regulations made by the Authority;

(h) such other documents as may be specified by the regulations made by the Authority.

* * * * *

2A. If, on receipt of an application for registration and after making such inquiry as he deems fit, the Authority is satisfied that—

(a) the financial condition and the general character of management of the applicant are sound;

(b) the volume of business likely to be available to, and the capital structure and earning prospects of, the applicant will be adequate;

(c) the interests of the general public will be served if the certificate of registration is granted to the applicant in respect of the class or classes of insurance business specified in the application; and

(d) the applicant has complied with the provisions of sections 2C, 5, 31A and 32 and has fulfilled all the requirements of this section applicable to him, the Authority may register the applicant as an insurer and grant him a certificate of registration.

(2C) Any person aggrieved by the decision of the Authority refusing registration may, within thirty days from the date on which a copy of the decision is received by him, appeal to the Central Government.

(2D) The decision of the Central Government on such appeal shall be final and shall not be questioned before any court.

(3) Notwithstanding anything contained in sub-section *(2A)*, in the case of any insurer having his principal place of business or domicile outside India the Authority shall withhold registration or shall cancel a registration already made, if it is satisfied that in the country in which such insurer has his principal place of business or domicile Indian nationals are debarred by the law or practice of the country relating to, or applied to insurance from carrying on the business of insurance, or that any requirement imposed on such insurer under the provisions of section 62 is not satisfied.

(4) The Authority 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,—

(a) if the insurer fails to comply with the provisions of section 7 or section 98 as to deposits, or

(aa) if the insurer fails, at any time, to comply with the provisions of section 65VA as to the excess of the value of his assets over the amount of his liabilities, or

(b) if the insurer is in liquidation or is adjudged an insolvent, or

(c) if the business or a class of the business of the insurer has been transferred to any person or has been transferred to or amalgamated with the business of any other insurer, or

(d) if the whole of the deposit made in respect of insurance business has been returned to the insurer under section 9, or

(e) if, in the case of an insurer specified in sub-clause *(c)* of clause *(9)* of section 2, the standing contract referred to in that sub-

clause is cancelled or is suspended and continues to be suspended for a period of six months, or

(ee) if the Central Government so directs under sub-section *(4)* of section 33, and the Authority may cancel the registration of an insurer, or

(f) if the insurer makes default in complying with, or acts in contravention of, any requirement of this Act or of any rule or any regulation or order made or, any direction issued thereunder, or

(g) if the Authority has reason to believe that any claim upon the insurer arising in India under any policy of insurance remains unpaid for three months after final judgment in regular course of law, or

(h) if the insurer carries on any business other than insurance business or any prescribed business, or

(i) if the insurer makes a default in complying with any direction issued or order made, as the case may be, by the Authority under the Insurance Regulatory and Development Authority Act, 1999, or

41 of 1999.

(j) if the insurer makes a default in complying with or acts in contravention of, any requirement of the Companies Act, 1956 or 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.

(5) When the Authority withholds or cancels any registration under sub-section *(3)* clause *(a)*, clause *(aa)* or clause *(e)*, clause *(ee)*, clause *(f)*, clause *(g)*, or clause *(h)* of sub-section *(4)*, he shall give notice in writing to the insurer of its decision, and the decision shall take effect on such date as may specify in that behalf in the notice, such

date not being less than one month nor more than two months from the date of the receipt of the notice in the ordinary course of transmission.

(5A) When the Authority cancels any registration under clause (b), clause (c), or clause (d), of sub-section *(4)* the cancellation shall take effect on the date on which notice of the order of cancellation is served on the insurer.

* * * * *

(5C) Where a registration is cancelled under clause (a), clause (aa), clause (e), clause (f), clause (g), or clause (h), or clause (i), or clause (j) of sub-section (4), the Authority may at 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 Authority 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 the Insurance Regulatory and Development Authority Act, 1999, or of any rule or any regulation, or any order made thereunder or any direction issued under those Acts, 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 the Authority. 41 of 1999.

* * * * *

Renewal of registration.

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 March, after the commencement of the Insurance

Regulatory and Development Authority Act, 1999.

41 of 1999.

(2) An applicaiton for the renewal of a registration for any year shall be made by the insurer to the Authority 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 fee as determined by the regulations made by the Authority 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 or rupees five crores, whichever is less;

(ii) be less, in any case, than fifty thousand 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 re-insurances accepted by him in India shall be taken into account.

(3) The fee as determined by the regulations made by the Authority 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 Authority 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 fee as determined by the regulations made by the Authority, and payable by him, as the Authority may require:

Provided that an appeal shall lie to the Central Government from an order passed by the Authority imposing a penalty on the insurer.

(5) The Authority shall, on fulfilment by the insurer of the requirements of this section, renew the registration and grant him a certificate of renewal of registration.

* * * * *

Minimum limits for annuities and other benefits secured by policies of life insurance.

4. *(1)* No insurer, not being a Co-operative Life Insurance Society to which Part IV of this Act applies, shall pay or undertake to pay on any policy of life insurance issued after the commencement of the Insurance (Amendment) Act, 1946, an annuity of less than one hundred rupees of a gross sum of less than one thousand rupees exclusive of any profit or bonus provided that this shall not prevent an insurer from converting any policy into a paid-up policy of any value or payment of surrender value of any amount. 6 of 1946.

(2) Nothing contained in this section shall apply to any policy of the description known as a group policy, where the number of persons covered by the policy is not less than fifty or such smaller number as may be approved by the Authority and a standard form of the policy has been certified in writing by the authority to be a policy of such description or to any policy undertaking to pay a gross sum of more than five hundred rupees or an annuity of more than

fifty rupees, issued—

(a) by an insurer to any person in his permanent employ in respect of the life of that person, or

(b) under any scheme, approved by the authority and complying with such conditions, if any, as he may think fit to impose, whereby premiums due from persons employed under any employer are collected by or under the supervision of the employer, or to any policy issued by a Mutual Insurance Company to which Part IV applies and which the Authority may by order in writing exempt from the provisions of this section, for so long as the company complies with such conditions, if any, as may be prescribed.

Restriction on name of insurer.

5. *(1)* * * * *

(2) If an insurer, through inadvertence or otherwise, is without such consent as aforesaid registered by a name identical with that by which an insurer already in existence whether previously registered or not is carrying on business or so nearly resembling it as to be calculated to deceive, the first-mentioned insurer shall, if called upon to do so by the Authority on the application of the second-mentioned insurer, change his name within a time to be fixed by the Authority:

Provided that nothing in this section shall apply to any insurer carrying on business before the 27th day of January, 1937, under the Indian Life Assurance Companies Act, 1912:

6 of 1912.

Provided further that in the application of this section to any insurer who begins to carry on insurance business after the commencement of the Insurance (Amendment) Act, 1946, the references to an insurer in existence in sub-

6 of 1946.

section *(1)* and this sub-section shall be construed as including references to a provident society (as defined in Part III) in existence, whether or not the society is in the course of being dissolved.

(3) No insurer other than a provident society as defined in Part III, who begins to carry on insurance business after the commencement of this Act, shall adopt as its name and no such insurer carrying on business before the commencement of this Act shall continue after the expiry of six months from the commencement thereof to use as its name any combination of words which includes the word "provident".

Requirement as to capital.

6. No insurer carrying on the business of life insurance, general insurance or re-insurance in India on or after the commencement of the Insurance Regulatory and Development Authority Act, 1999, shall be registered unless he has,— 41 of 1999.

(i) a paid-up equity capital of rupees one hundred crore in case of a person carrying on the business of life insurance or general insurance; or

(ii) a paid-up equity capital of rupees two hundred crores in case of a person carrying on exclusively the business as a re-insurer:

Provided that in determining the paid-up equity capital specified under clause (i) or clause (ii), the deposit to be made under section 7 and any preliminary expenses incurred in the formation and registration of the company shall be excluded:

Provided further that an insurer carrying on business of life insurance, general insurance or re-insurance in India before the commencement of the Insurance Regulatory and Development Authority Act, 1999 and who is required to be registered under this Act, shall have a paid-up equity capital in 41 of 1999.

accordance with clause (i) and clause (ii), as the case may be, within six months of the commencement of that Act.

Requirements as to capital structure and voting rights and maintenance of registers of beneficial owners of shares.

6A. *(1)* No Public company limited by shares having its registered office in India, shall carry on life insurance business, unless it satisfies all the following conditions, namely:—

(i) that the capital of the company consists only of ordinary shares each of which has a single face value;

(ii) that, except during any period not exceeding one year allowed by the company for payment of calls on shares, the paid-up amount is the same for all shares, whether existing or new:

Provided that the conditions specified in this sub-section shall not apply to a public company which has, before the commencement of the Insurance (Amendment) Act, 1950, issued any shares other than ordinary shares each of which has a single face value or any shares the paid-up amount whereof is not the same for all of them for a period of three years from such commencement.

47 of 1950.

(2) Notwithstanding anything to the countrary contained in any law for the time being inforce or in the memorandum or articles of association but subject to the other provisions contained in this section the voting right of every shareholder of any public company as a foresaid shall in all cases be strictly proportionate to the paid-up amount of the shares held by him.

* * * * *

(4) A public company as aforesaid which carries on life insurance business—

(a) * * * *

(b) shall not register any transfer of its shares—

(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; 7 of 1913.

(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 approval of the Authority has been obtained to the transfer;

(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 the paid-up equity capital of the insurer, unless the previous approval of the Authority has been obtained for the transfer.

Explanation.—For the purposes 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.

* * * * *

(6) If the total paid-up holding of any person in the shares of a company referred to in sub-section *(1)* on the commencement of the Insurance (Amendment) Act, 1950, exceed two and a half per cent of its paid-up capital where that person is a banking company or an investment company, or five per cent of its paid-up capital in any other case, he shall not be entitled to any vote as a shareholder of the company in respect of such excess holding of shares.

47 of 1950.

(7) Where the total paid-up holding of any person in the shares of a company referred to in sub-section (1) on the date of the commencement of the Insurance (Amendment) Act, 1950, exceeds five per cent of its paid-up capital where that person is a banking company or an investment company, or ten per cent of its paid-up captial in any other case, he shall dispose of the excess holding of shares within three years from such commencement or such further period not exceeding two years as may be allowed to him by the Central Government.

47 of 1950.

(8) If, after the expiry of three years or of such further period as may be allowed to any person under sub-section *(7)*, the total paid-up holding of any such person has not been reduced to the limits specified in that sub-section, any shares in excess of the limits specified in that sub-section shall vest in the Administrator-General of the State in which the registered office of the company concerned is situate and the Administrator General shall take such steps as may be necessary for taking charge of any property which has been so vested in him and shall dispose of the said shares and the proceeds thereof in such manner as may be prescribed.

(9) Subject to the other provisions contained in this section, but notwithstanding anything contained in the Indian Companies Act, 1913, or in the memorandum or articles of association of any such company as is referred

7 of 1913.

to in sub-section *(1)*, no such company shall refuse to register the transfer of any shares where the transfer is for the purpose of securing compliance with the provision of sub-sections *(7)* and *(8)*.

(10) The Central Government may, subject to such restrictions as it may think fit to impose, exempt from the operation of sub-sections *(6)*, *(7)* and *(8)* any insurance company, in any case where the total paid-up holding of such insurance company in the shares of any other insurance company exceeds the limits specified in the said sub-sections, if the other insurance company is or is to be made a subsidiary company of the insurance company.

(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 insures carrying on general insurance business subject to the following modifications, namely:— 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 47 of 1950. 62 of 1968.

(ii) references in sub-section *(10)* to sub-section *(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 interests, 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.

Manner of divesting excess shareholding by promoter in certain cases.

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 equity 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 re-insurance in which the promoters hold more than twenty-six per cent of the paid-up equity 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 equity capital or such excess paid-up equity capital as may be prescribed, after a period of ten years from the date of the 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 declare that nothing contained in the proviso shall apply to the promoters being foreign

company, referred to in sub-clause (b) of clause (7A) of section 2.

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

Provision for securing compliance with requirements relating to capital structure.

6B. *(1)* For the purpose of enabling any public company carring on life insurance business to bring its capital structure into conformity with the requirements of section 6A, an officer appointed on this behalf by the Central Government may, notwithstanding anything contained in the Indian Companies Act, 1913,— 7 of 1913.

(a) examine any scheme proposed for the purpose aforesaid by the directors of the company:

Provided that—

(i) the scheme has been placed before a meeting of the shareholders for their opinion and has been forwarded to the officer together with the opinion of the shareholders thereon, and

(ii) the scheme does not involve any diminution of the liability of the shareholders in respect of unpaid-up share capital;

(b) invite objections and suggestions in respect of the scheme so proposed; and

(c) after considering such objections and suggestions to the scheme so proposed, sanction it with such modifications as he may consider necessary or desirable.

* * * * *

(4) The provisions of this section shall, on and from the commencement of the Insurance

62 of 1968. (Amendment) Act, 1968, also apply to insurers carrying on general insurance business.

Conversion of company limited by shares into company limited by guarantee.

6C. *(1)* Where a public company limited by shares carrying on insurance business has passed a special resolution for converting itself into a public company limited by guarantee, it may apply to the Central Government with a scheme for putting the special resolution into effect, including any provision for the alteration of the memorandum or articles of association insofar as it may be necessary for this purpose.

(2) If the Central Government, after giving such notice to any person concerned as it thinks fit, is satisfied—

(a) that the scheme makes suitable provision with respect to the repayment, conversion or liquidation of the paid-up capital of the company,

(b) that the consent of the creditors to the conversion of the company limited by shares into a company limited by guarantee has been obtained, or that suitable provisions have been made for discharging, determining or securing the debts or claims of such creditors, and

(c) that the scheme is otherwise reasonable, it may sanction the scheme and thereupon the scheme shall become binding on the company and on all the persons concerned.

(3) Against the decision of the Central Government sanctioning a scheme under sub-section *(2)*, any person aggrieved thereby may, within ninety days of the date of the order sanctioning the scheme, prefer an appeal to the High Court within whose jurisdiction the registered office of the insurer is situate.

(4) The decision of the High Court where an appeal has been preferred to it under sub-section

(3) or of the Central Government where no such appeal has been preferred, shall be final and binding on all the persons concerned.

(5) Where a scheme has been sanctioned under this section, the company shall file with the Registrar of Companies a certified copy of the scheme as sanctioned, and thereupon the provisions of the Indian Companies Act, 1913, relating to companies limited by guarantee shall become applicable to the company. 7 of 1913.

Deposits.

7. *(1)* Every insurer shall, in respect of the insurance business carried on by him in India, deposit and deep deposited with the Reserve Bank of India in one of the offices in India of the Bank for and on behalf of the Central Government the amount hereafter specified, either in cash or in approved securities estimated at the market value of the securities on the day of deposit, or partly in cash and partly in approved securities so estimated,—

(a) in the case of life insurance business, a sum equivalent to one per cent of his total gross premium written in India in any financial year commencing after the 31st day of March, 2000, not exceeding rupees ten crores;

(b) in the case of general insurance business, a sum equivalent to three per cent of his total gross premium written in India, in any financial year commencing after the 31st day of March, 2000, not exceeding rupees ten crores;

(c) in the case of re-insurance business, a sum of rupees twenty crores:

Provided that, where the business done or to be done in marine insurance only and relates exclusively to country craft or its cargo or both, the amount to be deposited under this sub-section shall be one hundred thousand rupees only:

Provided further that in respect of any insurer not having a share capital and carrying on only such insurance business as in the opinion of the Central Government is not carried on ordinarily by insurers under separate policies, the Central Government may, by notification in the Official Gazette, order that the provisions of this sub-section shall apply to such insurer with the modification that instead of the sum of rupees twenty lakhs or rupees ten lakhs, as the case may be, the deposit to be made by such insurer shall be such amount, being not less than one hundred and fifty thousand rupees, as may be specified in the said order.

(2) Where the insurer is an insurer specified in sub-clause (c) of clause (9) of section 2, he shall be deemed to have complied with the provisions of this section as to deposits, if in respect of insurance business carried on by him in India under a standing contract of the nature referred to in sub-clause (c) of clause (9) of section 2 a deposit of an amount one-and-a-half times that specified in sub-section *(1)* has been made in the Reserve Bank of India in one of the offices in India of the Bank for and on behalf of the Central Government in cash or approved securities estimated at the market value of securities on the day of deposit by or on behalf of the underwriters who are members of the Society of Lloyd's with whom he has his standing contract.

(3) Where the deposit is to be made by an insurer not carrying on insurance business in India immediately before the commencement of the Insurance (Amendment) Act, 1968, a deposit of rupees ten lakhs shall be made before the application for registration is made, and the provisions of clause (ii) of sub-section *(IA)* shall apply to such insurer after his registration as they apply to an insurer specified in clause (a) of sub-section *(1)*.

62 of 1968.

(4) An insurer shall not be registered for any class of insurance business in addition to the class or classes for which is already registered until the full deposit required under sub-section *(1)* has been made.

(5) Where an insurer who intends to become a member of a group, does not carry on all the classes of insurance business carried on by the other insurers in such group, or, where out of the several insurers who desire to form themselves into a group, any insurer does not carry on all the classes of insurance business carried on by the other insurers who desire to form themselves into the group, such insurer may be registered for that class or those classes of insurance business which is or are carried on by the other insurers of the group or the proposed group, as the case may be, and where any application for registration is made by any such insurer, the Authority may, notwithstanding anything contained in sub-section *(2A)* of section 3 or sub-section *(4)*, register such insurer for one or more additional classes of insurance, if the following conditions are fulfilled, namely:—

(a) the Authority is satisfied that registration for the proposed one or more additional classes of insurance business would qualify the insurer to become a member of a group;

(b) agreements have been executed by all the Insurers in the group or proposed group, as the case may be, and such agreements, in the opinion of the Authority, satisfy the requirements of the *Explanation* to sub-section *(1B)*; and

(c) the insurer has, after the commencement of the Insurance (Amendment) Act, 1968 62 of 1968. made deposit of a sum not less than the total of all the instalments of deposit which he would have been required to make after such commencement till the date of his

becoming a member of the group, had he been a member of the group from such commencement.

(6) The Authority shall cancel the registration made in pursuance of the provisions of sub-section *(5)*, if the insurer referred to therein fails to become, within a period of three months from the date of such registration, a member of the group or proposed group, as the case may be, and, where such registration has been cancelled, the provisions of this Act shall apply to the insurer as if he had not been registered for the class or classes of insurance business in relation to which his registration has been cancelled.

(7) Securities already deposited with the Authority of Currency in compliance with the Indian Life Assurance Companies Act, 1912 , shall be transferred by him to the Reserve Bank of India and shall, to the extent of their market value as at the date of the commencement of this Act, be deemed to be deposited under this Act, as the instalment or as part of the instalment to be made under the foregoing provisions of this section before the application for registration is made whether any such application is or is not in fact made.

6 of 1912.

(8) A deposit made in cash shall be held by the Reserve Bank of India to the credit of the insurance and shall except to the extent, if any, to which the cash has been invested in securities under sub-section *(9A)*, be returnable to the insurer in cash in any case in which under the provisions of this Act a deposit is to be returned; and any interest accruing due and collected on securities deposited under sub-section *(1)* or sub-section *(2)* shall be paid to the insurer, subject only to deduction of the normal commission chargeable for the realisation of interest.

(9) The insurer may at any time replace any securities deposited by him under this section

with the Reserve Bank of India either by cash or by other approved securities or partly by cash and partly by other approved securities, provided that such cash, or the value of such other approved securities estimated at the market rates prevailing at the time of replacement, or such cash together with such value, as the case may be, is not less than the value of the securities replaced estimated at the market rates prevailing when they were deposited.

(9A) The Reserve Bank of India shall, if so requested by the insurer,

(a) sell any securities deposited by him with the Bank under this section and hold the cash realised by such sale as deposit, or

(b) invest in approved securities specified by the insurer the whole or any part or a deposit held by it in cash or the whole or any part of cash received by it on the sale of or on the maturing of securities deposited by the insurer, and hold the securities in which investment is so made as deposit, and may charge the normal commission on such sale or on such investment.

(9B) Where sub-section (9A) applies,—

(a) if the cash realised by the sale of or on the maturing of the securities (excluding in the former case the interest accrued) falls short of the market value of the securities at the date on which they were deposited with the bank, the insurer shall make good the deficiency by a further deposit either in cash or in approved securities estimated at the market value of the securities on the day on which they are deposited, or partly in cash and partly in approved securities so estimated, within a period of two months from the date on which the securities matured or were sold or where the securities matured or were sold before the 21st day of March, 1940,

within a period of four months from the commencement of the Insurance (Amendment) Act, 1940; and unless he does so the insurer shall be deemed to have failed to comply with the requirements of this section as to the deposits; and

20 of 1940.

(b) if the cash realised by the sale of or on the maturing of the securities (excluding in the former case the interest accrued) exceeds the market value of the securities at the date on which they were deposited with the Bank, the Central Government may, if satisfied that the full amount required to be deposited under sub-section direct the required to be deposited under sub-section *(1)* is in deposit, direct the Reserve Bank to return the excess.

(10) If any part of a deposit made under this section is used in the discharge of any liability of the insurer, the insurer shall deposit such additional sum in cash or approved securities estimated at the market value of the securities on the day of deposit, or partly in cash and partly in such securities, as will make up the amount so used. The insurer shall be deemed to have failed to comply with the requirements of sub-section *(1)*, unless the deficiency is supplied within a period of two months from the date when the deposit or any part thereof is so used for discharge of liabilities.

Reservation of deposits.

8. *(1)* Any deposit made under section 7 or section 98 shall be deemed to be part of the assets of the insurer but shall not be susceptible of any assignment or charge; nor shall it be available for the discharge of any liability of the insurer other than liabilities arising out of policies of insurance issued by the insurer so long as any such liabilities remain undischarged; nor shall it be liable to attachment in execution of any decree except a decree obtained by a policyholder of the insurer in respect of a debt due upon a policy which debt the policyholder has failed to realise

in any other way.

(2) Where a deposit is made in respect of life insurance business the deposit made in respect thereof shall not be available for the discharge of any liability of the insurer other than liabilities arising out of policies of life insurance issued by the insurer.

Refund of deposit.

9. Where an insurer has ceased to carry on in India all classes of insurance business and his liabilities in India in respect of all classes of insurance business have been satisfied or are otherwise provided, for the court may, on the application of the insurer, order the return to the insurer of the deposit made by him under this Act.

Separation of accounts and funds.

10. *(1)* Where the insurer carries on business of more than one of the following classes, namely, life insurance, fire insurance, marine insurance or miscellaneous insurance, he shall keep a separate account of all receipts and payments in respect of each such class of insurance business and where the insurer carries on business of miscellaneous insurance whether alone or in conjunction with business of another class, he shall, unless the Authority waives this requirement in writing, keep a separate account of all receipts and payments in respect of each of such sub-classes of miscellaneous insurance business as may be prescribed in this behalf:

Provided that no sub-class of miscellaneous insurance business shall be, prescribed under this sub-section if the insurance business comprised in the sub-class consist of insurance contracts which are terminable by the insurer at intervals not exceeding twelve months and under which, if a claim arises, the insurer's liability to pay benefit ceases within one year of the date on which the claim arose.

* * * * *

Accounts and balance-sheet.

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 financial year prepare with reference to that year—

(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.

(1A) Notwithstanding anything contained in sub-section *(1)*, every insurer, on or after the commencement of the Insurance Regulatory and Development Authority Act, 1999, 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 that 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.

41 of 1999.

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

(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 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 help 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.

(3) Where an insurer carrying on the business of insurance at the commencement of this Act has prepared the balance-sheet and accounts required by the Indian Life Assurance Companies Act, 1912, or has based his accounts upon the financial and not the calendar year, the provisions of this section shall, if the Central Government so directs in any case, apply until the 31st day of December, 1939, as if sub-section (1) reference to the calendar year were references to the financial year. 6 of 1912.

Audit.

12. The balance-sheet, profit and loss account, revenue account and profit and loss appropriation account of 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, unless they are subject to audit under the Indian Companies Act, 1913 be audited annually by an auditor, and the auditor shall in the audit of all such accounts have the powers of, exercise the functions vested in, and discharge the duties and 7 of 1913.

be subject to the liabilities and penalties imposed on, auditors of companies by section 145 of the Indian Companies Act, 1913.

Actuarial report and abstract.

13. *(1)* Every insurer carrying on life insurance business shall, in respect of the life insurance 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 every year course 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 liability 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 Authority may, having regard to the circumstances of any particular insurer, allow him to have the investigation made as at a date not later than two years from the date as at which the previous investigation was made:

Provided further that for an insurer carrying on life insurance business in India at the commencement of the Insurance (Amendment) Act, 1950, the last date as at which the first investigation after such commencement should be caused to be made by an actuary shall be—

47 of 1950.

(a) the 31st day of December, 1950, or the date of expiration of five years from the date at which the last investigation was made by an actuary before such commencement, whichever is earlier, where the said last investigation was at a date—

(i) before the 31st day of December, 1946 but not more than five years before such commencement, or

(ii) after the 30th day of December, 1946, but before the 31st day of December, 1947, and had disclosed a deficit in the life insurance fund; or

(b) the 31st day of December, 1951, where the last investigation by an actuary before such commencement was at a date—

(i) after the 30th day of December, 1946, but before the 31st day of December, 1947, and did not disclose a deficit in the life insurance fund; or

(ii) after the 31st day of December, 1947, but before the 31st day of December, 1948;

(c) the 31st day of December, 1952, where the last investigation by an actuary before such commencement was as at any date after 30th day of December, 1948, but before the 1st day of January, 1950:

Provided also that for an insurer carrying on life insurance business in India immediately before the Commencement of the Insurance Regulatory and Development Authority Act, 1999, the last date as which the first investigation after such commencement should be caused by an actuary, shall be the 31st day of March, 2001: 41 of 1999.

Provided also that, in the case of an insurer who has not caused an investigation to be made by an actuary as at any date prior to such commencement, the date of commencement of life insurance business in India shall, for the purpose of the preceding proviso, be deemed to be the date as at which the last investigation was made by an actuary before such commencement and such investigation shall be deemed to have disclosed no deficit in the life insurance fund:

Provided also that every insurer, on or after the commencement of the Insurance Regulatory and Development Authority Act, 1999, shall cause an abstract of the report of the actuary to be made in the manner specified by the regulations made by the Authority.

41 of 1999.

* * * * *

(3) There shall be appended to every such abstract as is referred to in sub-section *(1)* or sub-section *(2)* or a certificate signed by the principal officer of the insurer that full and accurate particulars of every policy under which there is a liability either actual or contingent have been furnished to the actuary for the purpose of the investigation.

(4) There shall be appended to every such abstract a statement, in conformity with their requirement of a Part II of the Fifth Schedule and prepared in accordance with the regulations contained in Part I of that Schedule of the life insurance business in force at the date to which the account of the insurer are made up for the purposes of such abstract:

Provided that, if the investigation referred to in sub-sections *(1)* and *(2)* is made annually by any insurer, the statement need not be appended every year but shall be appended at least once in every three years:

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

* * * * *

(6) The provisions of this section relating to the life insurance business shall apply also to any such sub-class of insurance business included in the class "Miscellaneous Insurance" as may be

prescribed under sub-section *(1)* of section 10; and the Authority may authorise such modification and variation of regulations contained in Part I of the Forth and Fifth Schedules and of the requirement of Part II of those Schedules as may be necessary to facilitate their application to any such sub-class of insurance business:

Provided that, if the Authority is satisfied that the number and amount of transactions carried out by an insurer in any such sub-class of insurance business is so small as to render periodic investigation and valuation unnecessary, it may exempt that insurer from the operation of this sub-section in respect of that sub-class of insurance business.

Register of policies and register of claims.

14. Every insurer in the case of insurer specified in sub-clause (a) (ii) or sub-clause (b) of clause (9) of section 2 in respect of all business transacted by him, and in the case of any other insurer in respect of the insurance business transacted by him in India, shall maintain—

(a) a register or record of policies in which shall be entered in respect of every policy issued by the insurer, the name and address of the policy-holder, the date when the policy was effected and a record of any transfer, assignment or nomination of which the insurer has notice, and

(b) a register of record of claims, in which shall be entered every claim made together with the date of the claim, the name and address of the claimant and the date on which the claim was discharged, or, in the case of a claim which is rejected, the date of rejection and the ground therefor.

Submission of returns.

15. *(1)* The audited accounts and statements referred to in section 11 or sub-section *(5)* of section 13 and the abstract and statement referred

to in section 13 shall be printed, and four copies thereof shall be furnished as returns to the Authority within six months from the end of the period to which they refer:

Provided that the said period of six months shall in the case of insurers having their principal place of business or domicile outside India and in the case of insurers constituted, incorporated or domiciled in India but also carrying on business outside India be extended by three months, and provided further that the Central Government may in any case extend the time allowed by this sub-section for the furnishing of such returns by a further period not exceeding three months.

(2) Of the four copies so furnished one shall be signed in the case of a company by the chairman and two directors and by the principal officer of the company and, if the company has a managing director or managing agent, by that director or managing agent, in the case of a firm, by two partners of the firm, and, in the case of an insurer being an individual, by the insurer himself and one shall be singed by the auditor who made the audit or the actuary who made the valuation, as the case may be.

(3) Where the insurer's principal place of business or domicile is outside India he shall forward to the Authority along with the documents referred to in section 11, the balance-sheet, profit and loss account and revenue account and the valuation reports and valuation statements, if any, which the insurer is required to file with the public authority of the country in which the insurer is constituted, incorporated or domiciled, or, where such documents are not required to be filed, a certified statement showing the total assets and liabilities of the insurer at the close of the period covered by the said documents and his total income and expenditure during that period.

Returns by insurers established outside India.

16. *(1)* Where, by the law of the country in which an insurer, not being an insurer specified in sub-clause (a) (ii) or sub-clause (b) of clause (9) of section 2, is constituted, incorporated or domiciled, the insurer is required to prepare and to furnish to a public authority of that country documents of substantially the same nature as the documents required to be furnished as returns in accordance with the provisions of section 15, the provisions of sub-section *(2)* of this section shall apply to such insurer in lieu of the provisions of sections 11, 12, 13, and 15.

(2) The insurer shall, within the time specified in sub-section *(1)* of section 15, furnish to the Authority four certified copies in the English language of every balance-sheet, account, abstract, report and statement supplied to the public authority referred in sub-section *(1)* of this section, and in addition thereto, four certified copies in the English language of each of the following statements, namely:—

(a) a statement audited by an auditor or by a person duly qualified under the law of the insurer in India as at the date of any balance-sheet so furnished;

(b) for 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 for the period covered by any account so furnished, prepared 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 and similarly audited showing separately with respect to business transacted by the insurer in India the details required to be supplied in a revenue account furnished under this clause of this sub-section;

(c) a separate abstract of the valuation report in respect of all business transacted in

India in each class or sub-class or insurance business to which section 13 refers, prepared in the manner required by that section; and

(d) a declaration in the prescribed form stating that all amounts received by the insured directly or indirectly whether from his head office or from any other source outside India have been shown in the revenue account except such sums as properly appertain to the capital account.

Exemption from certain provisions of the Indian Companies Act, 1913.

17. Where 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, in any year furnishes his balance-sheet and accounts in accordance with the provisions of section 15, he may at the same time send to the Registrar of Companies, copies of such balance-sheet and accounts; and where such copies are so sent, it shall not be necessary for the company to file copies of the balance-sheet and account with the Registrar as required by sub-section *(1)* of section 134 of the first mentioned Act and such copies so sent shall be chargeable with the same fees and shall be dealt with in all respects as if they were filed in accordance with that section.

7 of 1913.
6 of 1882.
10 of 1866.

This Act not to apply to preparation of accounts, etc., for periods prior to this Act coming into force.

17A. Nothing in this Act shall apply to the preparation of accounts by an insured and the audit and submission thereof in respect of any accounting year which has expired prior to the commencement of this Act, and notwithstanding the other provisions of this Act such accounts shall be prepared, audited and submitted in accordance with the law in force immediately before the commencement of this Act.

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Custody and inspection of documents and supply of copies.

20. *(1)* Every return furnished to the Authority or certified copy thereof shall be kept by the Authority and shall be open to inspection;

and any person may procure a copy of any such return, or of any part thereof, on payment of a fee of six annas for every hundred words or fractional part thereof required to be copied, any five figures being deemed equivalent to one word.

(2) A printed or certified copy of the accounts, statements and abstract furnished in accordance with the provisions of section 15 or section 16 shall, on the application of any shareholder or policy-holder made at any time within two years from the date on which the documents was so furnished, be supplied to him by the insurer within fourteen days when the insurer is constituted, incorporated or domiciled in India and in any other case within one month of such application.

(3) A copy of the memorandum and articles of association of the insurer, if a company shall on the application of any policy-holder, be supplied to him by the insurer on payment of one rupee.

Powers of Authority regarding returns.

21. *(1)* If it appears to the Authority that any return furnished to it under the provisions of this Act is incorrect or defective in any respect it may—

* * * * *

(d) decline to accept any such return unless the inaccuracy has been corrected or the deficiency has been supplied before the expiry of one month from the date on which the requisition asking for correction of the inaccuracy or supply of the deficiency was delivered to the insurer or of such further time as the Authority may specify in the requisition and if it declines to accept any such return, the insurer shall be deemed to have failed to comply with the provisions of section 15 or section 16 for section 28 or section 28A or section 28B or section 64V relating to the furnishing of returns.

(2) The Court may on the application of an insurer and after hearing the Authority cancel any order made by Authority under clauses (a), (b) or (c) of sub-section *(1)* or may direct the acceptance of any return which the Authority has declined to accept, if the insurer satisfied the Court the action of the Authority was in the circumstances unreasonable:

Provided that no application under this sub-section shall be entertained unless it is made before the expiration of four months from the time when the Authority made the order or declined to accept the return.

Powers of Authority to order revaluation.

22. *(1)* If it appears to the Authority that an investigation or valuation to which section 13 refers or an abstract of a valuation report furnished under clause (c) of sub-section *(2)* of section 16 does not properly indicate the condition of the affairs of the insurer by reason of the faulty basis adopted in the valuation, it may, after giving notice to the insurer and giving him an opportunity to be heard, cause an investigation and valuation as at such date as the Authority may specify to be made at the expense of the insurer by an actuary appointed by the insurer for this purpose and approved by the Authority and the insurer shall place at the disposal of the actuary so appointed and approved all the material required by the actuary for the purposes of the investigation and valuation within such period, not being less than three months, as the Authority may specify.

(2) The provisions of sub-sections *(1)* and *(4)* of section 13, and of sub-sections *(1)* and (2) of section 15 or, as the case may be, of sub-section *(2)* of section 16, shall apply in relation to an investigation and valuation under this section:

Provided that the abstract and statement prepared as the result of such investigation and

valuation shall be furnished by such date as the Authority may specify.

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INVESTMENT, LOANS AND MANAGEMENT

Investment of assets.

27. *(1)* Every insurer shall invest and at all times keep invested assets equivalent to not less than the sum of—

(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:—

47 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 fourth 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 Authority 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 Authority 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. 47 of 1950.

(4) Where an insurer has accepted reassurance in respect of any policies of life insurance issued by another insurer and maturing for payment in India or has ceded reassurance 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 the 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 Authority and the instrument of trust under this sub-section shall be executed by the insurer with the approval of the Authority 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.

Further provisions regarding investments.

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:—

(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 Authority or a State Government or by any authority or body constituted by any Central Act or Act of a State Legislature;

(e) first mortage on immovable property situated in India under any housing or building scheme of the insurer approved by the Authority 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 on such or similar debentures 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 debenture secured by a floating charge on all in 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 on 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; 2 of 1934. 6 of 1912.

(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; 2 of 1912.

(s) such other investments as the Authority may, by notification in the Official Gazette, declare to be approved investments for the purposes of this section.

(2) Notwithstanding 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 Authority 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 Authority 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 shareholders 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 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.

(8) If, on an application submitted through the Authority the Authority is satisfied that special grounds exist warranting such exemption, the Authority 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 Authority 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 Authority considers any one or more of the investments constituting an insurer's controlled fund to be unsuitable or undesirable, the Authority 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 Authority.

(12) Every insurer in existence at the commencement of the Insurance (Amendment) Act, 1950, whose investments or 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 Authority a report specifying all such investments, and if the Authority is satisfied that it will not be in the interest of the insurer or any class of insurers generally to any such

47 of 1950.

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 Authority 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 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

(b) 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 busines;

(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 Authority 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 Authority is satisfied that it would not be in the interest of the insurer to apply the provisions of this section.

Further provisions regarding investments.

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 his assets otherwise than in any of the following approved investments, namely:—

(a) the investments specified in clauses (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 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 areas 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 atleast 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 atleast 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 carring on insurance business:

Providing that the property mortgaged is not leasehold 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 Authority 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 investment 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 amount of all such investments of the insurer do to 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 Authority with full details of the investments and the extent of the director's 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 debenturers 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 the 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 sharedholders 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 Authority is satisfied that special grounds exist warranting such exemption, 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 *(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 crediting 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 Authority considers any one or more of the investments constituting an insurer's assets to be unsuitable or undesirable, it 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 Authority.

(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 Authority a report specifying all such investments, and, if the Authority 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 *(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 Authority by sub-section *(12)*, 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. 62 of 1968.

(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 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 times against the head "Other Accounts (to be specified)".

(b) In the case of an insurer specified in sub-clauses *(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 spcified)"; and

(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 funds or portion thereof in respect of which the Authority 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 Authority is satisfied that it would not be in the interest of the insurer to apply the provisions of this section.

Prohibition for Investment of funds outside India.

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

Manner and conditions of Investment.

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 the 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.

(2) The Authority may give specific directions for the time, manner and other conditions subject to which the funds of policy-holders shall be invested in the infrastructure and social sector as may be specified by regulations made by the Authority and such regulations shall apply uniformly to all the insurers carrying on the business of life insurance, general insurance, or re-insurance in India on or after the commencement of the Insurance Regulatory and Development Authority Act, 1999. 41 of 1999.

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

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

Statement of investment of assets.

28. *(1)* Every insurer carrying on the business of life insurance shall every year, within thirty-one days from the beginning of the year, submit to the Authority return showing as at the 31st day of December of the preceding year the assets held invested in accordance with section 27, and all other particulars necessary to establish that the requirements of that section have been complied with, and such return shall be certified by a principal officer of the insurer.

(2) Every such insurer shall also furnish, within fifteen days from the last day of March, June and September, a return certified as aforesaid showing as at the end of each of said months the assets held invested accordance with section 27.

(2A) In respect of the Government securities and other approved securities invested and kept invested in accordance with sub-section *(1)* of section 27 an insurer shall submit along with the returns referred to in sub-sections *(1)* and *(2)* a certificate, where such assets are in the custody of a banking company, from that company, and in any other case, from the chairman, two directors and a principal officer, if the insurer is company, or otherwise from a principal officer of the insurer, to the effect that the securities are held free of any encumbrance, charge, hypothecation, or lien, and every such certificate after the first shall also state that since the date of the certificate immediately preceding all the securities have been so held.

(2B) In respect of the assets forming the controlled fund within the meaning of section 27A, and which do not from part of the Government securities and approved securities invested and kept invested in accordance with section 27, an insurer shall submit, along with the returns referred to in sub-sections *(1)* and *(2),* a statement, where such assets are in the custody of a banking company, from that company, and, in any other case, from the chairman, two directors and a principal officer, if the insurer is a company, or from a principal officer of the insurer, if the insurer is not a company, specifying the assets, which are subjected to a charge and certifying that the other assets are held free of any encumbrance, charge, hypothecation, or lien, and every such statement after the first shall also specify the charges created in respect of any of those assets since the date of the statement immediately preceding, and, if any such charges have been liquidated, the date on which they were so liquidated.

(3) The Authority may at his discretion require any insurer to whom sub-section *(1)* applies to submit before the 1st day of August in each or any year a return of the nature referred to in sub-section *(1)*, certified as required by that

sub-section and prepared as at the 30th day of June.

(4) In the case of an insurer having his principal place of business or domicile outside India the Authority may, on application made by the insurer, extend the periods of fifteen and thirty-one days mentioned in the foregoing sub-sections to thirty days and sixty days, respectively.

(5) The Authority shall be entitled at any time to take such steps as it may consider necessary for the inspection or verification of the assets invested in compliance with section 27 or for the purpose of securing the particulars necessary to establish that the requirements of the section have been complied with. The insurer shall comply with any requisition made in this behalf by the Authority and if he fails to do so within two months from the receipt of the requisition he shall be deemed to have made default in complying with the requirements of this 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 Authority a return in the form specified by the regulations made by the Authority showing as at the 31st day of March 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.

(2) Every insurer referred to in sub-section *(1)* shall also submit to the Authority a return in the form specified by the regulations made by the Authority showing all the changes that occurred in the investments aforesaid during each of the quarters ending on the last day of March, June, September and December within thirty-one days from the close of the quarter to which it relates, and every such return shall be certified by a principal office of the insurer.

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 Authority a return in the form specified by the regulations made by the Authority showing as at the 31st day of March 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.

Return of investments relating to the assets and changes therein.

(2) Every insurer referred to in sub-section *(1)* shall also submit to the Authority a return in the form specified by the regulations made by the Authority showing all the changes that occurred in the Investments aforesaid during each of the quarters ending on the last day of March, June, September and December within thirty-one days from the close of the quarter to which it relates, and every such return shall be certified by a principal officer of the insurer.

(3) Every insurer shall submit, along with the returns referred to in sub-sections *(1)* and *(2),* a statement, where any part of the assets are in the custody of a banking company, from that company, and in any other case, from the chairman, two directors and a principal officer, if the insurer is a company, or from a principal officer of the insurer, if the insurer is not a company, specifying the assets, which are subject to a charge and certifying that the other assets are held free of any encumbrance, charge, hypothecation or lien, and every such statement after the first shall also specify the charges created in respect of any of those assets since the date of the statement immediately preceding, and, if any such charges have been liquidated, the date on which they were so liquidated.

29. *(1)* No insurer shall grant loans or temporary advances either on hypothecation of property or on personal security or otherwise, except loans on life policies issued by him within their surrender value, to any director, manager,

Prohibition of loans.

managing agent, actuary, auditor or officer of the insurer if a company, or where the insurer is a firm, to any partner therein, or to any other company or firm in which any such director, manager, managing agent, actuary, officer or partner holds the position of a director, manager, managing agent, actuary, officer or partner:

Provided that nothing contained in this sub-section shall apply to loans made by an insurer to a banking company:—

Provided further that nothing in this section shall prohibit a company from granting such loans or advances to a subsidiary company or to any other company of which the company granting the loan or advance is a subsidiary company and where any such loan or advance is made out of any life insurance fund the matter shall be reported within thirty days of the making of such loan or advance to the Authority.

(2) The provisions of section 96D of the Indian Companies act, 1913 shall not apply to a loan granted to a director of an insurer being a company, if the loan is one granted on the security of a policy on which the insurer bears the risk and the policy was issued to the director on his own life, and the loan is within the surrender value of the policy. 7 of 1913.

(3) Subject to the provisions of sub-section *(1),* no insurer carrying on life insurance business shall grant—

(a) any loans or temporary advances either on hypothecation of property or on personal security or otherwise, except such loan as are specified in sub-section *(1)* of section 27A;

(b) temporary advances to any chief, special or insurance agent to facilitate the carrying out of his functions as such except in cases where such advances do not exceed in the aggregate—

(i) in the case of a chief agent, the over-riding renewal commission earned by him during the year immediately preceding,

(ii) in the case of a special agent, the renewal commission earned by him during the year immediately preceding,

(iii) in the case of an insurance agent, the renewal commission earned by him during the year immediately preceding.

Explanation.— The temporary advance referred to in clause (b) of this sub-section shall also be admissible in the case of any special agent or insurance agent newly appointed, but such advance—

(a) shall be repayable within two years from the date on which such special agent or insurance agent was first appointed, and

(b) shall not exceed, in the case of the special agent, five hundred rupees, and in the case of the insurance agent, one hundred rupees, and the total amount of all advances so made shall not exceed ten thousand rupees in the case of any insurer whose business in force is one crore of rupees or more and five thousand rupees in any other case.

(4) Every loan or advance existing at the commencement of the Insurance (Amendment) Act, 1950 which contravenes the provision of sub-section (3) shall be notified by the insurer to the Authority within thirty days of such commencement and shall, notwithstanding any contract to the contrary be repaid within one year from such commencement.

47 of 1950.

(5) Where any event occurs giving rise to circumstances, the existence of which at the time of the grant of any subsisting loan or advance would have made such grant a contravention of

this section, such loan or advance shall, notwithstanding anything in any contract to the contrary, be repaid within three months from the occurrence of such event.

(6) In case of default in complying with the provisions of sub-section *(4)* or sub-section *(5)*, the director, manager, auditor, actuary, officer or partner, or the chief, special or insurance agent concerned shall, without prejudice to any other penalty which he may incur, cease to hold office under, or to act for, the insurer granting the loan on the expiry of the said period of one year or three months, as the case may be.

Liability of directors, etc., for loss due to contravention of sections 27, 27A, 27B and 29.

30. If by reason of a contravention of any of the provisions of section 27, section 27A section 27B or section 29, any loss is sustained by the insurer or by the policy-holders, every director, manager, managing agent, officer or partner who is knowingly a party to such contravention shall, without prejudice to any other penalty to which he may be liable under this Act, be jointly and severally liable to make good the amount of such loss.

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 Authority 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.

* * * * *

Provisions relating to managers, etc.

31A. *(1)* Notwithstanding anything to the contrary contained in the Indian Companies Act, 1913, or in the articles of association of the insurer, if a company, or in any contract or agreement, no insurer shall after expiry of one year from the 7 of 1913.

commencement of the Insurance (Amendment) Act, 1950,— 47 of 1950.

(a) be directed or managed by, or employ as manager or officer,

(b) be directed or managed by, or employ as manager or officer or in any capacity, any person whose remuneration or any part thereof takes the form of commission or bonus or a share in the valuation surplus in respect of the life insurance business of the insurer, or

(c) be directed or managed by, or employ as manager or officer or in any capacity, any person whose remuneration or any part thereof takes the form of commission or bonus in respect of the general insurance business of the insurer:—

Provided that nothing in this sub-section shall be deemed to prohibit—

(i) the payment of commission to a chief agent, special agent or an insurance agent, in respect of life insurance business procured by or through him;

(ii) the payment of commission to a principal agent or an insurance agent in respect of general insurance business procured by or through him;

(iii) the payment of commission, with the approval of the Central Government and for such period as it may determine, to a person not being an officer of an insurer who was, on the 1st day of November, 1944, employing on behalf of an insurer, chief agents or special agents and continues so to do in respect of insurance business procured by or through him;

* * * * *

(iv) the employment of any individual in a clerical or other subordinate capacity who, as an insurance agent, receives commission in respect of insurance business procured by him;

(v) the employment as an officer of any individual who receives renewal commission in respect of life insurance business procured by him in his capacity as an insurance agent or as an employer of agents before such employment, or before the commencement of the Insurance (Amendment) Act, 1950, whichever is later; 47 of 1950.

(vi) the payment of a share in the profits of general insurance business;

(vii) the payment of bonus in any year on a uniform basis to all salaried employees or any class of them by way of additional remuneration.

(3) If in the case of any insurance company provision is made by the articles of association of the company or by an agreement entered into between any person and the company for empowering a director or manager or other officer of the company to assign his office to any other person, any assignment of office made in pursuance of the said provision, shall, notwithstanding anything to the contrary contained in the said provision or in section 86B of the Indian Companies Act, 1913 be void. 7 of 1913.

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Power to restrict payment of excessive remuneration.

31B. *(1)* The Authority 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 Authority in this behalf.

(2) Every insurer shall, before the close of the month following every year, submit to the Authority a statement, in the form specified by the regulations made by the Authority showing the remuneration paid, whether by way of commission or otherwise, to any person in cases where such remuneration exceeds such sum as may be specified by the regulations made by the Authority.

(3) Where any person not being a chief agent, principal agent or special agent is in receipt of remuneration exceeding the sum of five thousand rupees in any year, the Authority may, by notice in writing, require the insurer to submit certified copies of the agreement entered into between the insurer and any such person, and the insurer shall comply with any such requisition within the time specified in the notice.

(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.

Limitation on employment of managing agents and on the remuneration payable to them.

32. *(1)* No insurer shall, after the commencement of this Act, appoint a managing agent for the conduct of his business.

(2) Where any insurer engaged in the business of insurance before the commencement of this Act employs a managing agent for the conduct of his business, them, notwithstanding anything to the contrary contained in the Indian Companies Act, 1913, and notwithstanding 7 of 1913. anything to the contrary contained in the articles of the insurer, if a company, or in any agreement entered into by the insurer, such managing agent shall cease to hold office on the expiry of three years from the commencement of this Act and 7 of 1913. no compensation shall be payable to him by the insurer by reason only of the premature termination of his employment as managing agent.

(3) After the commencement of this Act, notwithstanding anything contained in the Indian Companies Act, 1913, and notwithstanding 7 of 1913. anything to the contrary contained in any agreement entered into by an insurer or in the articles of association of an insurer being a company, no insurer shall pay to a managing agent and no managing agent shall accept from an insurer as remuneration for his services as managing agent more than two thousand rupees per month in all, including salary and commission and other remuneration payable to and receivable by him, for his services as managing agent.

Prohibition of common officers and requirement as to whole-time officers.

32A. *(1)* No insurer shall, after commencement of this Act, appoint a managing agent for the conduct of his business.

(2) Where an insurer specified in sub-clause (b) of clause (9) of section 2 has a life insurance fund or more than twenty-five lakhs of rupees or insurance funds totalling more than fifty lakhs of rupees, the manager, managing director or other officer of the

insurer shall be a whole-time employee of this insurer:—

Provided that the Authority may, for such period as it thinks it, 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 Authority;

(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 insurances 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.

Insurance business in rural or social sector.

32B. Every insurer shall, after the commencement of the Insurance Regulatory and Development Authority Act, 1999, undertake such percentages of life insurance business and general insurance business in the rural or social sector as may be specified, in the Official Gazette by the Authority, in this behalf.

41 of 1999.

* * * * *

Power of investigation and inspection by Authority.

33. *(1)* The Authority may, at any time, by order in writing, direct any person (hereafter in this section referred to as "Investigating Authority") specified in the order to investigate the affairs of any insurer and to report to the Authority on any investigation made by such Investigating Authority:

Provided that the Investigating Authority may, wherever necessary, employ any auditor or actuary or both for the purpose of assisting him in any investigation under this section.

(2) Notwithstanding anything to the contrary contained in section 235 of the Companies Act, 1956, the Investigating Authority may, at any time, and shall, on being directed so to do by the Authority, cause an inspection to be made by one or more of his officers books of account; of any insurer and his and the Investigating Authority shall supply to the insurer a copy of his report on such inspection. 10 of 1956.

(3) It shall be the duty of every manager, managing director or other officer of the insurer to produce before the Investigating Authority directed to make the investigation under sub-section *(1)*, or inspection under sub-section *(2)*, all such books of account, registers and other documents in his custody or power and to furnish him with any statement and information relating to the affairs of the insurer as the said Investigating Authority may require of him within such time as the said Investigating Authority may specify.

(4) Any Investigating Authority, directed to make an investigation under sub-section *(1)*, or inspection under sub-section *(2)*, may examine on oath, any manager, managing director or other officer of the insurer in relation to his business and may administer oaths accordingly.

(5) The Investigating Authority shall, if he has been directed by the Authority may to cause an inspection to be made, and may, in any other case, report to the Authority on any inspection made under this section.

(6) On receipt of any report under sub-section *(1)* or sub-section *(5)*, the Authority may, after giving such opportunity to the insurer to make a representation in connection with the report as, in the opinion of the Authority, seems reasonable, by order in writing,—

(a) require the insurer, to take such action in respect of any matter arising out of the report as the Authority may think fit; or

(b) cancel the registration of the insurer; or

(c) direct any person to apply to the court for the winding up of the insurer, if a company, whether the registration of the insurer has been cancelled under clause

(b) or not.

(7) The Authority may, after giving reasonable notice to the insurer, publish the report submitted by the Investigating Authority under sub-section (5) or such portion thereof as may appear to it to be necessary.

(8) The Authority may by the regulations made by it specify the minimum information to be maintained by insurers in their books, the manner in which such information shall be maintained, the checks and other verifications to be adopted by insurers in that connection and all other matters incidental thereto as are, in its opinion, necessary to enable the Investigating Authority to discharge satisfactorily his functions under this section.

Explanation.—For the purposes of this section, expression "insurer" shall include in the case of

an insurer incorporated in India—

(a) all its subsidiaries formed for the purpose of carrying on the business of insurance exclusively outside India; and

(b) all its branches whether situated in India or outside India.

(9) No order made under this section other than an order made under clause (b) of sub-section *(6)* shall be capable of being called in question in any court.

(10) All expenses of, and incidental to, any investigation made under this section shall be defrayed by the insurer, shall have priority over that debts due from the insurer and shall be recoverable as an arrear of land revenue.

* * * * *

Power of Authority to remove managerial persons from office.

34B.*(1)** * * *

(4) If any person in respect of whom an order is made by the Authority under sub-section *(1)* or under the proviso to sub-section *(2)* contravenes the provisions of this section, he shall be punishable with fine which may extend to two hundred and fifty rupees for each day during which such contravention continues.

* * * * *

Power of Authority to appoint additional director.

34C. *(1)* If the Authority is of opinion that in the public interest or in the interest of an insurer, or his policy-holders it is necessary so to do, it may, from time to time, by order in writing, appoint, with effect from such date as may be specified in the order, one or more persons to hold office as additional directors of the insurer:—

Provided that the number of additional directors so appointed shall not, at any time,

exceed five or one-third of the maximum strength fixed for the Board by the articles of association of the insurer, whichever is less.

* * * * *

34E. The controller may,— Further powers.

(a) caution or prohibit insurers, generally or any issuer in particular against entering into any particular transaction or class of transactions and generally give advice to any insurer;

(b) at any time, if he is satisfied that in the public interest or in the interests of the insurer or for preventing the affairs of the insurer being conducted in a manner detrimental to the interests of the insurer or his policy-holders, it is necessary so to do, by order in writing and on such terms and conditions as may be specified therein—

(i) require the insurer to call a meeting of his directors for the purpose of considering any matter relating to or arising out of the affairs of the insurer;

(ii) depute one or more of his officers to watch the proceedings at any meeting of the Board of directors of the insurer or of any committee or of any other body constituted by it; require the insurer to give an opportunity to the officers so deputed to be heard at such meetings and also require such officers to send a report of such proceeding to the Authority;

(iii) require the Board of directors of the insurer or any committee or any other body constituted by it to give in writing to any officer specified by the Authority in this behalf at his usual address all

notices of, and other communications relating to, any meeting of the Board, committee or other body constituted by it;

(iv) appoint one or more of his officers to observe the manner in which the affairs of the insurer or of his offices or branches are being conducted and make a report thereon;

(v) require the insurer to make, within such time as may be specified in the order, such changes in the management as the Authority may consider necessary.

Power of Authority to order closure of foreign branches.

34G. Without prejudice to the generality of the powers conferred by sub-section *(1)* of section 34, the Authority may, if it has reason to believe that the working of any branch outside India of an insurer being an insurer specified in sub-clause (b) of clause (9) of section 2, is generally resulting in a loss or that the affairs of that branch are being conducted in a manner prejudicial to the interests of the policy-holders or the public interest, it may, after giving an opportunity to the insurer of being heard, direct that the insurer shall cease, within such period, not being less than one year, as may be specified in the order, to carry on insurance business in the country in which such branch is situated and if the insurer fails to comply with such order he shall be deemed to have failed to comply with the provisions of this Act.

Search and seizure.

34H. *(1)* Where the Chairperson of the Authority in consequence of information in his possession, has reason to believe that—

(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 rejected or settled at a figure higher than a reasonable amount, or

(e) any claim which is due to be settled by an insurer, has been or is likely to be rejected or 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 officer authorised by the Authority (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.

* * * * *

(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 Chairperson of the Authority under sub-section (5), he may make an application to the Central Government stating therein the reason for such objection and requesting for the return of the books, accounts, papers, receipts, vouchers, reports or other documents.

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

Amalgamation 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 approved by the Authority.

* * * * *

(3) Before an application is made to the Authority to approve any such scheme notices 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 Authority and certified copies, four in number, of each of the following documents shall be furnished to the Authority, 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:—

* * * * *

(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 the 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;

Sanction of amalgamation and transfer by Authority.

36. *(1)* When any application such as is referred to in sub-section *(3)* of section 35 is made to the Authority, the Authority shall cause, if for special reasons it 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 it may direct, and, after hearing the directors and such policy-holders as apply to be heard and any other persons whom it considers entitled to be heard, may approve the arrangement, it 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 incomplete 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 or insurer or of any or all of the insurers concerned in the amalgamation, the Authority may approve 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 approved by the Authority shall be valid and binding on all the parties concerned.

* * * * *

Power of Authority to prepare scheme of amalgamation.

37A. * * * *

(4) The scheme shall thereafter be placed before the Central Government for its sanction and the Central Government may sanction the scheme without any modification or with such modifications as it may consider necessary; and the scheme as sanctioned by the Central Government shall come into force on such date as the Central Government may specify in this behalf:—

Provided that different dates may be specified for different provisions of the scheme.

* * * * *

Assignment and transfer of insurance policies.

38. *(1)* A transfer or assignment of a policy of life insurance, whether with or without consideration may be made only by an endorsement upon the policy itself or by a separate instrument, signed in either case by the transferor or by the assignor, his duly authorised agent and attested by at least one witness, specifically setting forth the fact of transfer or assignment.

(2) The transfer or assignment shall be complete and effectual upon the execution of such endorsement or instrument duly attested but except where the transfer or assignment is in favour of the insurer shall not be operative as against an insurer and shall not confer upon the transferee or assignee, or his legal representative, and right to sue for the amount of such policy or the moneys secured thereby until a notice in writing of the transfer or assignment and either the said endorsement or instrument itself or a copy thereof certified to be correct by both transferor and transferee or their duly authorised agents have been delivered to the insurer:—

Provided that where the insurer maintains one or more places of business in India, such

notice shall be delivered only at the place in India mentioned in the policy for the purpose or at his principal place of business in India.

(3) The date on which the notice referred to in sub-section *(2)* is delivered to the insurer shall regulate the priority of all claims under a transfer or assignment as between persons interested in the policy; and where there is more than one instrument of transfer or assignment the priority of the claims under such instruments shall be governed by the order in which the notices referred to in sub-section *(2)* are delivered.

(4) Upon the receipt of the notice referred to in sub-section *(2)*, the insurer shall record the fact of such transfer or assignment together with the date thereof and the name of the transferee or the assignee and shall, on the request of the person by whom the notice was given, or of the transferee or assignee, on payment of a fee not exceeding one rupee, grant a written acknowledgement of the receipt of such notice; and any such acknowledgement shall be conclusive evidence against the insurer that he has duly received the notice to which such acknowledgement relates.

(5) Subject to the terms and conditions of the transfer or assignment, the insurer shall, from the date of receipt of the notice referred to in sub-section *(2)* recognise the transferee or assignee named in the notice as the only person entitled to benefit under the policy, and such person shall be subject to all liabilities and equities to which the transferor or assignor was subject at the date of the transfer or assignment and may institute any proceedings in relation to the policy without obtaining the consent of the transferor or assignor or making him a party to such proceedings.

(6) Any rights and remedies of an assignee or transferee of a policy of life insurance under an assignment or transfer effected prior to the

commencement of this Act shall not be affected by the provisions of the section.

(7) Notwithstanding any law or custom having the force of law to the contrary, an assignment in favour of a person made with the condition that it shall be inoperative or that the interest shall pass to some other person on the happening of a specified event during the lifetime of the person whose life is insured, and an assignment in favour of the survivor or survivors of a number of persons, shall be valid.

Nomination by policy-holder.

39. *(1)* The holder of a policy of life insurance on his own life may, when effecting the policy or at any time before the policy matures for payment, nominate the person or persons to whom the money secured by the policy shall be paid in the event of his death:

Provided that, where any nominee is a minor, it shall be lawful for the policy-holder to appoint in the prescribed manner any person to receive the money secured by the policy in the event of his death during the minority of the nominee.

(2) Any such nomination in order to be effectual shall, unless it is incorporated in the text of the policy itself, be made by an endorsement on the policy communicated to the insurer and registered by him in the records relating to the policy and any such nomination may at any time before the policy matures for payment be cancelled or changed by an endorsement or a further endorsement or a will, as the case may be, but unless notice in writing of any such cancellation or change has been delivered to the insurer, the insurer shall not be liable for any payment under the policy made *bona fide* by him to a nominee mentioned in the text of the policy or registered in records of the insurer.

(3) The insurer shall furnish to the policy-holder a written acknowledgement of having

registered a nomination or cancellation or change thereof, and may charge a fee not exceeding one rupee for registering such cancellation or change.

(4) A transfer or assignment of a policy made in accordance with section 38 shall automatically cancel a nomination:

Provided that the assignment, of a policy to the insurer who bears the risk on the policy at the time of the assignment, in consideration of a loan granted by that insurer on the security of the policy within its surrender value, or its reassignment on repayment of the loan shall not cancel a nomination, but shall affect the rights of the nominee only to the extent of the insurer's interest in the policy.

(5) Where the policy matures for payment during the lifetime of the person whose life is insured or where the nominee or, if there are more nominees than one, all the nominees die before the policy matures for payment, the amount secured by the policy shall be payable to the policy-holder or his heirs or legal representatives or the holder of a succession certificate, as the case may be.

(6) Where the nominee or, if there are more nominees than one, a nominee or nominees survive the person whose life is insured, the amount secured by the policy shall be payable to such survivor or survivors.

(7) The provisions of this section shall not apply to any policy of life insurance to which section 6 of the Married Women's Property Act, 1874 applies or has at any time applied:— 3 of 1874.

Provided that where a nomination made whether before or after the commencement of the Insurance (Amendment) Act, 1946, in favour of the wife of the person who has insured his life or of his wife and children or any of them is expressed, whether or not on the face of the

policy, as being made under this section, the said section 6 shall be deemed not to apply or not to have applied to the policy.

Prohibition of payment by way of commission or otherwise for procuring business.

40. *(1)* No person shall, after the expiry of six months from the commencement of this Act, pay or contract to pay any remuneration or reward whether by way of commission or otherwise for soliciting or procuring insurance business in India to any person except an insurance agent or an intermediary or insurance intermediary.

(1A) In this section and sections 40A, 41 and 43, reference to an insurance agent shall be construed as including reference to an individual soliciting or procuring insurance business exclusively in the territories which, immediately before the 1st November, 1956, were comprised in a Part B State notified in this behalf by the Central Government in the Official Gazette and holding a valid licence as insurance agent under the law of that Part B State.

(2) No insurance agent shall be paid or contract to be paid by way of Commission or as remuneration in any form an amount exceeding, in the case of life insurance business, forty per cent of the first year's premium payable on any policy or policies effected through him and five per cent of a renewal premium, payable on such a policy or, in the case of business of any other class, fifteen per cent of the premium:

Provided that insurers, in respect of life insurance business only, may pay, during the first ten years of their business to their insurance agents fifty-five per cent of the first year's premium payable on any policy or policies effected through them and six per cent of the renewal premiums payable on such policies:

Provided further that nothing in this sub-section shall apply in respect of any policy of life insurance issued after the 31st day of December,

1950, or in respect of any policy of general insurance issued after the commencement of the Insurance (Amendment) Act, 1950. 47 of 1950.

(2A) Save as hereinafter provided, no insurance agent or intermediary or insurance intermediary shall be paid or contract to be paid by way of commission or as remuneration in any form any amount in respect of any policy not effected through him:—

Provided that where a policy of life insurance has lapsed, and it cannot under the terms and conditions applicable to it be revived without further medical examination of the person whose life was insured thereby, an insurer, after giving by notice in writing to the insurance agent through whom the policy was effected if such agent continues to be an agent of the insurer an opportunity to effect the revival of the policy within a time specified in the notice, being not less than one month from the date of the receipt by him of the notice, may pay to another insurance agent who effects the revival of the policy an amount calculated at a rate not exceeding half the rate of commission at which the agent through whom the policy was effected would have been paid had the policy not lapsed, on the sum payable on revival of the policy on account of arrear premiums (excluding any interest on such arrear premiums) and also on the subsequent renewal premiums payable on the policy.

(3) Nothing in this section shall prevent the payment under any contract existing prior to the 27th day of January, 1937, of gratitudes or renewal commission to any person, whether an insurance agent within the meaning of this Act or not, or to his representatives after his decease in respect of insurance business effected through him before the said date.

Limitation of expenditure on commission.

40A. *(1)* No person shall pay or contract to pay to an 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:

Provided further that in a case referred to in clause (c), where the rate of commission payable on the first year's premium is equal to or less than twenty-one per cent thereof, and the rate on the fourth and fifth years' premiums does not exceed six per cent thereof, the Life Insurance Corporation of India may pay to an insurance agent, and the insurance agent may receive from it, commission on the sixth and subsequent years' renewal premiums payable on the

policy at a rate not exceeding six per cent of each renewal premium.

(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 fifteen per cent of the premium payable on the policy where the policy relates to fire or marine insurance or miscellaneous insurance. 62 of 1968.

(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—

(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 Authority may, in such circumstances and to such extent and for such period as may be specified, authorise 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-section by an insurer, any insurance agent who contravenes the provisions of sub-section *(1)* or sub-section *(3)* shall be punishable with the fine which may extend to one hundred rupees.

Limitation of expenses of management in life insurance business.

40B. *(1)* Every insurer transacting life insurance business in India shall furnish to the Authority, 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.

(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 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 Authority 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 Authority may require that it shall be submitted to another actuary appointed by the insurer for the purpose and 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 insurer 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 over 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 capitalised;

(iii) in the case of an insurer having his principal place of business outside India, a proper share of head office expenses which all not be less than such percentage as may be prescribed of the total premiums (less re-insurances) received during that 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.

Limitation of expenses of management in general insurance business.

40C. *(1)* After the 31st day of December, 1949, no insurer shall, in respect of any class of general insurance business transacted by him in India, spend in any calendar year as expenses of management including commission of remuneration for procuring business 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:

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 Authority after consultation with Executive Committee of the General Insurance Council constituted under section 64F, by which the actual expenses incurred may exceed the expenses permissible under this sub-section.

(2) Every insurer as aforesaid shall incorporate in the revenue account a certificate signed by the chairman and two directors and by the principal officer of the insurer, and by an auditor certifying that all expenses of management wherever incurred, whether directly or indirectly, in respect of the business referred to in this section have been fully debited in the revenue account as expenses.

Explanation.—In this section,—

(a) "calendar year" shall have the meaning assigned to it in section 40B;

(b) "expenses of management" means all charges, wherever incurred whether directly or indirectly, including commission payments of all kinds and, 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 his gross premium income (that is to say, the premium income without taking into account premiums or reinsurance ceded or accepted) written direct in India during the year, but in computing the expenses of management in India the following, and only the following, expenses may be excluded, namely:—

(i) in the case of an insurer having his principal place of business in India,

a share of head office expenses in respect of general insurance business transacted by him outside India not exceeding such percentage of his gross direct premium written outside India as may be prescribed;

(ii) in the case of an insurer having his principal place of business outside India, a share of the expenses of his office in India in respect of general insurance business transacted by him outside India through his office in India, not exceeding such percentage of his gross direct premium written outside India through his office in India, as may be prescribed;

(iii) any expenses debited to profit and loss account relating exclusively to the management of capital, and dealings with share-holders and a proper share of managerial expenses calculated in such manner as may be prescribed; and

(iv) any expenses debited to claims in the revenue account in Form F of Part II of the Third Schedule;

(c) "insurance business transacted in India" includes insurance business wherever effected relating to any properly situate in India or to any vessel or aircraft registered in India.

Prohibition of rebates.

41. *(1)* * * * *

(2) Any person making default in complying with the provisions of this section shall be punishable with fine which may extend to five hundred rupees.

Licensing of insurance agents.

42. *(1)* The Authority or an officer authorised by it in this behalf shall, in the manner determined by the regulations made by it and on payment of the fee determined by the regulations, which shall not be more than two hundred and

fifty rupees, issue to any person making an application in the manner determined by the regulations, a licence to act as an insurance agent for the purpose of soliciting or procuring insurance business:

Provided that,—

(i) in the case of an individual, he does not suffer from any of the disqualifications mentioned is sub-section *(4)*; and

(ii) in the case of a company or firm, any of its directors or partners does not suffer from any of the said disqualifications:

Provided further that any licence issued immediately before the commencement of the Insurance Regulatory and Development Authority Act, 1999 shall be deemed to have been issued in accordance with the regulations which provide for such licence.

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

(3) A licence issued under this section, after the date of the commencement of the Insurance Regulatory and Development Authority Act, 1999, 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)*, *(d)*, *(e)*, *(f)* and *(g)* of sub-section *(4)* and the application of renewal of licence 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 the regulations made by the Authority which shall not be more than rupees two hundred and fifty, and additional fee of an amount determined by the regulations not

41 of 1999.

exceeding rupees one hundred 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.

(3A) No application for the 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.

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

(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 of 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 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;

(e) that in the case of an individual, 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;

(ea) that in the case of a company or firm making an application under sub-section *(1)* or sub-section *(3)*, a director or a partner or one or more of its officers or other employees so designated by it and in the case of any other person, the chief executive, by whatever name called, or one or more of his employees designated by him, do not possess the requisite qualifications and practical training and have not passed such an examination as required under clauses *(e)* and *(f)*;

(f) that he has not passed such examination as may be specified by the regulations made by the authority in this behalf:

Provided that a person who had been issued a licence under sub-section *(1)* of this section or sub-section *(1)* of section 64UM shall not be required to possess the requisite qualifications, practical training and pass such examination as required by clauses *(e)* and *(f)*;

(g) that he violates the code of conduct as may be specified by the regulations made by the Authority.

(5) If it be found that an insurance agent being an individual is, or being a company or firm contains a director or partner who is suffering from any of the disqualifications mentioned in sub-section *(4)*, then, without prejudice to any

other penalty to which he may be liable, the Authority shall, and if the insurance agent has knowingly contravened any of the provisions of this Act may, cancel the licence issued to the agent under this section.

(6) The Authority may issue a duplicate licence to replace a licence lost, destroyed or mutilated, on payment of such fee not exceeding fifty rupees as may be determined by the regulations.

(7) Any person who acts as an insurance agent without holding a licence issued under this section to act as such shall be punishable with fine which may extend to five hundred rupees, and any insurer or any person acting on behalf of an insurer, who appoints as an insurance agent any person not licensed to act as such or transacts any insurance business in India through any such person shall be punishable with fine which may extend to one thousand rupees.

(8) 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 which may extend to five thousand rupees.

Registration of principal agents, chief agents and special agents.

42A. *(1)* The Authority or an officer authorised by it 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 it in the prescribed manner if—

(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.

(2) A certificate issued under this section shall entitle the holder thereof to Act as a principal agent, chief agent or special agent, as the case may be, for any insurer.

(3) A certificate issued under this section shall remain in force for a period of twelve months only from the date of issue, but shall, on application made in this behalf, be renewed from year to year on production of a certificate from the insurer concerned that the provisions of clauses 2 and 3 of the Part A of the Sixth Schedule in the case of a principal agent, the provisions of clauses 2 and 4 of Part B of the said Schedule in the case of a chief agent, and the provisions of clauses 2 and 3 of the Part C of the said Schedule in the case of a special agent, have been complied with, and on payment of the prescribed fee, which shall not be more than twenty-five rupees, in the case of a principal agent or a chief agent, and ten rupees in the case of a special agent, and an additional fee of the prescribed amount not exceeding five rupees by way of the penalty, in cases where the application for renewal of the certificate does not reach the issuing authority before the date on which the certificate ceases to remain in force:

Provided that, where the applicant is an individual, he does not suffer from any of the disqualifications mentioned in clauses *(b)* to *(d)* of sub-section *(4)* of section 42, and where the applicant is a company or a firm, any of its directors or partners does not suffer from any of the said disqualifications.

(4) Where it is found that the principal agent, chief agent or special agent being an individual is, or being a company or firm contains a director or partner who is suffering from any of the disqualifications mentioned in sub-section *(4)* of section 42, without prejudice to any other penalty to which he may be liable, the Authority shall, and where a principal agent, chief agent or special agent has contravened any of the provisions of this Act may, cancel the certificate issued under this section to such principal agent, chief agent or special agent.

(5) The authority which issued any certificate under this section may issue a duplicate certificate to replace a certificate lost, destroyed or mutilated on payment of the prescribed fee, which shall not be more than two rupees.

(6) Any person who acts as a principal agent, chief agent or special agent, without holding a certificate issued under this section to act as such, shall be punishable with fine which may extend to five hundred rupees, and any insurer or any person acting on behalf of an insurer, who appoints as a principal agent, chief agent or special agent any person not entitled to act as such or transacts any insurance business in India through and such person, shall be punishable with fine which may extend to one thousand rupees.

(7) Where the person contravening sub-section *(6)* 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 any other officer of the company, and every partner of the firm who is knowingly a party to such contravention shall be punishable with fine which may extend to five hundred rupees.

(8) The provisions of sub-sections *(6)* and *(7)* shall not take effect until the expiry of six months from the commencement of the Insurance (Amendment) Act, 1950 .

47 of 1950.

(9) No insurer shall, on or after the commencement of the Insurance (Amendment) Act, 2002, appoint or transact any insurance business in India through any principal agent, chief agent or special agent.

Regulation of employment of principal agents.

42B. *(1)* No insurer shall, after the expiration of seven years from the commencement of the Insurance (Amendment) Act, 1950, appoint, or transact any insurance business in India, through a principal agent. 47 of 1950.

(2) Every contract between an insurer and a principal agent shall be in writing and the terms contained in part A of the Sixth Schedule shall be deemed to be incorporated in, and form part of, every such contract.

(3) No insurer shall, after the commencement of the Insurance (Amendmen) Act, 1950, appoint any person as a principal agent except in a presidency town unless the appointment is by way of renewal of any contract subsisting at such commencement. 47 of 1950.

(4) Within sixty days of the commencement of the Insurance (Amendment) Act, 1950, every principal agent shall file with the insurer concerned a full list of insurance agents employed by him indicating the terms of the contract between the principal agent and each of such insurance agents, and, if any principal agent fails to file such a list within the period specified, any commission payable to such principal agent on premiums received from the date of expiry of the said period of sixty days until the date of the filing of the said list shall, notwithstanding anything in any contract to the contrary, cease to be so payable. 47 of 1950.

(5) A certified copy of every contract as is referred to in sub-section *(2)* shall be furnished by the insurer to the Authority within thirty days of his entering into such contract, and intimation of any change in any such contract shall be

furnished by the insurer with full particulars thereof to the Authority within thirty days of the making of any such change.

(6) If the commission due to any insurance agent in respect of any general insurance business procured by such agent is not paid by the principal agent for any reason, the insurer may pay the insurance agent the commission so due and recover the amount so paid from the principal agent concerned.

(7) Every contract as is referred to in sub-section *(2)*, subsisting at commencement of the Insurance (Amendment) Act, 1950 shall, with respect to terms regarding remuneration, be deemed to have been so altered as to be in accordance with the provisions of sub-section *(4)* of section 40A.

47 of 1950.

(8) If any dispute arises as to whether a person is or was a principal agent, the matter shall be referred to the Authority, whose decision shall be final.

(9) Every insurer shall maintain a register in which the name and address of every principal agent appointed by him, the date of such appointment and the date, if any, on which the appointment ceased shall be entered.

Regulation of employment of chief agents and special agents.

42C. *(1)* Every contract between an insurer carrying on life insurance business and a chief agent shall be in writing, and shall specify the area (not being less in extent than a district or the equivalent thereof) for which the chief agent is appointed, and the terms contained in Part B of the Sixth Schedule shall be deemed to be incorporated in, and form part of every such contract.

(2) No chief agent shall, either directly or through insurance agents or special agents employed by or through him procure life insurance business for the insurer in any area

outside the area for which he has been appointed or in any area for which another chief agent has been appointed or in any area in which the head office or any branch office of the insurer is operating and, neither the head office or any branch office of the insurer shall operate in any area for which a chief agent has been appointed:

Provided that nothing in this sub-section shall be deemed to prohibit the head office of an insurer which had been operating at the commencement of the Insurance (Amendment) Act, 1950 for a period of not less than ten years before such commencement within the municipal limits of any town where the head office is situate, and a chief agent who, in pursuance of an agreement in writing, had been operating for a similar period within such limits, from continuing to operate within the said limits: 47 of 1950.

Provided further that nothing in this sub-section shall be deemed to prohibit an insurance agent from procuring life insurance business in or from any area and submitting the proposals direct to the principal office of the insurer in India.

(3) Within sixty days of the commencement of the Insurance (Amendment) Act, 1950 every chief agent shall file with the insurer concerned a full list of the insurance agents employed by him, indicating the terms of the contract between the chief agent and each of such insurance agents and the business secured by each of such agents, and if any chief agent fails to file such a list with the period specified, any commission payable to such chief agent on premiums received from the date of the expiry of the said period of sixty days until the date of the filing of the said list, shall, notwithstanding anything in any contract to the contrary, cease to be so payable. 47 of 1950.

(4) Every contract between an insurer carrying on life insurance business and special agent, or between a chief agent of such insurer

and a special agent, shall be in writing and the terms contained in Part C of the Sixth Schedule shall be deemed to be incorporated in, and form part of, every such contract:

Provided that the Authority may, in the case of a contract between a co-operative life insurance society as defined in clause *(b)* of sub-section *(1)* of section 95 and a co-operative society registered under the Indian Co-operative Societies Act, 1912, or under any other law for the time being in force and acting as a special agent, alter, to such extent as he thinks fit, all or any of the said terms.

2 of 1912.

(5) A certified copy of every contract as is referred to in sub-section *(1)* or sub-section *(4)* shall be furnished by the insurer or the chief agent to the Authority within thirty days of his entering into such contract, and intimation of any change in any such contract shall be furnished by the insurer or the chief agent with full particulars thereof to the Authority within thirty days of the making of any such change.

(6) No such contract as is referred to in sub-section *(1)* or sub-section *(4)* shall be entered into or renewed for a period exceeding ten years at any one time, and, notwithstanding the terms of any contract to the contrary, no option to renew any such contract given to any of the parties shall be enforceable with the consent of the other.

(7) Every contract between an insurer and person acting on behalf of such insurer who before the commencement of the Insurance (Amendment) Act, 1950, has been employing insurance agents for the purpose of life insurance business, which is subsisting on such commencement, shall terminate after the expiration of ten years from such commencement, if it does not terminate earlier:

47 of 1950.

Provided that every such contract shall be modified by the parties before the 1st day of January, 1951, to bring it into conformity with this Act, and any such modification shall—

(i) as respects remuneration, whether in respect of business already procured or in respect of business to be procured thereafter, be such as may be mutually agreed upon between the parties, subject, in the case of remuneration payable on business procured before such commencement, to a maximum of an over-riding commission of two and a half per cent. plus a further commission not exceeding three-quarters per cent. On premiums in respect of which no commission is payable to any insurance agent;

(ii) be deemed to include all the terms specified in Part B or Part C of the Sixth Schedule, as the case may be:

Provided further that, in the event of any dispute as to the terms of any fresh contract, the matter shall be referred to arbitration.

(8) Any such contract as is referred to in sub-section *(7)* which was subsisting on the 1st day of January, 1949, but has terminated or has been terminated before the commencement of the Insurance (Amendment) Act, 1950, shall be subject to the maximum limits specified in clause *(i)* of the proviso to sub-section *(7)* as respects remuneration, if any, payable on business procured before the termination of the contract. 47 of 1950.

(9) Nothing in this section shall be deemed to prevent any special agent from receiving any renewal commission on policies effected through him as an insurance agent at any time before his appointment as such special agent.

(10) If any dispute arises as to whether a person is or was a chief agent or a special agent for the purposes of this Act, the matter shall be referred to the Authority whose decision shall be final.

(11) Every insurer shall maintain a register in which the name and address of every chief agent appointed by him, the date on which the

appointment was made and the date, if any, on which the appointment ceased shall be entered, and a separate register in which similar particulars relating to every special agent shall be entered, and every chief agent shall maintain a register in which similar particulars relating to every special agent appointed by him shall be entered.

Issue of licence to intermediary or insurance intermediary.

42D. *(1)* The Authority or an officer authorised by it in this behalf shall, in the manner determined by the regulations made by the Authority and on payment of the fees determined by the regulations made by the Authority, issue to any person making an application in the manner determined by the regulations, and not suffering from any of the disqualifications herein mentioned, a licence to act as an intermediary or an insurance intermediary under this Act:

Provided that,—

(a) in the case of an individual, he does 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 of partners does not suffer from any of the said disqualifications.

* * * * *

(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)*, *(d)*, *(e)* and *(f)* of sub-section (4) of section 42 and the application for renewal of licence 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 of 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.

* * * * *

Commission, brokerage or fee payable to intermediary or insurance intermediary.

42E. *(1)* No intermediary or insurance intermediary shall be paid or contract to be paid by way of commission, fee or as remuneration in any form, an amount exceeding thirty per cent. of the premium payable as may be specified by the regulations made by the Authority, in respect of any policy or policies effected through him:

Provided that the Authority may specify different amounts payable by way of commission, fee or as remuneration to an intermediary or insurance intermediary or different classes of business of insurance.

(2) Without prejudice to the provisions contained in this Act, the Authority may, by the regulations made in this behalf, specify the requirements of capital form of business and other conditions to act as an intermediary or insurance intermediary.

* * * * *

Register of insurance agents.

43. Every insurer and every person who acting on behalf of an insurer employs insurance agents shall maintain a register showing the name and address of every insurance agents appointed by him and the date on which his appointment began and the date, if any, on which his appointment ceased.

Prohibition of cessation of payments of commission.

44. *(1)* Notwithstanding anything to the contrary contained in any contract between any person and an insurance agent, providing for the forfeiture or stoppage of payment of renewal

commission to such insurance agent no such person shall, in respect of life insurance business transacted in India, refuse payment to an insurance agent of commission due to him on renewal premium under the agreement by reason only of the termination of his agreement, except for fraud:

Provided that—

(a) such agent ceases to act for the insurer concerned after the Central Government has notified in the Official Gazette that it is satisfied that the circumstances in which the said insurer is placed are such as to justify the agent's ceasing to act for him; or

(b) such agent has served the insurer continually and exclusively in respect of life insurance business for at least five years and policies assuring a total sum of not less than fifty thousand rupees effected through him for the insurer were in force on a date one year before his ceasing to act as such agent for the insurer, and that the commission on renewal premiums due to him does not exceed four per cent. in any case; or

(c) such agent has served the insurer continually and exclusively for at least ten years and after his ceasing to act as such agent he does not directly or indirectly solicit or procure insurance business for any other person.

Explanation.— For the purposes of this sub-section, service of an insurance agent under a chief agent of the insurer, whether before or after the commencement of the Insurance (Amendment) Act, 1950, shall be deemed to be service under the insurer.

47 of 1950.

(2) Any commission payable to an insurance agent, under the provisions of clauses *(b)* and *(c)* of the proviso to sub-section *(1)* shall, notwithstanding the death of the agent, continue to be

payable to his heirs for so long as such commission would have been payable had such insurance agent been alive.

Power to call for information.

44A. For the purposes of ensuring compliance with the provisions of sections 40A, 40B, 40C, 42B and 42C the Authority may by notice—

(a) require from an insurer, principal agent, chief agent or special agent such information, certified if so required by an auditor or actuary, as he may consider necessary;

(b) require an insurer, principal agent, chief agent or special agent to submit for his examination at the principal place of business of the insurer in India any book of account, register or other document, or to supply any statement which may be specified in the notice;

(c) examine any officer of an insurer or a principal agent, chief agent or special agent on oath, in relation to any such information, book, register, document or statement and administer the oath accordingly, and an insurer, principal agent, chief agent or special agent shall comply with any such requirement within such time as may be specified in the notice.

SPECIAL PROVISIONS OF LAW

Policy not to be called in question on ground of misstatement after two years.

45. No policy of life insurance effected before the commencement of this Act shall after the expiry of two years from the date of commencement of this Act and no policy of life insurance effected after the coming into force of this Act shall after the expiry of two years from the date on which it was effected, be called in question by an insurer on the ground that a statement made in the proposal for insurance or in any report of a medical officer, or referee, or friend of the insured, or in any other document leading to the issue of the policy, was inaccurate

or false, unless the insurer, shows that such statement was on a material matter or suppressed facts which it was material to disclose and that it was fraudulently made by the policy-holder and that the policy-holder knew at the time of making if that the statement was false or that it suppressed facts which it was material to disclose:

Provided that nothing in this section shall prevent the insurer from calling for proof of age at any time if he is entitled to do so, and no policy shall be deemed to be called in question merely because the terms of the policy are adjusted on subsequent proof that the age of the life insured was incorrectly stated in the proposal.

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Claims on small life insurance policies.

47A. *(1)* In the event of any dispute relating to the settlement of a claim on a policy of life insurance assuring a sum not exceeding two thousand rupees (exclusive of any profit or bonus not being a guaranteed profit or bonus) issued by an insurer in respect of insurance business transacted in India, arising between a claimant under the policy and the insurer who issued the policy or has otherwise assumed liability in respect thereof, the dispute may at the option of the claimant be referred to the Authority for decision, and the Authority may after giving an opportunity to the parties to be heard and after making such further inquiries as it may think fit, decide the matter.

(2) The decision of the Authority under this sub-section shall be final and shall not be called in question in any court, and may be executed by the court which would have been competent to decide the dispute if it had not been referred to the Authority as if it were a decree passed by that court.

(3) There shall be charged and collected in respect of the duties of the Authority under this

section such fees whether by way of percentage or otherwise as may be prescribed.

Directors of insurers being companies.

48. *(1)* Where the insurer is 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 and carries on the business of life insurance, not less than one-fourth of the whole number of the directors of the company the number to be elected not being less than two in any case shall, notwithstanding anything to the contrary in the Articles of Association of the company, be elected in the prescribed manner by the holders of policies of life insurance issued by the company.

7 of 1913.
6 of 1882.
10 of 1866.

(2) Only and all persons holding otherwise than as assignees policies of life insurance issued by the company of such minimum amount and having been in force for such minimum period as may be prescribed shall unless disqualified under sub-section *(2A)* be eligible for election as directors under sub-section *(1)*, and only and all persons holding policies of life insurance issued by the company and having been in force at the time of the election for not less than six months shall be eligible to vote at such elections:

Provided that the assignment of a policy to the person who took out the policy shall not disqualify that person for being eligible for election as a director under sub-section *(1)*.

(2A) A person shall be ineligible for election as a director under sub-section *(1)* of any company if he is a director, officer, employee, or legal or technical adviser of that company or of any other insurer, and shall cease to be a director under sub-section *(1)* if after election he acquires any disqualification specified in this sub-section or no longer holds the qualifications required by sub-section *(2)*:

Provided that nothing in this sub-section shall disqualify a person who is an elected director

under sub-section *(1)* and is not otherwise disqualified under this sub-section, from being re-elected:

Provided further that the Authority may exempt any director of a subsidiary company of the insurer from any disqualification imposed by this sub-section.

(3) The Central Government may, for such period, or to such extent and subject to such conditions as may be specified by it in this behalf, exempt from the operation of this section—

(a) any Mutual Insurance Company as defined in clause *(a)* of sub-section *(1)* of section 95, in respect of which the Authority certifies that in its opinion owing to the conditions governing membership of the company or to the nature of the insurance contracts undertaken by it the application of the provisions of this section to the company is impracticable, or

(b) any company in respect of which the Authority certifies that in its opinion the company, having taken all reasonable steps to achieve compliance with the provisions of this section, has been unable to obtain the required number of directors with the required qualifications.

(4) This section shall not take effect, in respect of any company in existence at the commencement of this Act, until the expiry of one year therefrom, and in respect of any company incorporated after the commencement of this Act, until the expiry of two years from the date of registration to carry on life insurance business.

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 on 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.

* * * * *

Restriction on dividends and bonuses.

49. *(1)* No insurer, being an insurer specified in sub-clause (a) (ii) or sub-clause (b) of clause (9) of section 2, who carries on the business of life insurance or any other class or sub-class of insurance business to which section 13 applies shall, for the purpose of declaring or paying any dividend to shareholders or any bonus to policy-holders or of making any payment in service of any debentures, utilize directly or indirectly any portion of the life insurance found or of the fund of such other class or sub-class of insurance business, as the case may be, except a surplus shown in the valuation balance-sheet in such form as may be specified by the regulations made by the Authority submitted to the Authority as part of the abstract referred to in section 15 as a result of an actuarial valuation of the assets and liabilities of the insurer; nor shall he increase such surplus by contributions out of any reserve fund or otherwise unless such contributions have been brought in as revenue through the revenue account applicable to that class or sub-class of insurance business on or before the date of the valuation aforesaid, except when the reserve fund is made up solely of transfers from similar surpluses disclosed by valuations in respect of which returns have been submitted to the Authority under section 15 of this Act or to the Central Government under section 11 of the Indian Life Assurance Companies Act, 1912: 6 of 1912.

Provided that payments made out of any such surplus in service of any debentures shall not exceed fifty per cent of such surplus including any payment by way of interest on the debentures, and interest paid on the debentures

shall not exceed ten per cent of any such surplus except when the interest paid on the debentures is offset against the interest credited to the fund or funds concerned in deciding the interest basis adopted in the valuation disclosing the aforesaid surplus:

Provided further that the share of any such surplus allocated to or reserved for the shareholders (including any amount for the payment of dividends guaranteed to them, whether by way of first charge or otherwise) shall not exceed such sums as may be specified by the Authority and such share shall in no case exceed ten per cent of such surplus in case of participating policies and in other cases the whole thereof.

* * * * *

Prohibition of business on dividing principle.

52. *(1)* No insurer shall after the commencement of this Act begin, or after three years from that date continue to carry on, any business upon the dividing principle, that is to say, on the principle that the benefit secured by a policy is not fixed but depends either wholly or partly on the results of a distribution of certain sums amongst policies becoming claims within certain time-limits, or on the principle that the premiums payable by a policy-holder depend wholly or partly on the number of policies becoming claims within certain time-limits:

Provided that nothing in this section shall be deemed to prevent an insurer from allocating bonuses to holders of policies of life insurance as a result of a periodical actuarial valuation either as reversionary additions to the sums insured or as immediate cash bonuses or otherwise:

Provided further that an insurer who continues to carry on insurance business on the dividing principle after the commencement of this Act shall withhold from distribution a sum of

not less than forty per cent of the premiums received during each year after the commencement of this Act in which such business is continued so as to make up the amount required for investment under section 27.

(2) On the expiry of the period of three years referred to in sub-section *(1)*, or on the insurer's ceasing before such expiry but at any time after the commencement of the Insurance (Amendment) Act, 1941 to carry on business on the dividing principle, the insurer shall forthwith cause an investigation to be made by an actuary, who shall determine the amount accumulated out of the contributions received from the holders of all policies to which the dividing principle applies and the extent of the claims of those policy-holders against the realisable assets of the insurer, and shall, before the expiration of six months from the date on which he is entrusted with the investigation, make recommendations regarding the distribution, whether by cash payments or by the allocation of paid-up policies or by a combination of both methods, of such assets as he finds to appertain to such policy-holders; and the insurer shall, before the expiry of six months from the date on which the actuary makes his recommendations, distribute such assets in accordance with those recommendations. 13 of 1941.

(3) Where at any time prior to the commencement of the Insurance (Amendment) Act, 1941, an insurer has ceased to carry on business on the dividing principle, the insurer shall, before the expiration of two months from the commencement of that Act, report to the Authority the measures taken or proposed by him for the distribution among holders of policies to which the dividing principle applies of the assets due to them; and the Authority may either sanction such measures or refuse its sanction, and, if it refuses its sanction or if the insurer does not report to him as required by this sub-section the provisions of sub-section *(2)* shall apply to the insurer forthwith. 13 of 1941.

When Administrator for management of insurance business may be appointed.

52A. *(1)* If at any time the Authority has reason to believe that an insurer carrying on life insurance business is acting in a manner likely to be prejudicial to the interests of holders of life insurance policies, he may, after giving such opportunity to the insurer to be heard as he thinks fit, make a report thereon to the Central Government.

(2) The Central Government, if it is of opinion after considering the report that it is necessary or proper to do so, may appoint an Administrator to manage the affairs of the insurer under the direction and control of the Authority.

(3) The Administrator shall receive such remuneration as the Central Government may direct and the Central Government may at any time cancel the appointment and appoint some other person as Administrator.

* * * * *

Powers of Administrator respecting property liable to attachment under section 106.

52BB. *(1)* * * *

(2) Any person aggrieved by an order made by the Administrator under sub-section *(1)* may, within fourteen days from the date on which the order is served on him, appeal against such order to the Central Government and the Central Government may pass such order thereon as it thinks fit.

(3) An order made by the Administrator under sub-section *(1)* shall, subject to any other order made by the Central Government on appeal, be in force for a period of three months from the date of the order unless, before the expiry of the said period, an application is made under sub-section *(1)* of section 106 to the court competent to exercise jurisdiction under that sub-section and when such an application is made, the order shall, subject to any order made by

that court, continue in force as if it were an order of attachment made by that court in proceeding under that section.

* * * * *

(10) Save as provided in this section or in section 106, and notwithstanding anything contained in any other law for the time being in force,—

(a) no suit or other legal proceeding shall lie in any court to set aside or modify any order of the Administrator or the Central Government made under this section, and

* * * * *

Termination of appointment of Administrator.

52D. If at any time, on a report made by the authority in this behalf, it appears to the Central Government that the purpose of the order appointing the Administrator has been fulfilled or that for any reason it is undesirable that the order of appointment should remain in force, the Central Government may cancel the order and thereupon the Administrator shall be divested of the management of insurance business which shall, unless otherwise directed by the Central Government, again vest in the person in whom it was vested immediately prior to the date of appointment of the Administrator.

Finality of decision appointing Administrator.

52E. Any order or decision of the Central Government made in pursuance of section 52A or section 52D shall be final and shall not be called in question in any Court.

Penalty for withholding documents of property from Administrator.

52F. If any director or officer of the insurer of any other person fails to deliver to the Administrator any books of account, registers or any other documents, in his custody relating to the business of the insurer, the management of which has vested in the Administrator, or retains any property of such insurer, he shall be punishable with imprisonment which may extend

to six months, or with fine which may extend to one thousand rupees, or with both.

52G. *(1)* * * * Protection of action taken under sections 52A to 52D.

(2) No suit or other legal proceeding shall lie against the Central Government or the Authority for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under section 52A, section 52B, or section 52D.

Acquisition of the Undertakings of Insurers in certain Cases

52H. *(1)* If, upon receipt of a report from the Authority, the Central Government is satisfied that an insurer,— Power of Central Government to acquire undertakings of insurers in certain cases.

(a) has persistently failed to comply with—

(i) any direction given to him under section 34, section 34F or section 34G, or

(ii) any order made under section 34E; or

(b) is being managed in a manner detrimental to the public interest or to the interests of his policyholders, or shareholders, and that—

(i) in the public interest, or

(ii) in the interests of the policyholders or shareholders of such insurer, it is necessary to acquire the undertaking of such insurer, the Central Government may, by notified order, acquire the undertaking of such insurer (hereafter in this section and in sections 52-I, 52J and 52N and in the Eighth Schedule referred to as the acquired insurer, with effect from such date as may be specified in the order (hereinafter in this section and in sections 52-I and 52J and in the

Eighth Schedule referred to as the appointed day):

Provided that no undertaking of an insurer shall be so acquired unless such insurer has been given a reasonable opportunity of showing cause against the proposed action.

Explanation.—For the purposes of this section and of sections 52-I to 52N—

(a) "notified order" means an order published in the Official Gazette,

(b) "undertaking", in relation to an insurer incorporated outside India, means the undertaking of the insurer in India.

(2) Subject to the other provisions contained in this section and in sections 52-I to 52M, on the appointed day all the assets and liabilities of the undertaking of the acquired insurer shall stand transferred to, and vest in, the Central Government.

(3) The assets and liabilities of the undertaking of the acquired insurer shall be deemed to include all rights, powers, authorities and privileges and all property, whether movable or immovable, including, in particular cash balances, reserve funds, investments, deposits and all other interests and rights in, or arising out of, such property, as may be in the possession of, or held by, the acquired insurer immediately before the appointed day and all books, accounts and documents relating thereto, and shall also be deemed to include all debts, liabilities and obligations, of whatever kind, then existing of the acquired insurer.

(4) Notwithstanding anything contained in sub-section *(2)*, the Central Government may, if it is satisfied that all the assets and liabilities of the undertaking of the acquired insurer should, instead of vesting in the Central Government, or

continuing to so vest, vest in a corporation or company, whether established under the scheme made under section 52-I or not (hereafter in this section and in sections 52-I to 52N and in the Eighth Schedule referred to as the acquiring insurer), by order, direct that the assets and liabilities of the said undertaking, shall vest in the acquiring insurer, either on the publication of the notified order or on such other date as may be specified in this behalf in the direction.

(5) Where the undertaking of the acquired insurer vests in an acquiring insurer under sub-section *(4)*, the acquiring insurer shall, on and from the date of such vesting, be deemed to have become the transferee of the acquired insurer and all the rights and liabilities in election to the acquired insurer shall, on and from the date of such vesting be deemed to have been the rights and liabilities of such acquiring insurer.

(6) Unless otherwise expressly provided by or under this section or sections 52-I to 52M, all contracts, deeds, bonds, agreements, power-of-attorney, grants of legal representation and other instruments of whatever nature subsisting or having effect immediately before the appointed day and to which the acquired insurer is a party or which are in favour of the acquired insurer shall be of as full force and effect against or in favour, of the Central Government or, as the case may be, the acquiring insurer, and may be enforced or acted upon as fully and effectually as if in the place of the acquired insurer the Central Government or the acquiring insurer had been a party thereto or as if they had been issued in favour of the Central Government or the acquiring insurer, as the case may be.

(7) If, on the appointed day, any suit, appeal or other proceeding of whatever nature, is pending by or against the acquired insurer, the same shall not abate, be discontinued or be, in any way prejudicially affected by reason of the transfer of the undertaking of the acquired insurer

or of anything contained in this section or in sections 52-I to 52M, but the suit, appeal or other proceeding may be continued, prosecuted and enforced by or against the Central Government or the acquiring insurer, as the case may be.

Power of Central Government to make Scheme.

52-I. *(1)* The Central Government may make a scheme for carrying out the purposes of sections 52H and 52J to 52M (both inclusive) in relation to the acquired insurer.

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

(a) transfer of the undertaking, including the property, assets and liabilities of the acquired insurer to an acquiring insurer, and the capital, constitution, name and office of the acquiring insurer;

(b) the constitution of the first board of management (by whatever name called) of the acquiring insurer and all such matters in connection therewith or incidental thereto as the Central Government may consider to be necessary or expedient;

(c) the continuance of the services of all the employees of the acquired insurer (excepting such of them as, not being workmen within the meaning of the Industrial Disputes Act, 1947, are specifically mentioned in the scheme) in the Central Government or in the acquiring insurer, as the case may be, on the same terms and conditions, so far as may be, as are specified in clauses (i) and (j) of sub-section *(2)* of section 37A so far as they may apply; 14 of 1947.

(d) the continuance of the rights of any person who, on the appointed day, is entitled to, or is in receipt of, a pension or other superannuation or compassionate allowance or benefit from the acquired insurer or any

provident, pension or other fund or any authority administering such fund to be paid by, and to receive from the Central Government or the acquiring insurer, as the case may be, or any provident, pension or other fund or any authority administering such fund, the same pension, allowance or benefit so long as he observes the conditions on which the pension, allowance or benefit was granted, and if any question arises whether he had so observed such condition, the question shall be determined by the Central Government and the decision of the Central Government thereon shall be final;

(e) the manner of payment to the acquired insurer in full satisfaction of his claim in relation to the compensation payable in accordance with the provisions of section 52J;

(f) the provision, if any, for completing the effectual transfer to the Central Government or the acquiring insurer of any asset or liability which forms part of the undertaking of the acquired insurer in any country outside India;

(g) such incidental, consequential and supplemental matters as may be necessary to secure that the transfer of the undertaking, property, assets and liabilities of the acquired insurer to the Central Government or the acquiring insurer, as the case may be, is effectual and complete.

(3) The Central Government may, by notification in the Official Gazette, and to, amend or vary any scheme made under this section.

(4) Every scheme made under this section shall be published in the Official Gazette.

(5) Copies of every scheme made under this section shall be laid before each House of Parliament as soon as may be after it is made.

(6) The provisions of sections 52H and 52J to 52M and of any scheme made under this section shall have effect notwithstanding anything to the contrary contained in any other provision of this Act or in any other law or any agreement, award or other instrument for the time being in force.

Compensation to be given to the acquired insurer.

52 J. *(1)* The acquired insurer shall be given by the Central Government or the acquiring insurer, as the case may be, such compensation in respect of the transfer of the undertaking of the acquired insurer as is determined in accordance with the principles contained in the Eighth Schedule.

(2) The amount of compensation to be given in accordance with the principles contained in the Eighth Scheduled shall be determined, in the first instance, by the Central Government or the acquiring insurer, as the case may be, in consultation with the Authority, and shall be offered by it to the acquired insurer, in full satisfaction thereof.

(3) If the amount of compensation offered in terms of sub-section *(2)* is not acceptable to the acquired insurer, he may, before such date as may be notified by the Central Government in the Official Gazette, request the Central Government in writing to have the matter referred to the Tribunal constituted under section 52K.

(4) If before the date notified under sub-section *(3)* the Central Government does not receive request as provided in that sub-section, the amount of compensation offered under sub-section *(2)*, or where a reference has been made to the Tribunal, the amount determined by it, shall be compensation payable under sub-section *(1)* and shall be final and binding on all the parties concerned.

(5) Where the Central Government does not receive request as provided in sub-section *(3)*,

the compensation payable in pursuance of the provisions of this section shall become due for payment on the expiry of one year from the appointed day, and where a reference has been made to the Tribunal under sub-section *(3)*, the amount determined by the Tribunal as compensation shall become due for payment on the expiry of one year from the appointed day or on the date of decision of the Tribunal, whichever is earlier.

(6) If between the appointed day and the date on which the compensation becomes due in pursuance of sub-section (5), any facts come to light which call for revision of the amount of the compensation, the necessary modification of the amount of the compensation shall be made and the amount of the compensation so determined shall be compensation payable in pursuance of sub-section *(1).*

(7) There shall also be paid simple interest at the rate of three per cent. per annum on the amount of the compensation for the period from the appointed day to the date on which payment of the compensation becomes due.

Constitution of the Tribunal.

52K. *(1)* The Central Government may, for the purposes of sections 52H to 52J, constitute a Tribunal which shall consist of a chairman and two other members.

(2) The chairman shall be a person who is, or has been, a Judge of a High Court or of the Supreme Court and of the two other members, one shall be a person who, in the opinion of the Central Government has had experience of matters connected with general insurance and the other shall be a person who is chartered accountant within the meaning of the Chartered Accountants Act, 1949.

38 of 1949.

(3) If, for any reason, a vacancy occurs in the office of the chairman or any other member of the Tribunal, the Central Government may fill

the vacancy by appointing another person thereto in accordance with the provisions of sub-section *(2)*, and any proceeding may be continued before the Tribunal so constituted from the stage at which the vacancy occurred.

(4) The Tribunal may, for the purpose of determining any compensation payable under section 52J, choose one or more persons having special knowledge or experience of any relevant matter to assist it in the determination of such compensation.

Tribunal to have powers of Civil Court.

52 L. *(1)* The Tribunal shall have the powers of a Civil Court, while trying a suit, under the Code of Civil Procedure, 1908, in respect of the following matters, namely:— 5 of 1908.

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) issuing commissions for the examination of witnesses or documents.

(2) Notwithstanding anything contained in sub-section *(1)* or in any other law for the time being in force, the Tribunal shall not compel the Central Government or the Authority:—

(a) to produce any books of account, or other documents which the Central Government or the Authority claims to be a confidential nature;

(b) to make any such books or documents a part of the record of the proceedings before the Tribunal;

(c) to give inspection of any such books or documents to any party before it and to any other person.

(3) Any proceeding before the Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code and the Tribunal shall be deemed to be a Civil Court for the purposes of section 195 and Chapter XXXV of the Code of Criminal Procedure, 1898.

45 of 1860.

5 of 1898.

Procedure of the Tribunal.

52M. *(1)* The Tribunal shall have power to regulate its own procedure.

(2) The Tribunal may hold the whole or any part of its inquiry *in camera.*

(3) Any clerical or arithmetical error in any order of the Tribunal or any error arising therein from any accidental slip or omission may, at any time, be corrected by the Tribunal either of its own motion or on the application of any of the parties.

Special provisions for the dissolution of acquired insurers.

52N. Where any acquired insurer, being a company, has in accordance with the provisions of this Act, collected and distributed any monies paid to him by the Central Government or the acquiring insurer, as the case may be, by way of compensation or otherwise, and has also complied with any directions given to him by the Central Government or the acquiring insurer, as the case may be, for the purpose of securing that the ownership of any property or any right is effectively transferred to the Central Government or the acquiring insurer, as the case may be, the Central Government may, on application being made to it in this behalf by such insurer, grant a certificate to the insurer that there is no reason for the continued existence of the insurer and upon the publication of such certificate, the insurer shall be dissolved.

WINDING UP

Winding up by the Court.

53. *(1)* The Tribunal may order the winding up in accordance with the Companies Act, 1956 of any insurance company and the provisions of

1 of 1956.

the Act shall subject to the provisions of this Act, apply accordingly.

(2) In addition to the grounds on which such an order may be based, the Tribunal may order the winding up of an insurance company—

(a) * * * *

(b) if the Authority who is hereby authorized to do so, applies in this behalf to the Tribunal on any of the following grounds, namely:—

(i) that the company has failed to deposit or to keep deposited with the Reserve Bank of India the amounts required by section 7 or section 98;

* * * * *

Scheme for partial winding up of insurance companies.

58. *(1)* * * * *

(4) An order of the Tribunal confirming a scheme under this section whereby the memorandum of a company is altered with respect to its object shall as respects the alteration have effect as if it were on order confirmed under section 12 of the Indian Companies Act, 1913, and the provisions of sections 15 and 16 of that Act shall apply accordingly. 7 of 1913.

Return of deposits.

59. In the winding up of an insurance company otherwise than in a case of which section 58 applies and in the insolvency of any other insurer the liquidator or assignee as the case may be shall apply to the Tribunal for an order for the return of the deposit made by the company or the insurer as the case may be under section 7 or section 98 and the Tribunal shall on such application order a return of the deposit subject to such terms and conditions as it shall direct.

* * * * *

Power of Central Government to impose reciprocal disabilities on non-Indian Companies.

62. Where by the law or practice of any country outside India in which an insurer carrying on insurance business in India is constituted, incorporated or domiciled, insurance companies incorporated in India are required as a condition of carrying on insurance business in that country to comply with any special requirement whether as to the keeping of deposits or assets in that country or otherwise which is not imposed upon insurers of that country under this Act, the Central Government shall, if satisfied of the existence of such special requirement, by notification in the Official Gazette, direct that the same requirement, or requirements as similar thereto as may, be, shall be imposed upon insurers of that country as a condition of carrying on the business of insurance in India.

Particulars to be filed by insurers established outside India.

63. Every insurer, having his principal place of business or domicile outside India, who establishes a place of business within India, or appoints a representative in India with the object of obtaining insurance business, shall, within three months from the establishment of such place of business or the appointment of such representative, file with the Authority—

(a) a certified copy of the charter, statutes, deed of settlement or memorandum and articles or other instrument constituting or defining the constitution of the insurer and, if the instrument is not written in the English language, a certified translation thereof,

(b) a list of the directors, if the insurer is a company,

(c) the name and address of some one or more persons resident in India authorised to accept on behalf of the insurer service of process and any notice required to be served on the insurer, together with a copy of the power-of-attorney granted to him,

(d) the full address of the principal office of the insurer in India,

(e) a statement of the classes of insurance business to be carried on by the insurer, and

(f) a statement verified by an affidavit setting forth the special requirements, if any, of the nature specified in section 62 imposed in the country of origin of the insurer on Indian nationals, and, in the event of any alteration being made in the address of the principal office or in the classes of business to be carried on, or in any instrument here referred to, or in the name of any of the persons here referred to, or in the matters specified in clause (f) above, the company shall forthwith furnish to the Authority particulars of such alteration.

Books to be kept by insurers established outside India.

64. Every insurer having his principal place of business or domicile outside India shall keep at his principal office in India such books of account, registers and documents as will enable the accounts, statements and abstracts which he is required under this Act to furnish to the Authority in respect of the insurance business transacted by him, in India to be compiled and, if necessary, checked by the Authority and shall furnish to the Authority on or before the last day of January in every calendar year a certificate from an auditor to the effect that the said books of account, register and documents are being kept as required at the principal office of the insurer in India.

PART-II A

Insurance Association of India, Councils of the Association and Committees thereof

Incorporation of the Insurance Association of India.

64A. *(1)* All insurers carrying on insurance business in India at the commencement of the Insurance (Amendment) Act, 1950, all insurers who may after such commencement begin to 47 of 1950.

carry on insurance business in India, and, if the Central Government, by notification in the Official Gazette, so declares all provident societies carrying on insurance business in India on the date of such notification and all provident societies which may begin to carry on insurance business in India after such date are hereby consituted body corporate by the name of the Insurance Association of India.

(2) All insurers and provident societies incorporated or domiciled in India shall be known as members of the Insurance Association of India, and all insurers and provident societies incorporated or domiciled elsewhere than in India shall be known as associate members of that Association.

(3) The Insurance Association of India shall have perpetual succession and a common seal and shall have power to acquire, hold and dispose of all property, both movable and immovable, and shall by the said name sue and be sued.

Entry of names of members in the register.

64B. *(1)* The Authority shall take or cause to be taken through such agency as he thinks fit such steps as may be necessary to have the names of all insurers and provident societies, who or which are entitled to have their names entered in the register of members and associate members of the Insurance Association of India maintained for this purpose entered therein.

(2) Where any insurer or provident society has ceased to carry on business as such, the Authority shall cause such steps to be taken as may be necessary to have the name of such insurer or provident society, as the case may be, removed from the register.

Councils of the Insurance Association of India.

64C. There shall be two Councils of the Insurance Association of India, namely:—

(a) the Life Insurance Council consisting of all the members and associate members of

the Association who carry on life insurance business in India, and

(b) the General Insurance Council consisting of all the members and associate members of the Association who carry on general insurance business in India.

Authority of members of Association to act through agents.

64D. It shall be lawful for any member of the Life Insurance Council or the General Insurance Council to authorise any individual, whether an officer of the insurer or not, to act as the representative of such member at any meeting of the Council concerned or to stand as a candidate for any election held by that Council.

* * * * *

Executive Committees of the Life Insurance Council and the General Insurance Council.

64 F. *(1)* The Executive Committee of the Life Insurance Council shall consist of the following persons, namely:—

(a) two official nominated by the Authority 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 Authority.

(c) one non-official not connected with any insurance business, nominated by the Authority; and

(d) five persons connected with life insurance business, nominated by the Authority 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 Authority 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 of members and from such areas as may be specified by the Authority;

(c) one non-official not connected with any insurance business, nominated by the Authority; and

(d) five persons connected with life insurance business, nominated by the Authority 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 anybody of persons specified in sub-sections *(1)* and *(2)* fails to elect any of the members of the Executive Committees of the Life Insurance Council or the General Insurance Council, the Authority may nominate any person to fill the vacancy, and any person so nominated shall be deemed to be 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 Authority 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 Authority, make bye-law as 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 from 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 Councils under this sub-section shall be with the previous consent of the Authority 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 Authority.

Resignation and filling up of casual vacancies.

64G.*(1)** * * *

(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 Authority and any person nominated to fill the vacancy shall hold office until the dissolution of the Committee to which he has been nominated.

* * * * *

Power of Executive Committee of Life Insurance

64-I. The Life Insurance Council may, with the approval of the Authority, authorise 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 Authority, 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:

Council to hold examinations for insurance agents.

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.

64J. *(1)** * * *

Functions of Executive Committee of Life Insurance Council.

(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 associated members of the Insurance Association of India who carry on life insurance business.

* * * * *

64L. *(1)** * * *

Functions of the Executive Committee of General Insurance Council.

(2) For the purpose of enabling it effectively to discharge its functions, the Executive Committee of 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 Authority, the Executive Committee of the General Insurance Council shall not collect any fees in relation to that year.

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Powers of the Executive Committees to act together in certain cases.

64N. The Central Government may prescribe the circumstances in which, the manner in which, and the conditions subject to which, the Executive Committee of the Life Insurance Council and the Executive Committee of the General Insurance Council may hold joint meetings for the purpose of dealing with any matter of common interest to both Committees, and it shall be lawful for the two Committees at any such joint meeting to delegate any matter under consideration for the determination of a sub-committee appointed for this purpose from amongst the members of the two Committees.

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—

* * * * *

(c) keep and maintain up to date a copy of the list of all insurers who are members or associate members of the Insurance Association of India;

(d) with the pervious approval of the Authority, 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 Authority;

(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.

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Power of Central Government to remove difficulties.

64S. The Central Government may exercise such powers as may be necessary for bringing the Life Insurance Council, the General Insurance Council or the Executive Committee of any of the said Councils, as the case may be, into effective existence for the purposes of this Part, and any such powers shall include—

(a) the power to hold, in such manner as may be directed by the Central Government, the first elections to the Executive Committees of the Life Insurance Council and the Central Insurance Council;

(b) where a notification under sub-section *(1)* of section 64A has been issued declaring provident societies to be members of the Insurance Association of India, the powers to associate provident societies effectively in the exercise of all powers and the discharge of all functions of the Life Insurance Council and the Executive Committee thereof;

(c) the power to make the provisions of section 40B applicable to the provident societies specified in clause (b) in the same manner as they apply to insurers.

Power to exempt.

64T. The Central Government may, subject to such conditions and restrictions as it may think fit to impose, exempt any insurers specified in sub-clause (c) of clause (9) of section 2 from the operation of all or any of the provisions of this Part.

PART-II B

TARIFF ADVISORY COMMITTEE AND CONTROL OF TARIFF RATES

Establishment of Tariff Advisory Committee.

64U. *(1)* With effect from the commencement of the Insurance (Amendment) Act, 1968, there shall be established a Committee, to be called the Tariff Advisory Committee (hereafter in this Part referred to as the Advisory Committee) to control and regulate the rates, advantages, terms and conditions that may be offered by insurers in respect of general insurance business. 62 of 1968.

(2) The Advisory Committee shall be a body corporate 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 may, by the said name, sue and be sued.

Composition of the Advisory Committee.

64UA. *(1)* The Advisory Committee shall consist of the following members, namely:—

(a) the Chairperson of the Authority *ex officio*, who shall be the Chairman;

(b) a senior officer of the office of the authority nominated by the Authority who shall be the Vice-Chairman;

(c) not more than ten representatives of Indian insurers, elected (in their individual capacities) by such insurers in such manner, from such areas and from among such insurers or groups of insurers as may be prescribed;

(d) not more than four representatives of insurers incorporated or domiciled elsewhere than in India but registered in India, elected (in their individual capacities) by such insurers in such manner, and from among such insurers or groups of insurers as may be prescribed.

(2) The Secretary to the Advisory Committee shall be an officer of the office of the Authority nominated by the Authority.

Power to make rules in respect of matters in this Part.

64UB. *(1)* The Authority may, by notification in the Official Gazette, make regulations to carryout the purposes of this Part.

(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 functions to be discharged by the Advisory Committee;

(b) the term of office of the members of the Advisory Committee, the procedure for their election and the manner of filling casual vacancies in the Advisory Committee;

(c) the travelling and other allowances payable to the members of the Advisory Committee;

(d) the procedure for holding the meetings of the Advisory Committee and for transaction of business thereat.

(3) The Advisory committee may, by notification in the Official Gazette, with the previous approval of the Authority make regulations for all or any of the following matters, namely:—

(a) the constitution, powers and duties of Regional Committees and of sub-committees constituted by the Advisory Committee or any Regional Committee;

(b) the method of election of candidates for Regional Committees and sub-committees, their eligibility, term of office and method of filling casual vacancies;

(c) the procedure for convening meetings and transaction of business by Regional Committees and sub-committees;

(d) the appointment of officers and other employees of the Advisory Committee and of Regional Committees or sub-committees constituted by or under the Advisory Committee or any Regional Committee and the terms and conditions of their service including travelling and other allowances;

(e) such other matters pertaining to procedure as are not inconsistent with the provisions of this Act or rules made thereunder, and may, from time to time, with the previous approval of the Authority add to amend or vary any such regulations.

(4) The regulations made by the Tariff Committee of the General Insurance Council under section 64-O as they were in force immediately before the commencement of the Insurance (Amendment) Act, 1968, shall, after such commencement, continue to be in force until rules are made by the Authority under sub-section *(1)* and immediately after such rules have come into effect, the regulations aforesaid shall cease to be valid. 62 of 1968.

(5) The Chairperson of the Authority 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.

Power of the Advisory Committee to regulate rates, advantages, etc.

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 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 Authority may, 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 and conditions different from those fixed by the Advisory Committee in respect of any particular category of risks, if it 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 Authority, and every such decision shall take effect from the date on which it is so ratified by the Authority or, if the Authority 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 Authority

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.

Transitional provisions.

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 each 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 Authority of Insurance shall become the Chairman of that Committee with effect from the commencement of the Insurance (Amendment) Act, 1968, and function as such, and any Chairman of the Tariff Committee holding office immediately before such 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: 62 of 1968.

Provided that the Chairperson of the Authority shall become the Chairman of the Advisory Committee with effect from the commencement of the Insurance Regulatory and Development Authority Act, 1999 and function as such, and any Chairman of the Tariff Committee holding office immediately before such commencement shall cease to be the Chairman. 41 of 1999.

(2) Notwithstanding anything contained in this Part, the constitutions of the Regional

Councils established under section 64P, as in force immediately before the commencement of the
62 of 1968. Insurance (Amendment) Act, 1968 (hereafter referred to as the Regional Councils), and of the Sectional Committees formed thereunder, existing immediately, before such commencement, shall continue to be in full force and be of full effect, until the regulations made by the Advisory Committee for the first time under section 64UB come into effect and as soon as such regulations have come into effect such constitutions shall cease to have effect.

(3) Notwithstanding anything contained in this Part, until the Secretary to the Advisory Committee is nominated under sub-section *(2)* of section 64UA, the Secretary to the Tariff Committee holding office immediately before the commencement of the Insurance (Amendment)
62 of 1968. Act, 1968, shall function as the Secretary and shall be deemed to have been duly nominated under this Part.

(4) All rates, advantages, terms and conditions fixed by the Tariff Committee or the Regional Councils prior to the commencement of the
62 of 1968. Insurance (Amendment) Act, 1968, and in force immediately before such commencement shall continue, except to such extent as they may be altered, replaced or abolished by the Advisory Committee, to be valid and fully in force as if they were rates, advantages, terms and conditions fixed by the Advisory Committee.

Power of the Advisory Committee to require information, etc.

64UE. *(1)* The Advisory Committee require, by notice in writing, any insurer to supply to it such information or statements, periodical or *ad hoc*, as it may consider necessary, to enable it to discharge its functions under this Part and every insurer shall comply with such requirements within such period as may be specified by the Advisory Committee in this behalf, failing which the insurer shall be deemed to have contravened the provisions of this Act.

(2) Any information supplied under this section shall be certified by a principal officer of the insurer or where the Advisory Committee has agreed in advance, by such other officer or officers of the insurer as the principal officer of the insurer may nominate for the purpose and if the notice so requires, also by an auditor.

(3) The Authority may, at any time, in writing, depute any subordinate of it to make a personal inspection of the books of account, ledgers, policy-registers and other books or documents of any insurer to verify the accuracy of any return or statement furnished by him under sub-section *(1)*, or to verify that full particulars have been supplied by him in respect of all policies issued by him, and the insurer shall provide all facilities for such inspection and make available to such person all the books of account, ledgers, policy-registers and other books or documents of the insurer which might be needed by him for such verification and the person deputed may himself extract from out of the books and records of the insurer such information as may be needed to fill up or complete the returns required to be submitted to the Advisory Committee under this section.

(4) The advisory Committee may, at any time, on the application of an insurer, make arrangements for the inspection of an organisation which is concerned with the inspection of risks, adjustment of losses or fire-fighting appliances, and may, whenever necessary, advise insurers about the adequacy of the arrangements for the inspection of risks and adjustment of losses or the suitability of such appliance:

Provided that no such inspection shall be made without the written permission of the concerned organisation.

Assets and liabilities of the General Insurance Council to vest in the advisory Committee.

64UF. *(1)* On the commencement of the Insurance (Amendment) Act, 1968, all the assets and liabilities of the General Insurance Council appertaining to its Tariff Committee and to its Regional Councils and their Sectional Committees existing on that day shall be transferred to, and vest in, the Advisory Committee.

62 of 1968.

(2) The assets appertaining to the Tariff Committee, the Regional Councils, and their Sectional Committees shall be deemed to include all rights and powers and all property, whether movable or immovable including, in particular, cash balances, reserve funds, investments, deposits and all other interests and rights in, or arising out of, such property as may be in the possession of the Tariff Committee, Regional Councils and their Sectional Committees and all books of account or documents thereof; and liabilities shall be deemed to include all debts, liabilities and obligations of whatever kind existing and appertaining to the work of the Tariff Committee, the Regional Councils and their Sectional Committees.

(3) Where the General Insurance Council has established a provident or superannuation fund or any other fund for the benefit of the employees of its Tariff Committee or Regional Councils and constituted a trust in respect thereof (hereafter in this section referred to an existing trust), the monies standing to the credit of any fund at the commencement of the Insurance (Amendment) Act, 1968, shall, subject to the provisions of sub-section *(4)*, stand transferred to, and vest in, on such commencement, the Advisory Committee.

62 of 1968.

(4) Where any employee of the Tariff Committee, or the Regional Councils, of the General Insurance Council does not become an employee of the Advisory Committee, the monies and other assets appertaining to any fund referred to in sub-section *(3)* shall be apportioned between the trustees of the fund and the Advisory Committee in the prescribed manner; and in case

of any dispute regarding such apportionment, the decision of the Central Government thereon shall be final.

(5) The Advisory Committee shall, as soon as may be after the commencement of the Insurance (Amendment) Act, 1968, constitute in 62 of 1968. respect of the monies and other assets which are transferred to, and vested in, it under sub-section *(3)*, one or more trusts having, as far as practicable, objects similar to the objects of the existing trust.

(6) Where all the monies and other assets belonging to an existing trust are transferred to, and vested in, the Advisory Committee under sub-section *(3)*, the trustees of such trust shall, on the commencement of the Insurance (Amendment) Act, 1968, be discharged from the 62 of 1968. trust except as respects things done or omitted to be done by them before such commencement.

Contracts, etc., to be effective by or against the Advisory Committee.

64UG. *(1)* Unless otherwise expressly provided by or under this Act, all contracts, agreements and other instruments of whatever nature subsisting or having effect immediately before the commencement of the Insurance (Amendment) Act, 1968, and to which the Tariff 62 of 1968. Committee, or any Regional Council is a part or which is in favour of that Committee or that Council, shall be of as full force and effect against or in favour of the Advisory Committee and may be enforced or acted upon as fully and effectually as if, instead of the Tariff Committee, or the Regional Council, the Advisory Committee had been a party thereto or as if they had been entered into or issued in favour of the Advisory Committee.

(2) If, at the commencement of the Insurance (Amendment) Act, 1968, any suit, appeal or other 62 of 1968. legal proceeding of whatever nature is pending by or against the Tariff Committee, or any Regional Council then it shall not abate, be discontinued or in any way be prejudicially

effected by reason of the transfer to the Advisory Committee of the assets and liabilities of the Tariff Committee, and the Regional Councils or of anything done under this Act, but the suit, appeal or other proceeding may be continued prosecuted or enforced by or against the Advisory Committee.

Employees, etc., to continue.

64UH. *(1)* Every whole-time employee of the Tariff Committee, or the Regional Councils who was employed by that Committee or those Councils wholly or mainly in connection with its or their statutory duties immediately before the commencement of the Insurance (Amendment) Act, 1968, shall, on and from such commencement, become an employee of the Advisory Committee and shall hold his office in it by the same tenure, at the same remuneration, and upon the same terms and conditions and with the same rates and privileges as to pension, gratuity and other matters as he would have held on such commencement if this Part had not been enacted, and shall continue to do so until his employment under the Advisory Committee is terminated or until the remuneration, terms and conditions, are duly altered by the Advisory Committee:

62 of 1968.

Provided that nothing contained in this sub-section shall apply to any employee who has given notice to the Central Government in writing either prior to or within two months from the commencement of the Insurance (Amendment) Act, 1968, intimating his intention of not becoming an employee of the Advisory Committee.

62 of 1968.

(2) Where the Central Government is satisfied that for the purpose of securing uniformity in the scales of pay, remuneration and other terms and conditions of service applicable to employees of the Tariff Committee, or the Regional Councils, it is necessary so to do, or that a reduction in the remuneration payable or revision of the other terms and conditions of

service applicable to employees or any class of them is called for, the Central Government may, notwithstanding anything contained in sub-section *(1)*, or in the Industrial Disputes Act, 1947, 14 of 1947.
or in any other law for the time being in force or in any award, settlement, or agreement for the time being in force, alter (whether by way of reduction or otherwise) the remuneration and other terms and conditions of service to such extent and in such manner as it thinks fit; and if the alteration is not acceptable to any employee, the Advisory Committee may terminate his employment by giving him compensation equivalent to three months' remuneration, unless the contract of service with such employees provides for a shorter notice of termination.

Explanation.—The compensation payable to an employee under this sub-section shall be in addition to, and shall not affect any pension, gratuity, provident fund money or any other benefit to which the employee may be entitled under his contract of service.

(3) If any question arises as to whether any person was a wholetime employee of the Tariff Committee, or the Regional Council, on the commencement of the Insurance (Amendment) Act, 1968, or as to whether any employee was 62 of 1968.
employed wholly or mainly in connection with the statutory duties of the Tariff Committee, or any Regional Council, immediately before such commencement, the question shall be referred to the Central Government whose decision thereon shall be final.

(4) Notwithstanding anything contained in the Industrial Disputes Act, 1947, or in any other 14 of 1947.
law for the time being in force, the transfer of the services of any employees of the Tariff Committee, or the Regional Councils, to the Advisory Committee, shall not entitle any such employee to any compensation under that Act or other law, and no such claim shall be entertained by any court, Tribunal or other authority.

Duty of person having custody or control of property to deliver such property to the Advisory Committees.

64UI. *(1)* Where any property of the Tariff Committee, or the Regional Councils (appertaining to its or their statutory duties) has been transferred to, and vested in, the Advisory Committee, then,—

(a) every person in whose possession, custody or control any such property may be, shall deliver the property to the Advisory Committee forthwith;

(b) any person, who, on the commencement of the Insurance (Amendment) Act, 1968, has in his possession, custody or control any books, documents and other papers relating to the Tariff Committee, or the Regional Councils, shall be liable to account for the said books, documents and papers to the Advisory Committee and shall deliver them to the Advisory Committee or to such person as the Committee may direct.

62 of 1968.

(2) Without prejudice to the provisions contained in this section, it shall be lawful for the Advisory Committee to take all necessary steps for securing possession of all properties which have been transferred to, and vested in, it under this Act.

Power of the Advisory Committee to constitute Regional Committees.

64UJ. *(1)* The Advisory Committee may constitute such Regional Committees as and when it deems fit for one or more of the prescribed regions.

(2) Each Regional Committee shall consist of not more than seven persons of which not more than five shall be elected by such groups of insurers carrying on general insurance business in the region as may be prescribed and not more than two shall be nominated by the Authority.

(3) For the purpose of enabling it effectively to discharge its duties, any Regional Committee may constitute such sub-committees as it may

think fit, whether consisting of members of the Regional Committee or not.

(4) It shall be the duty of every Regional Committee to advise the Advisory Committee on any question connected with the fixation of rates, advantages, terms and conditions for risks in its region which may be referred to it by the Advisory Committee for advice, and in additon, every Regional Committee shall perform such other functions as may be delegated to it by the Advisory Committee by regulations made by it with the previous approval of the Central Government.

(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 Authority against such order within thirty days from the date of service of that order on him and the Authority 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 Authority on such appeal shall be final.

(6) Notwithstanding anything contained in this section, every Regional Council and every Sectional or other Committee of such Regional Council, in existence immediately before the commencement of the Insurance (Amendment) Act, 1968, shall, until it is abolished by the Advisory Committee, be deemed to be a Regional Committee or sub-committee as the case may be, established in accordance with the provisions of this section and shall function as such and shall have all the powers and responsibilities which it had immediately before such commencement, and if the term of any such Council or Committee expires before Regional Committees constituted under sub-section *(1)* and sub-committees constituted under sub-section *(3)* come into

62 of 1968.

existence, such terms shall be deemed to have been validly extended up to the time when such Regional Committees and sub-committees are established.

Levy of fees by the Advisory Committee.

64UK. *(1)* Every insurer shall annually before the prescribed date make payment to the Advisory Committee in the prescribed manner of such fees, not exceeding for any year, in the case of an insurer doing only re-insurance business in India, one per cent. of his total premiums in respect of facultative re-insurance accepted by him in India in the preceding year and in the case of any other insurer, one per cent. of the total gross premium written direct by him in India in the preceding year, as may be specified by the Advisory Committee for the purpose of this Part.

(2) The Advisory Committee may collect, in addition to the fees mentioned in sub-section *(1)*, reasonable fees and charges from any person to cover the cost of any specific services rendered by it.

(3) If an insurer fails to make payment within the prescribed date of any fee required to be paid under sub-section *(1)* he shall be deemed to have failed to comply with the provisions of this Act.

(4) The Authority may, so long as an application to the court under sub-section *(5D)* of section 3 has not been made, revive the registration which might have been cancelled for failure to make payment of the fee required to be made under sub-section *(1)*, if the insurer makes payment of such fee together with such penalty not exceeding the actual amount of fee payable as the Authority may require.

Power to remove difficulties.

64UL. If any difficulty arises in giving effect to the provisions of this Part, the Central Government may, by order, make such provisions or give such directions not inconsistent with the provisions of this Act as may appear to it to be

necessary or expedient for the removal of the difficulty:

Provided that no such power shall be exercised after the expiry of a period of four years from the commencement of this Part.

Licensing of surveyors and loss assessors.

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 Authority. 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 but before the commencement of the Insurance Regulatory and Development Authority Act, 1999, shall make an application to the Authority 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. 41 of 1999.

(BA) 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 Regulatory and Development Authority Act, 1999, shall make an application to the Authority within such time, in such manner and on payment of such fee as may be determined by the regulations made by the Authority: 41 of 1999.

Provided that any licence issued immediately before the commencement of the Insurance Regulatory and Development Authority Act, 1999, shall be deemed to have been issued in accordance with the regulations providing for such licence. 41 of 1999.

(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 determined by the regulations.

(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 Authority that he—

(a) has been in practice as a surveyor or loss assessor on the date of commencement of the Insurance Regulatory and Development Authority Act, 1999, or

41 of 1999.

(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) possesses 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 recognized by the Government, or

(f) possesses such other technical qualifications as may be specified by the regulations made by the Authority, 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 Authority 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 Authority 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 Authority, 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.

(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 the regulations made by the Authority.

(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 Authority, be admitted for payment or settled

62 of 1968.

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 sureyor 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 Authority 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 Authority within such time as may be specified by the Authority or if no time limit has been specified by it within a reasonable time and the cost of, or incidental to such report shall be borne by the insurer.

(4) The Authority may, on receipt of a report referred to in sub-section *(3)*, issue such directions as it 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 Authority 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 Authority 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 despatch 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 Authority 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 Authority is satisfied that an approved surveyor or loss assessor has been guilty of wilfully 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 Authority 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 Authority makes such direction, the provisions of sub-sections *(3)* and *(4)* shall apply in respect of such claim.

(10) Where, in relation to any class of claims, the Authority 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.

PART-II C

SOLVENCY MARGIN, ADVANCE PAYMENT OF PREMIUM AND RESTRICTIONS ON THE OPENING OF A NEW PLACE OF BUSINESS

Assets and liabilities how to be valued.

64V. *(1)* For the purpose of ascertaining compliance with the provisions of section 64VA,—

(i) assets shall be valued at values not exceeding their market or realisable value and the assets hereafter mentioned shall be excluded to the extent indicated, namely:—

(a) agent's balances and outstanding premiums in India, to the extent they are not realised within a period of thirty days;

(b) agents' balances and outstanding premium outside India, to the extent they are not realisable;

(c) sundry debts, to the extent they are not realisable;

(d) advances of an unrealisable character;

(e) furniture, fixtures, dead stock and stationery;

(f) deferred expenses;

(g) profit and loss appropriation account balance and any fictitious assets other than pre-paid expenses;

(h) such other asset or assets as may be specified by the regulations made in this behalf;

(ii) a proper value shall be placed on every item of liability and liabilities in respect of share capital, general reserve and other reserves of similar nature not created to meet specific liabilities and investment reserve, reserve for bad and doubtful debts, and depreciation fund shall be excluded and liabilities thereafter mentioned shall be included to the extent indicated, namely:—

(a) provision for dividends declared or recommended, and outstanding dividends in full;

(b) reserves for unexpired risks in respect of—

(i) fire and miscellaneous business, 50 per cent;

(ii) marine cargo business, 50 per cent;

(*iii)* marine full business, 100 per cent, of the premium, net of re-insurances, during the preceding twelve months;

(c) estimated liability in respect of outstanding claims, in full;

(d) amount due to insurance companies carrying on insurance business, in full;

(e) amounts due to sundry creditors, in full;

(f) provision for taxation, in full;

(g) such other liability which may be made in this behalf to be included for the purpose of clause (ii).

Explanation.—In case of an insurer whose principal place of business or domicile is outside India, where, in the accounts filed with the public authority of the country in which the insurer is constituted, incorporated or domicilated, in respect of marine insurance business, the provisions for unexpired risks and outstanding claims are not shown separately, the liabilities under items (b) and (c) of clause (ii) in respect of marine insurance business shall be taken together at a figure of not less than the total premium less re-insurances in respect of that class of business during the preceding twelve months.

(2) Every insurer shall furnish to the Authority with his returns under section 15 or section 16; as the case may be, a statement certified by an auditor approved by the Authority in respect of general insurance business, or an actuary approved by the Authority in respect of

life insurance business, as the case may be, of his assets and liabilities assessed in the manner required by this section as on the 31st day of March of the preceding year.

(3) Every insurer shall value his assets and liabilities in the manner required by this section and in accordance with the regulations which may be made by the authority in this behalf.

Sufficiency of assets.

64VA. *(1)* An insurer shall, at all times before the commencement of the Insurance Regulatory and Development Authority Act, 1999, maintain an excess of the value of his assets over the amount of his liabilities of not less than the amount arrived at as follows (hereafter in this section referred to as the "relevant amount"), namely:— 41 of 1999.

(i) in the case of an insurer whose total premium income less re-insurances in respect of general insurance business (hereafter in this sub-section referred to as the "said income") in the preceding twelve months did not exceed five crores of rupees, one-fifth of the said income subject to a minimum of—

(a) five lakhs of rupees in the case of an insurer who is a co-operative society registered under the Co-operative Societies Act, 1912, or any other law for the time being in force in any State relating to co-operative societies, or 2 of 1912.

(b) ten lakhs of rupees in the case of any other insurer; and

(ii) in the case of an insurer whose said income in the preceding twelve months exceeded five crores of rupees, the aggregate of one-fifth of the first five crores of rupees of the said income and one-tenth of the amount by which the said income in the preceding twelve months exceeded five crores of rupees:

Provided that where a number of insurers occupying the status of parent and subsidiary companies prepare, under the laws of the country of origin of the parent company, a consolidated balance-sheet, the provisions of this sub-section shall apply to such of them as are not members of any group as if they constituted a single insurer, subject to the further condition that the relevant amount shall, in no case, be less than a sum equal to—

(i) the number of such insurers multiplied by ten lakhs of rupees, or

(ii) where all the insurers are co-operative societies registered under the Cooperative Societies Act, 1912, or any other law for the time being in force in any State relating to co-operative societies, the number of such insurers multiplied by five lakhs of rupees:

2 of 1912.

Provided further that if in respect of any insurer the Central Government is satisfied that either by reason of an unfavourable claim experience or because of a sharp increase in the volume of new business, or for any other reason, compliance with the provisions of this sub-section would cause undue hardship to the insurer, if may direct that for such period and subject to such conditions as it may specify, the provisions of this sub-section shall apply to that insurer with the modification that instead of the proportion of one-fifth, wherever mentioned in this sub-section, such other proportion being not less than one-tenth as may be specified by that Government shall be applicable to that insurer:

Provided also that in the case of an insurer carrying on insurance business at the commencement of the Insurance (Amendment) Act, 1968, it shall be sufficient compliance with the provisions of this sub-section until the 31st December, 1972 or until

62 of 1968.

such subsequent date, not being later than 31st December, 1976 as the Central Government may, at its discretion, allow for any particular insurer, if he progressively brings up the excess of the value of his assets over the amount of his liabilities, in such manner as may be prescribed, to the relevant amount.

(1A) Every insurer shall, at all times, on or after the commencement of the Insurance Regulatory and Development Authority Act, 1999, maintain an excess of the value of his assets over the amount of his liabilities of not less than the amount arrived at as follows (hereinafter to in this section as the "required solvency margin" namely:— 41 of 1999.

(i) in the case of an insurer carrying on life insurance business, the required solvency margin shall be the higher of the following amounts—

(a) fifty crores of rupees (one hundred crores of rupees in case of re-insures); or

(b) the aggregate sums of the results arrived at in items (I) and (II) stated below:—

(I) the aggregate of the results arrived at by applying the calculation described in item (A) below (Step I) and the calculation described in item (B) below (Step II):

(A) for Step I—

(A.1) there shall be taken, a sum equal to a percentage determined by the regulations not exceeding five per cent of the mathematical reserves for direct business and re-insurance acceptances without any deduction for re-insurance cessions;

(A.2) the amount of mathematical reserves at the end of the preceding financial year after the deduction of re-insurance cessions shall be expressed as a percentage of the amount of those mathematical reserves before any such deduction; and

(A.3) the sum mentioned in item *(A.1)* above shall be multiplied—

(A.3.1) where the percentage arrived at under item *(A.2)* above is greater than eighty-five per cent (or in the case of a re-insurer carrying on exclusive re-insurance business, fifty per cent.) by that greater percentage; and

(A.3.2) in any other case, by eighty-five per cent (or in the case of a re-insurer carrying on exclusive reinsurance business, by fifty per cent.);

(B) for Step II—

(B.1) there shall be taken, a sum equal to a percentage determined by the regulations made by the Authority not exceeding one per cent of the sum at risk for the policies on which the sum at risk is not a negative figure, and

(B.2) the amount of sum at risk at the end of the preceding financial year for policies on which the sum at risk is not a negative figure after the deduction of re-insurance cession shall be expressed as a

percentage of the amount of that sum at risk before any such deduction, and

(B.3) the sum arrived at under item (B.1) above shall be multiplied—

(B.3.1) where the percentage arrived at under item (B.2) above is greater than fifty per cent by that greater percentage; and

(B.3.2) in any other case by fifty per cent

(II) a percentage determined by the regulations made by the Authority of the value of assets determined in accordance with the provisions of section 64V;

(ii) in the case of an insurer carrying on general insurance business, the required solvency margin, shall be the highest of the following amounts:—

(a) fifty crores of rupees (one hundred crores of rupees in case of re-insurer); or

(b) a sum equivalent to twenty per cent of net premium income; or

(c) a sum equivalent to thirty per cent of net incurred claims.

subject to credit for re-insurance in computing net premiums and net incurred claims being actual but a percentage, determined by the regulations not exceeding fifty per cent:

Provided that if in respect of any insurer, the Authority is satisfied that either be reason of an unfavourable claim experience or because of sharp increase in the volume of the business, or for any other reason, compliance with the provisions of this sub-

section would cause undue hardship to the insurer, the Authority may direct, for such period and subject to such conditions, such solvency margin not being less than the lower of the amount mentioned in sub-clause (i) or sub-clause (ii) above, as the case may be.

Explanation.—For the purpose of this sub-section, the expressions—

(i) "mathematical reserves" means the provision made by a insurer to cover liabilities (excluding liabilities which have fallen due and liabilities arising from deposit back arrangement in relation to any policy whereby an amount is deposited by re-insurer with the cedant) arising under or in connection with policies or contracts for life insurance business. Mathematical reserves also include specific provision for adverse deviations of the bases, such as mortality and morbidity rates interest valuation for this purpose;

(ii) "net incurred claims" means the average of the net incurred claims during the specified period of not exceeding three preceding financial years;

(iii) "sum at risk", in relation to a life insurance policy, means a sum which is—

(a) in any case in which an amount is payable in consequence of death other than a case falling within sub-clause (b) below, the amount payable on death, and

(b) in any case in which the benefit under the policy in question consists of the making, in consequence of death, of the payments of annuity, payment of a sum by instalments or any other kind of periodic payments, the present value of that benefit, less in either case the mathematical reserves in respect of the relevant policies.

(2) An insurer who does not comply with the provisions of sub-section *(1)* shall be deemed to be insolvent any may be wound-up by the court.

(2A) If, at any time an insurer does not maintain the required solvency margin in accordance with the provisions of this section, he shall, in accordance with the directions issued by the Authority, submit a financial plan, indicating a plan of action to correct the deficiency to the Authority within a specified period not exceeding three months.

(2B) An insurer who has submitted a plan under sub-section *(2A)* to the Authority shall propose modifications to the plan if the Authority considers it inadequate, and shall give effect to any plan accepted by the Authority as adequate.

(2C) An insurer who does not comply with the provisions of sub-section *(2A)* shall be deemed to be insolvent and may be wound-up by the court.

(3) The Authority shall be entitled at any time to take such steps as he may consider necessary for the inspection or verification of the assets and liabilities of any insurer or for securing the particulars necessary to establish that the requirements of this section have been complied with as on any date and the insurer shall comply with any requisition made in this behalf by the Authority, and if he fails to do so within two months from the receipt of the requisition, he shall be deemed to have made default in complying with the requirements of this section.

(4) The provisions of this section shall not apply to an insurer, specified in sub-clause (c) of clause (9) of section 2.

(5) In applying the provisions of sub-section (1) to any insurer, who is a member of a group, the relevant amount for that insurer shall be an

amount equal to that proportion of the relevant amount which that group, if considered as a single insurer, would have been required to maintain as the proportion of his share of the risk on each policy issued by the group bears to the total risk on that policy:

Provided that when a group of insurers ceases to be a group, every insurer in that group who continues to carry on any class of insurance business in India, shall comply with the requirements of sub-section (1) as if he had not been an insurer in a group at any time:

Provided further that it shall be sufficient compliance with the provisions of the foregoing proviso if the insurer brings up the excess of the value of his assets over the amount of his liabilities to the required amount within a period of six months from the date of cessation of the group:

Provided also that the Central Government may, on sufficient cause being shown, extend the said period of six months by such further periods as it may think fit, so however that the total period may not in any case exceed one year.

(6) The Central Government may, by notification in the Official Gazette, reduce the sum of ten lakhs of rupees or five lakhs of rupees, as the case may be, referred to in sub section (1) to a lower figure not less than one hundred thousand rupees in respect of a country craft insurer or in respect of an insurer not having a share capital and carrying on only such insurance business as, in the opinion of the Central Government, is not carried on ordinarily by insurers under separate policies.

(7) Every insurer shall furnish to the Authority his returns under section 15 or section 16, as the case may be, in case of life insurance business a statement certified by an actuary approved by the Authority, and in case of general

insurance business a statement certified by an auditor approved by the Authority, of the required solvency margin maintained by the insurer in the manner required by sub-section (1A).

* * * * *

Restrictions on the opening of a new place business.

64VC. *(1)* No insurer shall, after the commencement of the Insurance (Amendment) Act, 1968, open a new place of business in India or change otherwise than within the same city, town or village, the location of an existing place of business situated in India without obtaining the prior permission of the Authority. 62 of 1968.

(2) The Authority may grant permission under sub-section *(1)* subject to such conditions as he may think fit to impose either generally or with reference to any particular case.

(3) Where, in the opinion of the Authority, an insurer has, at any time, failed to comply with any of the conditions imposed on him under this section, the Authority may, by order in writing and after affording reasonable opportunity to the insurer for showing cause against the action proposed to be taken against him, revoke any permission granted under this section.

Explanation.—For the purposes of this section, "place of business" includes a branch, a sub-branch, inspectorate, organisation office and any other office, by whatever name called.

* * * * *

PART III

PROVIDENT SOCIETIES

Defination of "provident society".

65. *(1)* In this Part "provident society" means, a person who, or a body of persons (whether corporate or unincorporate) which, not being an insurer registered for the time being under

Part II of this Act, carries on the business of insuring the payment, on the happening of any of the contingencies mentioned in sub-section (2), of—

(a) an annuity of or equivalent to one hundred rupees or less payable for an uncertain period, or

(b) a gross sum of one thousand rupees or less, whether paid or payable in a lump-sum or in two or more instalments over a certain period, exclusively in both cases (a) and (b) of any profit or bonus not being a guaranteed profit or bonus.

Explanation.—For the purposes of this sub-section, a period is "certain" if its duration is ascertainable in advance and "uncertain" if its duration is not so ascertainable.

(2) The contingencies referred to in sub-section *(1)* are the following, namely:—

(a) the birth, marriage or death of any person or the survival by a person of a stated or implied age or contingency;

(b) failure of issue;

(c) the occurrence of a social, religious or other ceremonial occasion;

(d) loss of or retirement from employment;

(e) disablement in consequence of sickness or accident;

(f) the necessity of providing for the education of a dependent;

(g) any other contingency which may be prescribed or which may be authorised by the State Government with the approval of the Central Government.

(3) For the purposes of sub-sections *(1)* and (2)—

(a) contracts entered into before the commencement of this Act shall not be taken into account;

(b) two or more policies issued to one person shall, for the purposes of determining whether the limits fixed by sub-section *(1)* have or have not been exceeded, be deemed to be one policy if the contingencies on the happening of which the sums are payable under the policies (whether the contingencies be the same of different) relate to one person only, whether he be the policy-holder or some other person.

(4) Every person or body of persons for the time being registered as a provident society under the Provident Insurance Societies Act, 1912, and every person or body of persons for the time being registered as a provident society under this Act shall be deemed to be a provident society for all the purposes of this Act. 5 of 1912.

(5) If the question arises whether any person or body of persons is or is not a provident society within the meaning of this section. Authority shall decide the question and its decision shall be final.

Prohibition of transaction of insurance business by provident societies other than public companies or co-operative societies.

65A. No person shall, after the commencement of the Insurance (Amendment) Act, 1950, begin to carry on in India any business specified in sub-section (1) of section 65, and no provident society carrying on any such business in India shall, after the expiry of one year from such commencement, continue to carry on any such business, unless he or it is— 47 of 1950.

(a) a public company, or

(b) a society registered under the Co-operative Societies Act, 1912 or under any other law for the time being in force in any State relating to co-operative societies, or 2 of 1912.

(c) a body corporate incorporated under the law of any country outside India not being of the nature of a private company.

Restrictions on provident societies.

66. No provident society shall undertake any form of insurance not falling within the limits fixed by sub-section *(1)* of section 65, nor shall any provident society be eligible to be registered under section 3.

Name.

67. No provident society established after the commencement of this Act shall adopt as its name, and no provident society established before the commencement of this Act shall continue after the expiry of six months from the commencement thereof to use as its name, any combination of words which fails to include the word "provident" or which includes the word "life".

47 of 1950.

68. [Rep. by the Insurance (Amendment) Act, 1950, sec. 48 (*w.e.f.* 1-6.1950).]

Dividing business.

69. *(1)* No provident society shall carry on any business upon the dividing principle, that is to say, on the principle that the benefit secured by a policy is not fixed but depends either wholly or partly on the results of a distribution of certain sums amongst policies becoming claims within certain time-limits, or on the principle that the premiums payable by a policy-holder depend wholly or partly on the number of policies becoming claims within certain time-limits.

(2) The Authority shall, as soon as possible, take steps to have any provident society which carries on business on dividing principle wound-up:

Provided that, where any such provident society in existence at the commencement of this Act applies within three months of such commencement to the Authority for permission to continue carrying on its business with a view meanwhile to reorganise its business in accordance with the provisions of this Act, the Authority may at its discretion, with due regard

to the past history of the society, permit the society to continue business for a period not exceeding two years from the date of receipt of such permission, so however that no new business on the dividing principle is undertaken by the society.

(3) Where after the commencement of the Insurance (Amendment) Act, 1941, a provident society is to be wound-up in pursuance of this section, or where, whether before or after the commencement of that Act, a provident society ceases to carry on business on the dividing principle, the provisions of sub-section *(2)* and sub-section *(3)* of section 52 shall, so far as may be, apply in like manner as they apply to an insurer ceasing to carry on business on the dividing principle. 13 of 1941.

Registration.

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 Authority, before the date of commencement of the Insurance Regulatory and Development Authority Act, 1999, a certificate of registration. 5 of 1912. 41 of 1999.

(2) Every application for registration shall be accompanied by—

(a) a certified copy of the rules of the society, and when the society is 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, a certified copy of the Memorandum and Articles of Association or where the society is not such a company a certified copy of the deed of constitution of the society; 7 of 1913. 6 of 1882. 10 of 1866.

(b) the names and addresses of the proprietors or directors, and the managers of the society, the full address of the

registered office of the society, the full address of the principle office of the society in India, the name of the manager at such office, and the name and address of some one or more persons resident in India authorised to accept any notice required to be served on the society;

(c) a certificate from the Reserve Bank of India that the initial deposit referred to in section 73 has been made;

(d) a declaration verified by an affidavit made by the principal officer of the society authorised in that behalf that the minimum working capital required by section 72, is available; and

(e) the receipt showing payment in the prescribed manner of the prescribed fee for registration being not more than two hundred rupees.

(3) The Authority may refuse to issue a certificate of registration until he is satisfied that the rules of the society comply with the provisions of this Act and that the society complies with the provisions of sections 65A, 67, 71, 72, 73, and 73A but if he is so satisfied he shall register the society and its rules.

(4) The Authority may, after giving previous notice in writing in such manner as he thinks fit specifying the grounds for the proposed cancellation, and allowing the society concerned an opportunity of being heard, apply to the Court and obtain sanction for cancellation of the registration made under this section or made under the provisions of the Provident Insurance Societies Act, 1912—

5 of 1912.

(a) if it is satisfied from the returns furnished under the provisions of this Act or

as the result of an inquiry made under section 87—

(i) that the society is insolvent or is likely to become so, or

(ii) that the business of the society is conducted fraudulently or not in accordance with the rules thereof, or what it is in the interests of the policyholders that the society should cease to carry on business, or

(b) if the society, having failed to comply with any requirement or having contravened any provision of this Act, has continued such failure or contravention for a period of one month after notice of such failure or contravention has been conveyed to the society by the Authority:

Provided that the Authority may, if it thinks, fit, instead of applying for cancellation of the registration under sub-clause (i) of clause (a) of this sub-section make a recommendation to the court that the contracts of the society should be reduced in such manner and subject to such conditions as he may indicate:

Provided further that the Authority may, without previous notice and without application to the court for sanction,—

(a) cancel the registration of a provident society which has failed to have its registration renewed, or

(aa) cancel the registration of a provident society if any deposit required by section 73, has not been made, or

(b) cancel, on such terms and conditions as it think fit, the registration of any provident society which applies to it for such cancellation if it is satisfied that the society has ceased to carry on insurance business and that all its liabilities inrespect of insurance policies are either satisfied or otherwise provided for, or

(c) cancel the registration of a provident society if he has reason to believe that any claim upon the society arising in India under any policy of insurance remains unpaid for three months after final judgment in regular course of law.

(5) When a registration is cancelled the provident society shall not, after the cancellation has taken effect, enter into any new contracts of insurance, but all rights and liabilities in respect of contracts of insurance entered into by it before such cancellation takes effect shall, subject to the provisions of section 88, continue as if the cancellation had not takes place.

(6) Where a registration is cancelled under clause (b) of sub-section (4), or clause (c) of the second proviso to that sub-section, or because the society has failed to have its registration renewed, the Authority may at its discretion revive the registration of the provident society, within six months from the date on which the cancellation took effect, makes the deposits required by section 73 or satisfies the Authority that no claim upon it such as is referred to in the said clause (c) remains unpaid or has had an application under sub-section (3) of section 70A accepted, as the case may be, and complies with any directions which may be given to it by the authority.

(7) The Authority may, on payment of the prescribed fee which shall not exceed five rupees, issue a duplicate certificate of registration to replace a certificate lost, destroyed or mutilated, or in any other case where it is of opinion that the issue of a duplicate certificate is necessary.

Renewal of registration.

70A. *(1)* Every provident society registered under this Act, or under the Provident Insurance Societies Act, 1912, shall have its registration renewed annually for each period of twelve months after that ending on the 30th day of June, 1942.

5 of 1912.

(2) An application for the renewal of a registration shall be made by the society to the Authority before the 30th day of June preceding the period for which renewal is sought, and shall be accompanied as provided in sub-section (3) by evidence of payment of the prescribed fee which shall not exceed two hundred rupees but may vary according to the volume of insurance business done by the society.

(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 a provident society fails to apply for renewal of registration before the date specified in sub-section *(2)* the Authority may, so long as it has taken no action under section 88 to have the society wound-up, accept an application for renewal of registration on receipt from the society of the fee payable with the applications and such penalty, not exceeding the prescribed fee payable by the society, as he may require.

(5) The Authority shall, on being satisfied that the society has fulfilled the requirements of this section, renew the registration and grant it a certificate of renewal of registration.

Supplementary information and reports of alterations in particulars furnished with application for registration.

70B. *(1)* Every provident society registered under section 70 before the commencement of the Insurance (Amendment) Act, 1941 shall, before the expiration of three months from the commencement of the Insurance (Amendment) Act, 1941 furnished to the Authority such particulars in addition to those already supplied for the purpose of obtaining registration as are required by sub-section *(2)* of section 70 of this Act as amended by the Insurance (Amendment) Act, 1941. 13 of 1941.

(2) Every provident society registered under the provisions of the Provident Insurance Societies Act, 1912, shall, before the expiration of three months from the commencement of the Insurance (Amendment) Act, 1941 furnished to the Authority so far as it has not already done so the documents and information required by clauses (a) and (b) of sub-section (2) of section 70 to accompany an application by a provident society for registration under the section.

5 of 1912.

13 of 1941.

(3) When any alteration occurs or is made which affects any of the matters which are required under the provisions of sub-section (2) of section 70 to accompany an application by a provident society for registration under that section, or are to be furnished to the Authority under this section, the provident society shall furnish forthwith to the Authority full particulars duly authenticated of such alternation.

Certain provisions of Part II to apply to provident societies.

71. The provisions of sub-sections *(2)* and *(3)* of section 10, section 20, sub-section *(1)* of section 27, sections 27A, 28, 29, 31A, 31B, 32, 46 and 53 shall apply to provident societies as they apply to insurers, and in such application references to shareholders of an insurer shall be construed as references to members of a provident society and references to section 7 or section 98 shall be construed as references to section 73:

Provided that a provident society may charge a fee not exceeding one rupee for supplying a copy of any document referred to in sub-section *(2)* of section 20.

Working Capital.

72. No provident society shall be registered unless it has a paid-up capital sufficient to provide as working capital a net sum of not less than five thousand rupees exclusive of deposits made under this Act and exclusive in the case of a company of any expenses incurred in connection with the formation of the company.

Deposits.

73. *(1)* Every provident society shall, if established before the commencement of this Act within one year from such commencement, or, if established after the commencement of this Act before the society applies for registration under section 70, deposit and keep deposited with the Reserve Bank of India in one of the offices in India of the Bank, for and on behalf of the Central Government, cash or approved securities accounting at the market value of the securities on the date of deposit to five thousand rupees, and shall thereafter make in each calendar year a further deposit amounting to not less than one-fifth of the premium income for the preceding calendar year as shown in the revenue account of the society (including admission fees and other fees received by the society) until the total amount so deposited and kept is fifty thousand rupees.

(2) The provisions of sub-sections 8, 9, 9A, 9B and 10 of section 7 and of sub-section *(1)* of section 8 and of section 9 shall apply to the deposits made under this section as they apply to deposits made by an insurer.

Restriction on name of provident society.

73A. *(1)* A provident society shall not be registered by a name identical with that by which an insurer or another provident society in existence is already registered, or so nearly resembling that name as to be calculated to deceive, except when the provident society in existence is in the course of being dissolved and signifies its consent, or the insurer in existence signifies his consent, to Authority.

(2) If a provident society, through inadvertence or otherwise, is without such consent as aforesaid registered by a name identical with that they by which an insurer or another provident society already in existence is registered, or so nearly resembling it as to be calculated to deceive, the first-mentioned society shall, if called upon to do so by the Authority on the application of the insurer or the second-mentioned society, change its name within a time to be fixed by the Authority:

Provided that nothing in this section shall apply to any provident society carrying on business before the commencement of the Insurance (Amendment) Act, 1946.

6 of 1946.

Rules.

74. *(1)* Every provident society shall in its rules set forth—

(a) the name, the object and the location of the registered office of the society;

(b) the contingencies or classes of contingency on the happening of which money is to be paid;

(c) the conditions to be complied with before, and the payments to be made on, admission to society;

(d) the rates of premium or contribution, and the periods for which or the times at which premiums or contributions are payable;

(e) the maximum amount payable to a subscriber or policyholder;

(f) the nature and amounts of the benefits provided for by the society;

(g) the circumstances in which a bonus may be paid to a policyholder;

(h) the nature of the evidence required for the proof of the happening of any contingency on which money is to be paid;

(i) the circumstances in which policies may be forfeited or renewed or the whole or a part of the premiums paid on a policy may be returned, or surrender value of a policy may be granted;

(j) the penalties for delay in paying or failure to pay premiums or contributions;

(k) the proportion of the annual income of society which may be disbursed on and the provisions to be made for meeting the expenses of the management of the society;

(l) the person or persons who or the authority which shall have power to invest the funds of the society;

(m) the provisions for appointment of auditors and their remunerations;

(n) the procedure to be adopted in altering the rules of the society;

(o) unless these are provided for in the articles of association of a society which is 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,— 7 of 1913. 6 of 1882. 10 of 1866.

(i) the mode of appointment and removal, the qualification and the powers of a director, manager, secretary or other officer of the society;

(ii) the manner of raising additional capital; and

(iii) the provisions for the holding of general meetings of the members and policyholders and for the powers to be exercised and procedure to be followed thereat; and

(p) such other matters as may be prescribed.

(2) Where the rules of any provident society registered under the Provident Insurance Societies Act, 1912 fail to comply with the expiry of twelve months from the commencement of this Act amend the rules so as to comply with these provisions. 5 of 1912.

Amendment of rules.

75. *(1)* No amendment of any rule of a provident society shall be valid until it has been sent to the Authority and has been registered by it.

(2) The Authority on being satisfied that the proposed amendment is not contrary to the provisions of this Act shall, unless it is of opinion that the amendment unfairly affects the rights of existing members or policyholders of the society, issue to the society an acknowledgement of the registration of the amended rule.

Supply of copy of rules.

76. Every provident society shall on demand deliver free of cost to any member of the society a copy of the rules of the society and to any person other than a member a copy of such rules on the payment of a sum not exceeding one rupee.

Registered office.

77. Every provident society shall have in India a principal office (on the outside of which it shall keep displayed its name in a conspicuous position in legible characters) to which all communications and notices may be addressed, and shall give notice to the Authority of any change in the location thereof within twenty-eight days of its occurrence.

Publication of authorised capital to contain also subscribed and paid-up capital.

78. Where any notice, advertisement or other official publication of a provident society contains a statement of the amount of the authorised capital of the society, the publication also contain a statement of the amount the capital which has been subscribed and the amount paid-up.

Registers and books.

79. Every provident society shall keep at its principal office in India—

(a) such registers in such form as may be prescribed;

(b) a cash-book in which shall be entered separately for each class of contingency separately specified in section 65 all sums received and expended by the society and the matters in respect of which the receipt or expenditure takes place;

(c) a ledger;

(d) a journal.

Revenue account, balance-sheet and annual statements.

80. *(1)* Every provident society shall at the expiry of the calender year prepare a revenue account and balance-sheet in the prescribed form verified in the prescribed manner, together with a report on the general State of the society's affairs and shall cause the revenue account and balance-sheet to be audited by an auditor, and the auditor shall so far as may be in the audit of a provident society have the powers of, exercise the functions vested in, and discharge the duties and be subject to the liabilities imposed on, an auditor of companies by section 145 of the Indian Companies Act, 1913. 7 of 1913.

(2) Every provident society shall at the expiry of the calender year prepare with respect to that year—

(a) a statement showing separately for each class of contingency separately specified in section 65—

(i) the number of new policies effected, the total amount insured thereby and the total premium income received in respect thereof and the number of existing policies discontinued during the year with the total amount insured thereby, and

(ii) the total amount of claims made and the total amount paid in satisfaction thereof;

(b) a statement showing details of every insurance effected on a life other than the life of the person insuring; and

(c) a statement showing the total amount paid as allowances to agents and canvassers.

(3) Until the expiry of two years from the commencement of this Act this section and

section 73 shall apply to provident societies registered before the commencement of this Act under the Provident Insurance Societies Act, 1912 as if the reference to the calender year were a reference to either the financial year or the calender year.

5 of 1912.

Actuarial report and abstract.

81. *(1)* Every provident society shall once in every five years or at such shorter intervals as may be laid down by the rules of the society cause an investigation to be made as at the last day of a calender year into its financial condition including the valuation of its liabilities and assets by an actuary.

(2) The report of the actuary shall contain an abstract in which shall be stated—

(a) the general principal adopted in the valuation, including the method by which the valuation age of lives was ascertained,

(b) the rate at each age of the mortality and any other factor assumed and the annuity values used in valuation,

(c) the reserve values held against policies effected,

(d) the rate of interest assumed, and

(e) the provision made for expenses, and shall have appended to it a certificate signed by a principal officer of the society that all material necessary for proper valuation has been placed at the disposal of the actuary and that full and accurate particulars of every policy under which there is a liability either actual or contingent have been furnished to the actuary for the purpose of the investigation.

(3) If the actuary finds that the financial condition of the society is such that no surplus exists for distribution as bonus to the policy-holders, or as dividend to the share-holders, he

shall state in his report whether in his opinion the society is insolvent and, if so, whether it should be wound up or not, and the extent to which in his opinion existing contracts should be modified or existing rates of premium should be adjusted to make good the deficiency in the assets.

Submission of returns to Authority.

82. *(1)* The revenue account and balance-sheet with the auditor's report thereon and the report on the general state of the society's affairs referred to in sub-section *(1)* of section 80 shall be printed and four copies of these and of the statements referred to in sub-section *(2)* of section 80, shall be furnished as returns to the Authority within six months from the end of the period to which they relate.

(2) All the material necessary for the proper valuation of the liabilities of the society under the provisions of section 81 shall be placed at the disposal of the actuary within three months from the end of the period to which such material relates, and the report and abstract referred to in section 81 shall be furnished as a return to the Authority within a further period of three months:

Provided that the Central Government may in any case extend the time allowed by this sub-section for the furnishing of such return by a period not exceeding three months.

(3) The provisions of sub-section *(2)* of section 15 relating to the copies therein referred to shall apply to the returns referred to in sub-section *(1)* of this section, and the provisions of section 17 shall apply to the accounts and balance-sheet of a provident society 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, as they apply to the accounts and balance-sheet of an insurer, and the Authority may exercise, in respect of returns made by a

7 of 1913.
6 of 1882.
10 of 1866.

provident society and in respect of an investigation or valuation to which section 81 refers, the same powers as are exercisable by it under section 21 and section 22, respectively, in the case of an insurer.

Actuarial examination of schemes.

83. *(1)* Every provident society, registered after the commencement of this Act, shall cause every scheme of insurance which it proposes to put into operation, and every provident society registered before the commencement of this Act under the provisions of the Provident Insurance Societies Act, 1912, shall cause any scheme which it proposes to put into operation for the first time, after such commencement to be examined by an actuary, and shall not receive any premium or contribution in connection with the scheme until the actuary has certified that the rates, advantages, terms and conditions of the scheme are workable and sound and such certificate has been forwarded to the Authority.

5 of 1912.

(2) The provisions of sub-section *(1)* shall apply to any alteration of a scheme already in operation, but the Authority may, if it is of opinion that the alteration unfairly affects the interests of existing policy-holders, prohibit the alteration, and, if he does so, the society shall not put the altered scheme into operation, unless it first discharges to the satisfaction of the Authority all its liabilities to those of the existing policy-holders who dissent from the alteration.

(3) Every provident society registered before the commencement of this Act under the provisions of the Provident Insurance Societies Act, 1912 shall, as soon as may be and in any event before the expiry of six months from the commencement of this Act, submit all scheme of insurance which the society has in operation at the commencement of this Act to examination by an actuary and shall, before the expiration of six months from the commencement of the Insurance (Amendment) Act, 1941 send the report of the actuary thereon to the Authority.

5 of 1912.

13 of 1941.

(4) The report of the actuary shall state in respect of each scheme whether the rates, advantages, terms and conditions are workable and sound and, where no actuarial report such as is referred to in section 81 has been made within the two years preceding the examination, the report shall also state whether the assets of the society are sufficient to meet its liabilities under the existing schemes, and, if not, how in the opinion of the actuary the existing contracts should be modified.

(5) If the rates, advantages, terms and conditions of any scheme are not reported by the actuary to be workable and sound, the Authority shall give notice to the society prohibiting the scheme, and the society shall not after its receipt of such notice enter into any new contract of insurance under the scheme, but all rights and liabilities in respect of contracts of insurance entered into by the society before receipt of the notice shall, subject to the provisions of sub-section *(6)*, continue as if the notice has not been given.

(6) Where a scheme is prohibited under the provisions of sub-section *(5)* the society shall, where its assets are sufficient to meet all existing liabilities, set apart out its assets the sum sufficient in the opinion of the actuary to meet the liabilities incurred under the scheme so prohibited and where its assets are not so sufficient, within three months from the date of the Prohibition, apply to the court for a modification of its existing contracts or failing such modification for the winding-up of the society.

Separation of accounts and funds.

84. Where a provident society effects policies of insurance in connection with more than one of the classes of contingency separately specified in sub-section *(2)* of section 65, the receipts and payments in respect of each such class shall be recorded in a separate account in the cash-book kept in accordance with section 79.

85. *(1)* * * * * Investment funds.

(2) No funds or investments of a provident society except a deposit made under section 73 or under the law of any state or country relating to insurance shall be kept otherwise than in the name of the society for in the name of a public officer approved by the Central Government.

(3) No loan shall be made out of the assets of a provident society to any director, manager, managing agent, auditor, actuary, officer or partner of the society, except on the security of a policy of insurance held in the society and within its surrender value and no such loans shall be made to any concern of which a director, manager, managing agent, actuary, officer or partner of the society is a director, manager, managing agent, actuary, officer or partner:

Provided that nothing in this sub-section shall apply to loans made by a provident society to a banking company:

Provided further that where any event occurs giving rise to circumstances, the existence of which at the time of the grant of any subsisting loan would have made such grant a contravention of this sub-section, such loan shall, notwithstanding any contract to the contrary, be repaid within three months from the occurrence of such event or from the commencement of the Insurance (Amendment) Act, 1946 whichever is later; and in case of default, the director, manager, auditor, actuary or partner concerned shall without prejudice to any other penalty which he may incur, ceases to hold office in the society on the expiry of the said three months.

6 of 1946.

(3A) Any loan prohibited under sub-section **(3)**, made before and outstanding at the commencement of the Insurance (Amendment) Act, 1940 shall be repaid before the 1st day of January, 1941, and in case of default the director, manager, managing agent, auditor, actuary, officer

20 of 1940.

or partner who has received the loan or is connected with the concern which has received the loan, as the case may be, shall cease to hold office in or be partner of the society and shall be ineligible to hold office in or to be a partner of the society until the loan is repaid.

(4) Any director, manager, managing agent, auditor, actuary, officer or partner, of a society which contravenes the provisions of sub-section *(3)*, who is knowingly a party to the contravention, shall without prejudice to any other penalty which he may incur be jointly and severally liable to the society for the amount of the loan, and such amount, together with interest from the date of the loan at such rate not exceeding twelve per cent per annum as the Authority may fix, shall on application by the Authority to any Civil Court of competent jurisdiction be recoverable by execution as if a decree for such amount had been passed by that court.

(5) The provisions of section 86D of the Indian Companies Act, 1913 shall not apply to a loan granted to a director of a provident society being a company if the loan is one granted on the security of a policy on which the society bears the risk and the policy was issued to the director on his own life and the loan is within the surrender value of the policy. 7 of 1913.

Inspection of books.

86. The books of every provident society shall at all reasonable times be open to inspection by the Authority or any person appointed by it in this behalf by any member or policy-holder of the society who has, on application in this behalf, been permitted by the Authority, subject to such condition, if any, as it impose, to make such inspection.

Inquiry by or on behalf of Authority.

87. *(1)* The Authority shall at least once in two years and may, if it thinks fit, at any time visit personally or depute a suitable person to visit the principal office of a provident society

or the principal office in India of a society having its principal place of business or domicile outside India and inquire into the affairs of the society, or may, after giving notice to the society any giving it an opportunity to be head, direct such an inquiry to be made by an auditor or actuary appointed by it or by both an auditor and an actuary appointed simultaneously, or first by an auditor only or an actuary only and afterwards by an actuary or auditor.

(2) For the purposes of any such inquiry the Authority or the auditor or actuary, at the case may be, shall be entitled to examine all books and documents of the society and may demand from the society or any officer of the society such explanations as he may require on any matter relating to the affairs of the society.

(3) The results of any such inquiry shall be recorded in writing by the person making the inquiry, and four copies of the record shall be supplied to the Authority and when the inquiry is completed, a copy of the record, or of each such record where more than one are made in the course of the same inquiry, shall be sent by the Authority to the society concerned and shall be open to inspection by any member or policy-holder of the society.

(4) All expenses of an incidental to any inquiry made by an auditor or actuary under sub-section *(1)* including any expenses incurred before the date on which the Authority receives notice of an appeal under clause *(e)* of sub-section *(1)* of section 110 shall be defrayed by the provident society, shall have priority over other debts due from the society, and shall be recoverable as an arrear of land revenue.

(5) The Authority may by notice in writing require the provident society to comply within a time to be specified therein (not being less than fifteen days from the receipt of the notice by the society) with any directions he may issue to

remedy defects disclosed by an inquiry under this section.

(6) If the society fails to comply with any directions issued under sub-section *(5)*, the Authority may, after giving notice to the society and giving it an opportunity to be heard, apply to the Court for the winding up of the society.

Amalgamation and transfer of insurance business.

87A. *(1)* The insurance business of a provident society may be transferred to any person or transferred to or amalgamated with the insurance business of any other provident society in accordance with a scheme prepared under this section and sanctioned by the Authority.

(2) Any scheme prepared under this section shall set out the agreement under which the transfer or amalgamation is proposed to be effect, and shall contain such further provisions as may be necessary for giving effect to the scheme.

(3) Before an application is made to the Authority 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 Authority and certified copies, four in number, of each of the following documents shall be furnished to him 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 of the provident societies 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 provident societies concerned in such amalgamation or transfer,

(c) actuarial reports and abstracts in respect of the insurance business of each of the provident societies so concerned,

(d) a report on the proposed amalgamation or transfer prepared by an independent actuary,

(e) any other reports on which the scheme of amalgamation or transfer was founded, and the balance-sheets, reports and abstracts referred to in clauses *(b)*, *(c)* and *(d)* shall be prepared as at the date at which the amalgamation or transfer if sanctioned by the Authority is to take effect, which date shall not be more than twelve months before the date on which the application to the Authority is made under this section:

Provided that the Authority may exempt the provident society or societies concerned from furnishing to him and from keeping open for inspection any one or more of the above documents.

(4) When any application such as is referred to in sub-section *(3)* is made to the Authority he may require, 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 policy of any provident society concerned and may 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 periods as he may direct, and after hearing the societies concerned, such policy-holders as apply to be heard and such other persons as he may deem fit, 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 73:

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 provident society 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)*;

(c) while the deposit last mentioned in clause (a) remains uncompleted, no accession, resulting from the arrangement, to the amount already deposited by the provident society 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 it or him under section 73.

(5) A copy of the order under sub-section *(4)* sanctioning or refusing to sanction the arrangement shall be sent to each of the societies concerned and to each of the policy-holders who applied to be heard.

(6) If the scheme involves a reduction of the amount of the insurance and other contracts of the transfer or society or of any or all of the societies concerned in the amalgamation, the Authority may sanction the scheme, reducing the amount of such contracts upon such terms and subject to such conditions as he may think proper, and the reduction of the contracts as sanctioned by the Authority shall be valid and binding on all the parties concerned.

Winding up by court and voluntary winding up.

88. *(1)* The court may order the winding up of a provident society 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 and the provisions of the Indian Companies Act, 1913 shall subject to the provisions of this Part, apply accordingly.

7 of 1913.
6 of 1882.
10 of 1866.

(2) In addition to the grounds on which such an order may be based, the court may order the winding up of a provident society if the Authority, who is hereby authorised to do so, applies in this behalf to the court on any of the following grounds, namely:—

(a) that the registration of the society has been cancelled under sub-section *(4)* of section 70;

(b) that it appears from the returns furnished under the provisions of this Act or as the result of an inquiry made under section 87 that the society is insolvent;

(c) that the continuance of the society is prejudicial to the interests of the policyholders.

(3) A provident society 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 may be wound up voluntarily in accordance with the provisions of the Indian Companies Act, 1913 but shall not be so wound up except for the purpose of effecting an amalgamation or reconstruction of the society or on the ground that by reason of its liabilities it cannot continue its business.

7 of 1913.
6 of 1882.
10 of 1866.

7 of 1913.

(4) A provident society not 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, may be wound up voluntarily under this Act, if a resolution is passed by proprietors that the society should be wound up voluntarily for the purpose or on the ground specified in sub-section *(3)*, and the Authority may, in any case where he has ordered the cancellation of the registration of a society under sub-section *(4)* of section 70, order the winding up of the society under this Act. 7 of 1913. 6 of 1882. 10 of 1866.

Reduction of Insurance contracts.

89. The court may make an order reducing the amount of the insurance contracts of a provident society upon such terms and subject to such conditions as the court think just—

(a) if the Authority as an alternative to cancelling the registration of a society under sub-section *(4)* of section 70 applies to the court in this behalf;

(b) if while a society is in liquidation the court thinks fit;

(c) if when a society has been proved to be insolvent, the court thinks fit to do so in place of making an order for the winding up of the society; or

(d) if the court is satisfied on an application made in this behalf by the society supported by the report of an actuary, and after giving the policy-holders an opportunity to be heard that it is desirable to do so.

Appointment of liquidator.

90. *(1)* Where a provident society is to be wound up whether under the Indian Companies Act, 1913 or under this Act, the society shall, within seven days from the date of the order of the court ordering the winding up or the passing of the resolution authorising the winding up, as the case may be, give notice thereof to the 7 of 1913.

Authority, and, except where the winding up is done by an order of the Court, the Authority shall appoint the liquidator and shall determine the remuneration to be paid to him:

Provided that if the Authority is not satisfied that the assets of the society are sufficient to meet the costs of liquidation including the remuneration of the liquidator, he may decline to make such appointment, and in such a case the society shall itself appoint a liquidator who shall carry out the liquidation as if the winding up was being done by an order of the court.

(2) Any liquidator appointed by the Authority under sub-section *(1)* may be removed by the Authority if satisfied that the duties entrusted to him are not being properly discharged.

Application of Act to liquidators.

90A. Notwithstanding anything to the contrary contained in the Indian Companies Act, 1913 the provisions of sections 91, 92 and 93 shall apply to any liquidator appointed to wind up a provident society, whether by the court, the Authority or the society itself.

7 of 1913.

Powers of liquidator.

91. *(1)* A liquidator appointed to wind up a society shall have power—

(a) to institute or defend any legal proceedings on behalf of the society by his name of office;

(b) to determine the contribution to be made by members of the society respectively to the assets of the society;

(c) to investigate all claims against the society and to decide questions of priority arising between claimants;

(d) to determine by what persons and in what proportion the costs of the liquidation including the remuneration of the liquidator and any expenses incurred under clause (g) of this sub-section are to be borne;

(e) to give such directions in regard to the collection and distribution of the assets of the society as may appear to him to be necessary for winding up the affairs of the society;

(f) to summon, and enforce the attendance of, witnesses and to compel the production of documents by the same means and as far as may be in the same manner as is provided in the case of a Civil Court by the Code of Civil Procedure, 1908, 5 of 1908.

(g) with the sanction of the Authority to employ such establishment and to obtain such assistance from an actuary or an auditor as may be necessary for the discharge of his duties;

(h) to sell the immovable and movable property of the society by public auction or private contract, with power to transfer the whole thereof to any person or society or to sell the same in parcels.

(2) The liquidator shall, for settling the list of contributories and realising the amount of contributions, have the same powers as an official liquidator appointed by the court for the winding up of a company under the Indian Companies Act, 1913. 7 of 1913.

Procedure at liquidation

92. *(1)* As soon as a liquidator is appointed to wind up a society he shall take charge of all property movable or immovable of the society and of all its books and documents.

(2) If any proprietor or officer of the society or any other person retains any portion of the assets of the society or fails to deliver to the liquidator any book or document when so required by the liquidator, he shall be punishable with imprisonment which may extend to six months, or with fine which may extend to five hundred rupees, or with both, and the court may

order the delivery of the assets or book or document to the liquidator.

(3) The liquidator shall within fifteen days of his appointment send notice by post to all persons who appear to him to be creditors of the society that a meeting of the creditors of society will be held on a date not being less than twenty-one or more than twenty-eight days after his appointment, and at a place and hour to be specified in the notice, and shall advertise notice of the meeting once in the local Official Gazette and once at least in two newspapers circulating in the State in which the society is situated.

(4) At the meeting so held the creditors shall determine whether an application shall be made for the appointment of any person as liquidator in the place of or jointly with the liquidator already appointed, or for the appointment of a committee of inspection, and, if they so resolve and an application accordingly is made at any time not later than fourteen days after the date of the meeting by any creditor appointed for the purpose at the meeting, the Authority may, if it thinks fit, appoint a suitable person in place of or jointly with the liquidator already appointed, and, determine the remuneration to be paid to him and if he considers it desirable, may also appoint a committee of inspection.

(5) The committee of inspection shall, subject to any prescribed conditions have a general power of supervision over the acts of the liquidator and shall have the right to inspect his accounts at all reasonable times.

(6) The liquidator shall, with such assistance from an actuary as may be required, ascertain as soon as practicable the amount of the society's liability to every person appearing by the society's books to be entitled to or interested in any policy issued by the society, and shall give notice of the amount so found to each such person in the prescribed manner and each such person on

receiving such notice shall be bound by the value so ascertained.

(7) The liquidator shall make a valuation of the assets of the society and an estimate of the costs of the winding up, and shall on the basis of these settle the list of contributories.

(8) The liquidator shall apply to the Authority for an order for the return of the deposit made by the society under section 73 and the Authority shall on such application order the return of the deposit subject to such terms and conditions as he may think fit.

(9) In administering and distributing the assets of the society the liquidator shall have regard to any directions that may be given by the creditors or contributories at a general meeting or by the Authority.

(10) The liquidator shall keep books of account in which he shall record the proceedings at all meetings attended by him, all amounts received or expended by him and any other matter that may be prescribed, and these books may, with the sanction of the Authority be inspected by any creditor or contributory.

(11) If the winding up continues for more than a year the liquidator shall summon a meeting of the creditors and contributories at the end of the first year and of each succeeding year, and shall lay before them an account of his acts and dealings and of the conduct of the winding up, and that account together with any views expressed thereon by the meeting shall be forwarded by the liquidator within one week after the meeting to the Authority.

(12) So far as is not otherwise provided herein or is not otherwise prescribed under this Act, the liquidator shall so far as practicable follow the procedure to be followed by an official liquidator appointed by the court for the winding up of a company under the Indian Companies Act, 1913. 7 of 1913.

(13) The costs of the liquidation including the remuneration of the liquidator and any expenses incurred under clause (g) of sub-section *(1)* of section 91 or shall, if the liquidator decides that they shall be payable of the assets of the society, be payable in priority to all other claims.

Dissolution of provident society.

93. *(1)* As soon as the affairs of a provident society are fully wound up the liquidator shall prepare an account of the winding up showing how the winding up has been conducted and the property of the society has been disposed of and shall call a meeting of the members, creditors and contributories for the purpose of laying before it the account and giving any explanation thereof.

(2) Notice of the meetings shall be sent to each person individually and shall be advertised in the local Official Gazette and in at least two newspapers circulating in the State in which the society is situated.

(3) Within one week after the meeting of the liquidator shall send to the Authority a copy of the account and shall report to the holding of the meeting and its date and shall forward to it a copy of the proceedings of the meeting.

(4) The Authority may return the account to the liquidator if it is incomplete or unsatisfactory and may require the liquidator to carry out any further steps necessary to complete the winding up and the liquidator shall comply with such requirement and shall submit a further report to the Authority within six months.

(5) If the Authority is satisfied that the affairs of the society have been fully wound up he shall register the account of the liquidator who shall forthwith make over to the Authority sums, if any, remaining undisposed of; and on the expiry of three months from the registering of the account the Authority shall declare the society

dissolved and cause the dissolution of the society to be notified in the local Official Gazette, and the liquidator shall thereupon be discharged from further responsibility.

(6) If within a period of five years from the date on which any sums have been made over to the Authority under sub-section *(5)* an order of a court of competent jurisdiction has not been obtained at the instance of any claimant to such sums for their disposal, the said sums shall become the property of Government.

Nominations and assignments.

94. *(1)* The provisions of section 38 and section 39 relating to assignment, transfer and nomination in the case of life insurance policies shall, subject to the provisions of this section, apply to policies of insurance issued by any provident society covering any of the contingencies specified in clause (a) of sub-section *(2)* of section 65.

PART III A

Insurance Co-operative Societies

Insurance co-operative society to be an insurer.

94A. *(1)* Every insurance co-operative society shall be deemed to be an insurer for the purposes of this Act.

(2) Save as otherwise provided in this Act, all the provisions applicable to an insurer being an Indian insurance company shall, so far as may be, apply to an insurance co-operative society:

Provided that the Authority may, by notification, direct that any of the provisions of this Act,—

(a) shall not apply to any insurance co-operative society; or

(b) shall apply to any insurance co-operative society only with such exceptions, modifications and adaptations as may be specified in the notification.

(3) A copy of every notification proposed to be issued under proviso to sub-section *(2)*, shall be laid in draft 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 disapproving the issue of the notification or both Houses agree in making any modification in the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses.

PART IV

MUTUAL INSURANCE COMPANIES AND CO-OPERATIVE LIFE INSURANCE SOCIETIES

Definitions.

95. *(1)* In this Part, before the date of commencement of the Insurance Regulatory and Development Authority Act, 1999—

41 of 1999.

(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 of this Act.

(2) Notwithstanding anything contained in sub-section *(1)*, other co-operative societies may be admitted as members of a Co-operative Life Insurance Society, without being eligible to any dividend, profit or bonus.

(3) A State Government may, subject to any rules made by the Central Government, empower the Registrar of co-operative societies of the State to register co-operative societies for the insurance of cattle or crops or both under the provisions of the Co-operative Societies Act in force in the State.

(4) A State Government may make rules not inconsistent with any rules made by the Central Government to govern such societies, and the provisions of this Act, in so far as they are inconsistent with those rules, shall not apply to such societies.

Application of Act to Mutual Insurance Companies and Co-operative Life Insurance Societies.

96. The provisions of sections 6 and 7 and of sub-section *(2)* of section 20, so far as those provisions are inconsistent with the provisions of this Part, shall not apply, and the provisions of this Part shall apply, to Co-operative Life Insurance Societies.

Working capital of Mutual Insurance Companies and Co-operative Life Insurance Societies.

97. No co-operative life insurance society registered after the 26th day of January 1937 under the Co-operative Societies Act, 1912, or under an Act of a State Legislature governing the registration of co-operative societies shall be registered under this Act, unless it has as working capital a sum of fifteen thousand rupees, exclusive of the deposit to be made before or at the time of application for registration in accordance with

2 of 1912.

sub-section *(2)* of section 98 of this Act and of the preliminary expenses, if any, incurred in the formation of the company or society.

Deposits to be made by Mutual Insurance Companies and Co-operative Life Insurance Societies.

98. *(1)* Every Co-operative Life Insurance Society shall, in respect of the life insurance business carried on by it in the States deposit and keep deposited with one of the offices in India of the Reserve Bank of India, for and on behalf of the Central Government, a sum of two hundred thousand rupees in cash or in approved securities estimated at the market value of the securities on the day of deposit:

The deposit referred to in sub-section *(1)*, may be made in instalments, of which the first shall be a payment, made before or at the time the application for registration under this Act is made of not less than twenty-five thousand rupees or such sum as with any deposit previously made by the insurer under the provisions of the Indian Life Insurance Companies Act, 1912, brings the amount deposited up to not less than twenty-five thousand rupees and the subsequent instalments shall be annual instalments made before the expiry of each subsequent calendar year of an amount in cash or in approved securities estimated at the market value of the securities on the day of payment of the instalment, equal to not less than one-third of the premium income in the preceding calendar year as shown in the revenue account.

6 of 1912.

(3) The provisions of sub-section *(7)* of section 7 shall apply in respect of a Co-operative Life Insurance Society as if for the words 'under the foregoing provisions of this section' the words and figures 'under the provisions of section 98' were substituted.

Prohibition of loans.

98A. The provisions of section 29 shall apply to Co-operative Life Insurance Societies as they apply to other insurers.

Transferees and assignees of policies not to become members.

99. No transferee or assignee of a policy issued by an insurer to whom this Part applies shall become a member of a Mutual Insurance Company or a Co-operative Life Insurance Society merely by reason of any such transfer or assignment.

Publication of notices and documents of Mutual Insurance Companies and Co-operative Life Insurance Societies.

100. Notwithstanding the provisions of section 79 and section 131 of the Indian Companies Act, 1913, a Mutual Insurance Company or a Co-operative Life Insurance Society may, instead of sending the notices and the copies of the balance-sheet, revenue account and other documents which they are required to send to the members under those sections, publish such notice together with a summary in the prescribed form of the balance-sheet and revenue account once in a newspaper published in the English language and in newspaper published in an Indian language circulating in the place where the principal office of the company is situated: 7 of 1913.

Provided that, where any members of the company are domiciled in a State other than that in which the principal office of the company is situated, publication of the notice of the meetings shall be made in a newspaper or newspapers published in the principal languages of that State and circulating therein and any member of the company domiciled in that State shall be entitled on application to the company to receive from it a copy of the balance-sheet and revenue account.

Supply of documents to members.

101. Every Mutual Insurance company and every Co-operative Life Insurance Society shall, on the application of any member made within two years from the date on which any such document is furnished to the Registrar of companies under the provisions of section 134 of the Indian Companies Act, 1937, or to the Registrar of Co-operative Societies of the State in which the Co-operative Life Insurance Society is 7 of 1937.

registered, furnish a copy of the document free of cost to the member within fourteen days of the application.

* * * * *

PART V

MISCELLANEOUS

Penalty for default in complying with, or act in contravention of this Act.

102. If any person, who is required under this Act, or rules or regulations made thereunder,—

(a) to furnish any document, statement, account, return or report to the Authority, fails to furnish the same; or

(b) to comply with the directions, fails to comply with such directions;

(c) to maintain solvency margin, fails to maintain such solvency margin;

(d) to comply with the directions on the insurance treaties, fails to comply with such directions on the insurance treaties, he shall be liable to a penalty not exceeding five lakh rupees for each such failure and punishable with fine.

Penalty for carrying on insurance business in contravention of sections 3, 7 and 98.

103. If a person makes a statement, or furnishes any document, statement, account return or which is false and which he either knows or believes to be false or does not believe to be true,—

(a) he shall be liable to a penalty not exceeding five lakh rupees for each such failure, and

(b) he shall be punishable with imprisonment which may extend to three years or with fine for each such failure.

Penalty for false statement in document.

104. If a person fails to comply with the provisions of section 27 or section 27A or section 27B or section 27C or section 27D, he shall be liable to a penalty not exceeding five lakh rupees for each such failure.

Wrongfully obtaining or withholding property.

105. If any director, managing director, manager or other officer or employees of an insurer wrongfully obtains possession of any property or wrongfully applies to any purpose of the Act, he shall be liable to a penalty not exceeding two lakh rupees for each such failure.

* * * * *

Penalty for failure to comply with section 32B

105B. If an insurer fails to comply with the provisions of section 32B, he shall be liable to a penalty not exceeding five lakh rupees for each such failure and shall be punishable with imprisonment which may extend to three years or with fine for each such failure.

* * * * *

Notice to an hearing of Authority.

106A. *(1)* * * *

(2) The orders to which this section applies are the following, namely:—

(a) an order for the attachment in execution of a decree of any deposit made under section 7 or section 98;

(b) an order under section 9 or section 59 for the return of any such deposit;

* * * * *

(f) an order under section 89 reducing the amount of the insurance contracts of a provident society.

Previous sanction of Advocate - General for

107. *(1)* Except where proceedings are instituted by the Authority or an Administrator appointed under section 52A no proceedings

under this Act against an insurer or any director, managing agent, manager, secretary or other officer of an insurer or any liquidator or any employee or agent of an insurer or any person who is liable under sub-section *(2)* of section 41 or any other person shall be instituted by any person unless he has previous thereto obtained the sanction of the Advocate-General of the State where the principal place of business in India of such insurer is situate to the institution of such proceedings: institution of proceedings.

Provided that where the principal place of business of such insurer is situated in a Union territory references in this section to the Advocate-General of the Province shall be construed as references to the Attorney-General of India.

(2) This section shall apply in respect of a provident society as defined in Part III as it applies in respect of an insurer.

107A. Every whole-time chairman, whole-time director, auditor, liquidator, manager and any other employee of insurer shall be deemed to be a public servant for the purposes of Chapter IX of the Indian Penal Code. Chairman, etc., to be public servants.

45 of 1860.

* * * * *

109. *(1)* No court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence under this Act. Cognizance of offences.

(2) No court shall take cognizance of any offence punishable under sub-section *(4)* of section 34B or sub-section *(1A)* of section 102 except upon complaint in writing made by an officer of the Central Government generally or specially authorised in writing, in this behalf by the Authority and no Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any such offence.

Appeals.

110. *(1)* An appeal shall lie to the court having jurisdiction from any of the following orders, namely:—

(a) an order under section 3 cancelling the registration of an insurer;

(b) an order under section 5 directing the insurer to change his name;

(c) an order under section 42 cancelling the licence issued to an agent;

(d) an order under section 75 refusing to register an amendment of rules;

(e) an order under section 87 or section 87A;

(f) an order made in the course of the winding up or insolvency of a provident society.

(2) The court having jurisdiction for the purposes of sub-section *(1)* shall be the principal court of civil jurisdiction within whose local limits the principal place of business of the insurer concerned is situate.

(3) An appeal shall lie from any order made under sub-section *(1)* to the authority authorised to hear appeals from the decisions of the court making the same and the decision on such appeal shall be final.

(4) No appeal under this section shall be entertained unless it is made before the expiration of four months from the date on which the order appealed against was communicated to the appellant.

* * * * *

Sections 3A, 27B, 28B, 33 etc., to apply to

110E. Notwithstanding anything contained in the Life Insurance Corporation Act, 1956, the provisions of sections 3A, 27B, 28B, 33, 34A, 31 of 1956.

clause (a) of sections 34E, 34F, 40C, 44A, 64U to 64UM (both inclusive), 64V, 64VA, 64VB, 64VC, 101C, 110D, 110G and 110H, shall also apply, so far as may be, to and in relation to the general insurance business carried on by the Life Insurance Corporation of India and the provisions of section 37A shall also apply to that Corporation if it becomes an acquiring insurer.

general insurance business of the Life Insurance Corporation of India.

* * * * *

110G. *(1)* The Central Government shall constitute a Consultative Committee consisting of the Chairperson of the Authority (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 filing 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 sections 64UM and section 64VC, the Chairperson of the Authority shall consult the Consultative Committee constituted under sub-section *(1)*.

110H. *(1)* Any person aggrieved by any order made by the Authority under sections 27D, 34A, 34B, 34C, 34E, 34F, 34G, sub-sections *(1), (4)* and *(7)* of section 64UM or section 64VC 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 made by the Authority and the order so made by the Government shall be final.

Appeals.

(2) No claim for compensation shall lie in favour of any person for anything done in pursuance of an order of the Authority so long as such order was effective.

(3) The Central Government may, on the application of an appellant, stay, until the decision of the appeal, the operation of any order made under section 34 or sub-section *(5)* of section 34B or sub-clause (v) of clause (b) of section 34E.

Service of notices.

111. *(1)* Any process or notice required to be served on an insurer or provident society shall be sufficiently served if addressed to any person registered with the Authority as a person authorised to accept notices on behalf of the insurer of provident society and left at, or sent by registered post to the address of such person as registered with the Authority.

(2) Any notice or other document which is by this Act required to be sent to any policy-holder may be addressed and sent to the person to whom notices respecting such policy are usually sent and any notice so addressed and sent shall be deemed to be notice to the holder of such policy:

Provided that, where any person claiming to be interested in a policy as transferee, assignee or nominee has given to an insurer or to a provident society notice in writing of his interest, any notice which is by this Act required to be sent to policy-holders shall also be sent to such person at the address specified by him in his notice.

* * * * *

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 the 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 provisions 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 Authority 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 Authority may, by notification in the Official Gazette appoint in this behalf.

(2) Nothwithstanding 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 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, 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 of 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 nonpayment of premium.

114. *(1)** * * * Power of Central Government to make rules.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may prescribe—

* * * * *

(c) the procedure to be followed by the Reserve Bank of India in dealing with deposits made in pursuance of this Act, including the receipt of, custody of, withdrawal of, and payment of interest on securities lodged as such deposits, and their inspection and verification by the Authority.

* * * * *

114A. *(1)* * * * 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 matters namely:—

(a) the qualifications to be possessed by actuaries;(aa) the matters including fee relating to the registration of insurers under section 3;]

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

(c) such fee, not exceeding five thousand rupees, as may be determined by the regulations for issue of a duplicate certificate of registration under sub-section *(7)* of section 3;

(d) the matters relating to the renewal of registration and fee therefor under section 3A;

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

(f) 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 section11;

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

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

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

(ia) the form in which a return showing the investments made out of the controlled fund shall be submitted by an insurer carrying on life insurance business under sub-section *(2)* of section 28A;

(ib) the form in which a return showing all the changes that occurred in the investments shall be submitted by an insurer carrying on life insurance business under sub-section *(2)* of section 28A;

(ic) the form in which a return showing the investment made out of assets shall be submitted by an insurer carrying on general insurance business under sub-section *(1)* of section 28B;

(id) the form in which a return showing all the changes that occurred in the investment shall be submitted by an insurer carrying on general insurance business under sub-section *(2)* of section 28B;

(ie) the form of the statement and the sum to be specified under sub-section *(2)* of section 31B;]

(j) the minimum information to be maintained by insurer in their books, the manner in which such information should be maintained, the checks and other verifications to be adopted by insurers in that connection and all other matters incidental thereto under sub-section *(8)* of section 33;

(k) the manner for making an application, the manner and the fee for issue of a licence to act as an insurance agent under sub-section *(1)* of section 42;

(l) the fee and the additional fee to be determined for renewal of licence of insurance agent under sub-section *(3)* of section 42;

(m) the requisite qualifications and practical training to act as an insurance agent under clause (e) of sub-section *(4)* of section 42;

(n) the passing of examination to act as an insurance agent under clause (f) of sub-section *(4)* of section 42;

(o) the code of conduct under clause *(g)* of sub-section *(4)* of section 42;

(p) the fee not exceeding rupees fifty for issue of duplicate licence under sub-section *(6)* of section 42;

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

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

(s) the requisite qualifications and practical training of intermediaries or

insurance intermediaries under clause (e) of sub-section *(5)* of section 42D;

(t) the examination to be passed to act as an intermediary or insurance intermediary under clause (f) of sub-section *(5)* of section 42D;

(u) the code of conduct under clause *(g)* of sub-section *(5)* of section 42D;

(v) the fee for issue of duplicate licence under sub-section *(7)* of section 42D;

(va) the amount of commission, fee or as remuneration in any form not exceeding thirty per cent. to be paid or contract to be paid under sub-section *(1)* of section 42E;

(vb) the requirements of capital, form of business and other conditions to act as an intermediary or insurance intermediary under sub-section *(z)* of section 42E;

(vc) the form of balance-sheet, as may be specified by the Authority under sub-section *(1)* section 49;

(w) such matters as specified under sub-section *(2)* of section 64UB relating to the Tariff Advisory Committee;

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

(y) such other asset or assets as may be specified under clause *(h)* of sub-section *(1)* of section 64V for the purposes of ascertaining sufficiency of assets under section 64VA;

(z) the valuation of assets and liabilities under sub-section *(3)* of section 64V;

(za) the matters specified under sub-section *(1A)* of section 64VA relating to sufficiency of assets;

(zb) the manner of receipt of premium to be specified under sub-section *(6)* of section 64VB;

(zb) the matters relating to re-insurance under sections 101A and 101B;

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

(zd) any other matter which is to be, or may be, specified by the regulations made by the Authority or in respect of which provision is to be made or may be made by the regulations;

(f) the matters to be prescribed for the purposes of section 48;

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THE FIFTH SCHEDULE

(*See* Section 13)

REGULATIONS FOR PREPARING STATEMENTS OF BUSINESS IN FORCE AND REQUIREMENTS APPLICABLE TO SUCH STATEMENTS

PART I

REGULATIONS

1. Statements prepared under this Schedule must be prepared, so far as practicable, in tabular form and must be identified by numbers and letters corresponding with those of the paragraphs of Part II of this Schedule.

2. Except with respect to rates of premium or contribution, items in statements prepared under this Schedule are to be shown to the nearest rupee.

3. Extra premium shown in the Forms of Summary and Valuation prepared under the Fourth Schedule to this Act must not be included in statements prepared under this Schedule.

4. Every statement prepared under this Schedule shall be signed by the actuary making the investigation in connection with which it is prepared.

5. For the purposes of this Schedule the following expressions have the meanings hereby respectively assigned to them, namely:—

(a) "annual loading" means the provision made for future expenses and profits;

(b) "extra premiums" means a charge for any risk not provided for in the minimum contract premium;

(c) "net premiums" means the premiums taken credit for in the valuation in connection with which any statement is prepared; and

(d) "valuation date" means as respects any valuation the date as at which the valuation is made.

PART II

Requirements for Statements applicable to Life Insurance

The statements required to be prepared under this Part of this Schedule are as follows, namely:—

1. Statements, separately prepared in respect of policies with and without participation in profits, showing:—

(a) as respects policies for the whole term of life, the rates of office premiums charged, in accordance with the published tables in use, for new policies giving the rates for decennial ages at entry from 20 to 70 inclusive; and

(b) as respects endowment insurance policies, the rates of office premiums charged, in accordance with the published tables in use, for new policies with original terms of ten, fifteen, twenty, thirty and forty years, giving the rates for decennial ages at entry from 20 to 40 inclusive, but excluding policies under which the age at maturity exceeds 60.

2. Statements, separately prepared in respect of policies with immediate profits, with deferred profits, with profits under discounted bonus systems, and without profits, showing in quinquennial groups—

(a) as respects policies for the whole term of life—

(i) the total amount assured (specifying sums assured and reversionary bonuses separately), grouped according to ages attained;

(ii) the amount per annum, after deducting abatements made by application of bonus, of office premiums payable throughout life, and of the corresponding net premiums, grouped according to ages attained; and

(iii) the amount per annum, after deducting abatements made by application of bonus, of office premiums payable for a limited number of years and, either, the corresponding net premiums grouped in accordance with the grouping adopted for the purposes of the valuation, or, the annual loading reserved for the remaining duration of

the policies, grouped according to ages attained.

(b) as respects endowment insurance policies—

(i) the total amount assured (specifying sums assured and reversionary bonuses separately) grouped in accordance with the grouping adopted for the purposes of the valuation; and

(ii) the amount per annum, after deducting abatements made by application of bonus, of office premiums payable and of the corresponding net premiums, grouped in accordance with the grouping adopted for the purposes of the valuation:

Provided that—

(a) as respects endowment insurance policies which will reach maturity in less than five years, the information required by sub-paragraph *(b) (i)* of this paragraph must be given for each year instead of in quinquennial groups; and

(b) where the office premiums payable under policies for the whole term of life for a limited number of years, or the office premiums payable under endowment insurance policies, or the corresponding net premiums, are grouped for the purposes of the valuation otherwise than according to the number of years' payments remaining to be made, or where the sums assured under endowment insurance policies are grouped for the purposes of the valuation otherwise than according to the years in which the policies will mature for payment or in which they are assumed to mature if earlier than the true year, then, in any such case the valuation

constants and an explanation of the method by which they are calculated must be given for each group, and in the case of the sums assured under endowment insurance policies a statement must also be given of the amount assured maturing for payment in each of the two years following the valuation date.

3. Statements as respects any policies in force under which premiums cease to be payable, whether permanently or temporarily, during disability arising from sickness or accident, showing the total amount of the office premiums payable.

4. Statements as respects immediate annuities on single lives for the whole term of life, separately prepared in respect of annuities on male and female lives, showing in quinquennial age groups the total amount of such annuities.

5. Statements as respects deferred annuities, separately prepared in respect of annuities on male and female lives, showing the specimen reserve values for annuities of one hundred rupees which will be produced on maturity on the basis of valuation adopted at ages, in the case of male lives, 60 and 65, and in the case of female lives, 55 and 60; the said statements must show the specimen reserve values which will be produced under the table of annual premiums in use for new policies, and if under any other table of annual premiums in use for any other deferred annuity policies in force smaller reserve values will be produced, the like specimens of these must also be given.

6. Statements as respects any policies of insurance upon the lives of a group of persons, whereby sums assured are payable in respect of the several persons included in the group, showing the total claims paid since the date as at which the last statements were prepared under

this Part of this Schedule or, where no such statements have been prepared, since the date on which the insurer began to carry on the class of business to which the statements relate, and the reserve for unexpired risks and outstanding claims.

THE SIXTH SCHEDULE

PART A

[*See* section 42B*(1)*]

TERMS DEEMED TO BE INCLUDED IN EVERY CONTRACT BETWEEN AN INSURER CARRYING ON GENERAL INSURANCE BUSINESS AND A PRINCIPAL AGENT

1. All payments of commission to insurance agents shall be made by the principal agent on behalf of the insurer.

2. The principal agent shall procure or cause to be procured through insurance agents such an amount of general insurance business of any class for the procurement of which he has been appointed, as will yield a gross premium income of not less than twenty thousand rupees in each calender year.

3. In the event of the principal agent failing in any celender year to comply with the requirements of clause 2, he shall forfeit to the insurer—

(i) one-quarter of the total remuneration payable to him by the insurer for that year, if the class of business for the procurement of which he has been appointed is fire or miscellaneous insurance business, or

(ii) one-third of the total remuneration payable to him by the insurer for that year, if the class of business for the procurement of which he has been appointed is marine insurance business.

4. In the event of the principal agent failing to comply with the requirements of clause 2 in any two successive calender years, the contract shall without prejudice to the provisions of clause 3, terminate on the 31st day of March immediately following the second calendar year.

5. Except in cases where the business relates to any property under his immediate control, a principal agent shall not by himself procure any class of the general insurance business without utilising the services of an insurance agent.

PART B

[See section 42C *(1)*]

Terms Deemed to be included in every Contract between an Insurer carrying on Life Insurance Business and a Special Agent or between a Chief Agent and a Special Agent

1. All payments of commission to insurance agents shall be made by the insurer direct or by the chief agent, who may make the payment either directly or through a special agent on behalf of the insurer.

2. The chief agent shall employ or cause to be employed for and on behalf of the insurer either directly or through special agents at least six insurance agents in cases where the business in force of the insurer is less than one crore of rupees and in any other case at least twelve agents each of whom will procure in each calender year new business amounting to not less than ten thousand rupees.

3. Save as provided in respect of cases specified in clause 7 of the part, the remuneration payable to the chief agent in respect of life insurance business effected through him for the insurer shall only be in the form of an overriding commission.

4. In the event of the chief agent failing in two successive calendar years to comply with the requirements of clause 2, he shall forfeit to the insurer one-half of the total remuneration payable to him by the insurer for those years.

5. In the event of the chief agent failing to comply with the requirements of clause 2 in four successive calendar years, the contract shall, without prejudice to the provisions of clause 4, terminate on the 31st day of March immediately following the last of such calendar years.

6. Not more than one intermediary to be remunerated by the insurance concerned, whether on a salary basis or by way of commission, shall be employed between the chief agent and any insurance agent, but the chief agent may employ as many persons as he thinks fit on a salary basis, provided such salaries are paid out of his overriding commission.

7. In cases where the commission payable on a policy of life insurance effected through an insurance agent working under a chief agent is stopped on or after the 1st day of January, 1949 and not paid to the insurance agent, an amount not exceeding one-quarter of such commission payable to the insurance agent concerned shall also be payable to the chief agent, if he continues to render service in connection with that policy and if such commission is otherwise payable to him.

PART C

[*See* section 42C*(4)*]

Terms Deemed to be included in every Contract between an Insurer carrying on Life Insurance Business and a Special Agent or between a Chief Agent and a Special Agent

1. All payments of commission to insurance agents shall be made by the insurer direct or, on

behalf of the insurer, either by the chief agent under whom the special agent is working or by the special agent.

2. The special agent shall employ at least two insurance agents and shall procure or cause to be procured through insurance agents employed under him in each calendar year new business amounting to not less than fifty thousand rupees assured on which at least the first year's premiums have been paid in full.

3. In the event of the special agent failing in any calendar year to comply with the requirements of clause 2, he shall forfeit to the insurer fifty per cent, of the total remuneration payable to him by the insurer, or, as the case may be, by the chief agent, for that year.

4. In the event of the special agent failing to comply with the requirements of clause 2 in two successive calendar years, the contract shall, without prejudice to the provisions of clause 3 of this Part terminate on the 31st day of March immediately following the second calendar year.

5. In the event of the special agent procuring life insurance business without utilising the services of an insurance agent, the special agent shall be entitled only to the commission that is ordinarily payable in respect of business so procured to an insurance agent.

6. The remuneration payable to the special agent in respect of policies of life insurance procured by him through insurance agents shall only be in the form of an overriding commission.

Explanation.— In this Schedule "business in force" means the total sum assured with bonuses, without taking into account reinsurances, ceded or accepted, by an insurer in respect of the whole of the life insurance business on the working day of the calendar year or the period covered by the revenue account furnished by such insurer under clause *(b)* or sub-section *(2)* of section 16, as the

case may be, preceding the calendar year in question.

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THE EIGHTH SCHEDULE

(*See* section 52J)

PRINCIPLES OF COMPENSATION

The compensation to be given under section 52J shall be an amount equal to the value of the assets of the acquired insurer as on the day immediately before the appointed day, computed in accordance with the provisions of Part I of this Schedule less the total amount of liabilities thereof as on that day, computed in accordance with the provisions of Part II of this Schedule.

PART I

ASSETS

For the purposes of this Part, "value of asset" means the total of the following:—

(a) the market value of any land or buildings;

(b) the market value of any securities, shares, debentures, bonds and other investments, held by the acquired insurer.

Explanation.—For the purposes of this clause,—

(i) Securities of the Central Government, such as Post Office Certificates and Treasury Savings Deposit Certificates and any other securities or certificates issued or to be issued under the Small Saving Scheme of the Central Government, shall be valued at their encashable value as on the appointed day;

(ii) Where the market value of any Government security such as the zamindari abolition bonds or other similar security, in respect of which the principal is payable in instalments, is not ascertainable or is, for any reason, not considered as reflecting the fair value thereof or as otherwise appropriate, the security shall be valued at such an amount as is considered reasonable, having regard to the instalments of principal and interest remaining to be paid, the period during which such instalments are payable, the yield of any security, issued by the Government to which the security pertains and having the same or approximately the same maturity, and other relevant factors;

(iii) Where the market value of any security, share, debenture, bond of other investment is not considered reasonable by reason of its having been affected by abnormal factors, the investment may be valued on the basis of its average market value over any reasonable period;

(iv) Where the market value of any security, share, debenture, bond or other investment is not ascertainable, only such value, if any, shall be taken into account as is considered reasonable, having regard to the financial position of the issuing concern, the dividend paid by it during the preceding five years and other relevant factors;

(c) the total amount of the premiums paid by the acquired insurer in respect of all leasehold properties, reduced in the case of each such premium by an amount which bears to such premium the same proportion as the expired term of the lease in respect of

which such premium shall have been paid bears to the total term of the lease;

(d) the written down value as per books, or the realisable value, as may be considered reasonable, of all furniture, fixtures and fittings;

(e) the amount of debts due to the insurer, whether secured or unsecured, to the extent to which they are reasonably considered to be recoverable;

(f) the amount of cash held by the insurer whether in deposit with a bank or otherwise;

(g) the market or realisable value, as may be appropriate, of other assets appearing on the books of the insurer, no value being allowed for capitalised expenses, such as share selling commission, organizational expenses and brokerage, losses incurred and similar other items.

PART II

LIABILITIES

The total amount of the liabilities of the insurer shall include—

(i) reserves for unexpired risks being in respect of each policy, such portion of the last premium paid as is proportionate to the unexpired portion of the policy in respect of which the premium was paid;

(ii) the total amount of all other liabilities of the insurer existing on the appointed day, including all contingent liabilities which the Central Government of the acquiring insurer may reasonably be expected to be required to meet out of its own resources on or after the appointed day.

CERTAIN DIVIDENDS NOT TO BE TAKEN INTO ACCOUNT

No separate compensation shall be payable for any profits or any dividend in respect of any period immediately preceding the appointed day, for which, in the ordinary course, profits would have been transferred or dividend declared after the appointed day.

EXTRACT FROM THE GENERAL INSURANCE BUSINESS NATIONALISATION ACT, 1972
(57 OF 1972)

* * * * *

Properties in India not to be with foreign insurer except with permission of Central Government.

25. *(1)* No person shall take out or renew any policy of insurance in respect of any property in India or any ship or other vessel or aircraft registered in India with an insurer whose principal place of business is outside India save with the prior permission of the Central Government.

(2) If any person contravenes any provision of sub-section *(1)*, he shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

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EXTRACTS FROM THE INSURANCE REGULATORY AND DEVELOPMENT AUTHORITY ACT, 1999
(41 OF 1999)

* * * * *

Definitions.

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

* * * * *

(b) "Authority" means the Insurance Regulatory and Development Authority established under sub-section *(1)* of section 3;

* * * * *

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

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CHAPTER II

INSURANCE REGULATORY AND DEVELOPMENT AUTHORITY

Establishment and incorporation of Authority.

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

* * * * *

CHAPTER IV

DUTIES, POWERS AND FUNCTIONS OF AUTHORITY

* * * * *

Duties, powers and functions of Authority.

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

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

* * * * *

(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.

* * * * *

(n) supervising the functioning of the Tariff Advisory Committee;

* * * * *

Constitution of Fund.

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

* * * * *

(c) the percentage of prescribed premium income received from the insurer.

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BILL

further to amend the Insurance Act, 1938, the General Insurance Business (Nationalisation) Act, 1972 and the Insurance Regulatory and Development Authority Act, 1999.

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(Shri Pawan Kumar Bansal, Minister of State in the Ministry of Finance and Minister of State in the Ministry of Parliamentary Affairs)