

54

**STANDING COMMITTEE
ON FINANCE
(2003)**

THIRTEENTH LOK SABHA

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

THE ACTUARIES BILL, 2002

FIFTY-FOURTH REPORT



Presented to Lok Sabha on 9.12.2003
Laid in Rajya Sabha on 9.12.2003

**LOK SABHA SECRETARIAT
NEW DELHI**

December, 2003/Agrahayana, 1925 (Saka)

CONTENTS

	PAGE
COMPOSITION OF THE COMMITTEE.....	(III)
INTRODUCTION.....	(v)
Report	1
Minutes of the sitting of the Committee held on 30 TH July, 13 th October and 13 th November, 2003	17

APPENDIX

The Actuaries Bill, 2002.....	25
-------------------------------	----

COMPOSITION OF STANDING COMMITTEE ON FINANCE – 2003

Shri. N. Janardhana Reddy – Chairman

MEMBERS

LOK SABHA

2. Shri Omar Abdullah
3. Shri Raashid Alvi
4. Shri Sudip Bandyopadhyay
5. Shri Surender Singh Barwala
6. Shri Ramesh Chennithala
7. Smt. Renuka Chowdhury
8. Dr. Daggubati Ramanaidu
9. Shri Kamal Nath
10. Shri Trilochan Kanungo
11. Shri Rattan Lal Kataria
12. Dr. C. Krishnan
13. Shri M.V.V.S. Murthi
14. Shri Sudarsana E.M. Natchiappan
15. Capt. Jai Narain Prasad Nishad
16. Shri Rupchand Pal
17. Shri Prabodh Panda
18. Shri Prakash Paranjpe
19. Shri Raj Narain Passi
20. Shri Sharad Pawar
21. Shri Pravin Rashtrapal
22. Shri Ramsinh Rathwa
23. Shri Chada Suresh Reddy
24. Shri S. Jaipal Reddy
25. Shri Jyotiraditya Madhavrao Scindia
26. Shri T.M. Selvaganapathi
27. Shri Lakshman Seth
28. Shri Kirit Somaiya
29. Shri Kharabela Swain
30. Shri P.D. Elangovan **

RAJYA SABHA

31. Dr. Manmohan Singh
32. Dr. T. Subbarami Reddy
33. Shri Murli Deora
34. Shri Prithviraj D. Chavan
35. Shri S.S. Ahluwalia
36. Shri Swaraj Kaushal *
37. Shri M. Rajasekara Murthy
38. Dr. Biplab Dasgupta

39. Shri P. Prabhakar Reddy
40. Shri Amar Singh
41. Shri Prem Chand Gupta
42. Shri Palden Tsering Gyamtso
43. Shri Raj Kumar Dhoot
44. Shri Praful Patel
45. Shri Dinesh Trivedi

*Nominated to this Committee vice Sh. Mukhtar Abbas Naqvi w.e.f. 26.3.2003

** Nominated to this Committee w.e.f. 07.04.2003

SECRETARIAT

1. Sh. P.D.T. Achary - Additional Secretary
2. Dr. (Smt.) P.K. Sandhu - Joint Secretary
3. Sh. R.K. Jain - Deputy Secretary
4. Sh. S.B. Arora - Under Secretary

Report

Background

With the enactment of the Insurance Regulatory and Development Authority (IRDA) Act, 1999 and establishment of IRDA on 19.4.2000 consequent thereto, the insurance sector stands opened up for competition. The foreign participation/partnership/joint venture in the private companies have been allowed upto 26%. The IRDA has granted registration to 20 private insurance companies in addition to the existing state-owned Life Insurance Corporation of India (LIC), General Insurance Corporation of India (GIC), National Insurance Company Limited (NIC), New India Assurance Company Limited (NIA), Oriental Insurance Company Limited (OIC) and United India Insurance Company Limited (UIIC).

2. The Actuarial Science is the backbone of the insurance operations particularly in the area of life insurance. However, with the passage of time, the scope of Actuarial profession stands extended to other sectors particularly where long term contracts/liabilities are involved. The demand for qualified actuary is anticipated/expected to increase in the mixed scenario where private and government insurance companies are operating.

3. According to the Insurance Regulatory and Development Authority (Appointed Actuary) Regulations, 2000, every insurance company shall have an "Appointed Actuary". The duties and obligations of an appointed actuary are given below:-

- (a) Rendering actuarial advice to the management of the insurer, in particular in the areas of product design and pricing, insurance contract wording, investments and reinsurance;
- (b) Ensuring the solvency of the insurer at all times;
- (c) Complying with the provisions of Section 64V of the Insurance Act, 1938 in regard to certification of the assets and liabilities that have been valued in the manner required under the said section
- (d) Complying with the provisions of Section 64VA of the Insurance Act in regard to maintenance of required solvency margin in the manner required under the said section;

- (e) Drawing the attention of management of the insurer, to any matter on which he or she thinks that action is required to be taken by the insurer to avoid-
 - (i) any contravention of the Act; or
 - (ii) prejudice to the interests of policyholders;
- (f) Complying with the authority's directions from time to time;
- (g) In the case of the insurer carrying on life insurance business:-
 - (i) to certify the actuarial report and abstract and other returns as required under Section 13 of the Act;
 - (ii) to comply with the provisions of Section 21 of the Act in regard to further information required by the Authority;
 - (iii) to comply with the provisions of section 40B of the Act in regard to the bases of premium
 - (iv) to comply with the provisions of Section 112 of the Act in regard to recommendation of interim bonus or bonuses payable by life insurer to policy holders whose policies mature for payment by reason of death or otherwise during the inter-valuation period;
 - (v) to ensure that all the requisite records have been made available to him or her for the purpose of conducting actuarial valuation of liabilities and assets of the insurer;
 - (vi) to ensure that the premium rates of the insurance products are fair;
 - (vii) to certify that the mathematical reserves have been determined taking into account the guidance notes issued by the Actuarial Society of India and any directions given by the Authority;
 - (viii) to ensure that the policyholders' reasonable expectations have been considered in the matter of valuation of liabilities and distribution of surplus to the participating policyholders who are entitled for a share of surplus
 - (ix) to submit the actuarial advice in the interests of the insurance industry and the policyholders;
- (h) In the case of the insurer carrying on general insurance business to ensure:-
 - (i) that the rates are fair in respect of those contracts that are governed by the insurer's in-house tariff;
 - (ii) That the actuarial principles, in the determination of liabilities, have been used in the calculation of reserves for incurred but not reported claims (IBNR) and other reserves where actuarial advice is sought by the Authority.

- (i) Informing the Authority in writing of his or her opinion, with a reasonable time, whether :-
- (i) the insurer has contravened the Act or any other Acts
 - (ii) the contravention is of such a nature that it may affect significantly the interests of the owners or beneficiaries of policies issued by the insurer;
 - (iii) the directors of the insurer have failed to take such action as is reasonably necessary to enable him to exercise his or her duties and obligations under this regulations; or
 - (iv) an officer or employee of the insurer has engaged in conduct calculated to prevent him or her exercising his or her duties and obligations under this regulation.

4. Presently, the profession of Chartered Accountants is governed through the Chartered Accountants Act, 1949; the profession of Cost and Works Accountants through the Cost and Works Accountants Act, 1959 and the profession of Company Secretaries through the Company Secretaries Act, 1980 respectively.

5. However, there continued to be lack of such a legislation with regard to Actuarial Profession in India. Perhaps it was not felt necessary so far due to nationalized set up of the insurance sector and consequently the limited scope of the qualified actuaries in these organizations. In the absence of such a legislation actuarial consultancy on private/individual basis also continued to be limited/restricted.

6. It may now be imperative that a professional statutory body be established in order to streamline, regulate and develop the profession of actuaries on healthy lines on the pattern the three professions are statutorily recognised since 1949, 1959 and 1980 respectively.

7. Hence, the Actuaries Bill, 2002 was introduced in Lok Sabha.

The Actuarial Society of India:

8. At present, the Actuarial Society of India (ASI), which is registered under the Societies Registration Act, 1960 and the Bombay Public Trusts Act, 1950 manages the affairs of the Actuarial Profession in India. The ASI has been conducting the examinations similar to the international pattern and in this regard they work closely with the Institute of Actuaries, London and is also a member of International Actuarial Association. The total membership of ASI is around 800 including 220 fellow members.

The Institute of Actuaries of India

9. The Bill envisages establishment of a professional body namely Institute of Actuaries of India (IAI) by converting the existing ASI into the IAI and transferring all the assets and liabilities of the existing ASI to the new IAI. The proposed new IAI is expected to be self-financing and self-supporting and does not envisage any budgetary support from the Government.

10. The IAI would be maintaining the register of actuaries for their members. The members are divided into 4 classes namely Fellow, Associate, Student and Affiliate. The student and Affiliate members would not be entitled to vote.

11. There will be a Council of the IAI for the management of its affairs and for discharging functions assigned to it. The council will have a minimum of 8 (and not more than 12 persons) elected by the Fellow and Associate members from amongst Fellow members. The Government shall nominate one person from the IRDA and not more than 3 persons with knowledge of life insurance, general insurance, finance, economics, law, accountancy or any other discipline useful to the Council.

12. The Council shall elect a President, Vice-President, Honorary Secretary. One third of the members of the Council shall retire at every annual general meeting by rotation and will be eligible for re-election. The council would appoint an Executive Director, a treasurer and such other officers and employees depending upon the need. The Council would constitute a disciplinary committee. A fund would be established under the management and control of the council. The actuaries would be entitled to practice in India only after obtaining a certificate of practice from the council on payment of prescribed annual fee.

13. Regarding various provisions of the Bill, written views/suggestions were received from (a) Insurance Regulatory and Development Authority (IRDA) (b) Actuarial Society of India (ASI) (c) Life Insurance Corporation of India (LIC) (d) Public Sector General Insurance Companies (e) India Life Hewitt (f) Sh. M C Chakravarti, Past President of the Actuarial Society of India (g) Sh. Nalin R Kapadia, Actuary.

14. The Committee took oral evidence of the representatives of (a) the Ministry of Finance,(Department of Economic Affairs-Insurance Division) (b) the Ministry of Law and Justice (Legislative Department) (c) Insurance Regulatory and Development Authority (d) Life Insurance Corporation of India and (e) Oriental

Insurance Company Ltd. to further enlighten themselves in various aspects of the proposed legislation.

15. After having examined various provisions of the Bill in detail, the Committee are generally in agreement with the broad objectives of the Bill. They do concede that with the opening up of insurance sector, the need for qualified actuaries will increase greatly. Therefore, there is a compelling need for a legislation to statutorily regulate the profession of actuaries, on the lines of other professions viz. Chartered Accountants, Cost and Works Accountants and Company Secretaries. The setting up of a professional statutory body, as envisaged in the Bill will certainly help advance the profession of actuarial science in India and improve the status of actuaries.

16. In their deliberations with representatives of various organisations such as Actuarial Society of India (ASI), Insurance Regulatory and Development Authority (IRDA) and insurance companies (both life and non life), the Committee found divergent views in respect of some of the clauses of the Bill. After hearing the views of these organisations, the Committee have come to the conclusion that some provisions of the Bill need modification to enlarge its scope so that it becomes more effective instrument to ensure proper growth of actuarial profession in India. The desired changes are included in the recommendations of the Committee, which are dealt with in the subsequent paragraphs.

Clause 2(1)(a)

17. Clause 2 (1) (a) of the Bill reads as:-

“Actuary” means an Actuary as defined in the Insurance Act, 1938;”

18. The Actuarial Society of India (ASI) stated that the Actuaries Act should define an Actuary in a generalized context rather than depending on such a definition in the Insurance Act, 1938, which relates solely to functions of an Actuary in connection with the Insurance business.

19. On this clause, the Ministry of Finance, in their written submission, have stated their response as below:-

“The definition of Actuary is proposed to be the same as in the Insurance Act. Further the Insurance Act do not define the Actuary but mention that the Actuary would be defined in the IRDA Regulations. If

it is considered necessary, appropriate amendments could be brought in the IRDA Regulations later. However, we do not have any objection in defining the word 'Actuary' in the proposed Bill."

20. Commenting on the role of actuaries, the Secretary, Ministry of Finance, during his oral evidence stated as follows:

"The role of an actuary in a life insurance company is extremely important. It includes designing and pricing of policies, that is, the kind of context they work out, monitoring the adequacy of funds to provide the promised benefits, whether the company will have adequate funds or not over a period of time to be able to service its liability, recommending fair rate of bonuses to be added to policies which are with profit policies, valuation of the insurance business, ensuring solvency margin, etc.

In the general insurance industry, their expertise covers insurance of property. This property ranges from homes and cars to even satellites. Other insurable risks like legal liabilities, loss of profit, etc., are also covered by them. Actuaries can also define the risk factors, what will be the risk in a particular type of policy, advise on the premia to be charged, reinsurance to be purchased, calculation of reserves for outstanding claims and carry out detailed mathematical financial moduling. The more advanced actuaries nowadays take the help of computers to do the calculation. Besides the insurance sector, the actuaries are required in other sectors as well. An actuary is skilled in finance moduling and risk analysis in many different areas of business. An actuary is expected to use a mathematical approach to find solutions to long-term financial problems particularly, in life insurance, investments and pension. Many actuaries work as consultants either as individual practitioners or in partnership with other actuaries. Many work in multi-disciplinary practices like insurance, information technology, taxation, employees' benefits, risk management and investments etc."

21. The Committee observe that actuaries have multidisciplinary role beyond the area of insurance. They have equally important role in areas such as employees benefit, information technology, taxation, risk management and investments etc. Given this, it is imperative that actuaries should be defined in a more wider context to recognise their role in other fields besides insurance. Therefore, the Committee are of the view that the proposed Act should define actuaries in a more generalised context, instead of leaving it to be defined by the IRDA regulations. Hence, the Committee recommend that the word "Actuary" should be defined in the proposed Act itself.

Clause 2(2)

22. Clause 2(2) states that “Save as otherwise provided in this Act, a member of the Institute shall be deemed “to be in practice” when, individually or in partnership with actuaries in practice, he, whether or not in consideration of remuneration received or to be received,-

- (i) engages himself in actuarial profession; or
- (ii) offers to perform or performs services involving the application of actuarial techniques in the fields of insurance, pension, investment, finance and management; or
- (iii) renders such other services as, in the opinion of the Council, are or may be rendered by an actuary in practice; or
- (iv) is in employment of a person engaged in one or more of the activities mentioned in clauses (i), (ii) and (iii) above, and the words ‘to be in practice’ with their grammatical variations and cognate expression shall be construed accordingly.”

23. Commenting on the provisions of this Clause, the Committee, appointed by the Actuarial Society of India known as K.P. Narasimhan Committee recommended as under:

“The provisions of this sub-section as contained in the Bill restrict the actuarial practice to be carried out “individually or in partnership with actuaries in practice”. Our submission is that the actuarial practice should be allowed to take place under other organizational structures too. What is sought to be done through the suggested amendment is that the professional body needs to regulate the members of the profession individually independent of the structure they operate under. Our view is that the actuaries should take responsibility as individuals and be regulated by the professional body as individuals. As regards the issue of professional liability on the individual actuary concerned, we would like to state that the structure under which an individual actuary chooses to operate would supplement individual actuary’s resources towards his professional liability. This would be so because resources of the entity under which an individual actuary would operate would normally exceed those of the individual actuary. In case resources of the entity are smaller than those of the individual actuary, the access to the resources of the individual would in any event be available. Further an actuary being principally responsible to the client, the liability would first fall on him and then on the entity under which he is working. This would not prevent the client from taking action against the individual actuary but if the client, the actuary and the actuary’s employer agree, there should be no reason why the employer should not assume the financial exposure.

We may add here that it is the individual actuary who is bound by the Professional Conduct Standards (PCS) and any Guidance Notes (GNs) issued by the professional body. The position that general actuarial consulting advice goes through a partnership or a corporate entity does not affect the responsibility of the actuary to

abide by the PCS and GNs and in this context, the responsibility for the advice given to a client always would lie on the individual actuary.

Thus what is sought to be achieved through the suggested change is that while an actuary can operate under any structure as an individual professional, the client's interest are not jeopardized but are made more secure.

Incidentally we may mention here that the structure of actuarial practice being suggested by us is the structure in which major actuarial bodies such as those of UK, US and Australia, operate. This will help us to put Indian actuarial profession in a competitive footing if not at an advantage in global competitive environment.

On the proposed deletion "whether or not in consideration of remuneration received or to be received" and replacement thereof by "when in consideration of remuneration received or to be received he__", we submit that a search for authentic literature on elements of a profession or professionalism would suggest besides other elements, existence of "a direct and definite compensation, wholly apart from expectation of other business gain" (Walter Rugland, 1993). We may further submit that the dictionary meaning of client is "one who employs a lawyer or other professional adviser" and employment always envisages remuneration."

24. India Life Hewitt, has furnished following views regarding changes in this Clause:

The Clause 2(2) should be changed as:

" A member of the institute shall be deemed to be in practice, if he

- a. individually, or
- b. in partnership with any one or more actuaries or
- c. as a whole-time director or an employee of any Life or Non-life Insurance companies approved by the IRDA or
- d. as a whole-time director or an employee of a body corporate which offers actuarial services.

Whether or not in consideration of remuneration received or to be received

- (i) engages himself in actuarial profession or
- (ii) offers to perform or performs services involving the application of actuarial techniques in the fields of insurance, investment, finance and management
- (iii) renders such other services as, in the opinion of the council, are or may be rendered by, an actuary in practice.
- (iv) is in employment of a person engaged in one or more of the activities mentioned in (i), (ii), and (iii) above

and the words "to be in practice" with their grammatical variations and cognate expressions shall be construed accordingly."

25. Explaining the advantages of allowing employees of corporates to be 'Actuaries in Practice', the India Life Hewitt put forth following arguments

1. "Corporates have been investing in recruiting and training of Indian Actuarial students to a much great extent than the sole proprietors or partnerships. This is essential for the long term health of the profession because a student employed with a consulting corporate of international origins would get exposed to expertise, systems and technology which is proven internationally.
2. Most of these corporates are looking at India as a base for providing actuarial services for their international offices. That would be possible only if a very reliable and diversified talent pool is developed. The bill by excluding the employees of corporates, denies these corporates such an opportunity
3. Internationally, both insurance and retirement benefits provide major growth area for the actuarial profession. In both these areas it is the corporates whether insurance companies or consultancies that have contributed significantly to improvement of the profession. In India both these industries are emerging and denying corporates the space in these industries would have an adverse impact on the overall development of the industry itself.
4. Corporates' liability though is limited, the resources available to a corporate in comparison to an individual is much higher normally and therefore the ability to support any claims. Therefore, argument based on the concept of unlimited liability of individuals is purely theoretical because the resources available to pay such claims limit the potential claims against the actuary. Further, internationally even the large unlimited liability partnerships require all clients to enter into contracts limiting the advisor liability to each client and therefore the argument of unlimited liability is only in theory."

In this regard IRDA expressed their views as under:

"The Bill runs on the same lines as the Act on the establishment of Institute of Chartered Accountants of India. In the case of the Chartered Accountants the members of the institute are permitted to practice in the country either in their individual names or in partnership with their members of the institute. They are prevented from allowing themselves with any other profession, non professional. In the case of the actuaries, however, there is a basic difference from that of the Chartered Accountant in the matter of practice. The Bill proposes that only a fellow member of the institute of actuaries can obtain a certificate of practice and certify valuations. In the case of Chartered Accountants either fellow or associate can hold the certificate of practice. In the case of any actuary the universal

practice has been for the recognition of the corporate firm existent directly in the organisation. In other words, an actuary could be practicing independently or in a firm with other actuaries or as a member or a director or an employee of a limited company. In order to protect the interests of the various stakeholders the profession, however, has admitted the individual responsibility of the actuary irrespective of the organisational structure he has adopted the liability to the various stakeholders will continue to be that of the individual actuary but in cases where he has an organisation to support, such a support would also be available to meet any damages or losses. This is a big departure from the other professional bodies' relationship with their members. We do support this system and feel that to the initial years of the establishment of a profession such a step would be in the right direction and would act to the strength and stability of the system and ensure professional accountability and responsibility to the members of the public."

27. When asked to express their views on this Clause the LIC stated following in their written submission:

"Actuaries should have freedom to choose the structure i.e. individual, partnership or employee of a corporate entity under which he/she would like to practice. LIC is administering a number of group gratuity and superannuation schemes where actuarial advice is being given to the clients (policy holders) as employees of the corporation by its actuaries. If employees of companies are considered to be actuaries not in practice, LIC shall be unable to administer such schemes which will adversely affect our group business."

28. On the other hand, the Public Sector General Insurance Companies did not agree with the suggestion on Clause 2(2). For instance the Oriental Insurance Company Ltd. furnished following reply in response to the suggested changes in clause 2(2):

"We do not agree with the suggestion that whole-time Directors and employees who possess actuarial qualification can also be treated as Members in Practice. This is on the analogy that this is not done in case of other professional bodies like ICAI, ICWAI or ICSI. If a Member joins a Company as a whole-time Director or an employee, his full attention is to be devoted to that company only and he cannot be said to be a Member in Practice."

29. When asked to give their response to the suggested changes in Clause 2(2), the Ministry of Finance, in their written reply stated as below:

"We do not agree with the suggestion. The present definition of Actuary in practice is in line with the definition contained in

the other three Acts covering the professions of Chartered Accountants, Cost and Works Accountants and Company Secretaries. The profession of Actuary is not very different from a profession of a lawyer or an engineer or a chartered accountant. We have been following the concept that the professional liability is unlimited and therefore, any member who enters a profession has to assume that unlimited liability to the profession as well as to the community at large. It is not proposed to allow limited liability entities in actuarial profession. Corporate entities are not allowed to become a member of the bar council or chartered accountants institute or the institute of company's secretary etc."

30. During the course of oral evidence, when the Committee raised a query on denial of corporates from indulging in actuarial practice, the representatives from Ministry of Law and Justice (Legislative Department) stated:

"Sir, the proposed law intends prescribing certain qualifications for individuals who would be known as actuaries. They would be on the register. They would be registered as members, as it is in the Bill. Thereafter, whenever there is a misconduct, the misconduct would not be against the company but would be against the individual member. In other professions, even in law to which I belong, you may know, there are law firms but legally there are no law firms. It is the individual expert, either the advocate or the actuary or the company secretary who would be subjected to discipline by the institute or council. That is the reason. Therefore, as prevalent in other professions, we are not going in for corporate practice in this area also.

It is only that Actuary who can be proceeded against and not the firm or the company, as legally you cannot hold the company or the firm liable for doing any misconduct. So, therefore, it primarily governs the individual who will be the Actuary. That is why, as I said earlier, this is intended in the Bill not to go for corporate practice."

31. In reply to a query on inclusion of those actuaries who are employees of a company under the proposed Bill, the Ministry replied as under:

" It is not proposed to allow corporates in any form as actuaries in practice. Any member who enters the profession as actuary in practice has to assume that unlimited liability to the profession. The concept of limited liability entities is not proposed to be allowed in the actuarial profession. An actuary

who is an employee of a company continues to be an actuary in practice according to the present provision of the Bill.”

32. In response to another query, the Ministry inter alia, further clarified their stand regarding denial to corporate entities from entering into actuarial profession as below:

“It has been decided that limited liability entities need not be allowed as actuaries in practice under the proposed Bill. It is necessary to develop the profession of actuaries in a healthy manner and in the initial stage, it is not proposed to allow corporate entities as actuaries in practice. Moreover, the Council of the proposed Institute is empowered to proceed against only members of the institute for mis conduct as per clause 24. Allowing body corporates would defeat the objective of this clause. Further, body corporates would be governed by the Companies Act and not by the clauses of the Bill under consideration.”

33. When the Government were enquired of their views on inclusion of actuaries employed by LIC within the definition of actuary in practice, the Ministry replied as under:

“ it is not proposed to allow a company or a corporate entity to engage in actuarial practice. However, for group gratuity or superannuation schemes being operated by life insurance companies, the issue of certificates for such funds being managed by that life insurance company through their employees who are appointed actuary or having appropriate actuarial qualification would be taken up with IRDA for covering it under the regulations relating to “appointed actuary” issued by the IRDA. In case it is necessary to consider some transitional provision in the Bill to tide over the difficulties expressed by LIC, this would be considered by the Government.”

34. Responding to a suggestion that instead of total prohibition on companies from practicing as actuaries, as provided in the Bill, there should be provision to allow only corporates employing at least one ‘Actuary in Practice’ to provide actuarial services, the Ministry in their written submission furnished following reply:

“ The suggestion is not acceptable, as it is not proposed to allow companies or corporate entities to engage in actuarial practice in any form. If we allow body corporate to engage in actuarial practices, then in case of any misconduct, the Institute would not be able to fix up the responsibility and proceed against them.”

35. With regard to provisions of this Clause, the IRDA, in a written note, have suggested following modification:

Section 2(2) defines 'an actuary in practice'. The definition is silent on actuaries employed by companies and needs to be more specific to address this explicitly. We suggest that the wording:

"save as otherwise provided in this Act, a member of the Institute shall be deemed 'to be in practice' when, individually or in partnership with actuaries in practice, he, whether or not in consideration of remuneration received or to be received,....."

be substituted by

"Save as otherwise provided in this Act, a member of the Institute shall be deemed 'to be in practice' when, individually or in partnership with actuaries in practice, being a member or an employee of a company consisting of members in practice, he, whether or not in consideration of remuneration received or to be received....."

Otherwise, the sub-section (2) could define 'person' mentioned in clause (iv) as:

'person' includes a firm, a company, or a corporate body, or an entity as may be prescribed."

36. On being asked to respond to this suggestion and furnish their views on need for explicit definition of 'Person', the Ministry in their written reply stated as under:

"The above suggestion has been considered. The present formulation does not prevent individual members of companies becoming members of the profession of actuaries. To make it more clear the following formulation could be considered for substituting sub-clause (2) of clause 2.

"Save as otherwise provided in this Act, a member of the Institute shall be deemed "to be in practice" when, individually or in partnership with actuaries in practice,

being a member or an employee of a company, he, whether or not in consideration of remuneration received or to be received....."

37. After hearing the views of all concerned organisations, including those of the Insurance Regulatory and Development Authority (IRDA), the Committee find that there is an ambiguity regarding 'Actuaries in Practice' as contained in clause 2(2) of the Bill. The Committee observe that while the Insurance Regulatory and

Development Authority, the Actuarial Society of India, and the India Life Hewitt have advocated for the entry of corporates in this profession, the general insurance companies have expressed their disagreement with this.

38. The Committee also note that Government are not in favour of allowing corporates in actuarial practice due to various reasons such as, (a) preference for system of unlimited liability to be carried by individual actuaries, (b) analogy with statutory provisions for regulation of Chartered accountants, Cost accountants and Company secretaries and (c) inability of IAI in fixing responsibility in case of misconduct. The Committee are in agreement with the Government's view that corporate entry into actuarial practices should be resisted but they are of the view that employees of the companies may be allowed to act as actuaries in practice under the proposed enactment. This will not only be in tune with the other enactments regulating professional bodies such as Institute of Chartered Accountants of India, Institute of Cost and Works Accountants and Institute of Company Secretaries but also ensure the fixing of unlimited liability on the actuary in practice in his individual capacity. They further note that the Government have themselves accepted that the definition of Actuary in Practice may also explicitly include employees of the companies in its ambit. Therefore, the Committee, in consonance with the suggestions of the Government recommend that the Clause 2(2) of the Bill may be amended accordingly.

39. With the modifications, recommended in the preceding paragraphs, the Committee approve the Bill for enactment.

NEW DELHI
03 December, 2003
12 Agrahayana, 1925 (Saka)

N. JANARDHANA REDDY
Chairman
Standing Committee on Finance

MINUTES OF THE SIXTEENTH SITTING OF STANDING COMMITTEE ON

FINANCE

The Committee sat on Wednesday, 30 July, 2003 from 1600 hours to 1700 hours.

PRESENT

Shri. N. Janardhana Reddy – Chairman

MEMBERS

LOK SABHA

2. Shri Ramesh Chennithala
3. Dr. Daggubati Ramanaidu
4. Capt. Jai Narain Prasad Nishad
5. Shri Rupchand Pal
6. Shri Prabodh Panda
7. Shri Chada Suresh Reddy
8. Shri Lakshman Seth
9. Shri Kirit Somaiya
10. Shri Kharbela Swain

RAJYA SABHA

11. Shri Prithviraj D. Chavan
12. Shri Raj Kumar Dhoot
13. Shri Dinesh Trivedi

SECRETARIAT

- | | | |
|---------------------------|---|----------------------|
| 1. Shri P.D.T Achary | - | Additional Secretary |
| 2. Dr. (Smt.) P.K. Sandhu | - | Joint Secretary |
| 3. Shri R.K. Jain | - | Deputy Secretary |
| 4. Shri S.B. Arora | - | Under Secretary |

WITNESSES

Ministry of Finance (Department of Economic Affairs-Insurance Division)

- | | |
|-------------------------|---|
| 1. Shri N.S. Sisodia | Secretary (Financial Sector) |
| 2. Shri G.C. Chaturvedi | Joint Secretary (Banking and Insurance) |
| 3. Shri R. Renganath | Director (Insurance) |

Ministry of Law and Justice (Legislative Department)

- | | |
|-----------------------|---|
| 4. Dr Santokh Singh | Joint Secretary and Legislative Counsel |
| 5. Shri N.K. Ambashta | Deputy Legislative Counsel |

Insurance Regulatory and Development Authority (IRDA)

6. Shri P.A. Balasubramaniam Member

Life Insurance Corporation of India

7. Shri R. N. Bhardwaj Managing Director
8. Shri G.N. Agarwal Chief-in-Charge (Actuarial)

The Oriental Insurance Co. Limited

9. Shri S.L. Mohan Chairman-cum-Managing Director

2. At the outset, the Chairman welcomed the representatives of the Ministry of Finance (Department of Economic Affairs- Insurance Division), Ministry of Law and Justice (Legislative Department), Insurance Regulatory and Development Authority (IRDA), Life Insurance Corporation of India and the Oriental Insurance Co. Limited to the sitting of the Committee and invited their attention to Direction 55 of the Directions by the Speaker, Lok Sabha.

3. The Committee then took oral evidence of the above representatives on the provisions of the Actuaries Bill, 2002.

4. Thereafter, the members raised queries which were replied to by the witnesses. The Committee directed the witnesses to send written replies to some of the queries on which replies were not readily available with them during the evidence.

5. The evidence was concluded.

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

The witnesses then withdrew.

The Committee then adjourned

Minutes of the Twenty- first sitting of Standing Committee on Finance (2003)

The Committee sat on Monday, the 13th October, 2003 from 1100 to 1300 hrs.

Present

Sh. N. Janardhana Reddy - Chairman

Members

LOK SABHA

2. Shri Omar Abdullah
3. Shri Raashid Alvi
4. Smt. Renuka Chowdhury
5. Dr. Daggubati Ramanaidu
6. Shri Trilochan Kanungo
7. Shri Rattan Lal Kataria
8. Dr. C. Krishnan
9. Shri M.V.V.S. Murthi
10. Shri Sudarsana E.M. Natchiappan
11. Capt. Jai Narain Prasad Nishad
12. Shri Rupchand Pal
13. Shri Prabodh Panda
14. Shri Raj Narain Passi
15. Shri Pravin Rashtrapal
16. Shri Ramsinh Rathwa
17. Shri Chada Suresh Reddy
18. Shri T.M. Selvaganapathi
19. Shri Lakshman Seth
20. Shri Kirit Somaiya
21. Shri Kharabela Swain

RAJYA SABHA

22. Dr. Manmohan Singh
23. Shri Murlidhar Deora
24. Shri S.S. Ahluwalia
25. Shri Swaraj Kaushal
26. Shri M. Rajasekara Murthy
27. Shri Dinesh Trivedi

SECRETARIAT

1. Sh. P.D.T. Achary - Additional Secretary
2. Dr.(Smt.) P.K. Sandhu - Joint Secretary
2. Shri R.K. Jain - Deputy Secretary
3. Shri S.B. Arora - Under Secretary

WITNESSES

Ministry of Finance, Department of Economic Affairs (Insurance Division)

1. Sh. N.S. Sisodia, Secretary (Financial Sector)
2. Sh. Vinod Rai, Additional Secretary (FS)
3. Shri Shekhar Agarwal, Joint Secretary

Ministry of Law and Justice (Legislative Department)

1. Sh. T.K. Viswanathan, Secretary
2. Sh. V.K. Bhasin, Joint Secretary and Legislative Counsel

Ministry of Law and Justice (Department of Legal Affairs)

Sh. K.D. Singh,

Reserve Bank of India

1. Smt. K.J. Udeshi, Deputy Governor
2. Sh. N.V. Deshpande, Pr. Legal Adviser

2. At the outset, the chairman welcomed the representatives of the Ministry of Finance (Department of Economic Affairs – Banking Division), Ministry of Law & Justice (Legislative Department and Department of Legal Affairs) and Reserve Bank of India to the sitting of the Committee and invited their attention to the provisions contained in Direction 55 of the Directions by the Speaker.

3. Then the representatives of the Ministry of Finance (Department of Economic Affairs – Insurance Division), Ministry of Law & Justice (Legislative Department and Department of Legal Affairs) and Reserve Bank of India briefed the Committee on the provisions contained in the Banking Regulation (Amendment) and Miscellaneous Provisions Bill, 2003.

4. After briefing, the Committee decided to invite suggestions/views from the organizations, institutions, experts and individuals interested in the subject matter of the Bill.

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

The witnesses then withdrew

The Committee then adjourned to meet again on 14.10.2003 at 1100 hours

MINUTES OF THE TWENTY FIFTH SITTING OF STANDING COMMITTEE ON FINANCE

The Committee sat on Thursday, 13 November, 2003 from 1100 to 1240 hours.

PRESENT

Shri. N. Janardhana Reddy – Chairman

MEMBERS

LOK SABHA

2. Shri Raashid Alvi
3. Shri Sudip Bandyopadhyay
1. Shri Ramesh Chennithala
2. Smt. Renuka Chowdhury
3. Shri Trilochan Kanungo
4. Shri Rattan Lal Kataria
5. Shri Sudarsana E.M. Natchiappan
6. Capt. Jai Narain Prasad Nishad
7. Shri Prabodh Panda
8. Shri Raj Narain Passi
9. Shri Chada Suresh Reddy
10. Shri Kirit Somaiya

RAJYA SABHA

11. Shri Murli Deora
12. Shri Prithviraj D. Chavan
13. Shri S.S. Ahluwalia
14. Shri Swaraj Kaushal
15. Shri M. Rajasekara Murthy
16. Shri Prem Chand Gupta
17. Shri Palden Tsering Gyamtso
18. Shri Praful Patel
19. Shri Dinesh Trivedi

SECRETARIAT

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

2. The Chairman, at the outset, welcomed the Members to the sitting of the Committee and requested them to consider the draft report on the Actuaries Bill, 2002 and the following action taken reports:-

- (i) Action taken report on Demands for Grants (2003-2004) of Ministry of Finance (Departments of Economic Affairs & Expenditure);
- (ii) Action taken report on Demands for Grants (2003-2004) of Ministry of Finance (Department of Revenue);
- (iii) Action taken report on Demands for Grants (2003-2004) of Ministry of Finance (Department of Company Affairs);
- (iv) Action taken report on Demands for Grants (2003-2004) of Ministry of Disinvestment;
- (v) Action taken report on Demands for Grants (2003-2004) of Ministry of Planning; and
- (vi) Action taken report on Demands for Grants (2003-2004) of Ministry of Statistics & Programme Implementation.

3.	XX	XX	XX	XX
	XX	XX	XX	XX
4.	XX	XX	XX	XX
	XX	XX	XX	XX
5.	XX	XX	XX	XX
	XX	XX	XX	XX
6.	XX	XX	XX	XX
	XX	XX	XX	XX
7.	XX	XX	XX	XX
	XX	XX	XX	XX
8.	XX	XX	XX	XX
	XX	XX	XX	XX

9. The Committee then took up for consideration the draft report on the Actuaries Bill, 2002. The Committee after deliberation adopted the draft report with modifications/amendments as shown in the **Annexure**.

10. The Committee then authorised the Chairman to finalise the Reports in the light of the amendments/modifications suggested and also to make verbal and other consequential changes and present the reports to both the Houses of Parliament.

The Committee then adjourned

ANNEXURE

**[MODIFICATIONS/AMENDMENTS MADE BY STANDING COMMITTEE ON
FINANCE IN THEIR DRAFT REPORT ON THE ACTUARIES BILL, 2002 AT
THEIR SITTING HELD ON 13 NOVEMBER, 2003]**

Delete: **Para Nos. 39 to 44 at page 16 to 18 and renumber para 45 as
para 39**

THE ACTUARIES BILL, 2002

A BILL

to provide for regulating and developing the profession of Actuaries
and to provide for matters connected therewith or incidental thereto

BE it enacted by Parliament in the Fifty-third Year of the Republic of India as follows:-

CHAPTER I PRELIMINARY

CLAUSES

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

CHAPTER II INSTITUTE OF ACTUARIES OF INDIA

3. Incorporation of Institute.
4. Transfer of assets, liabilities, etc., of Actuarial Society.
5. Objects of Institute.
6. Entry of names in register.
7. Associates and fellows.
8. Honorary, affiliate and student members.
9. Certificate of practice.
10. Members to be known as Actuaries.
11. Disqualifications.
12. Composition of Council of Institute.
13. Annual general meeting.
14. Mode of election to Council.
15. Chairperson, Vice-Chairperson and Honorary Secretary.
16. Resignation from membership and filling up of causal vacancies.
17. Functions of Council.
18. Staff, remuneration and allowances.
19. Committees of Council.
20. Finances of Council.

CHAPTER III REGISTER OF MEMBERS

21. Register.
22. Removal of name from register.
23. Re-entry in register.

CHAPTER IV MISCONDUCT

24. Procedure in inquiries relating to misconduct of members of Institute.
25. Professional misconduct.
26. Appeals.

CHAPTER V PENALTIES

27. Penalty for falsely claiming to be a member.
28. Penalty for using name of Institution, awarding degrees of actuarial science, etc.

CLAUSES

29. Companies not to engage in actuarial practice.
30. Unqualified person not to sign documents.
31. Offences by companies.
32. Sanction to prosecute.

CHAPTER VI

DISSOLUTION OF THE ACTUARIAL SOCIETY OF INDIA REGISTERED UNDER THE SOCIETIES REGISTRATION ACT

33. Dissolution of the Actuarial Society of India.
34. Provisions respecting employees of the dissolved society.

CHAPTER VII

MISCELLANEOUS

35. Maintenance of more than one offices by Actuary.
36. Reciprocity.
37. Directions of Government.
38. Protection of action taken in good faith.
39. Power to make regulations.
40. Power of Government to issue directions for making or amending regulations.
41. Laying of regulations.
42. Power to remove difficulties.

THE SCHEDULE.

THE ACTUARIES BILL, 2002

A

BILL

to provide for regulating and developing the profession of Actuaries and to provide for matters connected therewith or incidental thereto.

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

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement.-(1) This Act may be called the Actuaries Act, 2002.
(2) It extends to the whole of India.
(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.
2. Definitions.-(1) In this Act, unless the context otherwise requires,—
 - (a) “Actuary” means an Actuary as defined in the Insurance Act, 1938 (4 of 1938);
 - (b) “Actuarial Society” means the Actuarial Society of India registered under the Societies Registration Act, 1860 (21 of 1860) and the Bombay Public Trusts Act, 1950 (Bombay Act No.XXXIX of 1950);
 - (c) “appointed day” means the date on which the Institute is constituted under sub-section (1) of section 3;
 - (d) “Council” means the Council of the Institute as referred to in section 12;
 - (e) “fellow” means a fellow member of the Institute;
 - (f) “Government” means the Central Government;

(g) “Institute” means the Institute of Actuaries of India constituted under section 3;

(h) “member” means an individual whose name appears in the register of members maintained by the Institute;

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

(j) “register” means the register of members maintained by the Institute under this Act;

(k) “year” means the period commencing on the 1st day of April of any year and ending on the 31st day of March of the succeeding year.

(2) Save as otherwise provided in this Act, a member of the Institute shall be deemed “to be in practice” when, individually or in partnership with actuaries in practice, he, whether or not in consideration of remuneration received or to be received,—

(i) engages himself in actuarial profession; or

(ii) offers to perform or performs services involving the application of actuarial techniques in the fields of insurance, pension, investment, finance and management; or

(iii) renders such other services as, in the opinion of the Council, are or may be rendered by an actuary in practice; or

(iv) is in employment of a person engaged in one or more of the activities mentioned in clauses (i), (ii) and (iii) above,

and the words “to be in practice” with their grammatical variations and cognate expressions shall be construed accordingly.

CHAPTER II

INSTITUTE OF ACTUARIES OF INDIA

3. Incorporation of Institute.-(1) With effect from such date as the Government may, by notification in the Official Gazette, appoint, all persons whose names are entered in the register of the Actuarial Society at the commencement of this Act and all persons who may thereafter have their names entered in the register to be maintained under this Act, so long as they continue to have their names borne on the register, are hereby constituted a body corporate by the name of the Institute of Actuaries of India and all such persons shall be known as members of the Institute.

(2) The Institute shall have perpetual succession and a common seal and shall have power to acquire, hold and dispose of property, both movable and immovable, and shall, by its name, sue or be sued.

(3) The head office of the Institute shall be situated at such place as may be decided by the Government from time to time.

4. Transfer of assets, liabilities, etc., of Actuarial Society.-On the appointed day,—

(a) all the assets and liabilities of the Actuarial Society shall stand transferred to, and vested in, the Institute;

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

(b) without prejudice to the provisions of clause (a), all debts, obligations and liabilities incurred, all contracts entered into and all matters and things engaged to be done by, with or for the Actuarial Society immediately before that day, for or in connection with the purpose of the said Society, shall be deemed to have been incurred, entered into or engaged to be done by, with or for, the Institute;

(c) all sums of money due to the Actuarial Society immediately before that day shall be deemed to be due to the Institute; and

(d) all suits and other legal proceedings instituted or which could have been instituted by or against the Actuarial Society immediately before that day may be continued or may be instituted by or against the Institute.

5. Objects of Institute.-The objects of the Institute shall be to—

(a) promote, uphold and develop the standards of professional education, training, knowledge, practice and conduct amongst Actuaries;

(b) promote the status of the Actuarial profession;

(c) regulate the practice by the members of the profession of Actuary;

(d) promote, in the public interest, knowledge and research in all matters relevant to actuarial science and its application; and

(e) do all such other things as may be incidental or conducive to the above objects or any of them.

6. Entry of names in register.-(1) Any of the following persons shall be entitled to have his name entered in the register, namely:—

(a) any person who immediately before the appointed day was an associate or a fellow (including an honorary fellow) of the Actuarial Society;

(b) any person who has passed the examination conducted by the Actuarial Society and has completed training either as specified by the said Society or as prescribed by the Council, except any such person who is not a permanent resident of India;

(c) any person who has passed such examination and completed such training, as may be prescribed for membership of the Institute;

(d) any person who has passed such other examination and completed such other training outside India as is prescribed as being equivalent to the examination and training for membership of the Institute:

Provided that in the case of any person belonging to any of the classes mentioned in this sub-section who is not permanently residing in India, the Government or the Council may impose such further conditions as it may deem to be necessary or expedient in the public interest.

(2) Every person mentioned in clause (a) of sub-section (1) may have his name entered in the register without the payment of any entrance fee.

(3) Every person belonging to any of the classes mentioned in clauses (b), (c) and (d) of sub-section (1) shall have his name entered in the register on an application being made and granted in the prescribed manner and on payment of a prescribed fee.

(4) The Council shall take such steps as may be necessary for the purpose of having the names of all persons belonging to the class mentioned in clause (a) of sub-section (1) entered in the register before the appointed day.

(5) Notwithstanding anything contained in this section, the Council may confer on any person honorary fellow membership, if the Council is of the opinion that such person has made a significant contribution to the profession of actuary and thereupon the Council shall enter the name of such person in the register but such person shall not have any voting rights in any election or meetings of the Institute and shall not also be required to pay any fee to the Institute.

7. Associates and fellows.-(1) The members of the Institute shall be divided into two classes designated respectively as associates and fellows.

(2) Any person other than a person to whom the provisions of sub-section (3) apply, shall, on his name being entered in the register, be deemed to have become an associate and as long as his name remains so entered, shall be entitled to use the letters "AIAI" after his name to indicate that he is an associate.

(3) Any person who was a fellow of the Actuarial Society and who is entitled to have his name entered in the register under clause (a) of sub-section (1) of section 6 shall be entered in the register as a fellow.

(4) Any person whose name is entered in the register as fellow shall, so long as his name remains so entered, be entitled to use the letters "FIAI" after his name to indicate that he is a fellow.

8. Honorary, affiliate and student members.-(1) The Council may choose, in such manner as may be prescribed, any person of eminence in matters relating to and of interest to the profession of actuary as an honorary member of the Institute provided that he is not practising as an Actuary.

(2) Any person, who is a fellow member, or is a holder of membership considered equivalent to the fellow membership of the Institute, of any other institution similar to the Institute, whether within or

outside India, may be admitted as an affiliate member for such period, and on such terms and conditions as may be prescribed.

(3) Any person who enrolls himself for examination of the Institute, and possesses such academic qualifications as may be prescribed, may be admitted as a student member of the Institute on such terms and conditions as may be prescribed.

(4) An honorary member or a affiliate member or a student member shall have no right to vote on any matter or resolution in any meeting of the Institute.

9. Certificate of practice.-(1) No member of the Institute shall be entitled to practise unless he has obtained from the Council a certificate of practice.

(2) A member who desires to be entitled to practise shall make an application in such form and pay such annual fee for certificate of practice as may be prescribed and such fee shall be payable on or before the 1st day of April in each year.

10. Members to be known as Actuaries.-Every member of the Institute in practice shall, and any other member may, use the designation of an Actuary and no member using such designation shall use any other description whether in addition thereto or in substitution therefor:

Provided that nothing contained in this section shall be deemed to prohibit any such member from adding any other description or letters to his name, if entitled thereto, to indicate membership of such other Institute, whether in India or elsewhere, as may be recognised in this behalf by the Council, or any other qualification that he may possess, or to prohibit a firm, all the partners of which are members of the Institute and in practice, from being known by its firm name as Actuaries.

11. Disqualifications.-Notwithstanding anything contained in section 6, a person shall not be entitled to have his name entered in, or borne on, the register if he—

(a) has not attained the age of twenty-one years at the time of his application for the entry of his name in the register; or

(b) is of unsound mind and stands so adjudged by a competent court; or

(c) is an undischarged insolvent; or

(d) being a discharged insolvent, has not obtained from the court a certificate stating that his insolvency was caused by misfortune without any misconduct on his part; or

(e) has been convicted by a competent court, whether within or outside India, of an offence involving moral turpitude and punishable with imprisonment or of an offence, not of a technical nature, committed by him in his professional capacity unless in respect of the offence committed he has either been granted a pardon or, on an application made by him in this behalf, the Government has, by an order in writing, removed the disqualification; or

(f) has been removed from the membership of the Institute on being found on inquiry to have been guilty of a professional or other misconduct:

Provided that a person who has been removed from the membership for a specified period shall not be entitled to have his name entered in the register until the expiry of such period.

12. Composition of Council of Institute.-(1) There shall be a Council of the Institute for the management of the affairs of the Institute and for discharging the functions assigned to it under this Act.

(2) The Council shall consist of—

(a) a minimum of eight and not more than twelve persons elected by the fellow and associate members of the Institute from amongst fellow members in such manner as may be prescribed; and

(b) (i) one person from the Insurance Regulatory and Development Authority constituted under the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999) nominated by the Government; and

(ii) not more than three persons having knowledge in the field of life insurance, general insurance, finance, economics, law, accountancy or any other discipline which in the opinion of the Government, would be useful to the Council:

Provided that till such time as the Council is constituted under this Act, the Executive Committee of the Actuarial Society shall discharge all the functions and shall have all the powers of the Council.

(3) One-third of the members of the Council referred to in clause (a) of sub-section (2) shall retire at every annual general meeting of the Institute by rotation but shall be eligible for re-election.

(4) Any person nominated under clause (b) of sub-section (2) shall hold office during the pleasure of the President for a period of five years from the date of nomination and shall be eligible for re-nomination.

13. Annual general meeting.-The Council shall every year hold an annual general meeting of the Institute to elect its members under clause (a) of sub-section (2) of section 12, or to discuss any matter which it deems fit, and not more than fifteen months shall elapse between the date of one annual general meeting of the Institute and that of the next:

Provided that from the appointed day the Institute may hold its first annual general meeting within a period of not more than eighteen months and if such general meeting is held within that period, it shall not be necessary for the Institute to hold any general meeting in that year:

Provided further that the Government may, for sufficient reasons, extend the time within which any general meeting shall be held.

14. Mode of election to Council.-Where any dispute arises regarding any election held in the manner prescribed, the matter shall be referred by the Council to the Government whose decision shall be final:

Provided that no such reference shall be made except on an application made to the Council by an aggrieved party within thirty days from the date of declaration of the result of the election.

15. Chairperson, Vice-Chairperson and Honorary Secretary.-(1) The Council shall, at its first meeting, elect three of its members from amongst persons referred to in clause (a) of sub-section (2) of section 12, to be respectively the Chairperson, Vice-Chairperson and Honorary Secretary thereof, and so often as the office of the Chairperson, Vice-Chairperson and Honorary Secretary falls vacant, the Council shall choose another member in the same manner:

Provided that the Chairperson of the Council of the Actuarial Society shall continue to hold such office after the commencement of this Act until such time as a Chairperson is elected under the provisions of this sub-section.

(2) The Chairperson shall be the Chief Executive Officer of the Council.

(3) The Chairperson, Vice-Chairperson and Honorary Secretary shall hold office for a period of two years from the date on which he is chosen provided that he continues to be a member of the Council.

(4) The Chairperson shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

(5) In the event of occurrence of any vacancy in the office of the Chairperson, the Vice-Chairperson shall act as the Chairperson until a new Chairperson is elected in accordance with the provisions of this section to fill such vacancy and enters upon his office.

(6) When the Chairperson is unable to discharge his functions owing to absence, illness or any other cause, the Vice-Chairperson shall discharge his functions until the Chairperson resumes his duties.

16. Resignation from membership and filling up of casual vacancies.-(1) Any member of the Council may at any time resign his membership by writing under his hand addressed to the Chairperson, and the seat of such member shall become vacant when such resignation is accepted by the Council.

(2) A member of the Council, other than a member nominated under clause (b) of sub-section (2) of section 12, shall be deemed to have vacated his seat if he is declared by the Council to have been absent without sufficient reason from three consecutive meetings of the Council, or of any of the Committees constituted by the Council, and of which he is a member or if his name is, for any cause, removed from the register under the provisions of sections 22 and 24.

(3) If the seat of a member becomes vacant before the expiry of his term of membership, the resulting casual vacancy may be filled by the Council in such manner as may be prescribed:

Provided that any person filling the casual vacancy shall hold the membership of the Council till vacancy is filled up in accordance with clause (a) of sub-section (2) of section 12.

(4) No act done by the Council shall be called in question on the ground merely of the existence of any vacancy in, or defect in the constitution of, the Council.

17. Functions of Council.-(1) The duty of carrying out the functions under the provisions of this Act shall be vested in the Council.

(2) In particular, and without prejudice to the generality of the foregoing power, the functions of the Council shall include—

- (a) the holding of examination of the candidates for enrolment and prescribing fees therefor;
- (b) the prescribing of qualifications for entry in the register;
- (c) the recognition of foreign qualifications and training for the purposes of enrolment;
- (d) the granting of or refusal to grant the certificate of practice under this Act;
- (e) the maintenance and publication of a register of persons qualified to practise as Actuaries;
- (f) the levy and collection of fees from members, students, examinees and other persons;
- (g) the removal of names from the register and the restoration to the register of names which have been removed;
- (h) the regulation and maintenance of the status and standard of professional qualifications of members of the Institute;
- (i) to issue guidelines for the observance of the members including the student members;
- (j) to receive gifts, grants, donations or benefactions from the Central or a State Government and to receive bequests, donations and transfer of movable or immovable properties from testators, donors or transferors, as the case may be;
- (k) co-operating with educational or other institutions in any part of the world having objects wholly or partly similar to those of the Institute by exchange of members and generally in such manner as may be conducive to achievement of their common objects;
- (l) instituting and awarding fellowships, scholarships, prizes and medals;
- (m) giving gifts, grants, donations or benefactions to other institutions or bodies having objects similar to those of the Institute;
- (n) carrying out, by financial assistance to persons other than members of the Council, or in any other manner, research in the actuarial science;
- (o) the maintenance of a library and publication of books, journals and periodicals relating to actuarial science;
- (p) the exercise of disciplinary powers conferred by this Act;
- (q) establishing such regional council or councils as may be decided from time to time and fixing their headquarters; and
- (r) doing all such things as may be necessary, incidental or conducive, to the attainment of all or any of the objects of the Institute.

18. Staff remuneration and allowances.-(1) For the efficient performance of its functions, the Council may—

- (a) appoint an Executive Director, a Treasurer and such other officers and employees as it deems necessary and fix their salaries, fees, allowances and other conditions of service; and
- (b) fix the allowances of the Chairperson, Vice-Chairperson, Honorary Secretary and other members of the Council and its committees.

(2) The Executive Director of the Council shall be entitled to participate in the meetings of the Council but shall not be entitled to vote thereat.

19. Committees of Council.-(1) The Council shall constitute a disciplinary committee from amongst the persons mentioned in section 12 consisting of—

- (i) four fellow members of the Institute; and
- (ii) one nominee of the Government.

(2) The Council may also form other committees, and co-opt therein persons who are not members of the Institute, as it deems necessary for the purpose of carrying out the provisions of this Act.

(3) Every committee constituted under this section shall elect its own Chairperson Provided that—

- (i) where the Chairperson is a member of such committee, he shall be the Chairperson of such committee, and in his absence, the Vice-Chairperson, if he is a member of such committee, shall be its Chairperson; and

(ii) where the Chairperson is not a member of such committee but the Vice-Chairperson is a member, he shall be its Chairperson.

(4) The committee shall exercise such functions and be subject to such conditions as may be prescribed.

20. Finances of Council.-(1) There shall be established a fund under the management and control of the Council into which shall be paid all moneys (including donations and grants) received by the Council and out of which shall be met all expenses and liabilities incurred by the Council.

(2) The Council may invest any money for the time being standing to the credit of the fund in any Central or State Government security as it may deem prudent consistent with the considerations of security of such investments and maximum returns thereon.

(3) The Council shall keep proper accounts of the fund distinguishing capital account from revenue account.

(4) The annual accounts of the Institute shall be subject to audit by a chartered accountant in practice within the meaning of the Chartered Accountants Act, 1949 (38 of 1949) to be appointed annually by the Council:

Provided that no member of the Council who is a chartered accountant or a person who is in partnership with such member shall be eligible for appointment as an auditor under this sub-section.

(5) As soon as may be practicable at the end of each year, but not later than the 30th day of September of the year next following, the Council shall cause to be published in the Gazette of India, a copy of the audited accounts and the report of the Council for that year and copies of the said accounts and report shall be forwarded to the Government and to all the members of the Institute.

(6) The Council may borrow from a scheduled bank, as defined in the Reserve Bank of India Act, 1934 (2 of 1934), or from any public financial institution—

(a) any money required for meeting its liabilities on capital account on the security of the fund or on the security of any other asset, for the time being belonging to it; or

(b) for the purpose of meeting current liabilities, pending the receipt of income, by way of temporary loan or overdraft.

Explanation.—The expression “public financial institution” means a financial institution specified in section 4A of the Companies Act, 1956 (1 of 1956).

CHAPTER III

REGISTER OF MEMBERS

21. Register.-(1) The Council shall maintain in the prescribed manner a register of the members of the Institute.

(2) The register shall include the following particulars about every member of the Institute, namely:—

(a) his full name, date of birth, domicile, residential and professional addresses;

(b) the date on which his name is entered in the register;

(c) his qualifications;

(d) whether he holds a certificate of practice; and

(e) any other particulars which may be prescribed.

(3) The Council shall cause to be published in such manner as may be prescribed a list of members as on the 1st day of April each year, and shall, if requested to do so by any such member, send him a copy of such list, on payment of such fees as may be prescribed.

(4) Every member of the Institute shall, on his name being entered in the register, pay such annual membership fee as may be prescribed.

22. Removal of name from register.—The Council may by order remove from the register the name of any member of the Institute—

(a) who is dead; or

(b) from whom a request has been received to that effect; or

(c) who has not paid any prescribed fee required to be paid by him; or

(d) who is found to have been subject at the time when his name was entered in the register, or who at any time thereafter has become, subject to any of the disqualifications mentioned in section 11; or

(e) who for any other reason has ceased to be entitled to have his name borne on the register.

23. Re-entry in register.—The Council may, re-enter the name of a member whose name has been removed from the register for reasons mentioned in clauses (b), (c), (d) and (e) of section 22 by an order and on paying such fee and after satisfying such conditions and requirements as may be prescribed.

CHAPTER IV

MISCONDUCT

24. Procedure in inquiries relating to misconduct of members of Institute.—(1) Where on receipt of information by, or on a complaint made to it, the Council is *prima facie* of opinion that any member of the Institute has been guilty of any professional or other misconduct, the Council shall refer the case to the disciplinary committee constituted under section 19, and the disciplinary committee shall thereupon hold such inquiry and in such manner as may be prescribed and shall report the result of its inquiry to the Council.

(2) If on receipt of such report the Council finds that the member of the Institute is not guilty of any professional or other misconduct, it shall record its finding accordingly and direct that the proceedings shall be filed, or the complaint shall be dismissed, as the case may be.

(3) If on receipt of such report the Council finds that the member of the Institute is guilty of any professional or other misconduct, it shall record its finding accordingly, and shall proceed in the manner laid down in the succeeding sub-sections.

(4) Where the finding is that a member of the Institute has been guilty of professional or other misconduct specified in the Schedule, the Council shall afford to such member an opportunity of being heard and may thereafter make any of the following orders, namely:—

(a) reprimand the member; or

(b) remove the name of the member from the register either permanently or for such period as the Council thinks fit.

Explanation.—For the purpose of this section, "member of the Institute" includes the person who was a member of the Institute on the date of alleged misconduct although he has ceased to be a member of the Institute at the time of inquiry.

(5) For the purpose of any inquiry under this section, the Council and disciplinary committee shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) the discovery and production of any document; and

(c) receiving evidence on affidavits.

25. Professional misconduct.—For the purpose of this Act, the expression "professional misconduct" shall be deemed to include any act or omission specified in the Schedule, but nothing in this section shall be construed to limit or abridge in any way the power conferred or duty cast on the Council under sub-section (1) of section 24 to inquire into the conduct of any member of the Institute under any other circumstances.

26. Appeals.—(1) Any member of the Institute aggrieved by any order of the Council imposing on him any of the penalties mentioned in sub-section (4) of section 24, may, within thirty days of the date on which the order is communicated to him, prefer an appeal to the Government:

Provided that, for reasons to be recorded in writing, the Government may entertain any such appeal even after the expiry of the aforesaid period.

(2) Where an appeal is made, the Government may call for the records of any case and may revise any order made by the Council under sub-section (3) or sub-section (4) of section 24 and may—

(a) confirm, modify or set aside the order; or

(b) impose any penalty or set aside, reduce, confirm, or enhance the penalty imposed by the order; or

(c) remit the case to the Council for such further inquiry as the Government considers proper in the circumstances of the case; or

(d) pass such other order as the Government thinks fit:

Provided that no order of the Council shall be modified or set aside unless the Council has been given an opportunity of being heard and no order imposing or enhancing a penalty shall be passed unless the person concerned has been given an opportunity of being heard.

Explanation.—In this section, “member of the Institute” shall have the same meaning as is assigned to it in section 24.

CHAPTER V PENALTIES

27. Penalty for falsely claiming to be a members.—Subject to the provisions of section 10, any person who,—

(i) not being a member of the Institute,—

(a) represents that he is a member of the Institute in any of the manners mentioned in section 7; or

(b) uses the designation “Actuary”; or

(c) uses the letters “AIAI” or “FIAI” after his name; or

(d) practises the profession of an Actuary; or

(ii) being a member of the Institute, but not having a certificate of practice, represents that he is in practice, or practises as an Actuary,

shall be punishable on first conviction with fine which may extend to ten thousand rupees, and on any subsequent conviction with imprisonment which may extend to six months, or with fine which may extend to twenty-five thousand rupees, or with both.

28. Penalty for using name of Institution, awarding degrees of actuarial science, etc.—(1) Save as otherwise provided in this Act, no person shall—

(a) use a name or a common seal which is identical with the name or the common seal of the Institute or so nearly resembles it so as to deceive or as is likely to deceive the public; or

(b) award any degree, diploma or certificate or bestow any designation which indicates or purports to indicate the position or attainment of any qualification or competence in actuarial science similar to that of a member of the Institute; or

(c) seek to regulate in any manner whatsoever the profession of Actuaries.

(2) Any person contravening the provisions of sub-section (1) shall, without prejudice to any other proceedings, which may be taken against him, be punishable with fine, which may extend on first conviction to fifty thousand rupees and on any subsequent conviction with imprisonment which may extend to one year, or with fine which may extend to one lakh rupees, or with both.

(3) Nothing contained in this section shall apply to any University or other institution established by law or to any body affiliated to the Institute.

29. Companies not to engage in actuarial practice.—(1) No company, whether incorporated in India or elsewhere, shall practise as Actuaries.

(2) Any company contravening the provisions of sub-section (1) shall be punishable on first conviction with fine which may extend to ten thousand rupees, and on any subsequent conviction with fine which may extend to twenty-five thousand rupees.

30. Unqualified person not to sign documents.—(1) No person other than a fellow member of the Institute shall sign any document on behalf of an Actuary in practice or a firm of such Actuaries in his or its professional capacity.

(2) Any person contravening the provisions of sub-section (1) shall, without prejudice to any other proceedings which may be taken against him, be punishable on first conviction with fine which may extend to fifty thousand rupees, and on any subsequent conviction with imprisonment which may extend to one year, or with fine which may extend to one lakh rupees, or with both.

31. Offences by companies.—(1) If the person committing an offence under this Act is a company, the company as well as every person in charge of, and responsible to, the company for the conduct of its business at the time of the commission of the offence shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or that the commission of the offence is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

32. Sanction to prosecute.—No person shall be prosecuted under this Act except on a complaint made by or under the order of the Council or of the Government.

CHAPTER VI

DISSOLUTION OF THE ACTUARIAL SOCIETY OF INDIA REGISTERED UNDER THE SOCIETIES REGISTRATION ACT

33. Dissolution of the Actuarial Society of India.—On the appointed day,—

(a) the society known as the Actuarial Society of India registered under the Societies Registration Act, 1860 (21 of 1860) and the Bombay Public Trusts Act, 1950 (Bombay Act XXXIX of 1950) shall stand dissolved and thereafter no person shall make, assert or take any claims or demands or proceedings against the dissolved society or against any officer thereof in his capacity as such officer except in so far as may be necessary, for enforcing the provisions of this Act;

(b) the right of every member to, or in respect of, the dissolved society shall be extinguished, and thereafter no member of the society shall make, assert or take any claims or demands or proceedings in respect of that society except as provided in this Act.

34. Provisions respecting employees of the dissolved society.—(1) Every person employed in the dissolved society and continuing in its employment immediately before the commencement of this Act shall, as from such commencement, become an employee of the Institute, shall hold or service therein by the same tenure and upon the same terms and conditions and with the same rights and privileges as to retirement benefits as he would have held the same under the dissolved society if this Act had not been passed, and shall, continue to do so unless and until his employment in the Institute is terminated or until his remuneration, terms and conditions of employment are duly altered by the Institute.

(2) Notwithstanding anything contained in the Industrial Disputes Act, 1947 (14 of 1947) or in any other law for the time being in force, the transfer of the services of any employee of the dissolved society to the Institute shall not entitle any such employee to any compensation under that Act or other law, and no such claims shall be entertained by any court, tribunal or other authority.

CHAPTER VII

MISCELLANEOUS

35. Maintenance of more than one offices by Actuary.—(1) Where an Actuary in practice or a firm of such Actuaries has more than one office within or without India, each one of such offices shall be in the separate charge of a fellow member of the Institute:

Provided that the Council may in suitable cases exempt any Actuary in practice or firm of such Actuaries from the operation of this sub-section.

(2) Every Actuary in practice or a firm of such Actuaries maintaining more than one office shall send to the Council a list of offices and the person in charge thereof and shall keep the Council informed of any changes in relation thereto.

36. Reciprocity.—(1) Where any country, notified by the Government in this behalf in the Official Gazette, prevents persons of Indian domicile from becoming members of any institution similar to the

Institute or from practising the profession of Actuaries or subjects them to unfair discrimination in that country, no subject of any such country shall be entitled to become a member of the Institute or practise the profession of Actuaries in India.

(2) Subject to the provisions of sub-section (1), the Council may prescribe the conditions, if any, subject to which foreign qualifications relating to actuarial science shall be recognised for the purposes of entry in the register.

37. Directions of Government.-(1) The Government may, from time to time, issue such directions to the Council as in the opinion of the Government are conducive to the fulfilment of the objects of this Act and in the discharge of its functions, the Council shall be bound to carry out any such directions.

(2) Directions issued under sub-section (1) may include directions to the Council to make any regulations or to amend or revoke any regulations already made.

(3) If, in the opinion of the Government, the Council has persistently committed default in giving effect to the directions issued under this section, the Government may, after giving an opportunity to the Council to state its case, by order, dissolve the Council, whereafter a new Council shall be constituted in accordance with the provisions of this Act with effect from such date as may be notified by the Government.

(4) Where the Government passes an order under sub-section (3) dissolving the Council, it may, pending the constitution of a new Council in accordance with the provisions of this Act, authorise any person or body of persons to take over the management of the affairs of the Institute and to exercise such functions as may be specified in this behalf by the Government.

38. Protection of action taken in good faith.-No suit, prosecution or other legal proceeding shall lie against the Government or any officer or other employee of the Government or any officer or other person authorised by the Government or the Council or its committees and members thereof or its Chairperson, Vice-Chairperson, Honorary Secretary, Executive Director, Treasurer and other officers and employees in respect of anything which is done in good faith or intended to be done in pursuance of this Act or any regulations or orders made thereunder.

39. Power to make regulations.-(1) The Council may, with the previous approval of the Government and subject to the previous publication, by notification in the Official Gazette, make regulations to carry out the provisions of this Act.

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

(a) the examination and training for the purposes of clauses (b), (c) and (d) of sub-section (1) of section 6;

(b) the manner of making an application and granting thereof under sub-section (3) of section 6;

(c) the fees payable under sub-section (3) of section 6, sub-section (2) of section 9, clause (a) of sub-section (2) of section 17, sub-section (4) of section 21 and clause (c) of section 22;

(d) the manner in which the honorary members may be chosen under sub-section (1) of section 8;

(e) the terms and conditions on which an affiliate member may be admitted under sub-section (2) of section 8;

(f) the academic qualifications for admission of a student member under sub-section (3) of section 8;

(g) the form in which an application may be made under sub-section (2) of section 9;

(h) the manner in which an election to the Council may be conducted under sub-section (2) of section 12 and sub-section (1) of section 14;

(i) the filling up of a casual vacancy of the Council as required under sub-section (3) of section 16;

(j) the transaction of business by the Council for the discharge of its functions under section 17 and other provisions of this Act;

(k) the regulation and maintenance of the status and standards of professional qualifications of members of the Institute as required by clause (h) of sub-section (2) of section 17;

(l) the carrying out of research in matters of actuarial science as required by clause (n) of sub-section (2) of section 17;

(m) the maintenance of library and publication of books, journals and periodicals relating to actuarial science as required by clause (o) of sub-section (2) of section 17;

(n) the exercise of disciplinary powers as required by clause (p) of sub-section (2) of section 17;

(o) the functions and conditions of the committees as required under sub-section (4) of section 19;

(p) the manner in which the register may be maintained under sub-section (1) of section 21;

(q) the other particulars to be included in the register as required by clause (c) of sub-section (2) of section 21;

(r) the manner in which the annual list of members of the Institute may be published under sub-section (3) of section 21;

(s) the annual membership fee payable by the member of the Institute as required under sub-section (4) of section 21;

(t) the conditions and requirements and payment of fee for re-entry in the register as required under section 23;

(u) the inquiries to be held under sub-section (1) of section 24;

(v) the professional misconduct of a member of the Institute, as required under sub-section (4) of section 24 read with item (v) of paragraph (3) of the Schedule;

(w) the conditions subject to which foreign qualifications may be recognised under sub-section (2) of section 36; and

(x) any other matter which is required to be, or may be, prescribed under this Act.

40. Powers of Government to issue directions for making or amending regulations.-(1) Where the Government considers it expedient so to do, it may, by order in writing, direct the Council to make any regulations or to amend or revoke any regulations already made within such period as it may specify in this behalf.

(2) If the Council fails or neglects to comply with such order within the specified period, the Government may itself make the regulations or amend or revoke the regulations made by the Council.

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

42. Power to remove difficulties.-If any difficulty arises in giving effect to the provisions of this Act, the Government may, by order not inconsistent with the provisions of this Act, remove the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the commencement of this Act.

THE SCHEDULE

[See section 24(4)]

PROFESSIONAL MISCONDUCT IN RELATION TO ACTUARIES IN PRACTICE

(1) An Actuary in practice shall be deemed to be guilty of professional misconduct, —

(a) if he—

(i) allows any person to practise in his name as an Actuary unless such person is also an Actuary in practice and is in partnership with or employed by himself; or

(ii) save by way of remuneration to an employees, pays or allows or agrees to pay or allow, directly or indirectly, any share, commission or brokerage in the fees or profits of his professional business, to any person other than a member of the Institute or a partner or a retired partner or the legal representative of a deceased partner; or

(iii) enters into partnership with any person other than an Actuary in practice or a person resident outside India who but for his residence abroad would be entitled to be admitted as a

member under clause (c) of sub-section (1) of section 6 or whose qualifications are recognised by the Government or the Council for the purpose of permitting such partnership, provided the Actuary shares in the fees or profits of the business of the partnership both within and outside of India; or

(iv) secures either through the services of a person who is not an employee of such Actuary or who is not qualified to be his partner or by means which are not open to an Actuary, any professional business; or

(v) accepts an assignment as Actuary previously held by another Actuary without first communicating with him in writing; or

(vi) charges or offers to charge, accepts or offers to accept in respect of any professional employment fees which are based on a percentage of profit or which are contingent upon the findings or results of such employment except as permitted under any regulations made under this Act; or

(vii) engages in any business or occupation other than the profession of Actuaries unless permitted by the Council so to engage:

Provided that nothing contained herein shall disentitle an Actuary from being a director of a company; or

(viii) accepts a position as an Actuary previously held by some other Actuary in practice in such conditions as to constitute under cutting; or

(ix) allows a person not being a member of the Institute in practice, or a member not being his partner to sign on his behalf or on behalf of his firm, any valuation report or financial statement,

(b) if he—

(i) discloses information acquired in the course of his professional engagement to any person other than his client so engaging him, without the consent of such client, or otherwise than as required by any law for the time being in force; or

(ii) certifies or submits in his name, or in the name of his firm, a valuation report or a financial statement unless the examination of such statement and the related records has been made by him or by a partner or an employee in his firm or by another Actuary in practice; or

(iii) expresses his opinion or valuation reports or financial statements of any business or any enterprise in which he, his firm, or a partner in his firm has a substantial interest, unless he has disclosed the interest also in his report; or

(iv) fails to disclose a material fact known to him in a valuation report or a financial statement, but disclosures of which is necessary to make the valuation report or the financial statement not misleading where he is concerned with such valuation report or the financial statement in a professional capacity; or

(v) fails to report a material misstatement known to him to appear in a valuation report or financial statement with which he is concerned in a professional capacity; or

(vi) is grossly negligent in the conduct of his professional duties; or

(vii) fails to obtain sufficient information to warrant the formation of an opinion in regard to any matter contained in any valuation report or financial statement prepared by him or on his behalf; or

(viii) fails to invite attention to any material departure from the generally accepted procedure or professional work applicable to the circumstances, in any valuation report or financial statement prepared by him or on his behalf.

(2) A member of the Institute (other than a member in practice) shall be deemed to be guilty of professional misconduct, if he being an employee of any company, firm or person,—

(i) pays or allows or agrees to pay directly or indirectly to any person any share in the emoluments of the employment undertaken by him; or

(ii) accepts or agrees to accept any part of fees, profits or gains by way of commission or gratification; or

(iii) discloses confidential information acquired in the course of his employment except as and when required by law or except as permitted by him principal or employer.

(3) A member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he—

(i) includes in any statement, return or form to be submitted to the Council any particulars knowing them to be false; or

(ii) not being a fellow member of the Institute acts himself as a fellow member of the Institute; or

(iii) does not supply the information called for or does not comply with the requirements asked for by the Council or any of its Committees; or

(iv) contravenes any of the provisions of this Act or the regulations made thereunder or any guidelines issued by the Council under clause (i) of sub-section (2) of section 17; or

(v) is guilty of such other act or omission as may be prescribed by the Council.

STATEMENT OF OBJECTS AND REASONS

The insurance sector has been opened to private sector with the enactment of the Insurance Regulatory and Development Authority Act, 1999. In addition to the six nationalised companies, which are already transacting insurance business, nineteen new private sector companies have started transacting insurance business in the country.

2. Traditional responsibilities of an Actuary in life and general insurance business include designing and pricing of insurance policies, monitoring the adequacy of funds to provide the promised benefits, recommending fair rate of bonus where applicable, valuation of the insurance business, ensuring solvency margin and other insurance risks like legal liability, loss of profit, etc. He also defines the risk factors, advises on the premia to be charged and re-insurance to be purchased, calculates reserves for outstanding claims and carries out financial modeling. An Actuary works as consultant either individually or in partnership with other Actuaries in multi-disciplines like insurance, information technology, taxation, employees benefits, risk management, investment, etc. Therefore, the scope of the functions and duties of an Actuary has increased considerably under the changed conditions.

3. At present, the Actuarial Society of India, which is registered under the Societies Registration Act, 1860 and the Bombay Public Trust Act, 1950 manages the affairs of the Actuarial profession in India.

4. It is proposed to regulate through an enactment the profession of Actuaries on the same lines as the professions of Chartered Accountants, Cost and Works Accountants and Company Secretaries, which are regulated through the Chartered Accountants Act, 1949, the Cost and Works Accountants Act, 1959, and the Company Secretaries Act, 1980, respectively.

5. The Institute of Actuaries of India to be constituted under the proposed legislation will have the responsibility for conducting examinations for the profession of actuaries for regulating the profession including professional misconduct and for creating necessary facilities for the growth and training of the members of the profession. It is also proposed to dissolve the Actuarial Society of India and transfer the assets and liabilities of the said Society to the proposed Institute of Actuaries of India.

6. The Bill seeks to achieve the above objects.

NEW DELHI; JASWANT SINGH.

The 2nd December, 2002.

NOTES ON CLAUSES

Clause 2 defines the various expressions occurring in the Bill.

Clause 3 provides for the incorporation of the Institute of Actuaries of India. It also provides that the head office of the Institute shall be at such place as the Central Government may decide from time to time.

Clause 4 provides for the transfer of assets and liabilities of the Actuarial Society to the Institute.

Clause 5 seeks to enumerate objects of the Institute.

Clause 6 provides as to persons who are entitled to have their names entered in the register of the Institute.

Clause 7 seeks to designate the members of the institute as associates and fellows.

Clause 8 provides for choosing of honorary members, admission of affiliated members and enrolment of student members.

Clause 9 seeks to provide that no member of the Institute shall practise without obtaining a certificate to practice from the Council.

Clause 10 seeks to provide that a member of the Institute shall be known as Actuary.

Clause 11 seeks to provide for the disqualifications regarding entry of names of persons in the register.

Clause 12 seeks to provide for the constitution of the Council of the Institute.

Clause 13 seeks to provide for the annual general meetings of the Institute.

Clause 14 seeks to provide for the mode of election to the Council.

Clause 15 seeks to provide for the election of the Chairperson, the Vice-Chairperson and the Honorary Secretary of the Council.

Clause 16 provides for the resignation from membership of the Council and filling up of casual vacancies.

Clause 17 seeks to enumerate functions of the Council.

Clause 18 seeks to provide for appointment of staff and their remuneration and allowances and the allowances of the Chairperson, the Vice-Chairperson, the Honorary Secretary and other members of the Council and its committees.

Clause 19 seeks to provide for the constitution of various committees of the Council.

Clause 20 seeks to provide for the establishment of a fund to be managed by the Council, its maintenance and auditing of annual accounts.

Clause 21 seeks to provide for the maintenance of a register of the members of the Institute.

Clause 22 seeks to provide for the removal of the name of a member from the register of the Institute.

Clause 23 seeks to provide for the re-entry of the name of a member in the register.

Clause 24 seeks to provide for the procedure for holding inquiry relating to misconduct of any member of the Institute, for reprimanding the member and removing name from the register.

Clause 25 seeks to describe the expression "professional misconduct".

Clause 26 seeks to provide for an appeal by a member against the order of the Council.

Clause 27 provides for penalty for falsely claiming to be a member of the Institute.

Clause 28 provides for penalty for using the identical name or common seal of the Institute or award of degree or diploma etc., of actuarial science in contravention of the provisions of this Bill.

Clause 29 seeks to prohibit companies from practising the profession of actuaries and provides penalty the contravention.

Clause 30 seeks to prohibit unqualified persons from signing documents and seeks to provide for penalty for violation of these provisions.

Clause 31 seeks to provide for liabilities of persons in respect of the offences committed by a company.

Clause 32 seeks to prohibit prosecution of any person, except on a complaint made by, or under the order of, the Council or the Government.

Clause 33 seeks to provide for the dissolution of the existing Actuarial Society of India.

Clause 34 seeks to provide for transfer of services of the employees of the Actuarial Society to the Institute.

Clause 35 seeks to provide for manning more than one offices of Actuary or a firm of Actuaries by different fellow members of the Institute.

Clause 36 seeks to provide for recognition of foreign qualifications.

Clause 37 seeks to empower the Government to issue directions or dissolve the Council.

Clause 38 seeks to prohibit any person for taking action in good faith.

Clause 39 seeks to empower the Council to make regulations for carrying out the provisions of this Bill.

Clause 40 seeks to empower the Central Government to direct the Council to make regulations or to amend or revoke such regulations.

Clause 41 seeks to provide for laying of regulations before each House of Parliament.

Clause 42 seeks to empower the Central Government to remove difficulties.

The Schedule to the Bill seeks to enumerate the categories of misconduct.

FINANCIAL MEMORANDUM

The Central Government proposes to establish a professional body by converting the existing Actuarial Society of India into the Institute of Actuaries of India under clause 3 of the Bill. The new Institute is expected to be self-financing and self-supporting and does not envisage any budgetary support from the Government.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (1) of clause 39 empowers the Council of the Institute of Actuaries of India to make regulations generally for the purpose of carrying out the provisions of the Bill. The specific matters in respect of which regulations may be made by the said Council under various clauses of the Bill are—

- (a) the examination and training for the purposes of sub-clause (1)(b), (c) and (d) of clause 6;
- (b) the manner of making an application and granting thereof under sub-clause (3) of clause 6;
- (c) the fees payable under sub-clause (3) of clause 6, sub-clause (2) of clause 9, sub-clause (2)(a) of clause 17, sub-clause (4) of clause 21 and sub-clause (c) of clause 22;
- (d) the manner in which the honorary members may be chosen under sub-clause (1) of clause 8;
- (e) the terms and conditions on which an affiliate member may be admitted under sub-clause (2) of clause 8;
- (f) the academic qualifications for admission of a student member under sub-clause (3) of clause 8;
- (g) the form in which an application may be made under sub-clause (2) of clause 9;
- (h) the manner in which election to the Council may be conducted under sub-clause (2) of clause 12 and sub-clause (1) of clause 14;
- (i) the filling of a casual vacancy of the Council as required under sub-clause (3) of clause 16;
- (j) the transaction of business by the Council for the discharge of its functions under clause 17 and other provisions of this Bill;
- (k) the regulation and maintenance of the status and standards of professional qualifications of members of the Institute as required by sub-clause (2) of clause 17;
- (l) carrying out of research in matters of actuarial science as required by sub-clause (2) of clause 17;
- (m) the maintenance of library and publication of books, journals and periodicals relating to actuarial science as required by sub-clause (2) of clause 17;
- (n) the exercise of disciplinary powers as required by sub-clause (2) of clause 17;
- (o) the manner in which the register may be maintained under sub-clause (1) of clause 21;
- (p) the functions and conditions of the committees as required under sub-clause (4) of clause 19;
- (q) the other particulars to be included in the register as required by sub-clause (2) of clause 21;
- (r) the manner in which the annual list of members of the Institute may be published under sub-clause (3) of clause 21;
- (s) the annual membership fee payable by the member of the Institute as required under sub-clause (4) of clause 21;
- (t) the conditions and requirements and payment of fee for re-entry in the register as required under clause 23;
- (u) the inquiries to be held under sub-clause (1) of clause 24;
- (v) the professional misconduct of a member of the Institute as required under sub-clause (4) of clause 24 read with item (v) of paragraph (3) of the Schedule;
- (w) the conditions subject to which foreign qualifications may be recognised under sub-clause (2) of clause 36; and
- (x) any other matter which is required to be, or may be prescribed under this Bill.

2. The regulations made by the Council under this Bill shall be subject to the condition of previous publication and to the approval of the Government. These matters are of procedural character. Moreover the regulations made under the Bill will have to be laid before each House of Parliament and they will be

subject to the scrutiny of Parliament. The delegation of legislative power is, therefore, of a normal character.

LOK SABHA

A
BILL

*to provide for regulating and developing the profession of Actuaries and
to provide for matters connected therewith or incidental thereto.*

(Shri Jaswant Singh, Minister of Finance and Company Affairs)