

INTRODUCTION

The main regulations that regulate the life insurance business are the Insurance Act, 1938, the Life Insurance Corporation Act, 1956 and IRDA Act, 1999 and regulations made thereunder. The Indian Contract Act, 1872, governs most of the aspects of the insurance contract. Additionally Section 80C, 10 and 139 of Income Tax Act, 1961, Section 3, 7, 11, and 17 of Indian Stamp Act, 1899 and Section 11 of the Hindu and Indian Succession Act, 1956 govern some aspects involved in insurance.¹

One area that continues to cause concern is the number of customer grievances in insurance, especially in a few specific classes. This calls for more transparency in designing the contract wording and on insisting that the applicant is sufficiently informed about the coverage and more particularly the exclusions. In addition, the legislation itself requires to be transformed to meet the needs of the emerging markets. Law Commission studied and made its recommendations. The expert committee headed by **Mr. K.P. Narasimhan** also submitted its proposals requiring

¹. Kulkarni, Lalitagauri, “*Development of secondary market in life insurance products international survey and potential in India*”, Ph.D. Awarded by the University of Pune, January, 2009, 91.

amendments to the laws.²

The Complexities of Insurance Legislation

Insurance is a domain where the incidence of consumer grievances is high. This stems mostly from the fact that insurance contracts are not well-understood, even by the formally educated elite, in some cases. While several classes of insurance business are exposed to this challenge, there are some classes that are additionally vulnerable; owing to the fact that interpretation of clauses is even more intricate. All this presupposes the existence of a legislation that can put things in the right perspective; and at the same time accomplish that delicate balance of sustained business growth and implementation of justice³.

It has been mentioned ad-nauseum that Insurance Act, 1938 is a comprehensive piece of legislation that has served the purpose for a very long period. All the same, in view of the fresh challenges that the industry has been confronted with, it is the time that we ponder over some of contents of insurance legislature. Insurable interest, for example, has been widely interpreted globally. Its applicability in insurance contracts needs no emphasis. However, certain verdicts given in a few cases recently have thrown new challenges in this area. Secondary trading in life insurance contracts, which challenges a puritan's understanding of insurable interest, is vastly successful in some markets and has been

². J. Hari Naryan, *IRDA Journal*, Volume IX, No. 8, August, 2011.

³. U. Jawaharlal, The Editor, *IRDA Journal*, October, 2007, Vol. V, No. 11, 3.

upheld sporadically at home as well. Trading in life insurance contracts necessarily creates an interest for the transferee to look forward to an early death of the life assured.

In a domain where the awareness levels of the nuances of insurance contracts are pretty low, this could have dangerous portends. There is need for the legislation to be very strong and specific in this aspect. Another sensitive area that has been a perennial bone of contention is the **Clause of Indisputability**; or Section 45 in more mundane terms.⁴ There is need to achieve better clarity in this regard as to what exactly amounts to material suppression, intent to defraud etc. In the absence of this, insurers would tend to interpret its contents to repudiate claims and on the other hand, the insured would exploit the loose ends to get cases settled in his favour. During the interregnum, however, there is need to concede the benefit of doubt in favour of the insured.

Further, the resurgent insurance market is throwing up various challenges hitherto unknown – particularly in the area of market-linked policies in the life arena and the recently de-tariffed classes of non-life domain.

Prior to 1912, India had no legislation to regulate insurance business. In the year 1912, the Life Insurance Companies Act, and the Provident Fund Act were passed. The Life Insurance Companies Act,

⁴ . U. Jawaharlal, The Editor, *IRDA Journal*, October, 2007, Vol. V, No. 11, 4.

1912 made it necessary that the premium rate tables and periodical valuations of companies should be certified by an actuary. The Act discriminated between foreign and Indian companies on many accounts, putting the Indian companies at a disadvantage.⁵

The Insurance Act, 1938

Insurance Act, 1938 is the main piece of insurance legislation in India and it has withstood the test of time by providing strength and wholesomeness to whatever litigation that arose.⁶ However, the face of the industry has changed a great deal over a period of time; and the Indian consumer is now exposed to a highly evolved insurance industry with a large number of multinational insurance companies operating in the country as joint venture partners with Indian promoters. As a consequence, several new products hitherto unknown in the Indian market have been introduced.

Section 45⁷: No policy of life insurance effected before the commencement of this Act shall after the expiry of two years from the date of commencement of this Act and no policy of life insurance effected after the coming into force of this Act shall, after the expiry of two years from the date on which it was effected be called in question by

⁵ . G. Vijayaragavan Iyengar, *“Introduction to Banking”*, Excel Books, New Delhi, 2007, 19.

⁶ . Neelam C.Gulati, *“Principles of Insurance Management : A Special Focus on Development in Insurance Sector – Pre and Post Liberalisation”*, Excel Books, New Delhi, 2007, 322.

⁷ . C.L. Tyagi and Madhu Tyagi, *“Insurance : Law and Practice”*, Atlantic Publishers and Distributors (P) Ltd., New Delhi, 2007, 138.

an insurer on the ground that statement made in the proposal or in any report of a medical officer, or referee, or friend of the insured, or in any other document leading to the issue of the policy, was inaccurate or false, unless the insurer shows that such statement was on a material matter or suppressed facts which it was material to disclose and that it was fraudulently made by the policy-holder and that the policy-holder knew at the time of making it that the statement was false or that it suppressed facts which were material to disclose:

The Life Insurance Corporation Act, 1956

In the year 1956 government introduced the Life Insurance Corporation Act, 1956, an Act to provide for the nationalisation of life insurance business in India by transferring all such business to a Corporation established for the purpose and to provide for the regulation and control of the business of the Corporation and for matters connected therewith or incidental thereto. Life Insurance Corporation of India (LIC) was formed by the Life Insurance Corporation Act, 1956, with the objective of spreading life insurance much more widely and in particular to the rural areas, providing them adequate financial cover at a reasonable cost.

LIC functions with 2,048 fully computerized branch offices, 109 divisional offices, 8 zonal offices, 992 satellite offices and the corporate office. LIC's Wide Area Network covers 109 divisional offices and

connects all the branches through a Metro Area Network.⁸ LIC has tied up with some Banks and Service providers to offer on-line premium collection facility in selected cities. LIC's ECS and ATM premium payment facility is an addition to customer convenience. Apart from on-line Kiosks and IVRS, Info Centers have been commissioned at Mumbai, Ahmedabad, Bangalore, Chennai, Hyderabad, Kolkata, New Delhi, Pune and many other cities. With a vision of providing easy access to its policyholders, LIC has launched its SATELLITE SAMPARK offices.⁹ The satellite offices are smaller, leaner and closer to the customer. The digitalized records of the satellite offices will facilitate anywhere servicing and many other conveniences in the future.

LIC continues to be the dominant life insurer even in the liberalized scenario of Indian insurance and is moving fast on a new growth trajectory surpassing its own past records. LIC has issued over one crore policies during 2011-12. It has crossed the milestone of issuing 370.26 lakh policies during 2010-11 which has declined to 357.24 lakh policies new policies during 2011-12 registering a negative growth of 3.52%.¹⁰ From then to now, LIC has crossed many milestones and has set unprecedented performance records in various aspects of life insurance business.

⁸ . *Annual Report*, Life Insurance Corporation of India, Mumbai, 2011-12, 61.

⁹ . *Ibid.*, 61

¹⁰ . *Ibid.*, 81.

Milestones in the Life Insurance Business in India

- 1818: Oriental Life Insurance Company, the first life insurance company on Indian soil started functioning.
- 1870: Bombay Mutual Life Assurance Society, the first Indian life insurance company started its business.
- 1912: The Indian Life Assurance Companies Act enacted as the first statute to regulate the life insurance business.
- 1928: The Indian Insurance Companies Act enacted to enable the government to collect statistical information about both life and non-life insurance businesses.
- 1938: Earlier legislation consolidated and amended to by the Insurance Act with the objective of protecting the interests of the insuring public.
- 1956: 245 Indian and foreign insurers and provident societies were taken over by the Central Government and nationalised. LIC was formed by an Act of Parliament, viz. LIC Act, 1956, with a capital contribution of Rs. 5 crore from the Government of India.

The IRDA Act, 1999

The IRDA Act 1999 was passed, by Parliament in Dec. 1999 by which the Insurance Act 1938 and Life Insurance Corporation Act, 1956 and General Insurance Business Act, 1972 were amended to remove the exclusive privilege of nationalized insurance companies to transact life

and general insurance business and allow for entry of private sector players in the insurance sector. The Act also provided for the setting up of a statutory regulatory authority to regulate, promote and insure orderly growth of insurance industry.¹¹

1. The IRDA has been established on 19th April, 2000. The authority has made regulations in all major areas of operation in insurance industry.
2. The Insurance Act, 1938 allows for only Indian insurance companies registered under the Companies Act, 1956 to transact insurance business in India after registration with the IRDA.
3. It is expected that the entry of co-operative insurance sector would increase the insurance coverage specially in the rural areas.

Insurance Bill 2002 inter-alia contains provisions relating to payment of commission and fee for insurance intermediaries allowing flexibility qualification for corporate agent. Flexibility mode of payment of premium through credit card, smart card or internet etc. IRDA opened the market in August 2000 with the invitation for application for registration. Foreign companies were allowed ownership upto 26%.

Even prior to the IRDA Act a number of multinational companies had begun exploring the possibility of setting up operation in India in anticipation of the deregulation of the industry. Certain Indian companies

¹¹ . M.N. Mishra, “*Law of Insurance*”, 6th Edition (2002), IRDA Act, 1999.

were also keen to enter the insurance market and themselves seeking international partners the authority has been empowered under section 26 of the IRDA Act to make regulation in consultation with the insurance advisory committee, consequently following important regulation related to life insurance come into force for the proper implementation of the IRDA Act, 1999. Different regulation from IRDA Act:

- a) IRDA (Registration of Insurance Company's Regulation, 2000).
- b) IRDA (Insurance, Advertisement and Disclosure Regulation, 2000).
- c) IRDA (Licensing of Insurance Agent Regulation 2000).
- d) IRDA (Obligation of Insurers of Rural-Social Sector Regulation, 2000).
- e) IRDA (Life Insurance and Reinsurance Regulation Act, 2000).

REGULATORY REQUIREMENTS UNDER IRDA

1. Deposits

Every insurer should, in respect of the insurance business carried on by him in India, deposit with the Reserve Bank of India (RBI) for and on behalf of the Central Government of India the following amounts, either in cash or in approved securities estimated at the market value of the securities on the day of deposit, or partly in cash and partly in approved securities:

- in the case of **life insurance business**, a sum equivalent to one per

cent of his total gross premium written in India in any financial year commencing after the 31st day of March, 2000, not exceeding Rs. 100 million;

- in the case of **general insurance business**, a sum equivalent to three per cent of his total gross premium written in India, in any financial year commencing after the 31st day of March, 2000, not exceeding Rs. 100 million;
- in the case of re-insurance business, a sum of Rs. 200 million.
- If business done or to be done is marine insurance only and relates exclusively to country craft or its cargo or both, only Rs. 100 thousand should be deposited with the RBI.

These deposits will be held by the RBI through for the credit of the insurer and are returnable to the insurer in the event the provisions of the Insurance Act mandate such return. Interest accruing, due and collected on deposited securities will be paid to the insurer, subject to any deductions of the normal commission chargeable for the realization of interest. In addition, it is important to note that the deposits will:

- not be susceptible to any assignment or charge; or
- not be available for the discharge of any liability of the insurer other than liabilities arising out of policies of insurance issued by the insurer so long as any such liabilities remain undischarged, or

- not be liable to attachment in execution of any decree except a decree obtained by a policy-holder of the insurer in respect of a debt due upon a policy which debt the policy-holder has failed to realize in any other way.

Where the insurer has ceased to carry on all classes of insurance business in India, the deposit made with the RBI shall, on an application being made to the Court, be returned to the insurer after satisfaction of all his liabilities in India in respect of all classes of insurance businesses.

2. Investments¹²

Every insurer is required to invest and keep invested certain amount of assets as determined under the Insurance Act. The funds of the policyholders cannot be invested (directly or indirectly) outside India.

(a) Life insurance

An insurer involved in the business of life insurance is required to invest and keep invested at all times assets, the value of which is not less than the sum of the amount of its liabilities to holders of life insurance policies in India on account of matured claims and the amount required to meet the liability on policies of life insurance maturing for payment in India, reduced by the amount of premiums which have fallen due to the insurer on such policies but have not been paid and the days of grace for

¹² . S. Arjunajatesan, T.R. Vishwanathan, “*Risk Management and Insurance, Concepts and Practices of Life and General Insurance*”, Macmillan Publishers India Ltd., New Delhi, 2009, 163.

payment of which have not expired and any amount due to the insurer for loans granted on and within the surrender values of policies of life insurance maturing for payment in India issued by him or by an insurer whose business he has acquired and in respect of which he has assumed liability.

Every insurer carrying on the business of life insurance is required to invest and at all times keep invested his controlled fund (other than funds relating to pensions and general annuity business and unit linked life insurance business) in the following manner, free of any encumbrance, charge, hypothecation or lien:

Government Securities:	25 %
Government securities or other approved securities:	not less than 50%
Approved investments:	
(a) Infrastructure and social sector:	Not less than 15%
(b) Other to be governed by Exposure/ Prudential Norms:	Not exceeding 35%
Other than in Approved Investments to be governed by Exposure/Prudential Norms:	Not exceeding 15%

For the purposes of calculating the investments, the amount of deposits made with the RBI by the insurer in respect of his life insurance business shall be deemed to be assets invested in Government securities. In computing the assets to be invested by the insurer, any investment made with reference to the currency other than the Indian rupee which is in excess of the amount required to meet the liabilities of the insurer in India with reference to that currency to the extent of such excess and any

investment made in purchase of any immovable property outside India or on account of any such property shall not be taken into account. Further, an insurer should not out of his controlled fund invest any sum in the shares or debentures of any private limited company.¹³

Where an insurer has accepted reinsurance in respect of any policies of life insurance issued by another insurer and maturing for payment in India or has ceded reinsurance to another insurer in respect of any such policies issued by himself, the assets to be invested by the insurer shall be increased by the amount of the liability involved in such acceptance and decreased by the amount of the liability involved in such cession.¹⁴

In case of an insurer incorporated or domiciled outside India or an insurer incorporated in India whose share capital to the extent of one-third is owned by, or the members of whose governing body to the extent of one-third consists of members domiciled elsewhere than in India, the assets required to be invested should, be held in India by way of a trust for the discharge of the liabilities.

Every insurer shall invest and at all times keep invested his segregated fund of unit linked life insurance business as per pattern of investment offered to and approved by the policy-holders. The insurer is

¹³ . J. Hari Naryan, *IRDA Journal*, Volume IX, No. 8, August, 2011.

¹⁴ . *The Insurance Act, 1938 Bare Act with Short Notes*, Universal Law Publishing Co. Pvt. Ltd., New Delhi, 2011, 40.

permitted to offer unit linked policies only where the units are linked to categories of assets that are both marketable and easily realizable. However, the total investment in other approved category of investments should at no time exceed twenty five percent of the fund.

(b) General Insurance

An insurer carrying on general insurance business is required to invest and keep invested at all times his total assets in approved securities in the following manner:

Central Government Securities:	Not less than 20%
State Government Securities and other guaranteed securities including the aforesaid:	Not less than 30%
Housing and Loans to State Government for Housing and Fire Fighting Equipment	Not less than 5%
Investments in Approved Investments	
(a) Infrastructure and Social Sector:	Not less than 10%
(b) Others to be governed by Exposure/Prudential Norms:	Not exceeding 30%
Other than in Approved Investments to be governed by Exposure/Prudential Norms:	Not exceeding 25%

(c) Pension and General Annuity

Every insurer is required to invest and at all times keep invested assets of pension business, general annuity business and group business in the following manner:

Government Securities:	Not less than 20%
Government securities and other approved securities, including the above:	Not less than 40%
Balance to be invested in Approved Investments and to be governed by Exposure/Prudential Norms:	Not less than 60%

(d) Re-insurance

Every re-insurer carrying on re-insurance business in India is required to invest and at all times keep invested his total assets in the same manner as specified for the general insurance business.¹⁵

3. Valuation of Assets -Liabilities And Solvency Margins¹⁶

An insurer should maintain, at all times, an excess of the value of his assets over the amount of his liabilities of not less than the relevant amount arrived at in the following manner (required solvency margin):

- (a) in the case of an insurer carrying on life insurance business, the required solvency margin shall be the higher of rupees five hundred million or the aggregate sum arrived at based on the calculations specified in the Insurance Act.
- (b) in the case of an insurer carrying on general insurance business, the required solvency margin, shall be the highest of the following amounts: -
 - (i) Rs. 500 million (rupees one billion in case of a re-insurer);
 - or
 - (ii) a sum equivalent to 20% of net premium income; or
 - (iii) a sum equivalent to 30% of net incurred claims.

¹⁵ . *The Insurance Act, 1938 Bare Act with Short Notes*, Unviersal Law Publishing Co. Pvt. Ltd., New Delhi, 2011, 129.

¹⁶ . P.S. Palande, R.S. Shah, M. L. Lunawat, “*Insurance in India: Changing Policies and Emerging Opportunities*” Response Books, A Division of Sage Publications India Private Limited, New Delhi, 2003, 102.

This shall be subject to credit for re-insurance in computing net premiums and net incurred claims being actual but a percentage, determined by the regulations, not exceeding 50%.

An insurer who fails to maintain the required solvency margin will be deemed to be insolvent and may be wound up by the court. An insurer is required under the **IRDA (Assets, Liabilities and Solvency Margin of Insurers) Regulations, 2000**, to prepare a statement of solvency margin in accordance with Schedule III-A, in respect of life insurance business, and in Form KG in accordance with Schedule III-A, in respect of general insurance business, as the case may be.¹⁷

Every insurer is required to prepare a statement of the value of assets in accordance with the provisions of the aforesaid regulations. Every insurer should prepare a statement of the amount of liabilities in accordance with the provisions of Schedule II-A of the aforesaid regulations, in respect of the life insurance business, and in Form HG in accordance with Schedule II-B, in respect of the general insurance business. The aforesaid forms should be furnished separately for business within India and the total business transacted by the insurer.¹⁸

In the event that an insurer transacts insurance business in a country outside India and submits the statements or returns or any such particulars to a public authority of that country, he is required to enclose

¹⁷ . Neelam C. Gulati, '*Principles of Insurance Management*', Excel Books, New Delhi, 2007, 314.

¹⁸ . Ibid. 317.

such particulars along with the Forms specified in the aforesaid regulations and the **IRDA (Actuarial Report and Abstract) Regulations, 2000.**

4. Submission of Returns

Every insurer should submit to the Authority the following returns, showing that as of 31st day of December of the preceding year the assets held and invested, investments made out of the controlled fund and all other particulars necessary to establish that the requirements of the Insurance Act have been complied with.

Description		Times limit for submission	
Form 1	Statement of investment and income on investment	Yearly	Within 30 days from the date of Board Approval of audited accounts
Form 2	Statement of downgraded investments	Quarterly	Within 21 days of the end of each quarter
Form 3A	Statement of investment of Controlled Fund (Life) - Compliance Report	Quarterly	Within 21 days of the end of each quarter
Form 3B	Statement of investment of Total Assets (General) Compliance Report	Quarterly	Within 21 days of the end of each quarter
Form 4	Prudential Investment Norms-Compliance Report	Yearly	Within 30 days from the date of Board Approval of audited accounts

5. Actuary

An insurer carrying on the business of insurance or reinsurance in India is required, under the **IRDA (Appointed Actuary) Regulations, 2000**, to appoint a person fulfilling the eligibility requirements, to act as an appointed actuary, after seeking the approval of the Authority in this

regard. It is mandatory for an insurer carrying on the business of life insurance in India to appoint any actuary.¹⁹

Powers, Duties and Obligations of an Actuary

An appointed actuary has access to all such information and documents of an insurer for the performance of his duties and obligations. An appointed actuary may also attend the meetings of the insurer and discuss matters related to the actuarial advice and solvency of margin.²⁰

An appointed actuary, in addition to rendering actuarial advice to insurer (in particular in the areas of product design and pricing, insurance contract wording, investments and reinsurance), is also required inter alia to ensure the solvency of the insurer at all times, certify the assets and liabilities that have been valued and maintain the solvency margin.²¹

In case the insurer is carrying on life insurance business, an appointed actuary should also inter-alia:

- certify the actuarial report, abstract and other returns required under the Insurance Act,
- comply with the provisions with respect to the bases of premium,
- comply with the provisions with respect to recommendation of interim bonus or bonuses payable by the life insurer to

¹⁹ . Jyotsna Sethi and Nishwan Bhatia, “*Elements of Banking and Insurance*”, PHI Learning Private Limited, New Delhi, 131.

²⁰ . IRDA (Appointed Actuary) Regulations, 2000, IRDA, Reference no. 1980_GI_2000_2_ENG dated, 14-07-2000

²¹ . Clause 7 and 8, IRDA (Appointed Actuary) Regulations, 2000, IRDA, Reference no. 1980_GI_2000_2_ENG dated, 14-07-2000.

policyholders whose policies mature for payment by reason of death or otherwise during the inter-valuation period, and

- 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.²²

In case of an insurer carrying on general insurance business in India, the appointed actuary is required to ensure that the rates are fair in respect of those contracts that are governed by the insurer's in-house tariff and that the actuarial principles, in the determination of liabilities, have been used in the calculation of reserves for incurred but not reported claims and other reserves where actuarial advice is sought by the Authority.

Actuarial Report and Abstract

Every insurer carrying on life insurance business should every year cause an investigation to be carried out by an actuary with respect to financial condition of the life insurance business, including a valuation of his liabilities and should cause an abstract of the report to be made. This provision shall apply in the event that an investigation into the financial condition of the insurer is made with a view to the distribution of profits or an investigation is made of which the results are made public.

²². "Insurance Law Regulations in India", Nishith Desai Associates, Mumbai, 1, 2002, www.nishithdesai.com, site visited on 04/05/2011.

6. Insurance Advertisements

The IRDA (Insurance Advertisements) Regulations, 2000,²³

seeks to regulate and control every insurance advertisement issued by the insurer, intermediary or insurance agent. For this purpose, every insurer, intermediary or insurance agent is required to establish and maintain a system of control over the content, form and method of dissemination of all advertisements concerning its policies and such advertisement should be filed with the Authority as soon as it is first issued. An advertisement issued by an insurer should not fall in the category of an unfair or misleading advertisement. An ‘unfair or misleading advertisement’ means and includes any advertisement.²⁴

- that fails to clearly identify the product as insurance;
- makes claims beyond the ability of the policy to deliver or beyond the reasonable expectation of performance;
- describes benefits that do not match the policy provisions;
- uses words or phrases in a way which hides or minimizes the costs of the hazard insured against or the risks inherent in the policy;
- omits to disclose or discloses insufficiently, important exclusions, limitations and conditions of the contract;
- gives information in a misleading way;

²³ . *The IRDA (Insurance Advertisements) Regulations, 2000*, www.irda.gov.in website visited on 21-11-2011

²⁴ . Ibid.

- illustrates future benefits on assumptions which are not realistic nor realizable in the light of the insurer's current performance;
- where the benefits are not guaranteed, does not explicitly say so as prominently as the benefits are stated or says so in manner or form that it could remain unnoticed;
- implies a group or other relationship like sponsorship, affiliation or approval, that does not exist;
- makes unfair or incomplete comparisons with products which are not comparable or disparages competitors.

Every advertisement should disclose full particulars and identity of the insurer and that insurance is the subject matter of solicitation. In the event that such advertisement describes any benefits, the form number of the policy and the type of coverage should be fully disclosed.

In case of Internet advertisements, the website or portal of the insurer or intermediary should contain disclosure statements which outline the site's specific policies vis-a-vis the privacy of personal information for the protection of both their own businesses and the consumers they serve and should also display the registration or license numbers.²⁵ In addition to these requirements, every insurer or intermediary is also required to follow recognized standards of

²⁵ . *The IRDA (Insurance Advertisements) Regulations, 2000*, www.irda.gov.in website visited on 21-11-2011

professional conduct as prescribed by the Advertisement Standards Council of India.

Non-compliance with Regulations on Advertisement²⁶

If an advertisement is not in compliance with the aforesaid regulations, the Authority may take action in one or more of the following ways:

- issue a letter to the advertiser seeking information within a specific time, not being more than ten days from the date of issue of the letter;
- direct the advertiser to correct or modify the advertisement already issued in a manner suggested by the Authority with a stipulation that the corrected or modified advertisement shall receive the same type of publicity as the one sought to be corrected or modified;
- direct the advertiser to discontinue the advertisement;
- any other action deemed fit by the Authority, keeping in view the circumstances of the case, to ensure that the interests of the public are protected.

7. Obligations To The Rural And Social Sector²⁷

Every insurer who begins to carry on the business of insurance in India should ensure that he undertakes the following obligations to

²⁶ . *The IRDA (Insurance Advertisements) Regulations, 2000*, www.irda.gov.in website visited on 21-11-2011

²⁷ . Novi Dewan, “*Indian Life and Health Insurance Industry : A Marketing Approach*”, Gabler-Verlag, Wiesbaden, 31.

provide life insurance or general insurance policies, during the first five financial years, to the persons residing in the rural sector 11 or social sector, workers in the un-organised or informal sector or for economically vulnerable or backward classes of the society 14 and other categories of persons 15 and such insurance policies shall include insurance for crops.

Rural Sector

- **In respect of a life insurer -**
 - (i) 5% in the first financial year; (ii) 7% in the second financial year; (iii) 10% in the third financial year; (iv) 12% in the fourth financial year; (v) 15% in the fifth year.**
- **In respect of a general insurer**
 - (i) 2% in the first financial year; (ii) 3% in the second financial year; (iii) 5% thereafter.**

Social Sector

- **In respect of all insurers**
 - (i) five thousand lives in the first financial year, (ii) seven thousand five hundred lives in the second financial year, (iii) ten thousand lives in the third financial year, (iv) fifteen thousand lives in the fourth financial year, (v) twenty thousand lives in the fifth year.**

8. Assignment and Nomination²⁸

²⁸ . C.L. Tyagi and Madhu Tyagi, “*Insurance : Law and Practice*”, Atlantic Publishers and Distributors (P) Ltd., New Delhi, 2007, 117.

(a) Assignment

A policy of insurance is a contract of a personal nature and hence cannot be transferred by the insured without the consent of the insurer. In the case of life and personal accident insurances, the subject matter of the insurance is a life and is not amenable to transfer. An assignment of the policy in such cases is just an assignment of the right to receive the proceeds of the policy.²⁹

The Insurance Act lays down the mode of assignment and transfer of a life insurance policy. An assignment or transfer may be made only on satisfaction of the following conditions:³⁰

- (i) an endorsement upon the policy itself or by a separate instrument;
- (ii) the endorsement or instrument should be signed by the transferor or his agent and should be attested by at least one witness;
- (iii) it should specifically set forth the fact of transfer or assignment.

The aforesaid conditions need to be complied with irrespective whether the transfer or assignment is made without consideration or not. The insurer, on being given notice of the assignment or transfer, shall recognize the assignee or transferee as the only person entitled to the benefit of the policy and such a person shall also be subject to all the liabilities and equities to which the transferor or assignor was subject to.

²⁹ . C.L. Tyagi and Madhu Tyagi, “*Insurance : Law and Practice*”, Atlantic Publishers and Distributors (P) Ltd., New Delhi, 2007, 117.

³⁰ . *Ibid.*, 119.

Additionally, an assignment may be (a) absolute, or (b) conditional that it shall be inoperative or that the interest shall pass to some other person on the happening of a specific event during the lifetime of the person insured, or (c) in favour of the survivor or survivors of a number of persons. However, the term “policy holder” does not include an assignee whose interest in the policy is defeasible or is for the time being subject to any condition. Hence, an assignee of a policy subject to any condition shall not be entitled to the rights of a policy holder.

(b) Nomination³¹

A policy holder of a life insurance policy on his own life has the right, either while effecting the policy or before it matures, to nominate a person to whom the money secured by the policy should be paid in the event of the death of the policy holder. An insurer is not bound by such nomination unless it is brought to his notice, endorsed on the policy and registered in the records of the policy. It is pertinent to note that a transfer of assignment of a policy automatically leads to cancellation of a nomination. Additionally, these provisions relating to nomination under the Insurance Act do not apply to any policies under the Married Women’s Property Act, 1874.

9. Foreign Exchange Laws³²

³¹ . C.L. Tyagi and Madhu Tyagi, “*Insurance : Law and Practice*”, Atlantic Publishers and Distributors (P) Ltd., New Delhi, 2007, 121.

³² . Ibid, 207.

The Reserve Bank of India (“RBI”) is the apex bank of India established in 1935 under the Reserve Bank of India Act, 1934. The Exchange Control Department within the RBI is responsible for the regulation and enforcement of exchange controls. Prior to 1999, India had stringent exchange control regulations under the Foreign Exchange Regulation Act, 1973 (“FERA”). The Foreign Direct Investment (“FDI”) regime in India has been progressively liberalized in the nineties with the passage of the Foreign Exchange Management Act, 1999 (“FEMA”), which replaced FERA. Most restrictions on foreign investment have been removed and the procedures have been simplified. Non-residents can invest directly in India, either wholly or as a joint venture. Foreign investment is allowed in virtually all sectors including the services sector, subject to Government permission in certain cases.

Insurance companies that are registered with the IRDA, are permitted to issue general insurance policies denominated in foreign currency and are also permitted to receive premiums in foreign currency without the prior approval of the RBI. However, this is permitted only for certain kinds of cases such as marine insurance for vessels owned by foreign shipping companies and chartered by Indian companies, aviation insurance for aircrafts imported from outside India on lease/hire basis for

the purpose of air taxi operations etc.³³

Authorised dealers are also permitted to settle claims in foreign currency on general insurance policies subject to certain conditions such as the claim has been made for the loss occurred during the policy period, the claim has been settled as per the surveyors report and other substantiating documents, claims on account of reinsurance are being lodged with the reinsurers and will be received as per the reinsurance agreement, the remittance is being made to the non-resident beneficiary under the policy etc. However, in the case of resident beneficiaries, the claim is required to be settled in rupee equivalent of the foreign currency due and under no circumstances can payment be made in foreign currency to a resident beneficiary.

As per the provisions of the **Foreign Exchange Management (Insurance) Regulations, 2000**³⁴, no person resident in India is permitted to take any general or life insurance policy issued by an insurer outside India. However, the RBI may permit, for sufficient reasons, a resident in India to take any life insurance policy issued by an insurer outside India. However, an exemption has recently been made only for units located in Special Economic Zones (“SEZs”) for general insurance policies taken by such units. Therefore, remittances towards premium for general insurance

³³ . L.M. Bhole, *“Financial Institutions and Markets: Structure, Growth and Innovations,”* IV Edition, Tata McGraw-Hill Publishing Company Limited, 2006, p. 25.34.

³⁴ . www.rbidocs.rbi.org.in/rdocs/notification/PDFs/13262.pdf retrieved on March 14, 2012.

policies taken out by units located in SEZs from insurers outside India are permitted provided that the premiums are paid out of the foreign exchange balances.

A person resident in India but not permanently resident is permitted to continue holding any insurance policy issued to him by an insurer outside India, if the premium on such policy is paid out of foreign currency resources outside India. A person resident in India may take a general insurance policy issued by an insurer outside India, provided that, before taking the policy he has obtained a no objection certificate from the Central Government of India. Further, a person resident in India is also permitted to continue to hold any insurance policy issued by an insurer outside India when such person was resident outside India, subject to fulfillment of certain conditions. A foreign company may enter the insurance business in India in either of the following ways:³⁵

- Direct investment in an insurance company

FDI is permitted in India primarily either under the 'automatic route', or with prior government approval. Where FDI does not fall under the 'automatic route', the foreign investor would require the approval from the Foreign Investment Promotion Board (“FIPB”). Indian companies are generally permitted to accept FDI without prior approval, provided certain sectoral policies and investment limits are met. In the insurance

³⁵ . www.rbidocs.rbi.org.in/rdocs/notification/PDFs/13262.pdf retrieved on March 14, 2012.

sector there is 26% sectoral cap on FDI, subject to obtaining license from the IRDA, which means that a foreign company can invest up to only 26% in an Indian insurance company (calculated in the manner specified in the Insurance Act and regulations thereunder), while 74% would have to be invested by an Indian company.

- **Branch or Liaison Office**

In the event that a foreign insurance company is not desirous of directly investing in an Indian insurance company, it may, in the beginning, set up a branch or liaison office, subject to the approval of the RBI and/or the Government of India in this regard. The branch office in India is permitted to undertake only a certain set of activities such as carrying out research work for the parent company, representing the parent company in India etc. A liaison office is also permitted to undertake only a certain set of activities such as acting as a communication channel between the parent company and Indian companies.

10. Tax Implications

Insurance companies and insurance agents, in India, are subject to tax for the premiums and the commissions received by them respectively, under the **Indian Income Tax Act, 1963**.³⁶

³⁶ . “Insurance *Law Regulations in India*”, Nishith Desai Associates, Mumbai, 1, 2002, www.nishithdesai.com, site visited on 04/05/2011.

The Income Tax Act deals with the computation of the income of the following insurance companies:

- Companies carrying on life insurance business which are resident in India;
- Companies carrying on any other kind of insurance business, which are resident in India; and
- Non-resident persons carrying on the business of insurance in India through a branch.

There is no recognized business method of ascertaining the profits derived from life insurance business. This would depend on the actuarial calculations and valuations. The Income Tax Act lays down provisions with respect to the income received by an assessee from the business of insurance, whether the company which receives such business income is resident in India or not. These special provisions exclude the operation of other sections under the Income Tax Act dealing with computation of income. Therefore, the profits and gains from the insurance business are to be computed artificially in accordance with these rules.

The First Schedule of the Income Tax Act overrides the other provisions relating to computation of income under separate and distinct heads of income. The income is therefore, not to be computed under the different heads and in accordance with the provisions of the Income Tax Act, but the income from all the sources should be computed as one

figure on the basis laid down in this schedule.³⁷

The profits and loss of a person carrying on the business of insurance are to be computed separately from the profits and gains from any other business. Though the profits of life insurance business are to be computed separately from the profits of non-life insurance business or other business carried on by the assessee, any loss incurred in life insurance business can be set off against profits of non-life insurance business or other business.

In computing the profits of life insurance business, the profits and gains of the business is taken to be the annual average of the “surplus”. This surplus is arrived at by adjusting the surplus or deficit disclosed by the actuarial valuation made in respect of the last inter-valuation period ending before the commencement of the assessment year. The tax payable, computed in the manner stated above, will be reduced by tax withheld at source for income from interest on securities in respect of annual average of income tax. In computing the profits of any business other than life insurance, the profits and gains is taken to be the balance of the profits disclosed in the annual accounts.

In case of non-resident companies carrying on the business of insurance in India, in the absence of reliable data, the profits and gains is taken to be that proportion of the world income which corresponds to the

³⁷ . “Insurance Law Regulations in India”, Nishith Desai Associates, Mumbai, 1, 2002, www.nishithdesai.com, site visited on 04/05/2011.

proportion of the premium income derived from India.

A branch of a foreign insurance company is subject to income tax at the rate of 42% (including 5% surcharge on tax) while a subsidiary of a foreign insurance company is subject to tax at the rate of 38.75% (including 5% surcharge on tax). The Finance Act, 2002 has brought insurance within the service tax net. The insured is thus liable to pay service tax at the rate of 5%.

The Income Tax Act provides that the income tax payable on the profits and gains arising from the life insurance business will be calculated at the rate of 12.5% of such profits and gains.³⁸ An insurance company is required to deposit an amount equal to one-third of the tax, in a Social Security Fund as notified by the Central Government. Further, the insurance company is required to deposit an amount of not less than 2.5% of the profits and gains of the insurance business in such a Security Fund. Where the insurance company has deposited such an amount, the income tax payable by the insurance company will be reduced by that amount and the amount to be deposited in the Security Fund would also be calculated on the income tax so reduced.

Taxation of Commission to Insurance Agents³⁹

The Income Tax Act has laid down provisions for the taxation of insurance commissions. 'Insurance Commission' has been defined to

³⁸ . S.P. Subhedar, "*Taxation of Life Insurance Business – Some Issues*", 1, <http://www.actuariesindia.org/>,

³⁹ . Ibid, 2.

mean any income (remuneration or reward) by way of commission or otherwise for soliciting or procuring insurance business. The effect of the provision is that any person responsible for paying any such income to a resident individual will be required to deduct income tax at the prescribed rates. The provision applies only in the event that the individual is a resident of India. This provision is not applicable for an individual who is not a resident of India. Tax for such payments made to a non-resident will have to be deducted under in accordance with the provisions of Section 195 of the Income Tax Act.

11. Stamp Duty

An insurance policy needs to be duly stamped in accordance with the stamp duty prescribed for each kind of policy under the Indian Stamp Act, 1899 (“Stamp Act”). The rates of stamp duty on insurance policies are the same throughout the territories of India. Generally, the stamp duty on a life insurance policy or group insurance is borne by the person effecting the insurance. In the case of a fire insurance policy, the insurer is liable to bear the stamp duty. Non-payment of stamp duty is a punishable offence with a fine which may extend up to rupees two hundred if an insurer receives the premium for an insurance policy and does not execute a policy or executes a policy which is not stamped.

INSURANCE INTERMEDIARIES

1. Insurance Agents⁴⁰

All persons who desire to act as an insurance agent for any insurer would have to be registered as such under the provisions of the Insurance Act and the **IRDA (Licensing of Agents) Regulations, 2000**. A license issued under the provisions of the Insurance Act entitles the holder to act as an insurance agent for any insurer.

Eligibility Criteria for an Insurance Agent

Any person, desirous of being an insurance agent or a composite insurance agent, may make an application for a license to act as an insurance agent to the Authority. The applicant should possess the minimum qualifications of twelfth standard or equivalent examination conducted by any recognized Board or institution, in cases where the applicant resides in a place with a population of five thousand or more as per the last census; and passed the tenth standard or equivalent examination from a recognized Board or institution if the applicant resides in any other place.

Such an applicant should also not suffer from any of the following disqualifications⁴¹:

- that the person is a minor;
- that he is found to be of unsound mind by a Court of competent

⁴⁰ . M.C. Garg, B.S. Bodla, Karam Pal, “*Insurance Management : Principles and Practices*”, Deep and Deep Publications Pvt. Ltd., New Delhi, 2007, 96.

⁴¹ . Ibid, 99.

jurisdiction;

- that he is found guilty of criminal misappropriation or criminal breach of trust or cheating or forgery or an abetment of or attempt to commit any such offence by a Court of competent jurisdiction.
- Provided that where at least five years have elapsed since the completion of the sentence imposed on any person in respect of such person that his conviction shall cease to operate as a disqualification;
- that in the course of any judicial proceeding relating to any policy of insurance or the winding up of an insurance company or in the course of an investigation of the affairs of an insurer it has been found that he has been guilty of or has knowingly participated in or connived at any fraud, dishonesty or misrepresentation against an insurer or an insured;
- that he does not possess the requisite qualifications and practical training for a period not exceeding twelve months;
- that he has not passed the examination;
- that he violates the code of conduct.

However, any license that had been issued prior to the commencement of the IRDA Act, 1999 shall be deemed to have been issued in accordance with the **IRDA (Licensing of Agents) Regulations,**

2000 and the provisions of the regulation in relation to the practical training, qualifications and examination shall not be applicable to such existing insurance agents.⁴²

Payment of Commission

No insurance agent can be paid by way of commission or as remuneration, in any form, an amount exceeding, -

- in case of life insurance business, 40% of the first year's premium payable on any policy or policies effected through him and 5% of a renewal premium payable on such a policy. However, the insurer may, during the first ten years of their business, pay 55% of the first years' premium payable on any policy or policies effected through them and 6% of the renewal premiums payable on such policies.
- in the case of business of any other class, 15% of the premium.

2. Insurance Surveyors And Loss Assessors

An insurance surveyor is a technical expert who inspects the damage or loss of an insurance company. The insurer, based on the estimation of damage of the surveyor, arrives at the amount of compensation payable to the assured.

⁴² . IRDA (*Licensing of Agents*) Regulations, 2000, www.irda.gov.in

Eligibility Criteria for Surveyors/Loss Assessors⁴³

Every individual, who intends to act as a surveyor and loss assessor in respect of the general insurance business, may make an application to the Authority for a license. The Authority may grant a license (which shall be valid for a period of five years) after he is satisfied that the applicant:

- (i) satisfies all the applicable requirements of the Insurance Act and rules thereunder;
- (ii) has furnished evidence of payment of fees for grant of license, depending upon the categorization;
- (iii) has undergone a period of practical training, not exceeding twelve months; and
- (iv) any other information that may be required by the Authority.

Duties and Responsibilities

A surveyor and loss assessor is required to spend a major part of his time in investigating and managing losses arising from any contingency and prepare reports. He is required to carry out his duties in compliance with the code of conduct. A surveyor and loss assessor has inter alia the duty and responsibility to ensure that he discloses whether he has any interest in the subject matter in question or whether it pertains to any of his relatives, business partners or through material shareholding;

⁴³ . M.Y. Khan, “*Financial Services*”, Tata McGraw Hill Education Private Limited, New Delhi, 6th Edition, 2011, 9.14.

or maintaining confidentiality and neutrality without jeopardizing the liability of the insurer and claim of the insured; or conducting inspection and re-inspection of the property in question suffering a loss; or recommending applicability of depreciation, or the percentage and quantum of depreciation etc.

3. Third Party Administrators⁴⁴

Under the provisions of the **IRDA (Third Party Administrators Health Services) Regulations, 2001**, (TPA Regulations) the Third Party Administrator (TPA) means a third party administrator, who has obtained a license from the Authority, and is engaged for a fee or remuneration, as specified in the agreement with the insurance company, for the provision of health services. An insurance company may engage more than one TPA and similarly, one TPA may serve more than one insurance company. The TPA is required to maintain professional confidentiality of records, books, evidence etc. of all transactions that it carries out. In addition, the TPA is required to furnish to the insurance company and the Authority, an annual report and any other return as may be required by the Authority. The TPA is prohibited from charging the policyholders with any separate fees.

Conditions for Grant of License⁴⁵

⁴⁴ . Siddhartha Sankar Saha, “*Indian Financial System and Markets*”, Tata McGraw-Hill, New Delhi, 2013, 142.

⁴⁵ . *IRDA (Third Party Administrators Health Services) Regulations, 2001*, www.irda.gov.in

Only a company, with a share capital and registered under the Companies Act, 1956, can function as a TPA. In addition, the company is also required to fulfill the following conditions to be eligible to act as a TPA:

- The main or primary object of the company should be to carry on business in India as a TPA in the health services, and on being licensed by the Authority.
- The minimum paid up capital of the company shall be in equity shares amounting to rupees ten million.
- The TPA should, at no point of time, have a working capital of less than rupees ten million.
- At least one of the directors of the TPA should be qualified medical doctor registered with the Medical Council of India;
- The aggregate holdings of equity shares by a foreign company shall not at any time exceed twenty-six percent of the paid-up capital of a third party administrator at or.
- Any transfer of shares exceeding five per cent of the paid up capital shall be intimated by the TPA to the Authority within 15 days of the transfer indicating the names and particulars of the transferor and transferee.

Every license granted by the Authority shall remain in force for

three years.

Revocation or Cancellation of a License

The Authority may revoke or cancel a license granted to a TPA for any of the following reasons:

- The TPA is functioning improperly and or against the interests of the policyholders or insurance company.
- The financial condition of the TPA has deteriorated and that the TPA cannot function effectively or that the TPA has breached any of the conditions of the TPA Regulation.
- The character and ownership of the TPA has changed significantly since the grant of license.
- The grant or renewal of license was on the basis of fraud or misrepresentation of facts and that there is a breach on the part of the TPA in following the procedure or acquiring the qualifications under the TPA Regulation.
- The TPA is subject to winding up proceedings under the Companies Act, 1956.
- There is a breach of code of conduct.
- There is violation of any directions issued by the Authority under the Insurance Act or the TPA Regulations.

RE-INSURANCE

Every insurer reinsures himself to protect against the risks to which it subjects himself in the conduct of insurance business. The general insurance company has been designated as the sole re-insurer in India. Every insurer is required to re-insure with an Indian re-insurer such percentage of the sum assured on each policy as specified by the Authority in this regard.

The insurer is free to choose any re-insurer subject to the condition that such a re-insurer should enjoy a credit rating of a minimum of BBB of Standard and Poor or equivalent rating of any international rating agency. However, the placement of business by the insurer with any other re-insurer can be made only after obtaining the prior approval of the Authority. Every insurer is mandatorily required to retain the maximum premium earned in India commensurate with his financial strength and volume of business.

Every insurer intending to write inward reinsurance business should adopt an underwriting policy for the purpose of underwriting inward reinsurance business. A note on the underwriting policy indicating the classes of business, geographical scope, underwriting limits and profit objective should be filed with the Authority.⁴⁶

⁴⁶ . “*Insurance Law Regulations in India*”, Nishith Desai Associates, Mumbai, 1, 2002, www.nishithdesai.com, site visited on 04/05/2011.

PRINCIPLES OF INSURANCE LAW⁴⁷

Where there is a positive enactment of the Indian legislature, the language of the statute is applied to the facts of the case. However, the common law of England is often relied upon in consideration of justice, equity and good conscience.

1. Good Faith

A contract of insurance is a contract *uberrime fidei* i.e. a contract of utmost good faith. This is a fundamental principle of insurance law. Both the parties to the contract are required to observe utmost good faith and should disclose every material fact known to them. There is no difference between a contract of insurance and any other contract except that in a contract of insurance there is a requirement of utmost good faith. The burden of proof to show non-disclosure or misrepresentation is on the insurance company and the onus is a heavy one. The duty of good faith is of a continuing nature in as much no material alteration can be made to the terms of the contract without the mutual consent of the parties. Just as the assured has a duty to disclose all the material facts, the insurer is also under an obligation to do the same. The insurer cannot subsequently demand additional premium nor can he escape liability by contending that the situation does not warrant the insurance cover.

The Insurance Act lays down that an insurance policy cannot be

⁴⁷ . C.L. Tyagi and Madhu Tyagi, “*Insurance : Law and Practice*”, Atlantic Publishers and Distributors (P) Ltd., New Delhi, 2007, 18.

called in question two years after it has been in force for two years. This was done to obviate the hardships of the insured when the insurance company tried to avoid a policy, which has been in force for a long time, on the ground of misrepresentation. However, this provision is not applicable when the statement was made fraudulently. The Marine Insurance Act, 1963 (“Marine Insurance Act”) lays down that the insured must disclose all the material facts before the contract is concluded⁴⁸. The disclosures by the assured or by his agent should be true. The insured is deemed to know every circumstance, which in the ordinary course of business, ought to be known by him. The insurer may avoid the contract if the assured fails to make such disclosure or if the representation made is untrue. However, circumstances which diminish the risk, or which are presumed to be known by the insurer or information which is waived by the insurer or any circumstance which is superfluous to disclose by reason of any express or implied warranty need not be disclosed, in absence of any enquiry.

2. Misrepresentation

Representations are statements, made by one party to the other, either prior to or while entering into an insurance contract, of some matter or circumstances relating to it and which is not an integral part of the contract. These statements are said to have fulfilled their obligations

⁴⁸ . Section 20, *The Marine Insurance Act, 1963*.

when the final acceptance on the policy is conveyed.⁴⁹

A mere recital of representations made at the time of entering into the contract will not make them warranties. However, if representations are made an integral part of the contract they become warranties, and, in case of their being untrue, the policy can be avoided, even if the loss does not arise from the fact concealed or misrepresented. A policy of life insurance cannot be called in question on the ground of misrepresentation after a period of two years from the commencement of the policy.

In dealing with representations as circumstances invalidating a contract, consideration should be paid as to whether such representations are willful or innocent and whether they are preliminary or for part of the contract. The Insurance Act lays down three conditions to establish that the misrepresentation was willful; (a) the statement must be on a material matter or must suppress facts which it was material to disclose; (b) the suppression must be fraudulently made by the policy holder; and (c) the policy-holder must have known at the time of making the statement that it was false or that it suppressed facts which it was material to disclose. The burden of proof of establishing that the insured had in fact suppressed material facts in obtaining insurance is on the insurer and all the aforesaid conditions are required to be proved cumulatively.

In determining whether there has been suppression of a material

⁴⁹ . “*Insurance Law Regulations in India*”, Nishith Desai Associates, Mumbai, 1, 2002, www.nishithdesai.com, site visited on 04/05/2011.

fact it is necessary to examine whether the suppression relates to a fact which is in the exclusive knowledge of the person intending to take the policy and also that it could not be ascertained by reasonable enquiry by a prudent person.

3. Warranties

A warranty may be distinguished from a representation in as much a representation may be equitably and substantially answered but a warranty must be strictly complied with. A breach of warranty will avoid the policy, although it may not relate to a matter material to the risk insured.⁵⁰

Warranties may be expressed or implied, if it is condition implied by law. However, implied warranties are mostly confined to marine insurance. The Marine Insurance Act defines a warranty as a promise whereby the assured undertakes that some particular thing shall or shall not be done, or that some condition shall be fulfilled, or affirms or negatives the existence of a particular state of facts.

The statements must be true in fact without any qualification of judgment, opinion or belief. The warranty should be in the policy or must be incorporated by reference. If any of the statements or representations made by the assured in the proposal have been made the “basis” of the contract and they are found to be untrue, the contract of insurance would

⁵⁰ . Karam Pal, B.S. Bodla and M.C. Garg, “*Insurance Management : Principles and Practices,*” Deep and Deep Publications Private Limited, New Delhi, 2007, 51.

be void and unenforceable in law, irrespective of the question whether the statement, concerned is of a material nature or not.

4. Conditions⁵¹

Conditions are terms which prescribe the limitations under which an insurance policy is granted and which specify the duties of the assured. They can be either conditions precedent or subsequent. Conditions precedents are those, which are essential for the creation of a valid contract, the non-satisfaction of which makes the contract void ab-initio. Conditions subsequent relate to the continuance of a valid contract, the non-fulfillment of which leads to the avoidance of the contract from the date of the breach.

They can be further classified into express conditions and implied conditions. Implied conditions are those, which are implied by law to apply to every contract of insurance irrespective of any specific inclusion or reference to them such as insurable interest, good faith etc. A condition, which seeks to reduce or curtail the period of limitation and prescribes a shorter period than that prescribed by law is void." However, the insured is absolved once it is shown that he has done everything in his power to keep, honour and fulfill the promise and he himself is not guilty of a deliberate breach. An insurer cannot take recourse to a condition, which has not been mentioned in the policy to reduce his liability.

⁵¹ . Ibid., 52.

However, an insurance policy may not curtail the right but may merely provide for forfeiture or waiver of any such right and such a right would be enforceable against either party.

5. Indemnity and Subrogation⁵²

Most kinds of insurance policies other than life and personal accident insurance are contracts of indemnity whereby the insurer undertakes to indemnify the insured for the actual loss suffered by him as a result of the occurring of the event insured against. Even within the maximum limit, the insured cannot recover more than what he establishes to be his actual loss. A contract of marine insurance is an agreement whereby the insurer undertakes to indemnify the insured to the extent agreed upon.

Indemnity is a fundamental principle of insurance law, and the principle of Subrogation is a corollary of this principle in as much the insured is precluded from obtaining more than the loss he has sustained. The most common form of subrogation is when an insurance company pays a claim caused by the negligence of another. The doctrine of subrogation confers two specific rights on the insurer. Firstly, the insurer is entitled to all the remedies which the insured has against the third party incidental to the subject matter of the loss, such that the insurer can take advantage of any means available to extinguish or diminish, the loss for

⁵² . Karam Pal, B.S. Bodla and M.C. Garg, “*Insurance Management : Principles and Practices,*” Deep and Deep Publications Private Limited, New Delhi, 2007, 53.

which the insurer has indemnified the insured. Secondly, the insurer is entitled to the benefits received by the assured from the third party with a view to compensate himself for the loss.

The fact that an insurer is subrogated to the rights and remedies of the insured does not ipso jure enable him to sue third parties in his own name. It will only entitle the insurer to sue in the name of insured, it being an obligation of the insured to lend his name and assistance to such an action.

An insurance policy may contain a special clause whereby the insured assigns all his rights, against third parties, in favour of the insurer. In case of subrogation, which vests by operation of law rather than as the product of express agreement, the insured would be entitled only to the extent of his loss. The excess amount, if any, would be returned to the insured.

6. Proximate Cause⁵³

The doctrine of proximate cause is expressed in the maxim 'Causa Proxima non remota spectator', which means that the proximate and not the remote cause, shall be taken as the cause of loss. The insurer is thus has to make good the loss of the insured that clearly and proximately results, whether directly or indirectly, from the event insured against in the policy. The burden of proof that the loss occurred on account of the

⁵³ . Ibid., 56.

proximate cause, lies on the insured.

As per the Marine Insurance Act, unless the insurance policy states otherwise, the insurer is liable for any loss proximately caused by a peril insured against, but he is not liable for any loss which is not proximately caused by a peril insured against. An insurer would therefore be exempted from liability when the cause of loss falls within the exceptions of the policy. The Marine Insurance Act further states that the insurer is not liable for any willful misconduct of the insured i.e. the assured cannot recover for a loss where his own deliberate act is the proximate cause of it. Further, in the event of loss caused by the delay of the ship, the insurer cannot be held liable, irrespective of the proximity of the cause.

7. Insurance and Consumer Protection

The Consumer Protection Act, 1986 is one of the most important socio-economic legislation for the protection of consumers in India. The provisions of this Act are compensatory in nature, unlike other laws, which are either punitive or preventive. Insurance services fall within the purview of the Consumer Protection Act, in as much, any deficiency in service of the insurance company would enable the aggrieved to make a complaint. Disputes between policyholders and insurers generally pertain to repudiation of the insurance claim or the matters connected with admission of the claim or computation of the amount of claim. In the case of assignment of all rights by the insured to the insurer, the consumer

forum and the courts generally refuse to accept the locus-standi of the insured.

The courts have held that insurance companies do not fall under the definition of “consumer” under the Consumer Protection Act, as no service is rendered to them directly. Neither the subrogation nor the transfer of the right of action would confer the legal status of a ‘consumer’ on the insurer, nor can the insurer be regarded as any beneficiary of any service. Therefore, the remedy available to the insurer is to file a suit in a civil court for recovery of the loss.

8. Insurable Interest⁵⁴

To constitute insurable interest, it must be an interest such that the risk would by its proximate effect cause damage to the assured, that is to say, cause him to lose a benefit or incur a liability. The validity of an insurance contract, in India, is dependent on the existence of an insurable interest in the subject matter. The person seeking an insurance policy must establish some kind of interest in the life or property to be insured, in the absence of which, the insurance policy would amount to a wager and consequently void in nature.

The test for determining if there is an insurable interest is whether the insured will in case of damage to the life or property being insured, suffer pecuniary loss. A person having a limited interest can also insure

⁵⁴ . C.L. Tyagi and Madhu Tyagi, “*Insurance : Law and Practice*”, Atlantic Publishers and Distributors (P) Ltd., New Delhi, 2007, 9.

such interest.

Insurable interest varies depending on the nature of the insurance. The controversy as to the existence of an insurable interest between spouses was settled by the court, which held that such an interest could exist as neither was likely to indulge in any 'mischievous game'. The same analogy may be extended to parents and children. Further, the courts have also held that such an insurable interest would exist for a creditor (in a debtor) and for an employee (in an employer) to the extent of the debt incurred and the remuneration due, respectively.

The existence of insurable interest at the time of happening of the event is another important consideration. In case of life and personal accident insurance it is sufficient if the insurable interest is present at the time of taking the policy. However, in the case of fire and motor accident insurance the insurable interest has to be present both at the time of taking the policy and at the time of the accident. The case is completely different with marine insurance wherein there need not be any insurable interest at the time of taking the policy.

9. Commencement of Policy⁵⁵

The general rule on the formation of a contract, as per the Indian Contract Act, is that the party to whom the offer has been made should accept it unconditionally and communicate his acceptance to the person

⁵⁵ . Karam Pal, B.S. Bodla and M.C. Garg, "*Insurance Management : Principles and Practices*," Deep and Deep Publications Private Limited, New Delhi, 2007, 66.

making the offer. Whether the final acceptance is to be made by the insured or insurer really depends on the negotiations of the policy.

Acceptance should be signified by some act as agreed upon by the parties or from which the law raises a presumption of acceptance. The mere receipt or retention of premium until after the death of the applicant or the mere preparation of the policy document is not acceptance. Nonetheless, acceptance may be presumed upon the retention of the premium. However, mere delay in giving an answer cannot be construed as acceptance. Also, silence does not denote consent and no binding contract arises until the person to whom an offer is made says or does something to signify his acceptance.

When the policy is of a particular date, it would cover the liability of the insurer from the previous midnight preceding the same date. However, where there is a special contract to the contrary in the policy, the terms of the contract would prevail. Hence where the time of the issue of the insurance policy is mentioned, then the liability would be covered only from the time when it was issued.

INSURANCE BROKERS UNDER IRDA ACT

Insurance brokers are a new class of intermediaries now recognised by the Insurance Act, 1938 and Insurance Regulatory and Development Authority Act, 1999. **The IRDA (Insurance Brokers) Regulations, 2002** provide a regulatory framework for the licensing, functioning and

control of brokers. The Regulations provide, inter alia, the following definitions:

“**composite broker**” means an insurance broker who for the time-being licensed by the Authority to act as such, for remuneration, arranges insurance for his clients with insurance companies and/or reinsurance for his client(s).

“**direct broker**” means an insurance broker who for the time-being licensed by the Authority to act as such, for a remuneration carries out the functions as specified under regulation 3 either in the field of life insurance or general insurance or both on behalf of his clients.

“**reinsurance broker**” means an insurance broker who, for remuneration arranges reinsurance for direct insurers with insurance and reinsurance companies.

“**person**” means

- (i) an individual, or
- (ii) a firm
- (iii) a Company under the Companies Act, 1956 or
- (iv) a Co-operative Society registered under the Co-operative Societies Act, 1912 or under any for the registration of Co-operative Societies, or
- (v) any other person recognised by the Authority to act as an insurance broker.

“Principal Officer” means

- (i) proprietor, in the case of a proprietary concern, or
- (ii) partner, in the case of a partnership firm, or
- (iii) a director who is responsible for the activities of the insurance broking in the case of a body corporate
- (iv) or the Chief Executive Officer appointed exclusively to carry out the functions of an insurance broker.

Functions of a Direct Broker⁵⁶

Regulation 3 specifies the functions as follows:

- (a) obtaining detailed information of the client’s business and risk management philosophy;
- (b) familiarising himself with the client’s business and underwriting information so that this can be explained to an insurer and others;
- (c) rendering advice on appropriate insurance cover and terms;
- (d) maintaining detailed knowledge of available insurance markets, as may be applicable;
- (e) submitting quotation received from insurer/s for consideration of a client;
- (f) providing requisite underwriting information as required by an insurer in assessing the risk to decide pricing terms and conditions for cover;

⁵⁶ . “*The Broking System – A Regulatory Framework*”, The Journal of Insurance Institute of India, Vol. XXIX, Jan-June 2003, Mumbai, 49.

- (g) acting promptly on instructions from a client and providing him written acknowledgements and progress reports;
- (h) assisting clients in paying premium under Section 64VB of Insurance Act, 1938 (4 of 1938);
- (i) providing services related to insurance consultancy and risk management;
- (j) assisting in the negotiation of the claims; and
- (k) maintaining proper records of claims.

Code of Conduct

1. Every insurance broker shall follow recognised standards of professional conduct and discharge his functions in the interest of the policyholders.
2. Conduct in matters relating to clients relationship – Every insurance broker shall:
 - (a) conduct its dealings with clients with utmost good faith and integrity at all times;
 - (b) act with care and diligence;
 - (c) ensure that the client understands his relationship with the broker and on whose behalf the broker is acting;
 - (d) treat all information supplied by the prospective clients as completely confidential to themselves and to the insurer(s) to which the business is being offered;

- (e) take appropriate steps to maintain the security of confidential documents in their possession;
- (f) hold specific authority of client to develop terms;
- (g) understand the type of client it is dealing with and the extent of the client's awareness of risk and insurance;
- (h) obtain written mandate from client to represent the client to the insurer and communicate the grant of a cover to the client after effecting insurance;
- (i) obtain written mandate from client to represent the client to the insurer/reinsurer; and confirm cover to the insurer after effecting re-insurance, and submit relevant reinsurance acceptance and placement slips;
- (j) avoid conflict of interest.

Licensing

A stringent licensing procedure is prescribed in terms of qualifications, examination, training, infrastructure, capital and deposit requirements. The qualifications specified include degree in Arts, Science, Commerce etc., engineering, law, management or Associateship /Fellowship of Insurance Institute of India or Institute of Risk Management, Associate / Fellow of Institute of Chartered Accountants of India, Cost and Works Accountants of India, etc.

The principal officer must receive 100 hours theoretical and practical training at a recognised institution and pass an examination conducted by the National Insurance Academy. The applicant must have the necessary infrastructure such as office space, equipment, trained manpower and minimum of two persons with any of the qualifications mentioned above.

Requirements of Capital⁵⁷

1. Any applicant seeking to become an insurance broker under these regulations should satisfy the following conditions:
 - (i) it shall have a minimum amount of capital as mentioned below:

Category	Minimum Amount (Rupees)
(a) Direct broker	50 lakhs
(b) Reinsurance broker	200 lakhs
(c) Composite broker	250 lakhs

- (ii) the capital in the case of company limited by shares and a cooperative society shall be in the form of equity shares;
- (iii) the capital in the case of other applicants shall be brought in cash;
- (iv) the applicant shall exclusively carry on the business of an insurance broker as licensed under these regulations.

⁵⁷ . M.C. Garg, B.S. Bodla, Karam Pal, “*Insurance Management : Principles and Practices*”, Deep and Deep Publications Pvt. Ltd., New Delhi, 2007, 88.

2. No part of the capital of an applicant shall be held by a non-Indian interest beyond 26% at any time. For the purposes of these regulations, the calculations of non-Indian interest shall be made in the same manner as specified in Insurance Regulatory and Development Authority (Registration of Indian Insurance Companies) Regulations, 2000 for an insurer (Regulation 10).

Deposit Requirements

- (1) Every insurance broker shall before the commencement of his business, deposit and keep deposited with any scheduled bank a sum equivalent to 20% of the initial capital in fixed deposit, which shall not be released to him unless the prior permission of the Authority is obtained. Provided that the Authority may impose a separate limit of deposit, in any case not exceeding Rupees one hundred lakhs, for a person covered by Regulation 21 (i) (v).
- (2) Every insurance broker shall furnish to the Authority as and when called upon to do so a statement certified by the Bank in which such fixed deposit is kept (Regulation 22).

Validity of Licence -

A licence once issued shall be valid for a period of three years from the date of its issue, unless the same is suspended or cancelled pursuant to these regulations (Regulation 12).

Renewal of Licence -

An insurance broker may, within thirty days before the expiry of the licence, make an application in Form A to the Authority for renewal of licence. An insurance broker before seeking a renewal of licence, shall have completed at least twenty five hours of theoretical and practical training, imparted by an institution recognized by the Authority from time to time. (Regulation 13)

An insurance broker licensed under these regulations for a specified category may also apply for the grant of a licence by the Authority for any other category by fulfilling the requirements of these regulations. However, such application shall be made only after a lapse of one year from the grant of a licence in the first instance.

Licence Fees

Direct Broker	Rs. 25,000/-
Reinsurance Broker	Rs. 75,000/-
Composite Broker	Rs. 1,25,000/-

For renewal, the fees are calculated at the rate of 0.50% of the remuneration earned in the preceding financial year subject to :

Minimum	Maximum	
Rs. 25,000/-	Rs.1,00,000/-	for Direct Broker
Rs. 75,000/-	Rs.3,00,000/-	for Reinsurance Broker
Rs.1,25,000/-	Rs.5,00,000/-	for Composite Broker

Remuneration: This is provided for in Regulation 19 as follows:-

- (1) No insurance broker shall be paid or contract to be paid by way of remuneration (including royalty or licence fees or administration charges or such other compensation), an amount exceeding:
- (A) on direct general insurance business –
 - (i) on tariff products:
 - a. 10 percent of the premium on that part of the business which is compulsory under any statute or any law in force;
 - b. 12½ percent of the premium on others.
 - (ii) on non-tariff products:
17½ percent of the premium on direct business.
 - (B) on direct life insurance business–
 - (i) individual insurance
 - a. 30 percent of first year's premium
 - b. 5 percent of each renewal premium
 - (ii) annuity
 - a. immediate annuity or a deferred annuity in consideration of a single premium, or where only one premium is payable on the policy 2 percent of premium
 - b. deferred annuity in consideration of more than one premium

- (i) 7½ percent of first year's premium
- (ii) 2 percent of each renewal premium
- (iii) group insurance and pension schemes
 - a. one year renewable group term insurance, gratuity, superannuation, group savings linked insurance –
7½ percent of risk premium

Note: Under group insurance schemes there will be no remuneration for the savings component.

- b. single premium –
2 percent of risk premium
 - c. annual contributions, at new business procurement stage–
5 percent of non-risk premium with a ceiling of Rupees three lakhs per scheme.
 - d. single premium new business procurement stage –
5 percent with a ceiling of Rupees five lakhs per scheme
 - e. remuneration for subsequent servicing –
one year renewable group term assurance –
2 percent of risk premium with a ceiling of Rupees 50,000/- per scheme.
- (C) on reinsurance business –

as per market practices prevalent from time to time.

Explanation: For purposes of the procurement of business, an insurer shall not pay an agency commission, allow a special discount, and pay a remuneration to brokers for the same insurance contract.

Ceiling on business from single client –

- (1) The business of the insurance broker shall be carried in such a manner that, not more than 50 percent of the premium (quantum, receipts, etc. as the case may be) in the first year of business, 40 percent of the premium in the second year of business, and 30 percent of the premium from the third year of business onwards shall emanate from any one client.

Note: For the purposes of this regulation, the term “client” shall include in the case of a firm or a company, an associate or a subsidiary or a group concern under the same management.

- (2) The decision of the Authority as to whether a company, a business or an organisation is under the same management shall be final (Regulation 20).

Professional Indemnity Insurance:⁵⁸

Professional Indemnity Insurance is mandatory under Regulation 24, which provides as follows:

- (1) Every insurance broker should take out and maintain and continue to maintain a professional indemnity insurance cover throughout the validity of the period of the licence granted to him by the Authority. Provided that the Authority shall in suitable cases allow a newly licensed insurance broker to produce such a guarantee within fifteen months from the date of issue of original licence.
- (2) The insurance cover must indemnify an insurance broker against
 - (a) any error or omission or negligence on his part or on the part of his employees and directors;
 - (b) any loss of money or other property for which the broker is legally liable in consequence of any financial or fraudulent act or omission;
 - (c) any loss of documents and costs and expenses incurred in replacing or restoring such documents.
 - (d) Dishonest or fraudulent acts or omissions by brokers' employees or former employees.
- (3) The indemnity cover –

⁵⁸ . M.Y. Khan, "*Financial Services*", Tata McGraw Hill Education Private Limited, New Delhi, 6th Edition, 2011, 9.112.

- (a) shall be on a yearly basis for the entire period of licence;
- (b) shall not contain any terms to the effect that payments of claims depend upon the insurance broker having first met the liability;
- (c) shall indemnify in respect of all claims made during the period of the insurance regardless of the time at which the event giving use to the claim may have occurred.

Provided that an indemnity insurance cover not fully conforming to the above requirements shall be permitted by the Authority in special cases for reasons to be recorded by it in writing.

- (4) Limit of indemnity for any one claim and in the aggregate for the year in the case of insurance brokers shall be as follows:

Category of insurance broker	Limit of indemnity
(a) Director Broker	three times remuneration received at the end of every financial year, subject to a minimum limit of rupees fifty lakhs.
(b) Reinsurance broker	three times remuneration received at the end of every financial year subject to a minimum limit of rupees two crores and fifty lakhs.
(c) Composite broker	three times remuneration received at the end of every financial year subject to a minimum limit of rupees five crores.

- (5) The un-insured 'excess' in respect of each claim shall not exceed five percent of the capital employed by the insurance broker in the business.

- (6) The insurance policy shall be obtained from any registered insurer in India who has agreed to –
- (a) provide the insurance broker with an annual certificate containing the name and address, including the licence number of the insurance broker, the policy number, the limit of indemnity, the excess and the name of the insurer as evidence that the cover meets the requirements of the Authority;
 - (b) send a duplicate certificate to the Authority at the time the certificate is issued to the insurance broker.
- (7) Every insurance broker shall –
- (a) inform immediately the Authority should any cover be cancelled or voided or if any policy is not renewed;
 - (b) inform immediately the insurer in writing of any claim made by or against it;
 - (c) advise immediately the insurer of all circumstances or occurrences that may give rise to a claim under the policy; and
 - (d) advise the Authority as soon as an insurer has notified that it intends to decline indemnity in respect of a claim under the policy.

Records and Returns

Maintenance of books of account and records is dealt with in Regulation which, inter alia, provides as follows:-

- (1) Every insurance broker shall prepare for every accounting year—
balance sheet or a statement of affairs as at the end of each accounting period;
a profit and loss account for that period;
a statement of cash/fund flow;
additional statements on insurance broking business as may be required by the Authority.
- (2) Every insurance broker shall submit to the Authority, a copy of the audited financial statements as stated in sub-regulation (1) along with the auditor's report thereon within ninety days from the close of the accounting year along with the statement of accounts, etc. and a suitable explanation on such observations shall be appended to such accounts filed with the Authority.
- (3) All the books and documents, statements, contract notes etc. referred to in this regulation and maintained by the insurance broker shall be retained for a period of at least ten years from the end of the year to which they relate.

Submission of Half-yearly Results

- (1) Every insurance broker shall, before 31st October and 30th April

each year furnish to the Authority a half-yearly un-audited financial statement containing details of performance, financial position, etc. along with a declaration confirming the fulfilment of requirements of capital in accordance with the provisions of Regulation 10 and deposit requirements in accordance with the provisions of Regulation 22.

- (2) Failure to comply with the regulation of sub-regulation (1) will lead to an action, in accordance with the provisions of Regulation 34 being taken against the insurance broker (Regulation 26).

Internal Control and Systems

Every insurance broker shall ensure that a proper system of internal audit is practised in business and that his internal controls and systems are adequate for the size, nature and complexity of his business (Regulation 27).

AMENDMENTS TO INSURANCE LAWS VIDE THE INSURANCE LAWS (AMENDMENT) BILL, 2008⁵⁹

The following amendments have been made in the insurance laws through the Insurance Laws (Amendment) Bill, 2008 :

Clause 3 (iii): Definition of health insurance [Insertion of new Sub Section 6(B) in Section 2 of the Act]; Clause 3 (iv): Definition of Indian insurance company (Substitution of Sub Section 7A of Section 2 of the

⁵⁹ . *THE INSURANCE LAWS (AMENDMENT) BILL*, 2008, Forty First Report, Lok Sabha Secretariat, New Delhi, 13 December, 2011.

Insurance Act); Clause 3 (V) – Minimum Paid-up Capital (Substitution of Sub Section (b) in Section 2 (8A); Clause 3(vi) – Definition of Insurer (Substitution of Sub-Section 9 of Section 2 of the Insurance Act).⁶⁰

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

Clause 8 – Amendment of Section 3 of the Insurance Act (Registration of insurers); Clause 12: Requirement as to capital (Substitution of new Section for Section 6 of the Insurance Act); Clause 13: Capital structure, voting rights, maintenance of record of shareholders etc. (Amendment of Sub-Section 3 of Section 6A of the Insurance Act); Clause 14: Manner of divesting excess shareholding by promoter in certain cases (Omission of Section 6AA of the Insurance Act)

Clause 15: Provision for securing compliance with requirements relating to capital structure (Amendment of Section 6B of the Insurance Act); Clause 17: Separation of Accounts and funds (Amendment of

⁶⁰ . *THE INSURANCE LAWS (AMENDMENT) BILL*, 2008, Forty First Report, Lok Sabha Secretariat, New Delhi, 13 December, 2011.

Section 10 of the Insurance Act); Clause 20: Actuarial report and abstract- Amendment of Section 13 of the Insurance Act; Clause 21: Record of Policies and claims (Amendment of Section 14 of the Insurance Act); Clause 28: Investment of assets (Amendment of Sections 27, 27A, 27B, 27C and 27D of the Act)⁶¹

Clause 30: Loans or advances to subsidiaries of insurance companies (Amendment of Section 29 of the Insurance Act); Clause 37: Rural and Social Sector Obligations (Amendment) of Section 32B); Clause 38: Obligation of insurer in respect of insurance business in third party risks of motor vehicles. (Insertion of new Section 32 D); Clause 39: Power of investigation and inspection by Authority (Amendment of Section 33 of the Insurance Act); Clause 47: Power of Authority to prepare scheme of amalgamation (Amendment of Section 37A of the Act)

Clause 48: Assignment and transfer of insurance policies, Nomination by Policy holders, Prohibition of payment by way of commission or otherwise for procuring business (Substitution of new Sections for Sections 38, 39 and 40 of the Insurance Act); Clause 49: Omission of Section 40A of the Insurance Act; Clause 51: Prohibition of rebating (Amendment of Section 41 of the Insurance Act, 1938); Clause 52: Regulation of appointment of insurance agents by insurers in respect

⁶¹ . *THE INSURANCE LAWS (AMENDMENT) BILL*, 2008, Forty First Report, Lok Sabha Secretariat, New Delhi, 13 December, 2011.

of eligibility, disqualification and other aspects. (Amendment of Section 42 of the Insurance Act)

Clause 53: Omission of Section 42A, 42B and 42C relating to regulation of principal agents, chief agents and special agents; Clause 54: Issue of license to intermediary or insurance intermediary (Amendment of Section 42D of the Insurance Act); Clause 56: Record of insurance agents (Amendment of Section 43 of the Insurance Act); Clause 57: Omission of Section 44 relating to prohibition of cessation of payments of commission.⁶²

Clause 58: Policy not to be called in question on ground of misstatement after five years (Amendment of Section 45 of the Insurance Act); Clause 86: Surveyors or Loss assessors (Substitution of Section 64UM of the Insurance Act); Clause 92, 93 and 94: Penalty for failure to comply with Sections 3, 27, 27A, 27B, 27D, 27E, 32B, 32C and 32D; Clause 98: Appeal to Securities Appellate Tribunal (Substitution of new Section for Section 110); Clause 105 (xiii) and (xiv): Amendment of Section 114A of the Insurance Act relating to power of Authority to make regulations

Clause 107: Enhancement of equity capital of General Insurance companies [Insertion of a new Section after Section 10A of the General Insurance Business (Nationalisation) Act]; Clause 109: Amendment of

⁶². *THE INSURANCE LAWS (AMENDMENT) BILL*, 2008, Forty First Report, Lok Sabha Secretariat, New Delhi, 13 December, 2011.

Section 2 of IRDA Act, 1999-Insertion of the words insurance agents, third party administrator in definition of intermediary or insurance intermediary.⁶³

Conclusion

The main regulations that regulate the life insurance business are the Insurance Act, 1938, the Life Insurance Corporation Act, 1956 and IRDA Act, 1999 and regulations made thereunder. The Indian Contract Act, 1872, governs most of the aspects of the insurance contract. Additionally, the Foreign Exchange Management Act, 2000, Income Tax Act, 1961, Indian Stamp Act and the Hindu and Indian Succession Act, 1956 govern some aspects involved in insurance. This chapter deals with (i) the complexity of insurance legislation, (ii) the study of the Insurance Act, 1938, The Life Insurance Corporation Act, 1956, The IRDA Act, 1999, Taxation of Insurance Companies, different intermediaries in the life insurance business, Principles of Insurance Law, Role and responsibilities of insurance brokers under IRDA Act as also the amendments to the Insurance Laws vide the Insurance Laws (Amendment) Bill, 2008.

⁶³ . *THE INSURANCE LAWS (AMENDMENT) BILL*, 2008, Forty First Report, Lok Sabha Secretariat, New Delhi, 13 December, 2011.