

41

STANDING COMMITTEE ON FINANCE

(2011-12)

FIFTEENTH LOK SABHA

**Ministry of Finance
(Department of Financial Services)**

**THE INSURANCE LAWS (AMENDMENT) BILL,
2008**

FORTY FIRST REPORT



**LOK SABHA SECRETARIAT
NEW DELHI**

December, 2011/ Agrahyana, 1933 (Saka)

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Presented to Lok Sabha on 13 December, 2011

Laid in Rajya Sabha on 13 December, 2011



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COMPOSITION OF STANDING COMMITTEE ON FINANCE – 2011-2012

Shri Yashwant Sinha - Chairman

MEMBERS

LOK SABHA

2. Shri Shivkumar Udasi Chanabasappa
3. Shri Jayant Chaudhary
4. Shri Harishchandra Deoram Chavan
5. Shri Bhakta Charan Das
6. Shri Gurudas Dasgupta
7. Shri Nishikant Dubey
8. Shri Chandrakant Khaire
9. Shri Bhartruhari Mahtab
10. Shri Anjan Kumar Yadav M.
11. Shri Prem Das Rai
12. Dr. Kavuru Sambasiva Rao
13. Shri Rayapati S. Rao
14. Shri Magunta Sreenivasulu Reddy
15. Shri Sarvey Sathyanarayana
16. Shri G.M. Siddeswara
17. Shri N. Dharam Singh
18. Shri Yashvir Singh
19. Shri Manicka Tagore
20. Shri R. Thamaraiselvan
21. Dr. M. Thambidurai

RAJYA SABHA

22. Shri S.S. Ahluwalia
23. Shri Raashid Alvi
24. Shri Vijay Jawaharlal Darda
25. Shri Piyush Goyal
26. Shri Moinul Hassan
27. Shri Satish Chandra Misra
28. Shri Mahendra Mohan
29. Dr. Mahendra Prasad
30. Dr. K.V.P. Ramachandra Rao
31. Shri Yogendra P. Trivedi

SECRETARIAT

- | | | |
|---------------------------------|---|---------------------|
| 1. Shri A.K. Singh | - | Joint Secretary |
| 2. Shri R.K. Jain | - | Director |
| 3. Shri T. G. Chandrasekhar | - | Additional Director |
| 4. Shri Ramkumar Suryanarayanan | - | Deputy Secretary |

INTRODUCTION

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

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

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

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

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

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

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

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

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

New Delhi;
09 December , 2011
18 Agrahayana, 1933 (Saka)

YASHWANT SINHA
Chairman,
Standing Committee on Finance.

Report

Part - I

(i) Background

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

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

- (i) Provisions relating to Investments (Sec. 27, 27A & 27B)
- (ii) Sufficiency of Assets (Sec. 64VA)
- (iii) Insurance Surveyors (Sec. 64UM)
- (iv) Tariff Advisory Committee (Sec.64UA & ULA)
- (v) Shareholders' Fund and Policyholders' Fund (Sec.49)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8. Insurance reforms process was initiated with the enactment of the Insurance Regulatory and Development Authority Act, 1999, which paved the way for establishing the regulatory authority for the insurance sector i.e. Insurance Regulatory and Development Authority (IRDA). Advised by the Ministry of Finance, IRDA initiated the process of amending the archaic insurance laws and merging all the insurance related legislations into a comprehensive single Act, by requesting the Law Commission of India to review all the legislations regulating insurance sector. Consequent upon the recommendations of the Law Commission of India and its review by an Expert Committee headed by Shri K P Narasimhan, the Insurance Laws (Amendment) Bill, 2008 was introduced with a view to amend various regulatory laws in the insurance sector in the changed scenario. Major amendments as proposed through the Bill seek to envisage a greater role for foreign players in the Indian insurance market; define health insurance business; provide for infusion of more capital by inviting higher foreign direct investment; enable Lloyd's of London to enter

into Indian insurance sector; provide complete freedom to foreign insurers operating in Special economic zones (SEZ) by keeping them outside the regulatory purview of IRDA; allow foreign re-insurers to operate in India through their branches on lines akin to foreign banks operating in the country; provide for permanent registration of insurers with provision for annual renewal fee; remove the restriction on divestment by Indian promoters; make underwriting of third party motor insurance obligatory; enable appointment of insurance agents by insurers; restrict the period for repudiation of policies by insurers to 5 years; enable control of management expenses and payment of commission by IRDA; bestow wide ranging regulatory powers on IRDA to enable regulation with considerable flexibility; remove redundant clauses; enhance penalties; enable public sector general insurance companies to raise capital from the market; bring in other amendments related to reforms in the insurance sector; and align all the laws pertaining to this sector in consonance with the policy stance on overall financial sector reforms.

9. The Committee, while agreeing with the necessity of bringing in comprehensive changes in the archaic laws governing the insurance sector so as to make the legislative framework capable of facilitating insurance business in the current economic scenario, nevertheless have apprehensions on the implications of some of the policy issues proposed in the amendment Bill. The Committee feel that the suggested policy stance of enabling a greater role for foreign capital in the insurance sector, may not necessarily have the desired impact in view the experience of its limited role thus far in terms of facilitating investment in infrastructure,

deepening insurance accessibility for the poor and also in developing products suited as a means of providing social security to the Indian masses at large. On the other hand, increased role of foreign capital may lead to the possibility of exposing the economy to the vulnerabilities of the global market by way of likely inheritance of unsound balance sheets and financial health of the foreign partners through joint ventures and subsidiary routes, flight of capital outside the country and also endangering the interest of the policy holders. Also, there are a number of critical issues relating inter-alia to health insurance, reinsurance, performance of the insurers in rural and social sector etc., which need to be addressed to enable the policyholders to reap the benefits of insurance. Therefore, these issues which have a bearing on the overall performance of the insurance industry since its liberalization have been discussed separately.

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

Committee recommend consideration of the Bill subject to the modifications/observations as brought out in the subsequent paragraphs.

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

11. Certain broader issues/aspects relating to the laws governing the insurance sector came to the fore during the course of examination of the Insurance Laws (Amendment) Bill, 2008. These issues are dealt with in brief in the subsequent paragraphs which is followed by Clause wise examination of the provisions of the Bill, in part II of the report.

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

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

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

"We have kept it because we want technology to come into this country in this sector...Mr. Deputy-Speaker, Sir, the world has progressed. There are all kinds of insurance products which are being marketed in various countries of the world, which are unfortunately not yet available in India. It is our belief that with this opening up, it will be possible for those insurance products to come up in this country and provide both depth and weight to the market...through a larger coverage in the insurance sector, it is possible to cover a larger segment of the population through health insurance. For instance, there are pension schemes. There are sections of employees, sections in the unorganized sector, particularly, who have no pension cover. Now, there could be

insurance companies which will provide them pension facility. They can make small contribution. That will come in handy when they retire. Now this is the kind of social security which will become possible once the insurance sector is opened up, and that is why we are putting social service, social sector obligations even on the newer companies.”

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

“In one of the provisions of the Bill we are saying that neither through their subsidiaries nor through their nominees will it be possible for any foreign company to increase their share-holding through the back-door. We are taking even that care so that foreign equity is capped at 26 per cent and remains at 26 per cent...Some hon. Members have also raised the issue of non-corporate persons like NRI, trusts, etc. finding their way to make investments which may not be covered by the existing provisions. Sir, I am informed that the existing guidelines under FIPP will adequately take care of this problem also. I would like to assure this august House that the Government has been alive to the possibility of misuse of the provision of the Bill and breaching the limit by adopting dubious method. Adequate care has been taken in drafting these provisions and in due course the authority will publish necessary guidelines to be followed in this regard which will be applicable to all those who apply for the licence. The Authority will keep a close watch on the companies and ensure that the provisions are fully adhered to...Now I am making it very clear that the intention of the Government is to restrict it to 26 per cent...What I am saying in this House is based on expert legal opinion which is available to the Government. I have been assured that this is covered adequately in the way the whole clause has been drafted. It is on that basis that I am here to assure the House that there is no danger of the 26 per cent being breached.”

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

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

“The *KPN Committee* examined various issues relating to Surveyors and Loss Assessors, Investments, Tariff, Shareholders and Policyholders Funds and *extent of Foreign Shareholdings in the Indian insurance companies and co-operative societies*. It submitted its report to IRDA on 26th July, 2005. The reports submitted by the Law Commission and the KPN Committee were examined by IRDA and the IRDA forwarded its recommendations on amendment of insurance laws to the Government on 16th March, 2006. The recommendations have been considered and finalized by the Government in consultation with General Insurers Public Sector’s Association (GIPSA) and General Insurance Corporation of India (GIC) to amend the Insurance Act, 1938, General Insurance Business (Nationalisation) Act, 1972 and Insurance Regulatory and Development Authority Act, 1999.”

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

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

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

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

- i. repudiation of life insurance policies;

- ii. nomination,
- iii. assignments and transfer of policies;
- iv. merger of IRDA Act, 1999 with the Insurance Act, 1938;
- v. setting up of a grievance redressal mechanism, and
- vi. Deletion of redundant provisions of the Act, 1938; etc.

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

- i. surveyors and loss assessors;
- ii. investments,
- iii. tariffs,
- iv. shareholders' and policyholders' funds and
- v. extent of foreign shareholding.

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

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

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

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

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

“Section 2(7A)(b) of the Insurance Act 1938 provides for the foreign joint venture partner in an Indian Insurance Company to hold upto 26% equity stake. As per the proposed Insurance Laws (Amendment) Bill, 2008 the foreign shareholding cap is to be enhanced from 26% to 49%. The insurance industry not only helps in mitigating risks, it provides useful financial products and long term fund for development of infrastructure and long gestation

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

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

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

(iii) Performance of Insurance Sector

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

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

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

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

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

Year	No. of products cleared from inception (including riders)	
	Public sector	Private sector
2001-02	8	187
2002-03	13	122
2003-04	23	40
2004-05	24	76

2005-06	11	55
2006-07	30	73
2007-08	22	104
2008-09	16	160
2009-10	-	151

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

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

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

INVESTMENTS BY INSURERS IN INFRASTRUCTURE SECTOR (Rs. CRORES)			
<u>LIFE INSURERS</u>		2008-09	2009-10
		Total	Total
LIC		93425.00 (92.86%)	127424.28 (79.38%)
PRIVATE INSURERS		7182.00 (7.14%)	33109.10 (20.62%)
TOTAL:		100607.00	160533.38
<u>GENERAL INSURERS</u>			
PSUs	INFRASTRUCTURE AND HOUSING	9749.11(73.72%)	10694.05(70.53%)
PRIVATE INSURERS	INFRASTRUCTURE AND HOUSING	3474.86(26.28%)	4468.70(29.47%)

TOTAL:		13223.97	15162.75
Note : 2009-10 Figures are based on Provisional Returns filed by Insurer			
Figures in () indicate percentage w.r.t. the total investment			

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

SOLVENCY RATIO OF LIFE INSURERS IN INDIA (as on 31st March)

Sl. No.	Name of the insurer	2010	2009	2008
PRIVATE				
1.	AEGON RELIGARE	2.66	1.93	**
2.	AVIVA INS.	5.12	5.91	4.29
3.	BAJAJ ALLIANZ	2.68	2.62	2.34
4.	BHARTI AXA	1.68	2.07	2.73
5.	BIRLA SUN	2.11	2.44	4.29
6.	CANAR HSBC	2.58	5.74	**
7.	DLF PRAMERICA	1.67	1.71	**
8.	FUTURE GENERALI	2.34	3.17	2.94
9.	HDFC STANDARD	1.80	2.58	2.38
10.	ICICI PRUDENTIAL	2.90	2.31	1.74
11.	IDBI FORTIS	4.05	6.11	3.45
12.	ING VYSYA	1.79	2.26	2.36
13.	MAX NEW YORK	3.22	3.04	2.25
14.	MET LIFE	1.65	2.27	1.70
15.	OM KOTAK MAHINDRA	2.79	2.69	2.41
16.	RELIANCE	1.86	2.50	1.65
17.	SAHARA INDIA	4.50	3.60	4.32
18.	SBI LIFE	2.17	2.92	3.30
19.	SHRIRAM	2.69	3.05	2.85
20.	STAR UNION DAI-ICHI	7.46	2.53	**
21.	TATA AIG	2.11	2.51	2.50
22.	INDIAFIRST	5.27		
PUBLIC				
23.	LIC OF INDIA	1.54	1.54	1.52

SOLVENCY RATIO OF NON-LIFE INSURERS IN INDIA (as on 31st March)

Sl. No.	Insurer	2010	2009	2008
PRIVATE				
1.	BAJAJ ALLIANZ	1.71	1.62	1.55
2.	BHARTI AXA	2.38	2.11	**
3.	CHOLAMANDALAM	1.76	1.02	1.89

4.	FUTURE GENERALI	1.59	1.83	2.61
5.	HDFC ERGO	1.79	2.02	2.02
6.	ICICI LOMBARD	2.07	2.03	2.03
7.	IFFCO TOKIO	1.76	1.77	1.51
8.	RAHEJA QBE	3.79	**	**
9.	RELIANCE	1.70	1.59	1.64
10.	ROYAL SUNDARAM	1.58	1.64	1.59
11.	SHRIRAM	1.75	1.94	**
12.	TATA AIG	1.88	1.97	1.91
13.	UNIVERSAL SOMPO	3.15	4.23	4.63
14.	SBI GENERAL PUBLIC	12.84		
15.	NEW INDIA	3.55	3.41	4.00
16.	UNITED	3.41	3.32	3.24
17.	ORIENTAL	1.56	1.66	1.91
18.	NATIONAL SPECIALIZED INSURERS	1.60	1.56	1.80
19.	ECGC	14.17	16.42	18.90
20.	STAR HEALTH	1.68	1.38	1.97
21.	APOLLO MUNICH	1.64	1.82	1.39
22.	AIC	2.07	4.58	3.27
23.	GIC	3.71	3.67	3.36

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

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

“IRDA in their submission before the Committee have advocated need for increasing foreign capital and stated that the Authority has carried out detailed projections to work out the capital requirements of the insurance industry...Based on the trends observed during the last five years (2005-10), future outlook of the economy and the new players entering the market, the capital requirements at the current trend rate of expenses, new business growth, persistency and investment yield of the life insurance industry over the next five years works out to approximately Rs. 51000 crore. Similarly assuming a gross direct premium growth of 15%, the additional capital requirements of the general insurance industry works out to Rs. 9,700 crores over a five year period. The total capital requirement of the insurance sector is therefore Rs. 61,200 crore over next 5 years. This is a large capital requirement.

There can be two ways of raising this large capital a) domestically or b) through foreign capital. The domestic capital can be raised either by promoters investing in the venture or through IPO for

general public. The Indian promoters have already invested close to Rs. 21,000 crores for the last decade without receiving any dividends. All the life insurance companies have also accumulated losses which have to be recouped. Expecting them to further invest Rs. 61,200 crores will be a challenge. Already there are some life insurance companies like Metlife, ING Vysya Life who are finding it difficult to raise capital either because of RBI caps or structural issues to achieve the targeted premium growth. This situation will only deteriorate in future with current dispensation unless remedial steps are taken. There are 13 bank promoted insurance companies in the life and general insurance space. With the introduction of Basel II requirements, the promoter banks will need to provide extra capital for their core banking activities. Further as per RBI norms a bank can invest upto 20% of its net-worth in an insurance company. Most banks are reaching this limit making it difficult for them to infuse further capital in the insurance companies promoted by them. This will have an adverse impact on the capital requirements of insurance companies and therefore impact their growth. The alternate to raise domestic capital through the capital market route is equally difficult. As per the information available the amount of capital raised by different companies in the last three years was as follows:

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

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

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

Bharti Axa General Insurance Company Limited have welcomed the proposal to raise foreign equity to 49 per cent and have suggested that, going forward, the limit on foreign equity could be raised beyond 50 per cent.

US India Business Council have favoured the proposal and stated that this provision will further develop India's insurance and equity markets. Access to domestic and new foreign pools of long term

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

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

Raising and Pooling Capital Efficiently

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

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

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

Funding India's Infrastructure Build Out

Because of the current 26 percent FDI cap, the insurance industry has, to date, not been a significant player in infrastructure financing. Raising the FDI cap will likely attract more companies to establish operations in India, further increasing the number of firms looking to invest policyholder premiums into the infrastructure debt market.

Supporting Inclusive Growth

Entry of foreign companies through joint ventures also helped develop a range of innovative insurance products geared specifically towards the urban and rural poor. Microinsurance products, for example, have been developed to protect low-income Indians against specific risks, such as poor harvests, and premiums are deliberately kept low to ensure affordability. As of 2009, 14 private life insurers have developed 28 new microinsurance products. But despite this growth, the majority of Indians today still do not have comprehensive protection against illness, loss of life, or disability. A survey conducted by Max New York Life and the

National Council of Applied Economic Research found that while 81 percent of Indian households save, they do not save for the long-term. Only 4 percent of households surveyed stated that they could survive for more than one year after the loss of the primary household income. Consequently, insurance penetration remains low compared to other major economies in Asia. In 2009, insurance density (per capita expenditures on insurance, measured in U.S. dollars) stood at \$54.3 in India, compared to \$121.2 in China and \$1,987.2 in South Korea. This ranks India #77 out of the 88 economies studied by Swiss Re.

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

Job creation

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

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

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

Greater engagement of foreign partners can aid in introducing the global best practices in the Indian insurance sector in three areas, viz. long term risk management, innovation and technology. Efficient risk management is crucial for a sector like insurance while innovation is needed not just in terms of insurance products but also in ways of distributing them. FDI flowing into the sector would contribute to better penetration through innovation at the level of

products as well as distribution practices. Further, increasing the FDI stake would augment the overall capital base. This capital would help the Companies to provide higher focus on mass marketing campaigns and creating more infrastructure by opening offices to increase the awareness, reach and distribution of insurance to the rural population.

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

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

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

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

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

FDI in Insurance Sector

Private Sector	FDI* (Rs. Cr.)	FDI (%)
FDI in Life Insurance	5053.98	24.05
FDI in Non Life Insurance	896.33	24.76

Total 5,950.31

Foreign Promoter

(Source: IRDA Annual Report 2009-10)

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

The *All India Insurance Employees Association*, have stated that ‘incase, an Indian Insurance Company raises capital through IPO and if the foreign institutional investors (FII) pick up the equity shares either in the IPO or through secondary market purchases, the FDI and FII holdings put together at any point of time could result in a situation where the major holdings in a new insurance company would not be Indian.’

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

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

The Insurance Brokers Association of India, in their written memorandum, have stated that 'the present prescription of enhancement of a foreign equity holders interest in an insurance company to 49% from the existing 26% will have its own fallout. In case, in future, an Indian Insurance Company decides/is compelled to raise capital to sustain the growth in business, through rights issue, and further the Indian promoter for whatever the reasons, is unable to subscribe to the rights issue leaving the foreign partner to pick up the un-subscribed portion of rights issue, this may result in the equity of the foreign company in the Indian Insurance Company going beyond 49%. It is not clear whether the law allows such increase in foreign companies equity in the Indian Insurance Company'.

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

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

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

As far as technology is concerned, technology depends on the product development. The product in India can be developed specific to the Indian conditions. So, that kind of a technology to develop the product cannot be imported in India. The other thing is that insurance, as such, historically has adopted technology

because without technology, insurance cannot survive. Therefore, I do not feel that, that argument is right.

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

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

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

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

“The insurance sector was opened up to private participation in 2000, with foreign shareholding (whether FDI or FII shareholding) being capped at 26%. Over the last decade, a large number of players have entered the market, significantly enhancing competition in this sector. Both new and existing players have

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

(v) Capital requirements of insurance industry

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

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

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

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

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

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

“All I am saying is that public sector insurance would project that they would get more, but there are different views and once again it is their opinion versus others opinion. So, no one would be able to judge that. But there are different views on that. But coming to this number, as we mentioned, with the kind of total amount that could be raised in the market and based on the assessment of the annual requirement and based on the fact that these are all loss making companies, our assessment is very clear that through the IPO route going to the domestic market the insurance will not be able to raise capital required. We believe that this is essential.

Secondly, that is not the only reason and we have made very clearly what is the benefit this will confer on the insurance sector in the technological sense that is available with you. We had said, we are not talking of use of IT, but there are certain issues which other companies still have to get. For instance, we are looking at hardware and software, go factor, interaction, dependency and assessment, etc. are various variables which make into the deciding of the premium. We have not mastered that area. Second is that our companies have to develop and come out with new models especially in areas of health, etc. The global players are using this technology, whereas we have yet to develop these. Third is computer aided material could be decided. This we have given in our reports. This changed technical policy for which our insurance companies need to have a proper pricing of the insurance policies certainly require investment which the foreign direct investment will produce for our country.”

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

“Sir, hon’ble Members presented their views on the availability of capital. The amount of capital which we are looking at may be sufficient in the county. But if we have to increase the penetration and the number of policies, we need to have more solvency requirement and, therefore, more capital requirement. As we propose not more than 49 per cent, it is still an Indian company. The investment comes from the foreign company for usage. If equity can come from the foreign companies for use for the purpose of insurance, I think we should welcome all methods in which capital can flow into the insurance companies, control being exercised by the Indian partner under the regulation of IRDA. I suppose we should have a case for looking at additional capital flowing through this methodology into the insurance companies.”

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

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

34. The Chairman, IRDA also added:

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

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

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

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

(vi) Valuation of insurance companies

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

“We should value the company based on certain uniform guidelines established by the appropriate authorities. This will also address

the issue of foreign investors who may have benefited from lower valuations at the time of incorporation of the insurance companies.”

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

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

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

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

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

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

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

“That is correct. That point is well taken. Our point is that subsequent to that, two things may happen. In future as the company grows, the company can grow by way of further infusion by way of either accessing an IPO or by the remaining partners again contributing various share capitals in the agreed form.”

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

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

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

“Presently, the foreign joint venture partner can hold 26% of equity. There has been a substantial increase in capital of Insurance Companies between 2000-01 and 2008-09. However, the additional capital has not distorted the share of the Indian or the foreign partner. The proposed Clause 3 of the Bill relating to Section 2(7 A) seeks to enhance the holdings of equity share by a foreign company through itself, the subsidiary company or nominees to not more than 49 per cent of the paid up equity capital of an Indian insurance company. The statutory provision as above will ensure that the share holding of the foreign partner continues to be 49%. The intention of the change is to ensure that the maximum holding of foreign companies (FDI, FII, etc.) is restricted to 49%. If need be, the clause will be redrafted in consultation with the Ministry of Law to ensure clarity.”

43. By extensively drawing reference to the reports of the Law Commission of India, which was appointed to review the legislations regulating the insurance sector, and the K.P. Narsimhan Committee

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

44. The insurance sector was liberalized in 1999 by fixing a clear cap of 26% on the foreign equity participation in the companies with the avowed purpose of providing both depth and weight to the market, bringing in new products and enabling in providing insurance as a means of social security to the Indian masses at large, particularly in the unorganized sector. At the time of opening of the sector, the Parliament was assured that the statutory prescriptions as also the foreign investment regulations would ensure that the cap of 26% on foreign equity

participation in insurance companies would not, in any way, be breached. The rationale given for seeking to hike the capping on foreign equity participation from 26% to 49% broadly centre on the very same purposes for meeting which, the insurance sector was liberalized more than a decade back – enabling increasing insurance coverage, bringing in new products, technological capabilities and cost efficiencies by adopting better practices and transfer of managerial skills, meeting the solvency margin norms etc.

45. The Committee, while recognizing the need for additional capital for enabling the growth of the insurance sector, are, nevertheless constrained to note that the justification provided for relying on foreign equity capital to meet this end has not been convincing. On the basis of the submissions made by the Ministry of Finance on the development and status of the insurance sector, the Committee note that more than a decade following the liberalization of the insurance sector with 26% foreign equity participation there has not been any significant spurt in insurance coverage; the product portfolios of the public sector insurers are comparable to those of the private sector; the utility of the new products introduced over the last few years, being more investment oriented in nature with high risks attached leave a question mark on their appropriateness as a means of providing social security to the people at large; public sector insurers continue to be the major investors in the crucial infrastructure sector; and the solvency margin maintained by the companies leaves enough scope for leveraging the existing capital. The data that gives credence to these observations include the fact that growth

in business as percentage of GDP during 2000 to 2010 in case of life insurance has risen merely to 4.61% from 1.2%, and in case of non life insurance, to 0.61% from 0.4%; LIC's share of investment in infrastructure during the year 2009-10 has been 70.38% and that of the public sector general insurers to the extent of 70.53% vis-à-vis their private sector counterparts; and the solvency margin of the companies has been in the range of 2% to 7% in case of life insurers and 2% to 12% in case of the general insurers, which is well above IRDA's stipulations.

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

47. On the issue of pursuing the alternate means of tapping the domestic market for meeting the capital needs of the industry too, there has been an element of inconsistency as also contradictions in the submissions made to the Committee by the Ministry of Finance at different stages. While the Ministry has maintained that the Indian market may not have the depth to meet the capital requirements of the industry (with Rs. 87,029 crore, Rs. 14,719 crore and Rs. 55,055 crore raised in years 2007-08, 2008-09 and 2009-10 respectively), the Secretary, Department of Financial

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

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

man too would not stand to gain through insurance, particularly as a means of social security.

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

(B) Health Insurance

50. Health insurance business in India has increased manifold over the past decade. From Rs. 675.86 crore gross premium collected through health insurance in the year 2000-2001, it increased around ten times to Rs. 6646 crore during the year 2008-09. In pursuance of the K P Narasimhan Committee Report, the present Bill provides for a separate definition of health insurance. The Bill proposes to fix a minimum capital requirement for this sector at Rs. 50 crores with a view to reduce entry barrier to a sector which is of priority category in the insurance space. However, there are also other issues pertaining to the sector, which have prevented full realization of benefits of health insurance for the policy holders.

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

"In Public Sector General insurance companies, the cashless facility is provided through Third Party Administrators (TPAs). The Insurance Companies are offering this facility in various cities and there are multiple TPAs in each city. Each TPA has its own network of hospitals.

The Public Sector Insurance Companies have a cost ratio of around 140% of the premium received under the health portfolio. The mounting losses in this portfolio are a matter of serious concern for them. It was also observed by these Companies that some of the hospitals were charging the patients having health insurance policies at rates which are higher than the reasonable cost of treatment. Due to these high charges, the policyholders were left with smaller amounts of sum assured to be used for any other eventuality during the remaining period of the health policy thereby causing undue hardships to them.

The Public Sector General Insurance Companies have not revised/withdrawn the product (health insurance policy) or the facility of cashless treatment. However, the Companies have started rationalization of empanelment of hospitals and standardization of rates and specified procedures followed by the hospitals. This has been implemented w.e.f. 1st July, 2010 in the cities of Delhi, Mumbai, Bangalore and Chennai. In these cities a Preferred Provider Network (PPN) has been started by inclusion of names of the hospitals that have agreed to work at given rates for specified procedures. The list of Hospitals in the PPN in these cities is available on the websites of TPAs/Insurance Companies. In the rest of India the earlier process of rendering cashless facility is still continuing.

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

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

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

renewal. Thus, this PPN system is in the interest of all health insurance policy holders.”

Initiatives of IRDA on the issue:

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

- (i) Policyholders are always informed about the nearest possible alternative hospitals where cashless facility is available;
- (ii) Where a policyholder has been issued a pre-authorisation for the conduct of a given procedure in a given hospital or if the policyholder is already undergoing such treatment at a hospital, and such hospital is proposed to be removed from the list of PPN, then the insurers are directed to continue to provide the benefits of cashless facility for such policyholder as if such hospital continues to be in the PPN list; and
- (iii) That the interests of the policyholders are not adversely affected at any point of time.

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

“It may be noted that medical inflation is increasing from 10-20%. Further, there is lack of standard terms with regard to treatment protocols and each provider has his own practices. The premium needs to be sufficient to cover these aspects together with rising

inflation. There is a trend towards cashless form of facilities is being charged to higher costs for the same procedures/treatment against those paying out of pocket. All these lead to inadequacy of premium, which forces the insurer to increase the premiums. The Authority is taking steps to check the increasing health insurance costs by introducing WHO ICD-10 standardized protocols for various procedures, standardization of claims forms, etc which should go some way in meeting the objectives.”

Health Insurance Schemes for Poor

54. There are Government schemes providing health insurance to BPL population viz. Rashtriya Swasthya Bima Yojana, Rajiv Arogyasri Yojana etc., covering expenses incurred towards in-patient hospitalization. The premium for such insurance schemes is being borne by Government of India and/or State Governments either fully or on a sharing pattern. The beneficiaries are being serviced by the insurance companies based on the Identification Cards i.e. Smart Card/Health Insurance/BPL Card issued to them. Around 15 crore people are beneficiaries of these Government schemes. There are also insurance policies with low premiums such as Janata Personal Accident Policy offering accidental protection against a minimum premium of Rs. 15 against a sum insured of Rs.. 25,000 etc.

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

Awareness:

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

Access:

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

Inadequate cover & product innovation:

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

Service Level Agreement:

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

Standard treatment guidelines:

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

Standard forms and format:

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

Trust and transparency:

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

Relationship with Intermediaries:

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

Co-payment and deductibles:

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

Selection of room category:

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

Training issues:

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

Use of information technology:

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

Efficiency and Effectiveness Communication between parties:

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

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

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

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

58. The Committee also note in this regard that the lack of uniformity in rates and charges, settlement forms, procedures etc. result in ambiguity and give rise to the possibility of disputes in settling claims. While the public sector insurance companies are stated to have initiated efforts towards rationalizing the empanelment of hospitals and

standardising the rates and procedures followed, the process needs to be completed expeditiously. With a view to ensuring that the policy holders are not inconvenienced, the Committee expect the IRDA to play a proactive role towards evolving a common procedure for availing 'cashless facility' and standardizing the rates and charges for different hospital procedures, treatment guidelines, forms and formats for settlement of claims etc.

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

60. An issue of critical importance in regard to health insurance, the Committee wish to highlight is the fact that while ideally, health insurance covers need to fulfill the requirements of the needy such as the elderly, the focus of the current health insurance portfolios is on insuring the young and healthy. While extending health insurance covers to the elderly may be considered unprofitable by the companies, the onus would be on the Government to ensure that the old, aged and the needy are

covered and benefited. It would, thus, be imperative on the Government to facilitate the health insurance policy framework in this direction and the IRDA to attune the regulatory framework for making it clear that health insurance is a human-centric initiative and covering the elderly at a reasonable cost a social obligation. A percentage or number of the elderly that would be covered as an obligation could be specified. The Committee desire that serious efforts are made in this direction so as to ensure that the benefits of health insurance are extended to the really needy sections of the society.

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

(C) Insurance in Rural and Social Sector

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

insurance companies. In respect of social sector, the obligation to be completed by life as well as general insurance companies range from 5000 to 55000 lives.

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

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

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

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

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

LIFE INSURANCE

Total New Business

Rural area business

Number of policies = 5.31 crs

Number of policies = 1.44 crs

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

Social Sector – 2.18 crore lives

GENERAL INSURANCE

Total Gross Premium – 34,620.50

Crores

Rural Sector – 4,479 crores Gross

Premium

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

LIFE INSURERS – SOCIAL SECTOR

No. of Lives covered in Social Sector

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

LIFE INSURERS -- RURAL SECTOR

% of Policies underwritten in Rural Sector

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

NON-LIFE INSURERS --- SOCIAL SECTOR

No. of Lives covered in Social Sector

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

NON-LIFE INSURERS -- RURAL SECTOR

% of Premium underwritten in Rural Sector

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

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

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

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

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

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

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

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

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

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

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

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

- Integration between insurance companies and other financial intermediaries (banks, post offices, stock exchanges, etc.) could go a long way in helping insurance penetration. Lesser financial integration has resulted in lesser deepening of the system along with inefficiencies at the level of channelizing the financial savings of the population. Insurance companies could initiate these agents to cross sell additional products.

- Insurance industry is viewing the transformation of insurance agents from mere intermediaries to financial advisors. This can boost the efforts to foster financial inclusion as that would convince the customers about the benefits of investing on insurance. Besides, simplification of the insurance delivery procedures could attract more people to the industry. This would also help boost the penetration levels of rural insurance.

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

(a) Change of Product Design

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

(b) Change of Sales Process:

- Shift from print based sales literature to audio/video based sales presentations
- Shift from a single sales person doing solicitation, advice, documentation, premium collection to customer service to multiple specialized delivery

channels doing these different tasks on mass scale to achieve benefits of specialization.

- Shift from field based dedicated insurance sales persons to embedding insurance sales and service as a part of additional activity of every small trader, service/utility person catering to various small needs of urban/rural poor.
- One time identification of customer through Aadhar/Biometric identification for universal financial inclusion

(c) Change of Servicing Process:

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

(d) Change of Regulatory requirements

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

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

However, the Indian landscape is such that insurers face various challenges from the geographical diversity and reach alone. This makes the delivery mechanisms for micro insurance constitute the single largest focal point in building a sustainable model. Hence, the need for regulatory reform:

	Regulation/Guidelines	Current Regulation	Proposed Reform
I	Group Guidelines issued by IRDA in July 2005	Definition of Group: A group should consist of persons who assemble together with a commonality of purpose or engaging in a common economic activity like employees of a Company	Group insurance policies for rural or urban poor should not be restricted by this definition. Farmers in a village or people like milk/vegetable vendors living in an urban slum should be allowed to be termed as a group for providing group

			insurance cover though they may or may not assemble together on a common platform.
ii	IRDA (Micro- Insurance) Regulations 2005	Minimum number of Members in a Group – 20	The minimum number of members should be further reduced to cover even a family of 4 under a group cover.
iii	IRDA (Micro- Insurance) Regulations 2005	Life Micro Insurance Product: Refers to term insurance contract with or without return of premium, any endowment insurance contract or health insurance contract with or without an accident rider, either on individual or group basis	IRDA may permit a preapproved standard Micro Insurance product on the lines of NPS developed on Traditional, Universal Life or Unit Linked Insurance plans with or without capital guarantee with features of partial withdrawals and ad hoc top ups to match the critical cash flow situations of Micro Insurance customers.
iv	IRDA (Micro- Insurance) Regulations 2005	Limit on Minimum and Maximum Sum Assured	Customer should be permitted to choose his Sum Assured as per his needs subject to premium limits or income eligibility.
v	AML Guidelines	Collection of KYC documents for establishment of identity and residential evidence.	Any individual holding Aadhar Card should be exempt from providing any further ID proof requirements. People not having UID number may be identified through bio-metric processes wherever documentary identity proof does not exist. Alternatively Insurance companies may be permitted as designated agencies to issue adhar numbers to uncovered population.
VI	Premium Collection proposed IRDA guidelines on outsourcing	The proposed IRDA guidelines on outsourcing do not envisage premium collection as an activity that can be outsourced to a specialized agencies.	Subject to adequate safeguards, outsourcing of premium collection should be permitted for any utility companies, retail vendors, shop keepers etc to reduce the cost of collection. This is the most critical requirement for the success of Micro Insurance business in India.
VII	Customer Service and Claim Payment	IRDA regulations mandate this job cannot be outsourced.	Universal Helpline facility to be set up as private-public partnership and the Central Record Keeping

			Authority for Micro Insurance customer data management should be allowed as outsourcing agencies to render appropriate customer service and claim settlement.
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(e) Measures essential for penetration of Health Insurance in rural areas:

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

Micro insurance

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

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

(Premium in lakhs`)

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

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

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

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

74. The IRDA has also specified that micro insurance business would also be considered for rural and social sector obligations if it falls under the definition as prescribed under the Obligations of Insurers to Rural and Social

Sector Regulations. The IRDA had also expanded the definition of micro insurance agents to include Non Profit Companies under Sec 25 of the Companies Act.

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

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

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

(D) Reinsurance business

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

Details	2007-08	2008-09	2009-10
A. Gross Direct Premium (Indian)	27,823.74 cr	30,351.84 cr	34,620.42cr
B. Reinsurance Premium ceded within India	29.58%	23.44%	24.63%

C. Reinsurance premium ceded in India to GIC Re (of B)	69.6%	66.4%	58.5%
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Compulsory cession

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

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

“Looking into the GIC position, we have gone in a very strong way both domestically as well as internationally. We have started this reinsurance business just in 2000 whereas the foreign reinsurance is as old as 60 to 100 years. We have geared up ourselves to meet any challenge internationally. Let me tell you, today we are the 16th largest company in the world so far as reinsurance business is concerned...In view of the strength of GIC, we understand the domestic market very well. Let me tell you that for the last three years Swiss Re and Munich Re are not participating in domestic market. They may be imparting a very meagre amount in some of the domestic markets in reinsurance programme. They have practically gone out for the last three years.

Then about the reinsurance hub, GIC has practically become the reinsurance hub today. We are contributing 44 per cent with a lot of international branch offices. We have our branches in London, Dubai, Kuala Lumpur and Moscow. Practically, the GIC has become the reinsurance hub so far as this part of the world is concerned. We are covering SAARC countries, South East Asia and the Middle East region.”

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

“We have taken an initiative in this case because this is a new area altogether and we have to provide civil liability of 1500 crore liability to the operator per location as per legislation. GIC Re has taken a lead to create a Nuclear Pool in India to provide a civil liability to operators. We are working on it and I hope that in this financial year we will be able to complete it. We are also in touch with Nuclear

Power Corporation of India, who are the sole operator today, for working out the modalities of providing insurance protection.”

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

“Today there is absolutely no bar on doing reinsurance business by any foreign reinsurance company in India. They can accept reinsurance business without taking any licence, without opening any branch in India.

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

at the time of having major claims. I now come to the very important point as far as reinsurance is concerned and that is the entry of Lloyds into the country. Lloyds as you know, is not a company as such. It is a society which transacts business through various syndicates each of which works in its own capacity. We are not against having Lloyds in India as such by setting up a company. In countries like China, they opened as a company. Only those syndicates should be allowed to do business in India which have got a syndicates desk in India. It is not that the Lloyds is here and its about 121 syndicates working in London transact business from there. There should be specific underwriting desks in India itself so that they can justify their technical expertise to India as such, if any.”

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

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

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

Reinsurance business requires huge amount of capital to enable the company to provide meaningful reinsurance to direct companies. It is perhaps for this reason that while we have seen a large number of joint ventures in the life and non-life direct segment, we have not seen even a single joint venture being formed to provide reinsurance business. General Insurance Corporation, the Indian Reinsurer is the only reinsurance company

in India at present. Even GIC with a net worth of Rs.7738.34 crore as on 31.3.2009 was able to retain 91.83% of its business and has had to place business worth Rs.658 crore premium outside India with other companies.

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

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

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

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

- a) The branch office will always have access to global capital of the parent reinsurer as the parent would continue to be legally responsible for the liabilities of its branch and reduce chance of default on valid claims.
- b) The cost of reinsurance will be lower for the industry because of the advantage of global diversification.
- c) The company will be required to pay taxes on the India related business it generates.
- d) It would enable the branch to function as a hub for Asian Reinsurance business.
- e) Proposed section 27(E) prohibits an insurer to directly or indirectly invest outside India the funds of the policyholder. Thus, the amount received as premium by these branches would need to be invested in India as per the guidelines of IRDA and will serve the interests of the country.
- f) The above measure is likely to bring more competition, it will also bring efficiency in GIC. GIC has the financial strength and capacity to accept risks and compete effectively against the foreign reinsurers.”

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

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

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

“It is correct that at the time of liberalization it was envisaged that India would become a hub of reinsurance. It is also a fact that despite one decade of liberalization the Indian insurance sector has

not been able to attract even one reinsurance joint venture company.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“insurer” means —

- (a) an Indian Insurance Company, or
- (b) a statutory body established by an Act of Parliament to carry on insurance business, or
- (c) an insurance co-operative society, or
- (d) a foreign company engaged in re-insurance business through a branch established in India;

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

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

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

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

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

- a) Other than ceding risk to the re-insurers, derive experience and expertise from re-insurers for evaluation of risks and sharing of contract wordings
- b) Under Section 101A of the Insurance Act, 1938, it is obligatory to cede a given portion of every risk written by insurers to GIC Re (i.e. 30 % maximum)
- c) beyond which the Insurers in India cede the risk to other Indian insurance companies and foreign re-insurers
- d) Internationally, there are specialized re-insurers for specific kind of risks

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

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

- i) Is engaged in re-insurance business through a branch established in India, and
- ii) Has net owned funds of not less than rupees five thousand crore

Might affect the Indian insurance industry on the following attributes:

- a) Given the quantum and value of assets and diverse nature of industry in India, the need for global capacity is critical to provide cover to the customers
- b) Opportunity to Indian insurers to have competitive cost of insurance without compromising on quality of security
- c) The cost of insurance for Indian customers may increase in the absence of access to foreign re-insurers
- d) In the business of insurance, as claims can create high volatility than any other business, it is prudent to distribute the risk across entities/countries

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

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

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

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

“In case of branch office operations, there will be no requirement for a joint venture with an Indian company. The branch office can leverage the financial strength of its parent to provide reinsurance cover within the country. It may be useful here to compare the

banking sector where a number of foreign banks are operating in the country through branches under the regulations of RBI. The same model is proposed to be replicated for insurance companies also. Since, currently the Act does not permit the entry of reinsurance business in the branch mode, it would require suitable amendments to the Insurance Act, 1938 to provide for regulations and supervision by IRDA. The branch office will always have access to global capital of the parent reinsurer as the parent would continue to be legally responsible for the liabilities of its branch and reduce chance of default on valid claims. The company will be required to pay taxes on the India related business it generates. Further, the proposed section 27(E) prohibits an insurer to directly or indirectly invest outside India the funds of the policyholder. Thus, the amount received as premium by these branches would need to be invested in India as per the guidelines of IRDA and will serve the interests of the country. In the year 2007-08 business worth Rs. 2000 crore was placed outside India by Indian insurers. Allowing the branch network would help in rather retaining this much business in India.

92. As seen from the deposition of the chairman, GIC before the Committee, presently there is no bar on foreign re-insurance companies carrying on re-insurance business in the country without any licence or opening a branch nor is there any regulation to control the transactions of foreign re-insurers. This is contrary to the situation faced by GIC in transacting international business, where the company is subjected to a number of cross checks and regulations.

93. The amendment proposals of the Bill seek to permit foreign re-insurers to enter the Indian re-insurance sector through branch offices, as also by way of forming joint ventures with Indian companies with FDI upto 49%. According to the Ministry, the 'capacity of the Indian reinsurer (GIC) is insufficient to meet the re-insurance needs' in the country, and the branch offices of foreign insurers, proposed to be allowed, are expected to leverage the financial strength of the parent company in providing re-

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

94. On the specific issue of allowing entry of Lloyds of London, which operates through numerous syndicates, the Committee would take

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

(E) Dematerialization of insurance policies

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

“It is submitted that though the proposed bill recognizes maintenance of electronic record; nothing has been specified for online issuance of policies.

It is suggested that issuance of the insurance policy in electronic form should also be recognized.”

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

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

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

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

preventing. If that is enabled, a continuous premium payment through the mobile phone technology is possible. That is one thing.”

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

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

- (a) Tele-calling can be made by out sourced agencies as well who are trained, rather than only the employees of the company doing the telemarketing activity.
- (b) In case of telesales, the physical proposal forms need not be insisted upon, has the recorded conversation may serve as proof for the proposal to be contract.
- (c) The norms in respect of distance marketing should be user friendly and also taking into account the protection of policy holder rather than cumbersome provisions.
- (d) Acceptance of digital signatures needs to be made an acceptable way of accepting an insurance proposal.

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

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

“It is submitted that the intent of the section is to ensure advance payment of the premium, however by specifying the nature of instruments which could be accepted by the insurance company, would unnecessarily restrict the implementation of technological advancement in the field of payment and settlement in the

insurance sector. Hence it is suggested that provision specifying the mode of payment and refund should be removed.”

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

“Sub-sections 2 and 3 of Sections 64 VB have to be retained in the best interests of the policyholders' protection. However, the clause as it stands requires payments (including refunds) to be made in cash or by cheque or by Postal Orders. It is necessary to enable transfer of moneys by making use of technological advancement such as credit cards, ECS etc. To this extent, the suggestion is accepted and it is now suggested that the following amendments be considered.

- 1) In section 64 VB (2), the last 8 words starting with the word "in cash.....ending with the word the insurer....." be deleted.
- 2) In section 64 VB (3), in the 3rd sentence the words "by a crossed..... Money Order" be deleted.”

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

102. The suggestion for allowing all forms of electronic modes of payments (including refunds) having been accepted, the Committee expect that appropriate provisions to this effect are incorporated in the Bill. As effective usage of technological advancements can play a key role in faster spread of insurance and thereby help in achieving greater financial

inclusion, the Committee would recommend bringing in appropriate amendments in the statute/ regulations inter-alia for allowing online issuance of insurance policies through digital signatures.

Part – II

Clause By Clause Examination

6. Clause 3 (iii): Definition of health insurance [Insertion of new Sub Section 6(B) in Section 2 of the Act]

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

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

“(iii) after clause (6B), the following clause shall be inserted, namely:—

‘(6C) “health insurance business” means the effecting of contracts which provide for sickness benefits or medical, surgical or hospital expense benefits, whether in-patient or out-patient on an indemnity, reimbursement, service, prepaid, hospital or other plans basis including assured benefits, long term care, overseas travel cover and personal accident cover ;”

1.3 On this Clause the following suggestions have been made:

Confederation of Indian Industry (CII)

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

General Insurance Council

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

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

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

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

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

Further, *Bharti Axa Life insurance company limited*, in their memorandum stated that: 'Health Insurance policies sold by life insurance may be included within the definition of life insurance business by including the following sub clause in Section 2 (11) “the granting of health insurance covers or riders.”

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

“Section 2(11) reads as under:

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

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

1.6 While the Committee agree with the proposal for separately defining 'health insurance business' with the incorporation of Section 6(B) of Section 2 of the Act, as pointed out by the insurance companies and

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

7. Clause 3(iv): Definition of Indian insurance company (Substitution of Sub Section 7A of Section 2 of the Insurance Act)

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

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

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

(b) in which the aggregate holdings of equity shares by a foreign company, either by itself or through its subsidiary companies or its nominees, do not exceed forty-nine per cent. paid-up equity capital of such Indian insurance company;

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

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

2.2 Amendments to Section (7A) (b), of the Act in terms of the proposals of Clause 3 (4) seek to increase the extent of Foreign Direct Investment (FDI) in insurance companies from 26 to 49 per cent. The Amendment proposals also seek to change the definition of 'foreign company' which is presently in consonance with Section 2(23A) of the Income Tax Act 1961. The definition

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

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

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

“Lloyd's which is registered as a society under the Lloyd's Act, 1871 has been included in the explanation to the definition of Indian insurance company which explains the expression "foreign company" for the purpose of defining an Indian insurance company. Further, only that insurer who is an Indian Insurance company as defined in the Insurance Act can carry out insurance business. Therefore Lloyd's which is registered as a society is treated on par with a "foreign company" eligible for participation in the Indian joint venture insurance company. Lloyd's is a Society of underwriters based in London (U.K.) whose members are authorized to issue protection notes, cover notes, or other documents granting insurance cover to others on behalf of underwriters. Lloyd's is one of the world's largest insurer/re-insurer but it is unable to start its business in India because the Insurance Act, 1938 does not permit any insurer other than an "Indian insurance company" itself or in joint venture with 'foreign company' (as defined in Income Tax Act) to carry on any class of insurance business in India. It is, therefore, proposed to make an amendment in Section 2 (7A) of the Insurance Act to facilitate entry of Lloyd's in Indian insurance

sector. Lloyd's would have to abide by other regulatory restrictions under the insurance enactments and IRDA regulations. Lloyd's would also be permitted to open branches for reinsurance business in India in case the proposal to permit foreign re-insurers opening branch offices in India is accepted.

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

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

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

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

domestic market for meeting the capital requirements and also retain the capital for the long term development of the country.

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

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

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

“(v) in clause (8A),—

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

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

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

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

“The capital requirements for a health insurance company has been proposed to be reduced from Rs. 100 crores to Rs. 50 crores in order to facilitate growth of the health insurance in the country with a view to reduce entry barrier to a sector which is a priority sector in the insurance space. At present there are three stand alone health insurance companies namely:

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

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

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

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

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

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

In view of the present market scenario and the conditions stated below, capital requirement for a standalone health insurance company lesser than a general insurance company may not be effective. The success of the health insurance business would depend on the extent of awareness and credibility amongst the customer groups. This would entail substantially large startup investments in creating a wide spread distribution structure necessitating the need for high capital requirement. Further the investments into this category of insurance business would need to be sustained over a longer period of time to obtain the desired objectives. The infrastructure requirement for health insurance business is bigger than any other general insurance business both for policy servicing and claim servicing. This fact associated with the retail character of the business may require a relatively bigger establishment. The contemporary market requirement may demand the health insurance companies to involve themselves in the mass health insurance policies promoted by various State Governments and the Central Government of India. Besides the statutory requirement of social, rural obligation of insurance companies may require them to focus on undertaking rural distribution in competition with other established general insurance companies. Such an environment may create pressure upon the health insurance companies for capital. In view of the above, the Health Insurance Companies may be required to infuse more capital consequent to their constitution to enable themselves to set up necessary business infrastructure to carry out the business.”

3.6 As against the minimum capital requirement of Rs. 100 crore for life and non life insurance companies, the Bill proposes to allow an insurance company to start exclusive health insurance business with a minimum paid up capital of Rs. 50 crore. While the Ministry has argued that providing a lower capital requirement for health insurance would enable in removing the entry barrier to this sector so as to increase penetration of health insurance, given the rapidly rising costs of medical treatment as also the reservations expressed by the private insurance companies on the adequacy of capital requirement proposed, the Committee do not find this

to be wholly convincing. The Committee are of the view that for providing adequate health cover to the larger section of the population, an insurance company needs to be fully equipped with the modern infrastructure and other facilities, for which the stipulation of Rs. 50 crore capital may be inadequate. As also suggested by the private insurers, the Committee, would therefore, recommend that the Government keep the minimum capital amount for starting a health insurance company at Rs. 100 crore.

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

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

‘(9) “insurer” means —

(a) an Indian Insurance Company, or

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

(c) an insurance co-operative society, or

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

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

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

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

“Yes. Section 2 (8) defining ‘insurance company’ may be proposed for deletion as it has become redundant.”

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

10. 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

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

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

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

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

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

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

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

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

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

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

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

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

11. 2CB. (1) No person shall take out or renew any policy of insurance in respect of any property in India, except a property situated in any Special Economic Zone as defined in clause (za) of section 2 of the Special Economic Zones Act, 2005, or any ship or other vessel or aircraft registered in India with an insurer whose principal place of business is outside India save with the prior permission of the Authority.

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

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

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

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

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

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

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

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

“Clauses 4, 5 and 6 are as per the Government of India’s SEZ policy.”

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

“Section 2C prohibits the conduct of any class of insurance business in India by any entity not registered under Section 3 of the Insurance Act. The intention of the provisos of the proposed amendment is to permit unregistered foreign entities to conduct insurance business in SEZ only and to permit reinsurance business in India to be conducted by branches of foreign reinsurers subject to terms and conditions as per the regulations to be framed by the IRDA. Thus the final decision on the matter rests with the Central Government. Moreover, *the amendment to Section 2C of the Insurance Act pertaining to SEZ has its genesis in the Special Economic Zones Act, 2005 which allows special dispensation to the*

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

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

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

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

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

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

5.9 A few other suggestions received on this Clause, state as under:

“*Cholamandalam MS General Insurance Companies Ltd.* in their written submission have stated that SEZ’s exemption can be deleted as most of the countries prohibit insuring of risks located within their own countries with Foreign Insurers, even if the risk is located in SEZ.

Further, *the Insurance Brokers Association of India*, In their written memorandum, have stated that Section 2(CB), proposed to be inserted in the Act, tries to make exception in the case of special economic zone where various insurers have been permitted to extend covers. This provision would go against the principle that no insurance company can carry on business in India without recognition from the IRDA. This will also run counter to the new provision being sought to be introduced in the Insurance Act which is available under GIBNA now proposed to be eliminated from that Act and to be introduced under the Insurance Act stating that no Indian property would be offered for insurance to a non Indian insurer. There should not be any discrimination between insurance companies in offering their products in normal and special economic zones. An incidental issue would be where a foreign insurer fails to carry out his obligations in terms of a policy, whose jurisdiction will be invoked by the client to take care of his interest.

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

“As per amended Section 2C, any foreign insurer, without registering itself with the IRDA, can carry on insurance business in Special Economic Zones. The implication of this concession will be evident if seen along with Sections 63 and 64. Section 63 deals with information to be filed by foreign insurers planning to procure insurance business in India and Section 64 prescribes the annual returns to be filed by them. These two sections are now proposed to be deleted. Since the provision that, only an Indian insurance Company can carry on insurance business in India, has been

dropped while amending Section 2C, any foreign insurer can freely operate in Special Economic Zones without even filing its name and address with the IRDA and need not also file any periodic returns. So, when a concession in respect of Special Economic Zones is being given, Sections 63 and 64 should not have been omitted.”

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

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

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

“The Central Government may, by notification, direct that any of the provisions of this Act,-

(a) Shall not apply to insurer, being an Indian Insurance Company, insurance co-operative society or a body corporate referred to in clause (c) of sub-section (1) of section 2C, carrying on the business of insurance, in any Special Economic Zone as defined in clause (za) of section 2 of the Special Economic Zones Act, 2005; or

(b) Shall apply to any insurer being an Indian Insurance Company, insurance co-operative society or a body corporate referred to in clause (c) of sub-section (1) of section 2C, carrying on the business of insurance, in any Special Economic Zone as defined in clause (za) of section 2 of the Special Economic Zones Act, 2005 only with such exceptions, modifications and adaptations as may be specified in the notification.”

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

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

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

“There was a question on Special Economic Zone in the country, and the Members wanted to know as to why the foreign companies would be allowed to do business without subject to the Indian regulations. I think, we would also support the view that the companies operating in the Special Economic Zone should also be governed by the Indian regulations. There should be a level

playing field for the Indian companies...My point of view was that foreign companies should not be allowed. Only companies, which are subject to the Indian regulations, should be allowed to do business there.”

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

“25. (1) No person shall take out or renew any policy of insurance in respect of any property in India or any ship or other vessel or aircraft registered in India with an insurer whose principal place of business is outside India save with the prior permission of the Central Government.

(2) If any person contravenes any provision of sub-section (1), he shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.”

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

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

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

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

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

5.18 The Committee note in this regard that the Insurance regulator, IRDA as well as GIPSA have expressed serious reservations on the policy stance enunciated inter-alia on the ground that foreign insurers would be at an advantage over their domestic counterparts in the matter of regulations. Also, the stakeholders from the private sector too have expressed reservations and concerns over the amendment proposals under the clause.

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

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

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

6.2 Clause 8 reads as under:

In Section 3 of the Insurance Act,—

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

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

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

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

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

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

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

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

(4) The Authority may suspend or cancel the registration of an insurer either wholly or in so far as it relates to a particular class of insurance business, as the case may be,—

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

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

(c) if the business or a class of the business of the insurer has been transferred to any person or has been transferred to or amalgamated with the business of any other insurer, or
(d) if the insurer makes default in complying with, or acts in contravention of, any requirement of this Act or of any rule or any regulation or order made or, any direction issued there under, or

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

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

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

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

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

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

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

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

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

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

“(5C) Where a registration is suspended or cancelled under clause (a), clause (d), clause (e), clause (f) or clause (g) of sub-section (4), the Authority may at its discretion revive the registration, if the insurer within six months from the date on

which the suspension or cancellation took effect complies with the provisions of section 64VA as to the excess of the value of his assets over the amount of his liabilities or has had an application under sub-section (4) of section 3A accepted, or satisfies the Authority that no claim upon him such as is referred to in clause (e) of sub-section (4) remains unpaid or that he has complied with any requirement of this Act or the Insurance Regulatory and Development Authority Act, 1999, or of any rule or any regulation, or any order made there under or any direction issued under those Acts, or that he has ceased to carry on any business other than insurance business or any prescribed business, as the case may be, and complies with any directions which may be given to him by the Authority.”

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

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

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

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

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

“Since the existing section 3A(4) provides for renewal of registration after the due date upon payment of such fees, it is suggested that

revival of cancellation of registration on account of non-payment of fees be also included for the purposes of revival”.

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

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

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

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

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

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

“For section 6 of the Insurance Act, the following section shall be substituted, namely :—

6. (1) No insurer not being an insurer as defined in sub-clause (d) of clause (9) of section 2, carrying on the business of life insurance, general insurance, health insurance or re-insurance

in India or after the commencement of the Insurance Regulatory and Development Authority Act, 1999, shall be registered unless he has,—

(i) a paid-up equity capital of rupees one hundred crore, in case of a person carrying on the business of life insurance or general insurance; or

(ii) a paid-up equity capital of rupees fifty crore, in case of a person carrying on exclusively the business of health insurance; or

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

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

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

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

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

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

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

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

“As per Section 6 no insurer can carry on the business of life insurance, general insurance or reinsurance in India unless he has a paid up equity capital of rupees one hundred crore in case of life insurance or general insurance business and rupees 200 crore for the reinsurance business. This is the minimum requirement at the time of registration with the IRDA for starting the Insurance business. However, it has been observed that even though the

minimum capital stipulated is Rs.100 crore/200 crore, in actual practice most of the companies have raised more than the stipulated capital.

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

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

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

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

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

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

powers are given to the Government to notify the enhanced limits from time to time.”

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

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

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

7.9 With regard to the minimum capital proposed for health insurers, the Committee reiterate the observation made in the earlier section of the report for reconsidering and hiking the prescribed amount so

as to give sufficient cushioning to the insurance companies in providing benefits to the policyholders at large.

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

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

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

“In section 6A of the Insurance Act,—

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

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

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

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

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

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

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

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

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

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

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

(i) unless, in addition to compliance being made with the provisions of section 108 of the Companies Act, 1956, the transferee furnishes a declaration in the prescribed form as to whether he proposes to hold the shares for his own benefit or as a nominee, whether jointly or severally, on behalf of others and in the latter case giving the name, occupation and address of the beneficial owner or owners, and the extent of the beneficial interest of each;

(ii) where, after the transfer, the total paid-up holding of the transferee in the shares of the company is likely to exceed five per cent. of its paid-up capital unless the previous approval of the Authority has been obtained to the transfer;

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

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

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

(v) in sub-section (11), the words, brackets and figures "except those of subsections (7), (8) and (9)" shall be omitted;
(vi) in sub-section (11), clause (ii) shall be omitted; and
(vii) in the *Explanation*, in sub-clause (c) of clause (ii), the words "managing agent" shall be omitted."

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

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

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

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

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

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

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

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

9.2 Section 6AA of the Insurance Act provides following:

“6AA. Manner of divesting excess shareholding by promoter in certain cases.- (1) No promoter shall at any time hold more than twenty-six per cent or such other percentage as may be prescribed, of the paid-up equity capital in an Indian insurance company:

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

Explanation.- For the removal of doubts, it is hereby declared that nothing contained in the proviso shall apply to the promoters being foreign company, referred to in sub-clause (b) of clause (7A) of section 2.

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

9.3 Clause 14 provides for its omission as follows:

“Section 6AA of the Insurance Act shall be omitted.”

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

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

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

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

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

recommend that such divestment of shares would be done at any time even before it is necessary after 10 years.

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

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

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

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

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

Provided that—

- (i) the scheme has been placed before a meeting of the shareholders for their opinion and has been forwarded to the officer together with the opinion of the shareholders thereon, and
- (ii) the scheme does not involve any diminution of the liability of the shareholders in respect of unpaid-up share capital;

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

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

(2) Any shareholder or other person aggrieved by the decision of the officer sanctioning a scheme under sub-section (1) may, within ninety days of the date of the order sanctioning the scheme, prefer an appeal to

the High Court within whose jurisdiction the registered office of the insurer is situate for the purpose of modifying or correcting any such scheme for the purpose specified in sub-section (1).

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

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

10.3 Clause 15 of the Bill reads as under:

“In Section 6B of the Insurance Act,—

(i) in sub-section (1),—

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

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

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

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

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

Further, since the Securities Appellate Tribunal is going to be the appellate authority against the orders of the IRDA we may consider appointing SAT as the appellate as against the High Court to prefer an appeal if the shareholder or a person is aggrieved by the decision of the Authority regarding compliance with the capital requirements. Accordingly, in case the Standing Committee makes a recommendation to this effect, Sections 6B(2) and (3) will be amended to provide an appeal to SAT instead of High Court.”

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

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

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

11.2 Clause 17 reads as under:

“In section 10 of the Insurance Act,—

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

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

“(2AA) Where the insurer carries on the business of general insurance, all receipts due in respect of each sub-clause of such insurance business shall be carried to and shall form a separate fund, the assets of which shall be kept separate and distinct from other assets of the insurer and every insurer shall submit to the

Authority the necessary details of such funds as may be required by the Authority from time to time and such funds shall not be applied directly or indirectly save as expressly permitted under this Act or regulations made thereunder.”.

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

“.....the existing provisions are quite adequate since

(a) Separation of accounts is already in practice.

(b) Separating of funds is not required.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12.4 While the amendment proposal under Clause 20 seeks to omit sub-section 3 of Section 13 of the Act, which mandates the insurers to file particulars of policies with the actuaries for the purpose of investigation for coverage under IRDA’s regulations, following a re-thinking on the matter at the behest of the Committee, the Ministry has purposed to retain the

section in the Act. As the aspect about the obligation of the Principal Officer of an insurance company to furnish full and accurate information to the actuaries is needed to be appropriately stipulated in the Act, the Committee expect that the sub-section is retained and the amendment proposal of the Clause modified accordingly.

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

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

“Every insurer, in respect of all business transacted by him, shall maintain –

(a) a record of policies, in which shall be entered, in respect of every policy issued by the insurer, the name and address of the policy-holder, the date when the policy was effected and a record of any transfer, assignment or nomination of which the insurer has notice, and

(b) a record of claims, every claim made together with the date of the claim, the name and address of the claimant and the date on which the claim was discharged, or, in the case of a claim which is rejected, the date of rejection and the grounds thereof.”

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

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

in electronic form also. The notes on clauses will also be amended in the light of the above suggestion.”

13.3 The Committee express agreement with the view point expressed by the Ministry that enabling the companies to maintain the records of claims and policies only in electronic form could leave scope for manipulation. The Committee, therefore, desire that the amendments proposed to section 14 under clause 21 are suitably modified to specify that the companies are not mandated to maintain the records in electronic form only.

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

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

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

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

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

(a) the amount of his liabilities to holders of life insurance policies in India on account of matured claims, and

(b) the amount required to meet the liability on policies of life insurance maturing for payment in India, less—

(i) the amount of premiums which have fallen due to the insurer on such policies but have not been paid and the days of grace for payment of which have not expired, and

(ii) any amount due to the insurer for loans granted on and within the surrender values of policies of life insurance maturing for payment in India issued by him or by an insurer whose business he has acquired and in respect of which he has assumed liability in the manner following, namely, twenty-five per cent. of the said sum in

Government securities, a further sum equal to not less than twenty-five per cent. of the said sum in Government securities or other approved securities and the balance in any of the approved investments as may be specified in the regulations subject to the limitations, conditions and restrictions specified therein.

(2) In the case of an insurer carrying on general insurance business, twenty per cent. of the assets in Government Securities, a further sum equal to not less than ten per cent. of the assets in Government Securities or other approved securities and the balance in any other investment in accordance with the regulations of the Authority and subject to such limitations, conditions and restrictions as may be specified by the Authority in this regard.

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

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

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

—
(a) any investment made with reference to any currency other than the Indian rupee which is in excess of the amount required to meet the liabilities of the insurer in India with reference to that currency, to the extent of such excess; and

(b) any investment made in the purchase of any immovable property outside India or on the security of any such property, shall not be taken into account:

Provided that nothing contained in this sub-section shall affect the operation of sub-section (2):

Provided further that the Authority may, either generally or in any particular case, direct that any investment, whether made before or after the commencement of the Insurance (Amendment) Act, 1950, and whether made in or outside India, shall, subject to such conditions as may be imposed, be taken into account, in such manner as may be specified in computing the assets referred to in subsections (1) and (2) and where any direction has been issued under this proviso copies thereof shall be laid before each house of Parliament as soon as may be after it is issued...

27A. (1) No insurer carrying on life insurance business shall invest or keep invested any part of his controlled fund and no insurer carrying on general business shall invest or keep invested any part of his assets otherwise than in any of the approved investments as

may be specified by the regulations subject to such limitations, conditions and restrictions therein.

(2) Notwithstanding anything contained in sub-section (1) or (2) of section 27, an insurer may, subject to the provisions contained in the next succeeding sub-sections, invest or keep invested any part of his controlled fund or assets otherwise than in an approved investment, if—

(i) after such investment, the total amounts of all such investments of the insurer do not exceed fifteen per cent. of the sum referred to in sub-section (1) of section 27 or fifteen per cent. of the assets referred to in sub-section (2) as the case may be;

(ii) the investment is made, or, in the case of any investment already made, the continuance of such investment is with the consent of all the directors present at a meeting and eligible to vote, special notice of which has been given to all the directors then in India, and all such investments, including investments in which any director is interested, are reported without delay to the Authority with full details of the investments and the extent of the director's interest in any such investment.

(3) An insurer shall not out of his controlled fund or assets as referred to in subsection (2) of section 27,—

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

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

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

(5) All assets forming the controlled fund or assets as referred to in sub-section (2) , of section 27, not being Government securities or other approved securities in which assets are to be invested or held invested in accordance with this section, shall(except for a part thereof not exceeding one-tenth of the controlled fund or assets as referred to in sub-section (2) thereof in value which may, subject to such conditions and restrictions as may be prescribed, be offered as security for any loan taken for purposes of any investment), be held free of any encumbrance, charge, hypothecation or lien.

(6) If at any time the Authority considers any one or more of the investments of an insurer to be unsuitable or undesirable, the Authority may, after giving the insurer an opportunity of being heard, direct him to realise the investment or investments, and the insurer shall comply with the direction within such time as may be specified in this behalf by the Authority.

(7) Nothing contained in this section shall be deemed to affect in any way the manner in which any moneys relating to the provident fund of any employee or to any security taken from any employee or other moneys of like nature are required to be held by or under any Central Act, or Act of a State legislature.

Explanation.—In this section “controlled fund” means—

(a) in the case of any insurer carrying on life insurance business—

(i) all his funds, if he carries on no other class of insurance business;

(ii) all the funds appertaining to his life insurance business if he carries on some other class of insurance business also; and

(b) in the case of any other insurer carrying on life insurance business—

(i) all his funds in India, if he carries on no other class of insurance business;

(ii) all the funds in India appertaining to his life insurance business if he carries on some other class of insurance business also; but does not include any fund or portion thereof in respect of which the Authority is satisfied that such fund or portion thereof, as the case may be, is regulated by the law of any country outside India or in respect of which the Authority is satisfied that it would not be in the interest of the insurer to apply the provisions of this section...

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

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

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

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

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

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

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

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

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

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

- (a) Subsection 4(b) be deleted.
- (b) The second proviso to subsection (4) also contains references to investments outside India. This may be deleted. The words ‘whether made before or after the commencement of the Insurance (Amendment) Act, 1950’ may also be deleted”.

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

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

14.7 The Committee note that the definition of ‘controlled fund’, as proposed, apart from being long-winding would also be inappropriate to the extent that it seeks to bifurcate insurers into life insurers and other insurers doing life insurance business. As only life insurers undertake life

insurance business or miscellaneous/health insurance business, the Ministry have proposed to re-draft the definition to mean 'all funds pertaining to the life insurance business'. The Committee desire that the definition of the term is suitably revised as agreed to.

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

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

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

15.2 The provisions of the Clause are as under:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15.5 While the amendments proposed to section 29 in terms of clause 30 seek to prohibit granting of loans to Directors etc. of insurance companies, reference has been drawn to the incorrect section of the Companies Act, 1956 i.e. section 220, instead of the correct section 295, which contains provisions relating to loans to key personnel of companies. The Committee expect that the infirmity in the provision as drafted is rectified. The Committee also expect that the suggestion made by the insurers for exempting the applicability of the provisions in case of loans given to employees as part of the salary package is appropriately addressed.

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

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

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

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

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

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

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

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

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

On the point of rural and social sector we feel it should continue to be gazetted so that the commitment of the companies for the rural and social sectors is there because there is a suggestion that it should not be gazetted. It is because today if you examine the IRDA reports, there are a lot of penalties being paid by the private companies on the non-obligations of the rural and social sectors. So, when such is the state there should not be any scope for the neglect of rural and social sectors. After the advent of the private companies whatever apprehension we had, the focus on rural and social sectors is only diminishing because in the competition with these private companies, the Life Insurance Corporation is also forced to go behind so many other aspects where the rural and social sectors stands neglected. So, we feel that this protection should be there and the basic concept of Life Insurance industry that it is peoples’ money for social security and peoples’ money for peoples’ welfare in the long term should remain the focus so that India grows is what we like to place before you.”

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

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

16.7 The Committee express agreement with the proposal to replace the term, ‘rural or social sector’ in section 32 B pertaining to insurance business in these sectors. Nevertheless, the Committee have reservations on the second part of the amendment proposal to the section whereby rural and social sector obligations of insurers would no longer be notified in the official gazette, which is the current practice and instead, confined to regulations. As covered in the earlier section of the report

(Overview) various stakeholders, including the GIPSA and CII have pointed out serious shortcomings in the prevailing practice of formulating, undertaking and overseeing the pursuance of rural and social sector obligations by the insurers. As suggested by the employees associations, the Committee desire that rural and social sector obligations of insurance companies may continue to be specified in the Official gazette by IRDA instead of being left to be dealt with in the regulations.

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

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

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

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

“32D. Every insurer carrying on general insurance business shall, after the commencement of the Insurance Laws (Amendment) Act, 2008, underwrite such minimum percentage of insurance business in third party risks of motor vehicles as may be specified by regulations: Provided that nothing in this section shall apply to an insurer carrying on the health insurance or re-insurance business only.”.

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

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

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

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

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

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

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

- The objective of obligation is to ensure that buyers of third party liability insurance do not face any supply side constraint from insurers.
- Current regulatory provisions which bar insurers from declining a third party liability cover to a vehicle owner are sufficient to ensure supply
- Motor third party insurance, in terms of acceptability of risks, depends upon of its categorization such as:
 - Ownership (Private or commercial),
 - Segment (two wheeler, private car or commercial vehicle
 - Sub-segments (Passenger carrying, Goods carrying, Special types etc.)
 - Geographical location of the vehicle
 - Usage (urban, rural, highway, mountainous, mining etc.)
- Prescription of a general obligation may not be useful for achievement of the objective
- Prescription of obligation detailing Ownership, Segments, Sub-segments, Geographical location, Usage would be equitable but may not be possible so far as implementation and regulatory monitoring is concerned.”

17.8 The representatives further stated as follows:

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

The other thing that happens with the obligatory is that for these types of policies, there are various types of covers. For example, there could be difference on the ownership which could be private

or commercial segment in terms of two wheeler, private car or commercial vehicles, geographic. So, trying to create an obligatory model, we would not be able to address all these sub-segments because for sub-segments, if you create obligations, it will be very difficult to monitor. If you have a generic obligatory nature, then it will be difficult to monitor the sub-segment wise obligation. So, rather than have an obligation, the current approach and thereafter determining of the prices would probably be the most appropriate solution for the market.”

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

“An industry pool constituted by IRDA has been in operation since April 2007 to underwrite the motor third party insurance policies with respect to the commercial vehicles in the country. The operation of the pool over last few years has addressed the supply side constraints. At the same time it has resulted in significant losses for the insurance industry. In view of the same, a few alternative models are suggested as under:

- a. Market driven pricing: The nature of third party liability risks insurers of assigning coverage of unlimited value, which leads to unlimited potential exposure for them. Tariff driven pricing always lag the cost of servicing the portfolio.
- b. Industry wide “Declined risk pool”: A declined risk is one which is usually declined by insurance companies since they feel that covering such risks would adversely impact their financials. Therefore risks, which are mandated to be covered by law but are not readily underwritten by insurance companies, can be considered to belong to a declined risk category. Under the present market conditions the declined risk can be variously defined as
 - A specific case where the vehicle owner is unable to obtain the mandatory third party liability cover
 - A specific case where the commercial vehicle owner is unable to obtain the mandatory third party liability cover
 - A pool can be created to cover all risks falling under the category of risks defined above as declined risks. All the policies of the declined risks category can be ceded into the pool and claims related to such policies would be claimed from the pool. The practice is prevalent in variations of Compulsory Auto Liability Insurance in Japan, Taiwan and Singapore.
- c. Drivers Third Party liability cover policy: An alternative would be to address the claims related to injuries and deaths through a legal liability cover for drivers. Since in almost all accidents the courts necessarily render a finding of rash and negligent driving by the driver, it may be appropriate to have a separate legal

liability cover for drivers wherein such claims shall be covered by the driver's insurance policy. In such a scenario, almost all the claims would be covered by the driver's insurance policy as against owner's legal liability cover. The basic purpose is to bring in a sense of collective responsibility with the driver and the concerned insurer picking up some part of the liability as the accidents normally take place due to the careless, negligent and rash driving of the drivers. This is the practice prevalent in the USA."

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

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

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

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

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

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

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

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

17.14 The Committee observe that the proposed Section 32D, which casts an obligation on the insurers to provide Third Party motor insurance cover has not found favour with various stakeholders. While the CII has inter-alia pointed out that third party insurance policies can be made compulsory only if the pricing is left to be decided by the companies, as per GIPSA, for making third party insurance obligatory, it would be essential to continue with the existing ‘third party pool’. A point made by yet another insurance company rightly highlights the shortcomings in the mechanism of monitoring compliance with the requirements of the Motor Vehicles Act, 1988. The Committee are of the view that ensuring compliance with the requirements under the Motor Vehicles Act by making it obligatory to provide third party cover would be in the interest of all the road users. Yet, the onus would be on the Government to effectively address the issues raised and concerns expressed by the insurers, which

relate inter-alia to the pricing of such products, which could be done in a manner that would ensure that the companies are not unduly burdened and the larger interest of the public is not harmed. Till such time these issues are resolved, sharing of liability by the insurers through the mechanism of common pool would be the best recourse.

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

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

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

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

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

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

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

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

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

proposed are suitably modified to provide for a mechanism of appeal in such cases.

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

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

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

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

“(4) The scheme shall thereafter be placed before the Central Government for its sanction and the Central Government may sanction the scheme without any modification or with such modifications as it may consider necessary, and the scheme as sanctioned by the Central Government shall come into force on such date as the Central Government may notify in this behalf in the Official Gazette:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) Subject to the provisions in sub-section (2), the transfer or assignment shall be complete and effectual upon the execution of such endorsement or instrument duly attested but except, where the transfer or assignment is in favour of the insurer, shall not be operative as against an insurer, and shall not confer upon the transferee or assignee, or his legal representative, any right to sue for the amount of such policy or the moneys secured thereby until a notice in writing of the transfer or assignment and either the said endorsement or instrument itself or a copy thereof certified to be correct by both transferor and transferee or their duly authorised agents have been delivered to the insurer:

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

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

(7) Upon the receipt of the notice referred to in sub-section (5), the insurer shall record the fact of such transfer or assignment together

with the date thereof and the name of the transferee or the assignee and shall, on the request of the person by whom the notice was given, or of the transferee or assignee, on payment of such fee as may be specified by regulations, grant a written acknowledgement of the receipt of such notice; and any such acknowledgement shall be conclusive evidence against the insurer that he has duly received the notice to which such acknowledgment relates.

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

Explanation.— Except where the endorsement referred to in sub-section (1) expressly indicates that the assignment or transfer is conditional in terms of subsection (10) hereunder, every assignment or transfer will be deemed to be an absolute assignment or transfer and the assignee or transferee, as the case may be, will be deemed to be the absolute assignee or transferee respectively.(9) Any rights and remedies of an assignee or transferee of a policy of life insurance under an assignment or transfer effected prior to the commencement of the Insurance Laws (Amendment) Act, 2008 shall not be affected by the provisions of this section.

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

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

(b) the insured surviving the term of the policy, shall be valid: Provided that a conditional assignee shall not be entitled to obtain a loan on the policy or surrender a policy.

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

39. (1) The holder of a policy of life insurance on his own life may, when effecting the policy or at any time before the policy matures for payment, nominate the person or persons to whom the

money secured by the policy shall be paid in the event of his death:

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

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

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

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

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

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

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

(5) Where the policy matures for payment during the lifetime of the person whose life is insured or where the nominee or, if there are more nominees than one, all the nominees die before the policy matures for payment, the amount secured by the policy shall be payable to the policy-holder or his heirs or legal representatives or the holder of a succession certificate, as the case may be.

(6) Where the nominee or if there are more nominees than one, a nominee or nominees survive the person whose life is insured, the amount secured by the policy shall be payable to such survivor or survivors.

(7) Subject to the other provisions of this section, where the holder of a policy of insurance on his own life nominates his parents, or his spouse, or his children, or his spouse and children, or any of them, the nominee or nominees shall be beneficially entitled to the amount payable by the insurer to him or them under sub-section (6) unless it is proved that the holder of the policy, having regard to the nature of his title to the policy, could not have conferred any such beneficial title on the nominee.

(8) Subject as aforesaid, where the nominee, or if there are more nominees than one, a nominee or nominees, to whom sub-section (7) applies, die after the person whose life is insured but before the amount secured by the policy is paid, the amount secured by the policy, or so much of the amount secured by the policy as represents the share of the nominee or nominees so dying (as the case may be), shall be payable to the heirs or legal representatives of the nominee or nominees or the holder of a succession certificate, as the case may be, and they shall be beneficially entitled to such amount.

(9) Nothing in sub-sections (7) and (8) shall operate to destroy or impede the right of any creditor to be paid out of the proceeds of any policy of life insurance.

(10) The provisions of sub-sections (7), (8) and (9) shall apply to all policies of life insurance maturing for payment after the commencement of the Insurance Laws (Amendment) Act, 2008.

(11) Every policy-holder shall have an option to indicate in clear terms whether the person or persons being nominated by the policy-holder is/are a beneficiary nominee(s) or a collector nominee(s):

Provided where the policy-holder fails to indicate whether the person being nominated is a beneficiary nominee or a collector nominee it will be deemed that the person nominated is a beneficiary nominee.

Explanation.—For the purposes of this sub-section,—

(a) the expression ‘beneficiary nominee’ means a nominee who is entitled to receive the entire proceeds payable under a policy of insurance subject to other provisions of this Act; and

(b) the expression ‘collector nominee’ means a nominee other than a beneficiary nominee who is liable to make payment of the benefits arising out of policy to the beneficiary nominee or legal heirs of policy-holders or representative.

(12) The collector nominee shall make payment of the benefits arising out of policy to the beneficiary nominee or legal heirs or representative of the policy-holder in accordance with the regulations made by the Authority.

(13) Where a policy-holder dies after the maturity of the policy but the proceeds and benefit of his policy has not been made to him because of his death, in such a case, his nominee shall be entitled to the proceeds and benefit of his policy.

(14) The provisions of this section shall not apply to any policy of life insurance to which section 6 of the Married Women's Property Act, 1874, applies or has at any time applied:

Provided that where a nomination made whether before or after the commencement of the Insurance Laws (Amendment) Act, 2008, in favour of the wife of the person who has insured his life or of his wife and children or any of them is expressed, whether or not on the face of the policy, as being made under this section, the said section 6 shall be deemed not to apply or not to have applied to the policy."

40. (1) No person shall, pay or contract to pay any remuneration or reward, whether by way of commission or otherwise for soliciting or procuring insurance business in India to any person except an insurance agent or an intermediary or insurance intermediary in such manner as may be specified by regulations.

(2) No insurance agent or intermediary or insurance intermediary shall receive or contract to receive commission or remuneration in any form in respect of policies issued in India, by an insurer except in accordance with the regulations specified in this regard.

(3) Without prejudice to the provisions of section 102 in respect of a contravention of any of the provisions of the preceding sub-sections or the regulations framed in this regard, by an insurer, any insurance agent or intermediary or insurance intermediary who contravenes the said provisions shall be liable to a penalty which may extend to rupees one lakh."

20.3 By way of furnishing the rationale for bringing in the changes as proposed in the Section dealing with assignment and transfer of policies as per Clause 48, the Ministry informed the Committee:

"Assignment of an insurance policy is an instrument to transfer right of one person over the policy to another so that the transferee has the same right or interest as that of the transferor. Currently, Section 38 of the Insurance Act, 1938 provides provisions for assignment and transfer of policies. Sub-sec. (2) sets out that once a transfer or assignment is made in the manner prescribed by sec. 38(1) of the Insurance Act, 1938, the assignment is complete and effectual on the execution of endorsement or by a separate instrument. However, such assignment is not binding as against the insurer unless and until intimation in writing of the assignment has been delivered to the insurer in the prescribed manner. Once the notice is received by the insurer by virtue of sub-sec (4), the insurer is bound to record the fact of transfer or assignment together with

the date thereof and the name of the transferee. Hence, by operation of law, the insurer is bound to accept the transfer or assignment if notice is given to the insurer and the procedure followed. The proposed amendment aims at providing certain safeguards in the case of assignments and the policyholder has to disclose the reasons for assignment, the antecedents of the assignee and the exact terms on which the assignment is made. There will be an obligation upon the insurer to get the credentials of the assignee verified at the cost of the insured. If the insurer is not satisfied that the assignment is bona fide, he may decline to register the assignment and communicate the reasons thereto to the policyholder.”

20.4 On the amendment proposals, a private insurance company (Max New York Life Insurance Co. Ltd.) stated that ‘in case both the insured and the nominee die, the legal heirs of policyholder would be entitled to policy money if nominee is only a collector nominee’. Further, ‘this section provides that the collector nominee shall make payment of the benefits in accordance with the law of succession. It is suggested that there is no need to issue regulations in this regard’.

20.5 When asked to express their views on this suggestion, the Ministry informed the Committee:

“This issue will be discussed with the Ministry of Law and if required necessary amendments may be carried out in the Bill.”

20.6 The insurance company has also suggested that the Bill may specify certain types of assignments, which may not be permitted e.g. those which are speculative in nature and amount to insurance trading, with a view to preventing moral hazard. Responding to this, the Ministry in their written reply, have stated as under:

“The proposed sub section 2 of Section 38 of the Insurance Laws (Amendment) Bill, 2008 provides that an insurer may, accept the transfer or assignment or decline to act upon any endorsement where it has sufficient reason to believe that such transfer or assignment is not bonafide or is not in the interest of the policyholder. This section will empower the insurer to use due diligence to identify assignments/ transfers which are speculative/ or involves moral hazard. In light of the above, it may not be necessary to prescribe the types of assignments that may be allowed/ debarred.”

20.7 The CII, in their memorandum submitted to the Committee made the following suggestions in regard to Section 38:

“In Section 38(2) the words “is not in the interest of the policyholder or in the public interest” are not conclusive and it may not be possible for the insurer to argue whether interests of the Policyholders are violated in a particular case of assignment, hence, we suggest that the above words may be further extended by appending “or for the purpose of trading of policy”, this may expressly prohibit trading of a life insurance policy...

Section 38(5) concludes with the words “whether the policy is being serviced or attached”, as the word ‘attached’ is redundant, misleading and hence, should be removed.”

20.8 As per yet another suggestion of an insurance company, Section 39 (13) of the Insurance Act needs to be reworded as follows:

“Where a policyholder dies after the maturity of the policy but the proceeds and benefit of his policy has not been made to him because of his death, in such a case, the legal heirs of the deceased life assured shall be entitled to the proceeds and benefit of his policy”.

20.9 Asked whether the Ministry expresses agreement with the above mentioned suggestion, the written reply furnished in this regard states as follows:

“the issue of receipt of policy benefits by heirs or the nominee of the policy holder was discussed by LCI and it was of the view that there is a need to draw a clear distinction between a beneficial nominee and a collector nominee. An option may be given to the policyholder to clearly express whether the nominee will collect the money on behalf of the legal representatives or whether the nominee will be the absolute owner of the monies in which case such nominee will be the beneficial nominee. Accordingly it was recommended to add Sub-clause 13 in order to address a conflict between the Indian Succession Act and the nomination facility provided for in insurance policies. However, in case there is any conflict arising out of this amendment, the section may be reworded in consultation with Ministry of Law.”

20.10 Section 40 relating to commission payable to agents is being sought to be replaced by a new section as per which, the commissions payable will now be specified by the Authority by way of regulations. The existing sub-sections are, therefore, not being done away with but are being recast so that there is greater flexibility on part of the Authority to specify commissions which

could vary depending on the product, the line and the sophistication of the market. As per the submission of the Ministry, the power to regulate commissions could contribute to stability in the cost of management across industry and reduce distortions. The objective is to increase competition in the market with corresponding disclosures and inspections to ensure that the policyholders interests are at all times protected. Further, the commission payouts is stated to influence the professional growth of intermediaries, owing to which, the need for regulatory oversight on such payouts is said to arise.

20.11 With regard to the proposed omission of Section 40A, the Life Insurance Agents' Federation of India, in their memorandum submitted to the Committee have expressed the following view:

“The relevant parts of this Section on which we want to draw your attention are **40(2)**.

Sec 40(2) of the Act defines the limit for the commissions payable to the insurance agents on first year premiums and the renewal premiums on policies affected through them.

These Sections are being omitted without any specific substitute section in the proposed Insurance Laws (Amendment) Bill 2008. Whereas the amendment bill has not mentioned specific details in the substitute section on commission limits with this amendment, the statutory protection and guarantee of the commission payable to the agents which is available in the act would be taken away.....by this amendment the class of Agents, and the persistency of the Agency as a career, shall suffer by loosing the statutory protection given to them by the Insurance Act 1938. Consequently the policyholders shall also be victim to this amendment. For these and other reasons, we strongly request to retain Sec 40(2) of the Insurance Act 1938.

Clause 49 of the bill seeks to omit Section 40A of the Insurance Act 1938 so as to omit the provisions relating to limitation of expenditure on commission. This also provides for the payment of commission to insurance agents at the rates specified in the act. By omission of this clause, there is no clarity as to the commission payable to the agents. Further there is no alternate provision made in the proposed bill.

Our views that this section defines the upper limit that any insurance company can spend on commission to their agents and should remain as it is. If this amendment takes place, it will not only demoralise the agency force but also lakhs of agents will be deprived of the statutory protection embedded in the Act. Therefore we strongly request you to retain the section 40A with

Insurance Act 1938 only and the Regulator should not be empowered.”

20.12 The provisions of existing Section 40 (2) of the Act, read as under:

“(2) No insurance agent shall be paid or contract to be paid by way of Commission or as remuneration in any form an amount exceeding, in the case of life insurance business, forty per cent. of the first year's premium payable on any policy or policies effected through him and five per cent. of a renewal premium, payable on such a policy or, in the case of business of any other class, fifteen per cent. of the premium:

Provided that insurers, in respect of life insurance business only, may pay, during the first ten years of their business to their insurance agents fifty-five per cent. of the first year's premium payable on any policy or policies effected through them and six per cent. of the renewal premiums payable on such policies:

Provided further that nothing in this sub-section shall apply in respect of any policy of life insurance issued after the 31st day of December, 1950, or in respect of any policy of general insurance issued after the commencement of the Insurance (Amendment) Act, 1950.

20.13 The Committee note that the amendments proposed to Section 38 and 39 in terms of Clause 48 seek to recognise two types of assignment of policies i.e. absolute and conditional assignment, and two categories of nominees, namely ‘beneficial’ and ‘collector’ nominee. Though the amendment proposals are aimed at providing an additional safeguard to policy holders in case of assignment of policies, concerns have been expressed, inter-alia on possible conflict of the proposed provisions with the law of succession in the event of both the policy holder and nominee(s) passing away. It has also been felt to be essential to specifically provide for prohibiting ‘trading of policies’ in the Act. While the Ministry has sought to address the issue of possible contradiction of the provisions with the Indian Succession Act, the suggestion to specifically provide for prohibiting ‘speculative assignment of policies’ has not found favour on

the ground that the insurers would verify and prevent such assignments. Curbing any attempt to encourage trading of policies being a necessity, the Committee feel that the Act should specifically debar speculative assignments instead of leaving the issue to the discretion of the insurers. The Committee, accordingly recommend that appropriate modifications be carried out in the provisions of Sections 38 and 39 to address the concerns expressed.

20.14 With regard to the amendments proposed to the existing Section 40 (2), which seeks to do away with the stipulations on the percentage of premium payable to the agents as commission, and leave the matter to be decided by way of regulations to be framed by IRDA, serious reservations have been expressed, which, in the opinion of the Committee are not totally unfounded. While the intention of moving the amendment proposals is to enable in effectively regulating commissions, and reduce distortions, the Committee note that the agency force, particularly in the life insurance sector has been, and continues to be a very large self-employed group instrumental in propagating the importance of insurance as a means of social security, and in serving the interest of the policy holders. The Committee are of the view in this regard that the statutory protection on payment of commission to agents should not be done away with. If not the actual quantum of commission entitled for, which could be left to be decided in the regulations, the minimum amount or percentage of premium, the agents would be entitled to as commission could be specified in the Act.

21. Clause 49: Omission of Section 40A of the Insurance Act

21.1 Clause 49 of the Bill, seeks to omit Section 40A of the Insurance Act to omit the provisions relating to limitation of expenditure on commission. Clause 49 reads as under:

“Section 40A of the Insurance Act shall be omitted.”

21.2 Section 40A of the current statute reads as under:

“As per section 40A “No person shall pay or contract to pay to an insurance agent, and no insurance agent shall receive or contract to receive by way of commission or remuneration in any form in respect of any policy of life insurance issued in India by an insurer after the 31st day of December, 1950, and effected through an insurance agent, an amount exceeding.

a. where the policy grants an immediate annuity or a deferred annuity in consideration of a single premium, or where only one premium is payable on the policy, two per cent, of that premium,

b. where the policy grants a deferred annuity in consideration of more than one premium, seven and a half per cent, of the first year's premium, and two per cent, of each renewal premium, payable on the policy, and

c. in any other case, thirty-five per cent, of the first year's premium seven and a half per cent, of the second and third year's renewal premium and thereafter five per cent, of each renewal premium payable on the policy”

21.3 An issue placed before the Committee has been that the proposed omission of Section 40A would be detrimental to the interest of a large number of agents and their source of livelihood. In this regard, the Ministry, in their post evidence submission, furnished the following reply:

“As per Clause 49 the manner of payment and regulation of commission is proposed to be removed from the Insurance Act (Section 40(1) and 40A) and the same is proposed to be prescribed by Regulations to be issued by IRDA. The Insurance Act, 1938 currently prescribes a graded commission payment structure for life companies. It has been felt that more flexibility in the structure of commission payment is required which will help competition. The intention of the proposed clause is to formulate regulations for commission payment to agents for flexibility through an amended Section integrating 40(1) and 40A.”

21.4 On the issue of limits on commission for each policy or overall expenses, an insurance company (Bajaj Allianz Life Insurance Company Ltd.) in their memorandum stated as below:

“The Act continues to prescribe limits on commissions although, under the amendment, this is left to IRDA to decide. The basic issue here is, “should there be limits on each policy or whether IRDA should only regulate overall expenses or commissions?” As millions of policies are issued, despite best efforts by companies, it may not be possible to ensure compliance at each policy level and take compliance risk. The Act therefore should only allow the Authority to prescribe limits on expenses and commissions at aggregate levels by lines or classes of business or for the insurer in its entirety. The regulator may be empowered to ask for disclosure of commissions to policyholders in lieu of per policy limits. An alternate view would be to dispense with regulated limits on expenses and commissions altogether and leave it to the Board of Directors of the companies to decide. This would mean deleting sections 40, 40A of the Act.”

21.5 When queried on this issue, the Ministry, in a written reply clarified by stating as below:

“The objective of any regulation in this regard is to increase competition in the market with corresponding disclosures and inspections to ensure that the policyholder’s interests are at all times protected. The power to regulate management expenses including commission could contribute to stability in the cost of management across industry and reduce distortions. The limit of expenditure which may be prescribed would vary depending on the product, the line and the sophistication of the market.

Further, the power to prescribe a limit on the expenses of management should be provisioned for in the Bill with IRDA being suitably empowered to specify the limits on expenses in the regulations framed by it. If the Committee recommends the relevant provisions will be incorporated in consultation with Law department.”

21.6 The Committee note that the proposal to omit a Section 40A, which stipulates the maximum amount of commission payable to an insurance agent on different types of life insurance policies, i.e. a policy with immediate annuity or a deferred annuity with single premium, renewal premium etc., is intended to effectively empower IRDA to monitor payment

of commission. However, in line with the observation made on the amendment proposals of Clause 48 [Amendment of Section 40(2)], the Committee feel that the statutory protection presently provided on payment of commission to agents should not be done away with. The Committee, therefore, desire that the existing provisions of Section 40A are suitably modified to provide for guaranteed payment of commission to the agents for different classes of business, and empower IRDA to frame detailed regulations inter-alia with a view to bringing in transparency in commission payments. This would also be in the interest of the policy holders.

21.7 The Committee also note from the submissions of the Ministry that the Act, at present, does not adequately empower IRDA to prescribe limits on the expenses of management of an insurance company. The Committee, in this regard, express agreement with the proposal made by the Ministry for incorporating suitable provisions empowering the IRDA to specify the limit on management expenses of insurance companies.

22. Clause 51: Prohibition of rebating (Amendment of Section 41 of the Insurance Act, 1938)

22.1 Clause 51 seeks to substitute sub-section (2) of Section 41 of the Act with the objective of raising the penalty so as to make it an effective deterrent against rebating. The amendment proposals under the Clause provide as under:

“In section 41 of the Insurance Act, for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) Any person making default in complying with the provisions of this section shall be liable for a penalty which may extend to five lakh rupees.”.

22.2 Life Insurance Agents Federation of India has expressed the following view with regard to the proposed amendment:

“From the date of commencement of this Act, there has not been a single case to be punished under this Section. On the contrary it has created a lot of misunderstanding among agents and policy holders, hence we propose that instead of penalty some other way out should be found to stop rebating like making agency a full time profession.”

22.3 In this regard, CII in their memorandum have argued for making rebating legal. The suggestion made reads as follows:

“As many insurance companies today have a direct selling channel through web, call centre or otherwise, it should be permissible for the companies to pass on the commission (part or full) built into the product to the policyholder as this is in the interest of the policyholder. Similarly, as it is the discretion of an agent whether to further provide the share of his commission to another person, it is submitted that the same be legalized and the prohibition of rebates be removed for both companies and agents.”

22.4 Asked to furnish their comments, the Ministry in one of their written replies submitted as below:

“The objective of raising the penalty is to prevent prospects from being lured into buying insurance policies by financial allurements. The prospect should understand his need and take an insurance policy based on his requirement rather than purchasing insurance policies for other considerations. Therefore it will not be proper to allow the agent to share the commission he earns which he may use to sell policies which do not meet the prospect’s requirements. The penalty may be made more stringent in case Committee recommends or make any suggestion to stop rebating.”

22.5 The Committee note that while the amendments proposed to section 41 in terms of Clause 51 seek to enhance the penalty applicable in cases where policies are sought to be sold to prospective customers not on the basis of the virtues of the policies as such, but through monetary incentives, a case has also been made out for legalizing ‘rebating’, that is, sharing of agent’s commission with others. The Committee are of the view that selling insurance policies by way of financial allurements is unethical, and the practice needs to be effectively deterred. The Committee, therefore, express agreement with the proposal to raise the penalty in such cases to Rs. 5 lakh. The Committee would also suggest that the adequacy of the penalty amount proposed to serve as a deterrent be re-assessed and the amount enhanced, if felt necessary.

23. Clause 52: Regulation of appointment of insurance agents by insurers in respect of eligibility, disqualification and other aspects. (Amendment of Section 42 of the Insurance Act)

23.1 Clause 52 seeks to substitute section 42 of the Act to regulate the appointment of insurance agents by insurers in respect of eligibility, disqualification and other aspects.

23.2 The existing Section 42 of the Insurance Act empowers the Authority or an officer authorized by it in this behalf to issue license to act as an insurance agent in the manner determined by regulations made by it.

Clause 52 of the Bill reads as under:

For Section 42 of the Insurance Act, the following section shall be substituted, namely:—

"(1) An insurer may appoint any person to act as insurance agent for the purpose of soliciting and procuring insurance business:

Provided that such person does not suffer from any of the disqualifications mentioned in sub-section (3).

(2) No person shall act as an insurance agent for more than one life insurer and one general insurer.

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

(a) that the person is a minor;

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

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

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

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

(e) that in the case of an individual, who does not possess the requisite qualifications or practical training or passed the examination, as may be specified by the regulations;

(f) that in the case of a company or firm making, a director or a partner or one or more of its officers or other employees so designated by it and in the case of any other person the chief executive, by whatever name called, or one

or more of his employees designated by him, do not possess the requisite qualifications or practical training and have not passed such an examination as required under clauses (e) and (g);

(g) that he has not passed such examination as may be specified by the regulations;

(h) that he has violated the code of conduct specified by the regulations.

(4) Any person who acts as an insurance agent in contravention of the provision of this Act, shall be liable to a penalty which may extend to ten thousand rupees and any insurer or any person acting on behalf of an insurer, who appoints any person as an insurance agent not permitted to act as such or transacts any insurance business in India through any such person shall be liable to penalty which may extend to one crore rupees."

23.3 The K P Narsimhan (KPN) Committee, in paragraph 7.9 of its report has observed, that in reference to Section 42 of the Insurance Act, 1938, the present system of licensing of insurance agents by the IRDA has served no useful purpose. Therefore, the Committee recommended amending the provisions.

23.4 Suggestions placed before the Committee by the insurers (ICICI Lombard General Insurance, Cholamandalam MS General Insurance Companies Ltd.) as well as the General Insurance Council, on this clause, are stated as below:

- “(i) In view of the fact that insurance companies are vicariously liable for the acts of its agent, it is suggested that complete freedom should be given to insurance companies for issues relating to appointment, training and commission etc. for its agents. Further requirement for training should be removed for pre underwritten products and Insurers should be allowed to choose agents based on its own criteria's. A reference may be made in the preamble of the act to the report of the Goverdhan Committee to facilitate the structure of insurance intermediation and distribution as recommended by the committee. Further in view of the fact that when an agent mis-sells a policy the insurance company is not absolved of its liability under the policy so issued, proposed penalty is quite stringent on insurance companies and would not serve any constructive purpose and should be removed.
- (ii) Proposed clause 52 (2) restricting one insurance agent for one life insurer and one general insurer may be relaxed at least to the extent that one bank can be an agent for more than one health insurer or in respect of term life only etc. Specifically this section may be relaxed for bank, who can distribute any number of mutual funds. Such restriction for one agency for Banks may affect the penetration of insurance sector in India. It is also possible to restrict agents to handle specific lines of business for different insurers.
- (iii) The role of agents to work for single / multiple insurers should be left to regulations to be framed by IRDA.”

23.4 In this regard, the Ministry, in their written reply have informed that a Committee has been formed by IRDA to consider the issues involved in entirety.

23.5 Suggestions received from others as well (CII, National Federation of Insurance Field Workers of India and Shriram Life Insurance Company Limited), in this regard, state as under:

- (i) Though insurance companies have been given right to grant license to insurance agents, however in view of the fact that insurance companies are vicariously liable for the acts of its agent, it is suggested that complete freedom should be given to insurance companies for issues relating to appointment training and commission etc. for its agents. Further requirement for

training should be removed for pre-underwritten products and Insurers should be allowed to choose agents based on its own criteria's. A reference may be made in the preamble of the act to the report of the Goverdhan Committee to facilitate the structure of insurance intermediation and distribution as recommended by the Committee, so that at the time of conflict a reference/interpretation of intent can be drawn from the report of the Committee.

- (ii) There is a proposal to allow the Insurer to appoint agents. This will lead to unregulated appointments. Therefore the present provision of 'Licensing of Insurance agents by the Authority or an officer authorized by it' should remain . Otherwise it will dilute the system of licensing and lead to complaints. In view of this the omission in Clause (10) under Section 2 should not be done. Clause (10) should remain as it is. Hence submission proposed in Section 42(D) of the section should also be changed."
- (iii) Clause 52 seeks to amend Section 42 which pertains to the appointment of insurance agents. Earlier the rule was that the agent who is appointed by the company should acquire the requisite qualification like training and passing the test within a period of one year of appointment. This condition was changed in the year 2000 and passing the test and training became a pre-condition for becoming an agent. This prompted a large bank of insurance agents who are good students, pass the examination fast and take up agency license but they failed totally in the sales front and got their agency terminated, thus increasing the number of termination of agents. The previous condition of allowing one year time to acquire this qualification was better since the insurance company would have utilized this time for judging whether the person concerned would be a good insurance salesman and then only would have nominated him for the required training and test. The persons possessing insurance qualification from Insurance Institute of India (III) or Institute of Insurance and Risk and Management (IIRM) can be exempted from this requirement of practical training/test for the purpose of becoming a agent, because the above mentioned qualification allow the persons to acquire the knowledge of all that is covered in the syllabus of pre-licensing examination."

23.6 The response / clarification furnished by the Ministry on the issues raised reads as under:

"In the Bill, the appointment of agents is proposed to be done by insurance companies subject to the agents meeting the qualifications specified by IRDA. Further, under the existing legislation, IRDA is empowered to take disciplinary action against agents under Section 42(4) of the Insurance Act, 1938 which is essentially to protect the policy-holders interests. With the

amendment in the Bill proposing appointment of agents by the insurance companies, it is necessary to empower the Authority to penalize the companies in the event their agents do not abide by the Code of Conduct. If the Committee agrees, we may incorporate the same in consultation with ministry of Law.”

23.7 Licenses of Agents/Corporate Agents are issued by the Insurers as per the provisions of Section 42 of Insurance Act 1938 and IRDA (Licensing of Insurance Agents) Regulations, 2000, IRDA (Licensing of Corporate Agents) Regulations, 2002 and various circulars/guidelines issued in this respect. As per procedure the Insurer sponsors the candidates to attend 50 hours mandatory training from an accredited institute (in-house, private, online offline) who then appears for examination conducted by the Insurance Institute of India at about 150 offline and 150 online locations. After successful completion of the examination, the candidate after paying Rs.250/- to the Insurer may be issued Agency license.

23.8 On the issue of training imparted to agents an insurance company (ICICI Lombard General Insurance Company Limited), in their memorandum submitted to the Committee, stated as follows:

“Insurance agents solicit business on behalf of Insurance Companies and derive commission for the same subject to prescribed Statutory/Regulatory cap. Insurer is held responsible for all the acts, deeds and thing done by the Insurance agent. Training and licensing of the Insurance Agents are governed under the Insurance Act, 1938. Insurance Regulatory and Development Authority (IRDA) in the year 2007 had constituted a committee namely Goverdhan Committee (Chaired by Mr. N.M Goverdhan, former Chairman of LIC of India), to recommend effective modes and modalities of insurance distribution in India. As per the recommendations of the Goverdhan Committee categorization of agents may be done with varying level of training and licensing requirements. General insurance products are either simple and standardized products (such as motor, PA etc.) or are too complicated (engineering, liabilities, credit etc.). Instead of generalized training, specialized training may be prescribed only for persons opting for distributing complicated products. There is no training requirement for those who distribute off the shelf standardized products. The responsibility of training and licensing may be trusted with the Insurers who is ultimately responsible for the act of the agent. Recommendations of Goverdhan Committee may be implemented on categorization of insurance agents.”

23.9 Asked about the methodology followed by IRDA in the matter of imparting training to prospective Agents, conducting qualifying test/examinations for Agents and their absorption by Insurance Companies, the Ministry, in a written submission, stated as follows:

“The training facility is available both online and offline. On 14th October 2010, 2446 in-house accredited centers (Insurers) and 519 private centers totaling to 2965 are available as off line centers. For on-line training 17 web sites have been accredited which includes 2 in-house portals (Insurers). The online Agent Training Institutes (ATIs) are given accreditation for one year whereas the offline ATIs are given three years. In view of the complaints received against online training institutes that they are generating training certificates from backend of the server without giving requisite training to the candidates, we are constrained to renew the accreditation only for one year to monitor them very closely.

At present the training course for pre-recruitment examination for agents has been compiled by Insurance Institute of India, which is available in their book IC-33 for Life Insurance and IC-34 for General Insurance. These books are based on the syllabus prescribed by IRDA. IRDA proposes to take the services of CII London for further development of this course.

IRDA has notified guidelines for imparting accreditation to Agent Training Institutes and on the basis of the same the accreditation is granted. In October 2007, the mandatory training hours for prospective agents were reduced from 100 to 50 hours. In view of this the accreditation to private Training Institutes was stopped. The in-house ATI continue to get the accreditation. The revision of offline training guidelines is under process, whereas the guidelines for online training which were first notified on 24 May 2005 have been revised on 1st June 2010. The validation of offline is for three years at present and for online the same is for one year. The new guidelines for online ATIs are under examination and therefore validity of the present accreditation for online Training Institutes was extended till 30th June, 2011.

Insurance Institute of India (III) is a professional body established in the year 1995 and the governing body of the III is nominated by the public sector insurers. The III was recognised as the ‘Examination Body’ by the IRDA under IRDA (Licensing of Insurance agents) Regulations, 2000 for conducting ‘pre recruitment examination’ (PRE). The III was taking assistance of National Stock Exchange (NSE), which was promoted by public sector financial institutions and conducting online financial certification modules, in conducting on-line PRE since 2001. NSE is replaced by NSE-IT, which is a wholly owned subsidiary of NSE, to support III in conducting on-line PRE from the year 2006. In view of the malpractices observed at the on-site locations of private institutions conducting on-line PRE,

it was decided by III in the year 2006 that only NSE-IT services would be utilised in conducting on-line PRE. In view of the malpractices observed at the off-line PRE locations, it was decided by III in the year 2007, in consultation with IRDA, to move completely to on-line basis of conducting PRE to minimise scope of malpractice. In this regard IRDA has set a time limit of 31-03-2011 to III and NSE-IT to shift to on-line basis of conducting PRE completely.”

23.10 On Section 42 (4) of the Insurance Act, the Law Commission of India, has inter-alia recommended that the nationality of the person should be expressly mentioned as a requisite qualification for becoming an insurance agent. Responding to a question posed in this regard, the Ministry in a written submission, stated as follows:

“This issue can be addressed by the IRDA while framing regulations under the relevant provisions of the Act.”

23.11 Regulation 3(2) of the IRDA (Licensing of insurance agents) Regulations, 2000 deals with issue or renewal of license to insurance agents. The Law Commission has also stated that Regulation 3 (2) must provide that in addition to satisfying the requisite qualification, licence would be issued only if the person does not attract any of the disqualifications under Section 42 (4). In this regard, the Ministry, in their written submission, have assured that these ‘suggestions would be taken care of while framing the regulations’.

23.12 Asked whether failure on the part of insurance agents to render necessary assistance to the policyholders or claimants of beneficiaries in complying with the requirements for settlement of claims by the insurer could be incorporated as a condition/reason for suspension/ cancellation of licence, the Ministry, in their written reply, submitted as under:

“Presently the appointment of agents is proposed to be done by insurance companies subject to them meeting the qualifications specified by the IRDA. Further, under the existing system, the IRDA is empowered to take disciplinary action against agents if their actions violate the specified code of conduct, which is essentially to protect the interest of the policyholder. With the amendment in the Bill proposing appointment of agents by the insurance companies, if the committee recommends, the Authority may be empowered to apply stringent penalties on the companies’ management in the event their agents not abiding by the code of conduct. We may make necessary changes in the Bill to provide for stringent penalties on insurance companies to meet such exigencies. The

relevant sections will be amended in consultation with the Ministry of Law.”

23.13 The LCI had recommended that it would be appropriate to amend Section 42 (5) to provide that a designated person authorised by the IRDA can exercise the power to cancel a licence. Any person aggrieved of the decision could file an appeal against such cancellation to the appropriate authority. Regulation 9 of the IRDA (Licensing of insurance agents) Regulations, 2000 is required to be amended to empower the designated officer to cancel the licence of an agent who deliberately contravenes the provisions of the Act. The Ministry in this regard, has informed that the matter would be ‘taken care of by the IRDA at the time of framing regulations’.

23.14 Reservations have been expressed, both by the insurance companies, and the agents’ associations on the amendment proposals of Clause 52, which inter-alia seek to empower the insurance companies to appoint agents and do away with the system of licensing of agents by the regulator, IRDA. While the insurance companies have sought to be empowered not only to appoint agents but also to be provided with the freedom to address issues relating to training, payment of commissions etc., as per the agents’ associations, appointment of agents by the insurers would dilute the system of licensing and lead to complaints. The issues raised before the Committee in regard to appointment and training of agents centre inter-alia on providing complete freedom to insurance companies in appointing, training, payment of commission etc., doing away with the system of one insurance agent/agency for one insurer, implementation of the recommendations of the Goverdhan Committee on the modes and modalities of insurance distribution etc. As informed, a separate Committee has been constituted by the IRDA to address these

issues. As observed by the K.P Narsimhan committee, and as is also evident from the submissions made before the committee, the existing system of training and licensing of agents is mired with serious shortcomings, which need to be addressed. The Committee are of the view in this regard that the existing system of registration of agents needs to be overhauled inter-alia with a view to holding the insurers liable for the acts of agents and instill responsibility on the agents in ensuring better distribution of products, increasing awareness, and curbing misselling so as to be in the interest of the policy holders. It would also be essential to restructure the existing system of training in the light of the need for appropriately assessing the capability of agents in selling different types of insurance products suited to the necessities of the customers. The Committee, while desiring that suitable measures are taken towards this end would, nevertheless, also point out that doing away with the role presently played by IRDA in the matter of qualifying and granting licences to insurance agents, as proposed, is inappropriate and fraught with the danger of leading to ineffective regulation of the profession, particularly in instances of unscrupulous act on the part of the agents as also insurance companies. The Committee, therefore recommend that the provisions of Section 42 are revised inter-alia with the purpose of not doing away with the role presently being played by IRDA in licensing and cancelling the licenses of insurance Agents.

23.15 The Committee also note that the Law Commission had recommended modifying the existing regulations of IRDA to clearly provide for issuing licenses to Agents only after ascertaining the fulfillment of the

qualification criteria, and empowering the designated officer of IRDA to cancel an Agent's license in the event of contravention of the provisions of the Act. The Committee expect that the recommendations of the Law Commission are duly addressed by carrying out appropriate changes in the regulations.

24. Clause 53: Omission of Section 42A, 42B and 42C relating to regulation of principal agents, chief agents and special agents

24.1 Clause 53 seeks to omit sections 42A, 42B and 42C of the Act relating to registration and regulation of principal agents, chief agents and special agents.

24.2 Clause 53 of the Bill reads as under:

“Section 42A, 42B and 42C of the Insurance Act shall be omitted.”

24.3 Section 42A, 42B and 42C deal with aspects relating to registration and regulation of employment of principal agents, chief agents and special agents.

24.4 In their memorandum submitted before the Committee, National Federation of Insurance Field Workers of India, has expressed views against proposed Clause 53, stated as below:

“The amendment to Section 42A which was done in 2002, went a step further to curb the unethical functioning in the form of Multi Level Marketing. Under Sec 42A an important amendment was inserted vide Sub Section 9 – ***‘No Insurer shall, on or after the commencement of the Insurance (Amendment) Act 2002 appoint or transact any insurance business in India through any Principal Agents, Chief Agent, Special Agent.’*** This part of the Section 42A needs to be retained in order to stop the unethical activity of procuring Insurance business through multi level marketing and through unfair means. Insurance agency has been developed to procure life Insurance business and render professional service. In the absence of this specific clause, the law would not stop the appointment of Principal, chief agents and special agents paving the way for exploitation of agents unsupervised sales force, creating instability due to contractual system of working and non accountability (Company will blame the agents and will not own up any accountability). In most private

companies and LIC today, even when Section 42A is in place the insurers have been appointing Principal Agent/Chief Agent/Special Agent by camouflaging the names and agency scheme. If these provisions are omitted the Insurers will have a field day and the ultimate sufferers will be the hapless policyholders and agents. The Chief Life Insurance Advisor (CLIA) Scheme of LIC is one such camouflaged scheme in blatant violation of Section 42 A of Insurance Act. Through this scheme the Agents have appointed their spouse and Children as their supervised agents and diverting their procured insurance business in order to earn extra commission facilitated by the CLIA Scheme. The scheme of Chief Life Insurance Advisor 2008 is contrary to the law of land, unfair, unethical and non tenable in the eye of law and in total violation of the spirit of the Amendment in Insurance Act of 1938, brought out in 2002.”

24.5 Questioned whether the Ministry agree with the views expressed, in their written reply, the Ministry stated as below:

“The system of principal agents, chief agents and special agents is no longer in vogue and hence the relevant sections were proposed to be deleted.”

24.6 Asked to detail the measures taken to curb the practice of chain marketing arrangements followed by insurance companies, particularly in the recent years, the Ministry in a written submission, stated as below:

“Some of the corporate agencies and referrals are operating on Multi-Level Marketing (MLM) model. In insurance, MLM companies are operating under the guise of corporate agencies and referrals through different names. They are engaging independent, unsalaried sales people and unregulated firms in insurance in a chain system to procure and solicit insurance business. MLM is growing insidiously in the Indian Life Insurance market destroying the credibility of the industry and the viability of legitimate distribution channels In view of this the IRDA has conducted On-Site Inspections and initiated disciplinary proceedings against the 10 corporate agents, one channel development associate and 3 insurers.

In order to streamline the process of licensing of corporate agents IRDA has laid down that the Insurer should submit a checklist and compliance certificate to the IRDA and obtain prior approval of the IRDA before granting and renewing the corporate agency licenses. Since 24th June, 2010 IRDA has accorded prior approval for grant/renewal to 25 applicants out of 46 applications received. In all other cases renewal has been refused on various grounds. The IRDA also issued a circular no. IRDA/CAGTS/CIR/LCE/093/06/2010 dated 7th June, 2010 in terms of which all the insurers are directed

to inspect its corporate agents before 30th September, 2010 and to submit a copy of inspection report to the IRDA. The IRDA will analyse reports received by Insurers and initiate action against those who are found to have violated the provisions of Insurance Act, 1938, IRDA (Licensing of Corporate Agents) Regulations, 2002, guidelines and circulars issued in this regard.”

24.7 The Committee note that the amendments proposed under Clause 53 are intended to omit Section 42A, B and C of the extant Act, which deal with registration and regulation of Principal agents, Chief agents and Special agents, a practice which has been debarred with the amendments made in the Act in 2002. While the Ministry has sought to justify the dropping of the provisions, as the system is no longer in vogue, as per the agents associations, the practice continues to be prevalent, albeit surreptitiously. The Ministry has also admitted that ‘Multi Level Marketing (MLM) is growing insidiously in the Indian Life Insurance market and destroying the credibility of the industry and the viability of legitimate distribution channels’. In the light of the Ministry’s own submission on this practice, which is a bane for the insurance sector, the Committee express the opinion that it would be appropriate to build in appropriate provisions in the statute for effectively deterring such practices.

25. Clause 54: Issue of license to intermediary or insurance intermediary (Amendment of Section 42D of the Insurance Act)

25.1 Clause 54 seeks to amend section 42D of the Act to provide for registration in place of licensing of intermediary or insurance intermediary by the Authority.

25.2 The provisions of Clause 54 of the Bill are as under:

In section 42D of the Insurance Act,—

(i) For the words "licence" and "licence issued", wherever they occur, the words "registration" and "registration made", shall respectively be substituted.

(ii) in sub-section (1), in clause (a) of the proviso, for the word, brackets and figure "sub-section (4)", the word, brackets and figure "sub-section (3)" shall be substituted;

(iii) in sub-section (3), for the words, letters, brackets and figures "in clauses (b), (c), (d), (e) and (f) of sub-section (4) of section 42", the following shall be substituted, namely:—

'in clauses (b), (c), (d), (e) and (g) of sub-section (3) of section 42.'

25.3 By way of giving the rationale for seeking to amend Section 42D of the Act, the Ministry in a written submission stated as below:

"42D of the Act has been amended to provide for registration of insurance intermediaries as defined in sec 2(f) of the IRDA Act. It has also been proposed that IRDA Act be amended to include agents in the definition of intermediaries in the IRDA Bill. It is absolutely essential that these intermediaries are properly regulated by a system of registration by the Authority. About 40% of the general insurance business is conducted through insurance intermediaries and 16% of the life insurance business is conducted by insurance intermediaries and therefore they need to be regulated."

24.4 A private insurer (Bharti Axa Life Insurance Company Ltd) has, in their written memorandum furnished to the Committee stated as below:

"Section 42D is applicable to all intermediaries including insurance agents. The word "intermediary" has been amended to include insurance agents. Since the provisions on appointment of agents are covered under section 42, insurance agents may be exempted from the provisions of section 42D. Otherwise there will be duplication of provisions for insurance agents."

25.5 Questioned on the issue raised, the Ministry furnished the following written reply:

“The appointment of agents is proposed to be done by insurance companies subject to them meeting the qualifications and complying with the code of conduct specified by the IRDA. Section 42D provides registration of all intermediaries including the agents. In view of the suggestion given above, we may delete the reference of agents in the definition of intermediaries under section 2 of the Insurance Regulatory and Development Authority Act, 1999. However, corporate agents be included in the definition of intermediaries and they be required to be registered under section 42 of Insurance Act. Necessary amendments may be carried out in the relevant sections in consultation with the Ministry of Law. “

25.6 Sub-sections (8) & (9) of Section 42D of the Insurance Act read as under:-

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

(9) Where the person contravening sub-section (8) is a company or a firm, then, without prejudice to any other proceedings which may be taken against the company or firm, every director, manager, secretary or other officer of the company, and every partner of the firm who is knowingly a party to such contravention shall be punishable with fine.”

25.7 The Law Commission of India had, in their 190th Report, recommended that the details of the fine that could be imposed also need to be specified in the Act. Replying to a query posed in this regard, the Ministry, in their written submission, stated as under:

“In terms of the proposed section 42(4) of the Bill, in case of contravention of the provisions of the Act, an insurance agent is liable to a penalty which may extend to rupees ten thousand and any insurer or a person acting on behalf of a insurer who appoints a person as an insurance agent not permitted to act as such or who transacts any insurance business in India through such a person, is in turn liable to a penalty which may extend to rupees one crore. On the same principle, if the committee recommends, penalties be imposed on the insurance intermediary and the insurer. The

necessary amendments to the relevant clauses will be made in consultation with the IRDA and the Ministry of Law.”

25.8 The Committee note that the amendments proposed to Section 42D in terms of Clause 54, which seek to provide for registration of insurance intermediaries is inconsistent to the extent that it covers agents as well. As per the amendments proposed separately under the Clause 52 (Amendment of Section 42), the process of registration of insurance agents has been sought to be done away with, and the insurance companies bestowed with the power to appoint agents. In this regard, the Committee has recommended reviewing the amendments proposed to Section 42 with a view to continuing with the role presently played by IRDA in the matter of registration/licensing of Agents. The Committee, therefore, desire that the amendments proposed to Section 42D to provide for registration of insurance intermediaries are finalised in the light of these observations made earlier. The Committee also expect that the recommendation of the Law Commission for specifying the fine that would be applicable on the insurance intermediaries as well as the companies for violation of the provisions of Section 42D, which has not been covered in the amendment proposals, is suitably addressed.

26. Clause 56: Record of insurance agents (Amendment of Section 43 of the Insurance Act)

26.1 Clause 56 seeks to substitute section 43 of the Act to enable the insurers to keep the records electronically.

26.2 The amendments proposed, *vide* Clause 56 of the Bill, provide for the following:

For Section 43 of the Insurance Act, the following Section shall be substituted, namely:—

"43. (1) Every insurer and every person who acting on behalf of an insurer employs insurance agents shall maintain a record showing the name and address of every insurance agent appointed by him and the date on which his appointment began and the date, if any, on which his appointment ceased.

(2) The record prepared by the insurer under sub-section (1), shall be maintained for a period of five years."

26.3 When pointed out that this Clause does not appear to enable for maintenance of records in electronic form, the Ministry, in their written submission, stated as below:

"The Law Commission had recommended that the register of insurance agents should also be maintained in electronic form and that the word 'register' be substituted with the word 'record' to encompass both register and records in the electronic form. However, as the Authority felt that maintenance of records only in the electronic form could leave scope for manipulation of record, it is proposed that the section be amended with the marginal noting as "Record of insurance agents" which would clearly indicate that the insurance companies are not necessarily mandated to keep the records of the agents in electronic form only but that they are able to maintain the register of agents in electronic form also."

26.4 Further a suggestion has also been received from Insurance Brokers Association of India, regarding maintenance of records of agents, which states as follows:

"the records under subsection (1) shall be maintained for five years.It can be stated that the records are to be maintained for a period of 5 years from the date he/she ceases to be an agent."

26.5 In this regard, the Ministry, in a written reply, stated as below:

"This suggestion can be accepted and the clause can be amended to add the words "from the date of cessation" after the words "five years" in consultation with the Ministry of Law."

26.6 The Committee expect that the amendment proposed to Section 43 of the Act (Clause 56) is suitably modified to specify that the records of agents are to be maintained for a period of five years 'from the

date of cessation' of the engagement of an agent by an insurance company.

27. Clause 57: Omission of Section 44 relating to prohibition of cessation of payments of commission.

27.1 Clause 57 of the Bill seeking to omit Section 44 of the Act relating to prohibition of cessation of payments of commission to agents states as under:

“Section 44 of the Insurance Act shall be omitted.”

27.2 Provisions of Section 44 of the existing Act, read as below:

“(1) Notwithstanding anything to the contrary contained in any contract between any person and an insurance agent, providing for the forfeiture or stoppage of payment of renewal commission to such insurance agent no such person shall, in respect of life insurance business transacted in India, refuse payment to an insurance agent of commission due to him on renewal premium under the agreement by reason only of the termination of his agreement, except for fraud:

Provided that—

(a) such agent ceases to act for the insurer concerned after the Central Government has notified in the Official Gazette that it is satisfied that the circumstances in which the said insurer is placed are such as to justify the agent's ceasing to act for him; or

(b) such agent has served the insurer continually and exclusively in respect of life insurance business for at least five years and policies assuring a total sum of not less than fifty thousand rupees effected through him for the insurer were in force on a date one year before his ceasing to act as such agent for the insurer, and that the commission on renewal premiums due to him does not exceed four per cent. in any case; or

(c) such agent has served the insurer continually and exclusively for at least ten years and after his ceasing to act as such agent he does not directly or indirectly solicit or procure insurance business for any other person.

Explanation.— For the purposes of this sub-section, service of an insurance agent under a chief agent of the insurer, whether before or after the commencement of the Insurance (Amendment) Act, 1950, shall be deemed to be service under the insurer.

(2) Any commission payable to an insurance agent, under the provisions of clauses (b) and (c) of the proviso to sub-section (1) shall, notwithstanding the death of the agent, continue to be

payable to his heirs for so long as such commission would have been payable had such insurance agent been alive.

44A. For the purposes of ensuring compliance with the provisions of sections 40A, 40B, 40C, 42B and 42C the Authority may by notice—

(a) require from an insurer, principal agent, chief agent or special agent such information, certified if so required by an auditor or actuary, as he may consider necessary;

(b) require an insurer, principal agent, chief agent or special agent to submit for his examination at the principal place of business of the insurer in India any book of account, register or other document, or to supply any statement which may be specified in the notice;

(c) examine any officer of an insurer or a principal agent, chief agent or special agent on oath, in relation to any such information, book, register, document or statement and administer the oath accordingly, and an insurer, principal agent, chief agent or special agent shall comply with any such requirement within such time as may be specified in the notice.”

27.3 The suggestions made by Life Insurance Agents Federation of India, National Federation of Insurance Field Workers of India as also an expert, on the omission of section 44, as proposed, are stated as below:

“Section 44 was introduced in the Insurance Act, 1938:

(i) **44 (1)**, apparently to protect the Agent from losing his earned but deferred income and inserting subsections (a), (b) and (c) to protect the Insurers from the liability of payment of renewal commission not before the latent period of 5 years.

(ii) **44(2)**, apparently to protect the heirs of the Agent from losing their rights to the renewal commission.

The reminiscence of the deletion of this Sec 44 shall be felt by the country in the year 2020-25, when we are destined to be the 3rd growing economy behind USA and CHINA. The economic prosperity shall come with its own problems of intra mismatch, big population, high unemployment etc. We shall be a Democratic country of 150 crore people of which about 50 crore shall be in the impatient age group of 20-30 and seeking for employment. We advocate for the **Insurance Agency as a whole time career and as a respectable source of employment**, provided the profession gets protection by such Sections as Sec 44 and the Govt takes other measures towards professionalizing the Agency Career (for which we have a separate panel of people working on the scheme).

We strongly request you to stop the omission of the Sec 44 of the Insurance Act 1938 and scrap the Clause 57 of the Insurance Laws Amendment Bill, 2008.”

- (iii) There is a proposal to omit this Section. This omission of Section 44 of Insurance Act will deprive the agents of their hard earned commissions. This will encourage companies to even withhold commissions by terminating the agents on flimsy grounds. This was the style of functioning of many companies prior to Nationalisation. This will lead to exploitation of work force who have to work on commissions after spending and ensuring productivity. In order to protect the Insurers interest it can be added that if an Agent joins another Insurer then the Renewal commissions can be stopped.

Based upon a few decades of experience, Section 44 was introduced in 1950 as a measure to give partial protection to the renewal commission of agents. It is now proposed to drop this Section, based on just two years' experience. There does not appear to be any logic behind this step which would only show the IRDA, in poor light. The Regulator has not only to be strictly impartial between different sections of the industry, but should also appear to be so. This move, to withdraw the protection provided to agents, is sure to affect the image of impartiality.

Another aspect has also to be noted. The number of agents just dropping out is many times greater than the number of agents moving from one company to another. If the companies, which complain about their agents being lured away by rival companies, take proper action to prevent drop out of agents, there would be no need to worry about a few agents moving to rival companies. The problem of 'agency drop out' is to be tackled by the IRDA, with the cooperation of all companies, not by amending the insurance Act.

With the Bill seeking to omit the entire section, the protection given to the family of the deceased agent, in the form of hereditary commission, also gets removed. So the proposed amendment is not only unfair, but will not also stand the test of law."

27.4 Responding to the above suggestions, the Ministry in one of their replies stated as below:

"As per Clause 48 of the Bill Section 40 will provide for regulations to be framed by IRDA on commissions paid and received. In view of this it was considered necessary to omit section 44 which provided for the manner of cessation of payment of commissions or remuneration. This will be taken care of by the regulation to be framed by IRDA as per Section 40."

27.5 While deposing before the Committee, a representative of the Life Insurance Agents Federation of India, submitted as follows on the proposed changes on issue of appointment, training and commission of agents etc.:

“There are certain provisions, especially, Section 40, 41, 44 and 45 and it is not to be delegated to anybody else. We have seen in the last 10 years of privatization about the regulation as to how it is misused and misinterpreted. We have full faith that whenever a regulator wants any change in the regulation or agent condition or commission, then they are always welcome in Parliament. Let this responsibility be only with the Parliament. We have seen it in only 10 years, and we do not know what will happen in the next 15 years...Today about Rs. 20 thousand crore of LIC commission plus fate of 30 lakh insurance agents will be vested in some individual body, which is not safe. This is what we feel about it.”

27.6 The Committee find substantial credence in the submissions of the agents’ association that the proposal to do away with section 44 of the Act, which guarantees payment of commission / renewal commission to agents, or their legal heirs leaves the possibility of working against the interest of the large number of agents in the Country. The Committee, therefore, express the view that the matter should not be totally left to be dealt with under the regulations, and the statutory safeguard on payment of commission to the agents and their legal heirs should be continued with.

28. Clause 58: Policy not to be called in question on ground of misstatement after five years (Amendment of Section 45 of the Insurance Act)

28.1 Clause 58 seeks to substitute sections 44A and 45 of the Act to provide that no policy of life insurance shall be called in question on any ground after the period of five years. It also provides that the policy can be called in question by the insurer within the period of five years only in case of fraud.

28.2 The provisions of the existing Section 45 of the Insurance Act are as follows:

“45. Policy not to be called in question on ground of mis-statement after two years.- No policy of life insurance effected before the commencement of this Act shall after the expiry of two years from the date of commencement of this Act and no policy of life insurance effected after the coming into force of this Act shall after the expiry of two years from the date on which it was effected, be called in question by an insurer on the ground that a statement made in the proposal for insurance or in any report of a medical officer, or referee, or friend of the insured, or in any other document leading to the issue of the policy, was inaccurate or false *unless the insurer shows that such statement was on a material matter or suppressed facts which it was material to disclose and that it was fraudulently made by the 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 it was material to disclose:*

Provided that nothing in this section shall prevent the insurer from calling for proof of age at any time if he is entitled to do so, and no policy shall be deemed to be called in question merely because the terms of the policy are adjusted on subsequent proof that the age of the life insured was incorrectly stated in the proposal.”

28.3 Clause 58 of the Bill seeks to amend Section 45 of the Insurance Act, as under:

“(1) No policy of life insurance shall be called in question on any ground whatsoever after the expiry of five years from the date of the policy, *i.e.*, from the date of issuance of the policy or the date of commencement of risk or the date of revival of the policy or the date of the rider to the policy, whichever is later.

(2) A policy of life insurance may be called in question at any time within five years from the date of issuance of the policy or the date of commencement of risk or the date of revival of the policy or the date of the rider to the policy, whichever is later, on the ground of fraud:

Provided that the insurer will have to communicate in writing to the insured or the legal representatives or nominees or assignees of the insured the grounds and materials on which such decision is based.

Explanation 1.—For the purposes of this sub-section, the expression ‘fraud’ means any of the following acts committed by the insured or by his agent, with the intent to deceive the insurer or to induce the insurer to issue a life insurance policy:

- (a) the suggestion, as a fact of that which is not true and which the insured does not believe to be true;
- (b) the active concealment of a fact by the insured having knowledge or belief of the fact;
- (c) any other act fitted to deceive; and

(d) any such act or omission as the law specially declares to be fraudulent.

Explanation II.—Mere silence as to facts likely to affect the assessment of the risk by the insurer is not fraud, unless the circumstances of the case are such that regard being had to them, it is the duty of the insured or his agent, keeping silence to speak, or unless his silence is, in itself, equivalent to speak.

(3) Notwithstanding anything contained in sub-section (2), no insurer shall repudiate a life insurance policy on the ground of fraud if the insured can prove that the mis-statement of or suppression of a material fact was true to the best of his knowledge and belief or that there was no deliberate intention to suppress the fact or that such mis-statement of or suppression of a material fact are within the knowledge of the insurer.

Explanation.—A person who solicits and negotiates a contract of insurance shall be deemed for the purpose of the formation of the contract, to be the agent of the insurer.

(4) A policy of life insurance may be called in question at any time within five years from the date of issuance of the policy or the date of commencement of risk or the date of revival of the policy or the date of the rider to the policy, whichever is later, on the ground that any statement of or suppression of a fact material to the expectancy of the life of the insured was incorrectly made in the proposal or other document on the basis of which the policy was issued or revived or rider issued:

Provided that the insurer will have to communicate in writing to the insured or the legal representatives or nominees or assignees of the insured the grounds and materials on which such decision to repudiate the policy of life insurance is based:

Provided further that in case of repudiation of the policy on the ground of misstatement or suppression of a material fact, and not on the ground of fraud, the premiums collected on the policy till the date of repudiation shall be paid to the insured or the legal representatives or nominees or assignees of the insured within a period of ninety days from the date of such repudiation.

Explanation—For the purposes of this sub-section, the mis-statement of or suppression of fact will not be considered material unless it has a direct bearing on the risk undertaken by the insurer, the onus is on the insurer to show that had the insurer been aware of the said fact no life insurance policy would have been issued to the insured.

(5) Nothing in this section shall prevent the insurer from calling for proof of age at any time if he is entitled to do so, and no policy shall

be deemed to be called in question merely because the terms of the policy are adjusted on subsequent proof that the age of the life insured was incorrectly stated in the proposal."

28.4 As per the submission of the Ministry, the rationale for this amendment proposal emanates from the recommendations of the Law Commission of India, which in its 190th Report examined this issue and recommended as under:

"5.1.24 The Law Commission is of the firm view that there should be no unilateral repudiation of a life insurance policy by an insurer. Accordingly, S. 45 of the Act requires to be amended to expressly state this position. Further, the Law Commission accepts in principle the suggestion by the LIC that if a policy of life insurance has been in force continuously for a period, no repudiation on any ground should thereafter be permitted. Although the Law Commission in its consultative paper has suggested that this period should be three years, taking into account the view of LIC (which still controls nearly 90 per cent of the life insurance business in this country) that this period should be 6-8 years, the Law Commission finally recommends that this period should be fixed at 5 years, i.e. five years after the coming into force of the policy, i.e. the date of issuance of the policy or the date of commencement of the policy or the date of the revival of the policy or the date of the rider to the policy whichever is later...In other words, no insurer should be permitted to repudiate a life insurance policy on any ground whatsoever, five years after the coming into force of the policy, i.e., the date of issuance of policy or the date of commencement of the policy or the date of the revival of the policy or the date of the rider to the policy whichever is later."

28.5 Many stakeholders have opposed this amendment, as it is perceived to be not in the interest of the policyholder. The National Federation of Insurance Field Workers of India, in their memorandum submitted before the Committee stated as below:

"We strongly oppose this amendment which is completely anti-policy holder and intended to help the private insurance companies to turn down the genuine claims of the policy holder. The existing provision of 2 years should be retained. Only on the basis of fraud the policies should be questionable within 2 years. The insurer should take the safeguards and adequate check measures at the time of entry and not at the time of settling claims. This will only encourage selection of sub-standard lives through aggressive marketing and then repudiation of death claims and harassment of widows and children. This will defeat the very purpose of life

insurance. At the time of opening the insurance sector, it was promised that the service to the policy holders will be improved and made more liberal. In fact, this is just the reverse, making the existing law more stringent.”

28.6 Life Insurance Agents’ Federation of India, in their memorandum, have stated as follows on the proposed amendment:

“Sec 45 gives a protection to the heirs of the policyholders from the action of the learned and highly paid officials of the Insurer from declining Death Claims on flimsy grounds, if the death occurs after completion of two years of the policy; but gives enough space to the insurer to protect itself from wrong, malicious design - if any - either by the policyholder or his soliciting Agent. During the regime of this Sec 45 the LIC has made tremendous financial growth. We shall like to draw your attention on the Death Claims Statistics for the year 2008-09, a period when the Sec 45 prevails, and kindly note that the private insurers have repudiated the death claims to the extent of 9.97 % whereas LIC has repudiated as much as 1.33 % only.

Clause 58 seeks to extend this period of 2 years as per Sec 45 of the Insurance Act 1938 to 5 years during which the policy can be called to question. It can be easily inferred that this extension shall give more leeway to the above kind of Insurers to repudiate higher percentage of the death claims raised by the mostly shy, semi literate/ ill literate, inwardly looking and mostly exploited class the – widows; to whose benefit the conception of Life Insurance was born. Besides, the LIC has withstood it for last 55 years.

Hence, we pray to stop the amendment to Sec 45 of the Insurance Act 1938 as proposed in the Clause 58 of the Insurance Laws Amendment Bill 2008. “

28.7 While deposing before the Committee, a representative of All India Insurance Employees Association opined as follows:

“On Section 45 of the Insurance Act, the change is not in the interest of the policy holders. At present a policy cannot be called into question beyond two years. Now it is proposed to increase that period to five years. As it is even within these two years, we find that quite a lot of policies are being repudiated. To give some small figures in the private sector on individual policies 9.97 per cent of the claims have been repudiated. In the Group Insurance, 3.39 per cent of the claims have been repudiated as against LIC’s 1.33 per cent of the claims which have been repudiated. What we find is that something very strange where insurance company like Bharti Axa on a number of claims which have been repudiated amount to 44.83 per cent. Tata AIG has repudiated 27.78 per cent. Met Life – 22.27 per cent and SBI Life – 15 per cent of the claims

have been repudiated. All this has happened within two years and if this is increased to five years, we feel that it will be more harmful to the interest of the policy holders and a still larger claims can be repudiated. We strongly feel that this Section should not be amended.”

28.8 When pointed out that the amendments proposed would go against the interest of policy holders, the Ministry, in their written reply, stated as below:

“As informed by the IRDA the average life span is 15-17 years for Unit Linked Insurance Policies and 17 for other traditional policies. The proposed amendment vide clause 58 is largely in favour of the policyholder because in the existing provision, a claim could be repudiated at any point during the tenure of the policy as opposed to the proposal in the Bill, where there is no demarcation between early or non early claims and repudiation of claims can be done only within 5 years, on grounds of fraud or misstatement. Where a claim is repudiated on the ground of fraud, the onus of disproving that there was no fraud lies upon the beneficiaries of the claim. However where a claim is to be repudiated on the basis of misstatement, the onus is proposed to be vested upon the insurance company to substantiate that it was a misstatement.

As per section 45 of the Insurance Act 1938, repudiation of an insurance policy by insurer can be done at any time upto 2 years, if material facts in the proposal form are false. Further, the policy is not to be called in question by the insurer on ground of misstatement after 2 years unless the insurer shows that it was done knowingly or fraudulently. However, as per practice only when a claim is lodged that the insurer questions the statements made at the time of taking the policy. Thus, in the existing provision, a claim could be repudiated at any point during the tenure of the policy on grounds of fraud as opposed to the proposal in the Bill, where claims can be repudiated only within 5 years, on grounds of fraud or misstatement. As the existing provisions of section 45 allow the insurer to repudiate a claim at any point during the term of a policy for misstatement, while the proposed change disallows the life insurers to repudiate a claim after 5 years, the proposed Section 45 is in the interest and welfare of the policyholders.”

28.9 In response to yet another suggestion made by an insurance company (Shriram Life Insurance Company Limited) that sub clause 3 of clause 58 needs to be redrafted to cover cases where the insured may not be alive to prove his innocence in case of a ‘death claim’ and only the nominee has to prove policyholders’ innocence in this matter, the Ministry, in their written reply, further stated as follows:

“In the event of fraud, it is a fact that the onus of disproving now vests with the beneficiaries, in the absence of life assured who is no more. This purpose of this clause is to dissuade the incidence of frauds. For revision of the clause the matter may be discussed with the Ministry of Law for suitable amendments to the relevant clauses.”

28.10 The insurance Company further suggested as follows in respect of Clause 58:

“The period of two years provided in the erstwhile Section 45 has been increased to five years. This will go as a benefit to the insurer. In case of revival of policies some protection is needed to provide the claimant atleast the paid up value of the policy which has been acquired prior to revival even in case the claim is repudiated by the insurer on the basis of willful mis-statement of the policyholder.

Section 45(5)- Adjustment of policy terms on account of correcting the age. Section 45(5) states that no policy shall be deemed to be called in question merely because the subsequent proof shows the age of the life assured was incorrectly stated in the proposal. Our experience shows that in some cases the age is grossly understated at the time of taking the policy. This happens particularly in respect of non medical insurance. We suggest that the regulator is allowed to make suitable regulations if the real age of the policyholder is found to be beyond the insurable age as provided in the plan and in the rules of the insurer.”

28.11 Similar views have been expressed by CII on the need for providing for making changes in the policy due to misstatement of age which reads as follows:

“The proposed amendment provides for ‘adjustments’ being made to policies at any time in case of mis-statement of Age. In case the actual age of the Life Assured if found to be beyond the age boundaries stipulated for the product, insurers should also be permitted to make the policy void and forfeit all premiums received in its favour.”

28.12 The Committee note that while in terms of the existing Section 45 of the Insurance Act, a policy can not be questioned by an insurer after two years of its commencement on grounds of misstatement of material facts, it can still be repudiated by the insurer at any point during the term of

the policy on grounds of fraud. The amendment proposal seeking to stipulate a time frame of five years for questioning a policy on any ground, including furnishing of false information, suppression of facts etc. would thus be in the interest of the policy holders. With a view to serve the interest of the policy holders better, the Committee, however, feel that the period during which a policy can be repudiated on any ground, including misstatement of facts etc., should, be confined to about three years from the commencement of the policy as originally proposed by the Law Commission, instead of five years as proposed in the Bill. The Committee also expect that the infirmities in the proposed Section 58(3) relating to payment of policy maturity amount to the nominee of a deceased policy holder etc. are addressed for rectification, as agreed to by the Ministry.

29. Clause 86: Surveyors or Loss assessors (Substitution of Section 64UM of the Insurance Act)

29.1 Clause 86 seeks to substitute section 64UM of the Act to empower the Authority to regulate the functions, code of conduct, etc., of surveyors and loss assessors.

29.2 Clause 86 of the Bill, which seeks to substitute section 64 UM of the Act provides as under:

“64UM. Save as otherwise provided in this section and the regulations made thereunder, no person shall act as a surveyor or loss assessor in respect of general insurance business.”

29.3 The existing provisions of 64UM provide for licensing of surveyors and Loss Assessors by IRDA.

29.4 The Institute of Insurance Surveyors and Loss Assessors (IISLA) in their memorandum, have made out a case for suitably amending the provisions of Clause 86, to enable independent surveyors and loss assessors to function in

the interest of policyholders. The views expressed by the Institute are stated as below:

“.....The private Insurance companies with foreign collaboration are violating rules and regulations of Insurance Act – 64 UM as they are getting Insurance claim assessment done by their employees instead of licensed independent Surveyor/Loss Assessor. It is understood that there is proposal to dilute the provisions of the Act, by moving away the licensing to regulations and to increase certain limits prescribed in the Act. The proposed amendment if accepted, will adversely affect the independent practicing surveyor’s fraternity across India. The general public who buys the insurance policies would be put to great hardship if the employees of insurance companies or firms which indulge in contract survey are empowered to assess the claims, instead by a neutral person like INDEPENDENT LICENCED PRACTISING SURVEYOR. To avoid such dilution of Act by provisions which will be detrimental to the interests of insured clientele across India, we request you to recommend to;

- 1) retain the licensing of SLAs within the ambit of 64 UM.
- 2) incorporate suitable words to allow only practitioners in the profession of SLAs, i.e. employees or firms/companies not to be allowed to be licenced.”

29.5 Elaborating their view point further, the IISLA have stated as follows:

“The existing Section 64UM is getting interpreted differently to suit their own (insurer’s) interests, or at least not in tune with the spirit of such enactment, is the feeling of this body of Insurance Surveyors and Loss Assessors. The problems now faced are;

(i) Licensed Surveyor is to be an independent practitioner and not an employee of insurer.

The very spirit of enactment of 64UM was and is to enable just and reasonable assessment of loss by an entity of qualified, licensed and unattached (not belonging to the insured or insurer) independent surveyor. This provision is sought to be diluted by misinterpretation or seeking amendment by the vested interests (mainly private insurance companies), and / or by the regulator.

(ii) The no survey limit is sought to be enhanced to keep pace with inflation:

The objective of specifying such ‘no-survey’ limit was to prevent possible hardship to the insured clientele, in settling the claims of straight forward and obvious in nature, and definitely not intended to include claims in Motor portfolio, since at that time the total cost of a motor car was much less than this limit of ‘no survey’.

Obviously, the ‘no survey limit’ was imposed for the convenience of insurers to settle genuine claims, as the resources required for loss

assessment such as (i) qualified licenced surveyors' availability and (ii) to communicate with the surveyor, get him on the job and deliver the service required for claim settlement decision by the insurer was apprehended as not commensurate with the quantum of claim to be paid. This was the cost mentioned in the enactment and not the mere fee payable to the surveyor, which even now is about less than or about 5% of the claim amount.

And now in the present scenario of instant communication, and quick or 'no time elapsed' situation in data transfer, besides abundant availability of **qualified licenced independent surveyors** across the country, this concept of 'no survey limit', has no place and needs to be discarded as redundant feature of claim assessment process.

(iii) Licensed Surveyors as employees of insurance companies:

This is most disturbing trend that has manifested with privatization of the General Insurance industry. The principle of neutral and non belonging entity to either of the insurance contract is compromised in allowing such cadre of loss assessors. The licensed surveyor is regulated by the Act, regulations formed there under, while the same licensed surveyors gets into employment of insurance or any other company, the service rules and business interests of that company take precedence or overrides the conduct and service rules of such employee. Such an employee can not be treated as approved Surveyor, as envisaged in the Act and / or regulations.

We should note that in a similar professional Institute like ICAI (on the lines of which IISLA is sought to be modeled and nurtured), the practicing CA is eligible to certify the accounts of any company, but if he joins any company as its employee, he will not be entitled to certify the accounts of any company including that of his employer.

(iv) Corporate Surveyor:

This again is the manifestation of vested interests in the general insurance industry. The main objective of opening up of the insurance sector for private players was to achieve more penetration by capturing the potential in the semi urban and rural areas for the business of general insurance. In practice however, the private players confined their operations to the Metros, and big Cities only. In order to penetrate into the market and to maintain their share of market, the insurers entered often into cut throat competition by extending / incurring business procurement costs beyond permitted limit (15 – 17.5%), by almost double and more (often touching about 35% of premium income). The very same players have also entered into MOU with the Automobile dealers agreeing to pay more than required charges towards labour, and painting charges of automobiles. The astonishing factor is that the

PSUs have also joined the fray and they have also started to encourage similar agreements with the repairers / automobile dealers.

The insurers patronizing such corporate companies enter into bulk outsourcing of survey jobs, which ultimately leads to sub letting and contract surveying. The approved body of surveyors (IIISLA), is not against the Surveying firms as such, but it is that sub letting part (which amounts to contract surveying) that the body is apprehensive about, since such a practice would make this service, a business and not a profession any more. The licensing of firms / companies can be continued as envisaged provided that all the directors / partners are the eligible and qualified licence holders, and these directors / partners do not practice separately on their individual licence, and that none of their work is sub let or outsourced to 'another entity' whether such 'another entity' is licensed or not..... In order to keep unique nature and identity of the entity of Approved Surveyor, and to avoid any scope for ambiguity and/or misinterpretation and even misuse, Section 64 UM of Insurance Act should not be diluted and should be supplemented with certain wording and provisions to strengthen the spirit of the Act and equitable loss assessment practice in claim management of the insured clientele at large, besides having appropriate checks and balance of management of huge resources public funds of insurance.

29.6 The Institute has inter-alia suggested revising Section 64UM of the Act to read as follows:

(2) No claim in respect of a loss which has occurred in India and requiring to be paid or settled in India arising or intimated to an insurer at any time after the expiry of a period of one year from the commencement of the Insurance (Amendment) Act, 1968, shall, unless otherwise directed by the Authority, be admitted for payment or settled by the insurer unless he has obtained a report, on the loss that has occurred, from a person who holds a licence issued under this section to act as a Independent Licensed (Practicing) surveyor and loss assessor (hereafter referred to as "approved surveyor or loss assessor"):

29.7 Additional points, put forth by the Institute before the Committee are as follows:

“Moving the control of Surveyor empowerment from the ambit of the Act to that of Regulator is detrimental to the unique identity of the profession, which will be on least of priorities of the Regulator functions.

The Govt. has already promoted IISLA, which has on its board representatives / nominees of Ministry of Finance (GOI), Nominee of IRDA, and Chairman of GI Council as ex officio Director. So the institution or body of Independent Surveyors is already under the close supervisory governance of the regulator and Govt. Hence, it would be prudent to retain licensing and empowerment aspects of the Surveyor profession in the Act itself, with the above suggested amendments of reinforcement or strengthening the concept of Independent Surveyor in the field of loss assessment in the general insurance industry.”

29.8 Asked to state their views on the suggestions made by IISLA, the Ministry, in one of their written submission stated as under:

“The suggestions may be taken care at the time of formulation of regulations as proposed vide Clause 86 of the Bill.”

29.9 Responding to a question posed to a private insurance company (ICICI Lombard General Insurance Company Limited) on the amendment proposals of the Clause providing for IRDA to govern issues relating to licensing of surveyors and loss assessors, the company stated:

“Presently the Surveyors and the Loss assessors are members of and are administratively governed by the Indian Institute of Surveyors and Loss assessors. The code of conduct of the surveyors are governed by the Insurance Surveyors and Loss assessors (Licensing, Professional Requirements and code of Conduct) Regulations, 2000. The governing provision in the Insurance Act, 1938 i.e. Section 64UM has been proposed to be modified under the Insurance Amendment Bill, 2008. The amended provision while removes all the statutory prescriptions pertaining to insurance Surveyors and Loss assessors, requires IRDA to make appropriate regulations to govern the qualification, licensing, professional requirements, Code of Conduct and the procedure for survey of losses. So far as the independence of insurance surveyors are concerned, the prevailing provisions adequately safeguards the independence of the surveyors while protecting the interests of the policy holders.”

29.10 Some of the issues prevailing in the general insurance industry, which are harmful to the policyholders interest, as highlighted before the Committee include, employment of surveyors by the insurance companies, which may not ensure impartiality with regard to settling

claims, undertaking contract surveying by insurers etc. The amendments proposed under Clause 48 seek to do away with the existing statutory prescriptions pertaining to licensing insurance surveyors and loss assessors etc. and leave these issues to be addressed by way of regulations. The Committee, in this regard, find merit in the suggestion that only licensed and independent surveyors and loss assessors should be allowed to survey claims so as to be in the interest of the policy holders. The Committee, therefore, recommend modifying the amendments proposed under the Clause to provide for only independent and licensed surveyors to practice the profession. Further, measures need to be taken to strengthen the professional body of surveyors and loss assessors i.e. IISLA to function as a regulatory body for this profession.

30. Clause 92, 93 and 94: Penalty for failure to comply with Sections 3, 27, 27A, 27B, 27D, 27E, 32B, 32C and 32D

30.1 Clauses 92, 93 and 94 of the Bill seek to provide as under:

Clause 92.—This clause seeks to substitute sections 103 and 104 of the Act to enhance the fine not exceeding twenty-five crore rupees and with imprisonment which may extend to ten years in case a person carries on business of insurance without obtaining a certificate of registration. It also enhances the penalty for contravention of provisions relating to investment of controlled fund or assets.

Clause 93.—This clause seeks to amend section 105 of the Act to enhance the penalty not exceeding one crore rupees in case any executive of the insurer wrongfully obtains or withholds the property under the Act.

Clause 94.—This clause seeks to substitute sections 105B and 105C of the Act to enhance penalty in case an insurer fails to comply with the obligations for rural or social sector or third party insurance for motor vehicles to not exceeding twenty-five crore rupees. It further provides for powers of adjudication to the Authority and provides penalty for contravention where there is no separate penalty provided in the Act.”

30.2 Clause 92, 93 and 94 of the Bill read as under:

92. For sections 103 and 104 of the Insurance Act, the following sections shall be substituted, namely:—

“103. If a person carries on the business of insurance without obtaining a certificate of registration under section 3, he shall be liable to a fine not exceeding rupees twenty-five crores and with imprisonment which may extend to ten years.

104. If a person fails to comply with the provisions of section 27, section 27A, section 27B, section 27D and section 27E, he shall be liable to a penalty not exceeding twenty-five crore rupees.”.

93. In section 105 of the Insurance Act, for the words “not exceeding two lakh rupees for each such failure”, the words “not exceeding one crore rupees ” shall be substituted.

For sections 105B and 105C of the Insurance Act, the following sections shall be substituted, namely :—

“105B. If an insurer fails to comply with the provisions of section 32B, section 32C and section 32D, he shall be liable to a penalty not exceeding twenty-five crore rupees.

105C. (1) For the purpose of adjudication under sub-section (2) of section 2CB, sub-section (4) of section 34B, sub-section (2) of section 40A, sub-section (2) of section 41, sub-section (4) of section 42, section 102, section 104, section 105 and section 105B, the Authority, shall appoint any officer not below the rank of a Joint Director to be an adjudicating officer for holding an inquiry in the prescribed manner after giving any person concerned a reasonable opportunity of being heard.

(2) Upon receipt of the inquiry report from the officer so appointed, the Authority after giving an opportunity of being heard to the person concerned may impose any penalty provided in sections aforesaid.

(3) While holding an inquiry, the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give

evidence or to produce any document which in the opinion of the adjudicating officer, may be useful for or relevant to the subject matter of the inquiry and if on such inquiry, is satisfied that the person has failed to comply with the provisions of any of the sections specified in sub-section (1), he may recommend such penalty as he thinks fit in accordance with the provisions of any of those sections.

105D. While recommending the quantum of penalty under section 105C, the adjudicating officer and while imposing such penalty, the Authority shall have due regard to the following factors, namely:—
(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
(b) the amount of loss caused to the policy-holders as a result of the default; and
(c) the repetitive nature of default."

30.3 A suggestion received from an Insurance Company (Cholamandalam MS General Insurance Company Ltd.) states as follows with regard to Clause 92:

"Penalties prescribed are very stiff and need to be moderated to a maximum of Rs. 1 crore per annum. In case of violation IRDA be empowered to –

(a) Make Public the name of the company in leading news papers.

(b) Take cognizance of all the penalties paid by the Insurer at the time of renewal of registration.

Suspend the operations of the Insurer for a specified period after considering the magnitude of the violation. This would be in line with the provisions of Japan FSA."

30.4 Asked to furnish their views in this regard, the Ministry, in their written submission, stated as follows:

"After examining the provision of the insurance legislation which prescribed penalties and other related provisions, the Law Commission recommended the enhancement of all the penalties prescribed under sections 102-105C so as to make them highly deterrent, with a minimum penalty to be indicated in each of these provisions. IRDA also concurred with the recommendations of the Law Commission that in the event of violation of any of the provisions of the insurance legislations, the penalties to be levied, be enhanced.

As regards publishing names of insurers who have been penalized in leading newspapers, the Authority may consider it as part of the "name and shame" strategy. This however should not be made part

of the provisions of the Act, but could be left to regulatory discretion.”

30.5 Further, yet another insurance company (Bajaj Allianz General Insurance Company Limited) and the Insurance Brokers Association of India have made the following suggestions with regard to the penalty proposed vide Clause 93:

“The proposed amendment increases the fine from Rs. 5 lakhs to Rs. 25 crores. This is a very steep increase and may result in harassment and creating fear in the minds of insurers. It is suggested that fine be limited to reasonable levels.

The quantum proposed in many cases running into crores does not seem to be particularly relevant to the type of breach which is sought to be controlled. Very often, the proposed Bill mentions quantum at Rs. 10 crores, Rs. 25 crores, Rs. 50 crores etc. which in many cases would be a significant portion of the capital of insurance company itself and in case of insurance intermediaries many times the capital they are required to bring in.”

30.6 Expressing their views on the above suggestions, the Ministry, in their written replies, stated as under:

“It may be mentioned that the penalties prescribed are the maximum limits; however, the imposition of penalty would be commensurate with the offence. Furthermore, effective regulation of the management of policyholders’ funds and shareholders’ funds is mandatory for ensuring the orderly growth and development of the insurance industry and any contravention thereof should be viewed stringently.”

30.7 The Committee note that while the penalties proposed for acts of violation of the statutory stipulations relating inter-alia to registration requirements, investments, meeting rural and social sector obligations, etc. are said to be formulated on the basis of the recommendations of the Law Commission, as per the insurers, the penalties proposed under the Clause are too steep, and may not even be commensurate with the capital base of the insurance companies, intermediaries etc. It has, therefore, been suggested that the penalties proposed need to be rationalised. Apart from

rationalizing the penalties, it has also been suggested that measures such as making public, the names of the violating companies, taking cognizance of the penalty paid at the time of renewal of registration of insurers, suspending operations of the insurers for a specified period etc. could be considered as other alternate means for deterring the insurers from violating the statutory stipulations. The Committee are of the view that while the penalties should help in effectively deterring acts of violation, at the same time, they should also be rational and justifiable vis-à-vis the nature of the offence. The Committee, accordingly, recommend revisiting the monetary penalties proposed under the Clause inter-alia in the light of the views expressed on this count by the insurance companies.

31. Clause 98: Appeal to Securities Appellate Tribunal (Substitution of new Section for Section 110)

31.1 Clause 98 seeks to substitute section 110 of the Act to provide for appeal to the Securities and Appellate Tribunal against the decision of the Authority and omit certain redundant provisions.

31.2 The provisions of Clause 98 are as under:

“For section 110 of the Insurance Act, the following section shall be substituted, namely:—

"110. (1) Any person aggrieved—

(a) by an order of the Authority made on and after the commencement of the Insurance Laws (Amendment) Act, 2008, or under this Act, the rules or regulations made thereunder, or

(b) by an order made by the Authority by way of adjudication under this Act, may prefer an appeal to the Securities Appellate Tribunal having jurisdiction in the matter.

(2) Every Appeal under sub-section (1) shall be filed within a period of forty five days from the date on which a copy of the order made by the Authority is received by him and it shall be in such a form and be accompanied by such fees as may be prescribed:

Provided that the Securities Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

(3) On receipt of an appeal under sub-section (1), the Securities Appellate Tribunal may after giving parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, conforming, modifying or setting aside the order appealed against.

(4) The Securities Appellate Tribunal shall make available copy of order made by it to the Authority and parties.

(5) The appeal filed before the Securities Appellate Tribunal under sub-section

(1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of receipt of appeal.

(6) The procedure for filing and disposing of an appeal shall be such as may be prescribed.

(7) The provision contained in section 15U, section 15V, section 15W, section 15Y and section 15Z of the Securities and Exchange Board of India Act, 1992 shall apply to the appeals arising out of the provisions of this Act, as they apply to the appeals under the Securities and Exchange Board of India Act, 1992.”

31.3 Further Clause 3(xi) of the Bill defines the Securities Appellate Tribunal (SAT) to mean the SAT established under Section 15K of the SEBI Act, 1992.

31.4 Section 15K of the SEBI Act reads as under:

(1) “The Central Government shall, by notification, establish one or more appellate Tribunals to be known as the Securities Appellate Tribunal to exercise the jurisdiction, powers and authority conferred on such Tribunal by or under this Act.

(2) The Central Government shall also specify in the notification referred to in sub-section (1) the matters and places in relation to which the Securities Appellate Tribunal may exercise jurisdiction.”

31.5 When pointed out that insurance being a specialized activity, persons having substantial and specialised knowledge in insurance law should have representation in Securities Appellate Tribunal (SAT), the Ministry, in a written submission stated as under:

“The proposed amendment to Insurance Laws, inter-alia, includes making the Securities Appellate Tribunal (SAT) as the Appellate Tribunal in respect of appeals emanating from IRDA orders. However, as it exists now there is no provision for appointing Members of SAT with experience of insurance related matters. As

per Section 15M of SEBI Act, SAT consists of Presiding Officer and two Members. The Presiding Officer should be a sitting or retired Judge of Supreme Court or a sitting or retired Chief Justice or a High Court. A person shall not be qualified for appointment as Member of SAT unless he is a person of ability, integrity and standing who has shown capacity in dealing with problems relating to securities markets and has qualification and experience of corporate law, securities laws, finance, economics or accountancy. Broadly, the above qualifications are sufficient to have a reasonable understanding of the insurance related issues as well. However, as and when SAT becomes the Appellate Authority under Insurance Laws while making appointment to the post of members care could be taken to appoint people with practical experience relating to insurance. As and when SAT becomes the Appellate Authority under laws other than securities laws, there could be the requirement for increasing the number of members. The specific requirements on qualification etc. could be taken care of at that point of time.”

31.6 In this regard, an insurance company (Shriram Life Insurance Company Limited), in their memorandum stated as follows in regard to the proposal for making SAT the Appellate authority in cases pertaining to Insurance Sector:

“our suggestion is that for everything there should be an appellate authority. For every decision there should be an appellate authority. In some decisions SAT has been allowed to be the appellate authority, but on some decisions there is no appellate authority.”

31.7 As of now, persons having special knowledge in the field of security markets, corporate law, securities laws, finance, economics or accountancy are appointed as Members of SAT. The Committee are of the view that once SAT is made the Appellate authority for insurance matters as proposed in the Bill, it would be necessary to review the composition of SAT as well as the qualifications prescribed for the Members so as to provide for considering persons with special knowledge in the field of insurance as well for appointment.

32. Clause 105 (xiii) and (xiv): Amendment of Section 114A of the Insurance Act relating to power of Authority to make regulations

32.1 Section 114A bestows power on the Authority to frame regulations for the purposes of the Insurance Act, 1938.

32.2 The existing provisions of sub-section (m) and (n) of Section 114A pertaining to IRDA's regulation making power in respect of qualifications, training of agents etc. read as under:

“(m) the requisite qualifications and practical training to act as an insurance agent under Clause (e) of sub-section (4) of section 42;

(n) the passing of examination to act as an insurance agent under Clause (f) of sub-section (4) of section 42”

32.3 The amendment proposals of Clause 105 (xiii) and (xiv) provide as under:

“(xiii) for clause (m), the following clause shall be substituted, namely:—

(m) the requisite qualifications or practical training or examination to be passed for appointment as an insurance agent under clause (e) of sub-section (3) of section 42;”;

(xiv) clause (n), shall be omitted”

32.4 The Committee note that the existing regulation making power of IRDA which includes prescribing the qualifications and practical training to act as an insurance agent as also the examination required to be taken by insurance agents would be diluted with the amendment proposals. The amendments proposed to sub-sections (m) and (n) of section 144(A) seek to provide the Authority with the power to frame regulations relating to the requisite qualifications or practical training or examination to be passed for

appointment as an insurance agent. The emphasis made by the Committee has been on IRDA to continue to play a key and effective role in developing and regulating the profession of insurance agents. The Committee, therefore, recommend that the existing provisions of sub-sections (m) and (n) of section 144(A) be retained in the Act.

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

33.1 Clause 107 seeks to amend the General Insurance Business (Nationalisation) Act, 1972 to insert section 10A to empower the Central Government to allow public sector General Insurance companies to raise money from the market to meet their capital requirements.

33.2 Clause 107 seeks to provide for the following:

“In the General Insurance Business (Nationalisation) Act, 1972, after section 10A, the following section shall be inserted, namely:—

"10B. The General Insurance Corporation and the insurance companies specified in section 10A may, raise their capital for increasing their business in rural and social sectors, to meet solvency margin and such other purposes, as the Central Government may empower in this behalf."

33.3 In response to a query as to whether the incorporation of Section 10A as proposed, would imply that, in future, the companies would be entitled to raise money from the market to meet their capital requirements which may possibly result in decline of Government shareholding to the extent of the Companies becoming a minority partner and thereby affecting the public sector character of the companies, the Ministry of Finance (Department of Financial Services) in a written reply stated inter-alia as under:-

“In the coming scenario, GIPSA companies may be required to raise their Capital for various reasons and for this purpose, suitable provisions has been incorporated in GIBNA, 1972 empowering the

Central Government to allow the Companies to do so. Keeping in view the fact that the Public Sector General Insurers may ask the Government to raise capital for various purposes such as for increasing penetration in rural areas, covering social sectors, for diversification and expansion and for meeting solvency margins, it is necessary to provide enabling provision for raising of capital if required. This enhancement may either come from the government budget or from the market. At any point the stake of government is not envisaged to come below 51%.”

33.4 While tendering evidence, the Chairman GIPSA, submitted as follows on the proposed amendment:

“The idea is again the market is going to grow. If the public sector companies have to continue their dominant position in the market, they would certainly need capital at a future point of time. I think, that is why the Government is taking an authority to make appropriate disinvestment at the right time.

I understand that there is an assurance from the Government that the Government holding would not go below 51 per cent.”

33.5 When asked further whether the Government would favour amending the clause to reflect the position, that is, at any point the stake of the Government would not be envisaged to come below 51%; the Ministry in their written submission, stated as below:

“The suggestion can be accepted and necessary changes in the relevant clauses can be made in consultation with the Ministry of Law.”

33.6 The Committee, while agreeing with the amendment proposal enabling the general insurance companies and GIC to raise capital from the market to meet future capital requirements, expect that the aspect, reflecting the fact that the Government’s shareholding would not be allowed to come below 51 per cent at any point is suitably incorporated and specified in the section as agreed to.

34. Clause 109: Amendment of Section 2 of IRDA Act, 1999-Insertion of the words 'insurance agents, third party administrator' in definition of 'intermediary or insurance intermediary'

34.1 Clause 109 seeks to amend section 2 of the Insurance Regulatory and Development Authority Act, 1999 in order to substitute "Insurance Regulatory and Development Authority" to "Insurance Regulatory and Development Authority of India".

34.2 Provisions of Clause 109 read as under:

"In section 2 of the Insurance Regulatory and Development Authority Act, 1999, in sub-section (1),—
(i) in clause (b), after the words "Development Authority", the words "of India", shall be inserted;
(ii) in clause (f), after the words "insurance consultants", the words "Insurance agents, third party administrator" shall be inserted."

34.3 The term, 'insurance agent' has been defined in Section 2 (10) of the Insurance Act, as follows:

"insurance agent' means an insurance agent licensed under section 42 who receives or agrees to receive payment by way of commission or other remuneration in consideration of his soliciting or procuring insurance business [including business relating to the continuance, renewal or revival of policies of insurance]"

Further Section 2 (10B) of the Insurance Act, provides as under:
[(10B) "intermediary or insurance intermediary" shall have the meaning assigned to it in clause (f) of sub-section (1) of section 2 of the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999);]

34.4 With regard to the definition of 'insurance agents' as proposed, the Chairman IRDA, while tendering evidence before the Committee, stated as follows:

"The last important change is that the Act recognises intermediary called an agent, and that agent is licensed by the IRDA subject to such qualification and examinations as the IRDA may prescribe. We have proposed that the agent should be differentiated, that is, an individual agent and a company, which might act as an agent, which is a corporate agent. For instance, right now the banks operate as corporate agents of insurance companies. We have suggested that we should have two categories of agents, that is, agents and corporate agents. The agent would be licensed by the

insurance companies subject, of course, to such qualification and examination as the IRDA may prescribe, and the corporate agent would be licensed by the IRDA.”

34.5 On being asked whether the above suggestion has been incorporated by IRDA, the Ministry, in their post evidence submission stated as under:

“Insurance Agent is defined under Section 2(10) of the Insurance Act, 1938. Section 2(1)(B) of the Insurance Act defines intermediary to have the same meaning as in Section 2(1)(f) of the IRDA Act, 1999. Intermediary is defined under Section 2(1)(B) of the IRDA Act and it is proposed in the Bill to include the word ‘agent’ in that definition. Section 42(D) which provides for registration of intermediaries and the new proposed amendments would necessarily include agents also under this section. To address the issue raised in the query, Section 2(1)(f) can be amended to include Corporate agents instead of agents which would mean all agents except individuals. Thus registration would only be required in the case of Corporate agents and not in the case of individuals. Necessary amendments may be carried out in the relevant section in consultation with Ministry of Law.”

34.6 The Committee note that the definition of ‘intermediary or insurance intermediary’ as proposed to be included in Section 2 (1) (f) of IRDA Act, 1999 under Clause 109 covers individual agents. In terms of the amendments proposed in Section 42 of the Act, registration/licensing of agents by IRDA is sought to be done away with and insurance companies bestowed with the power to register/license agents. The IRDA has, accordingly suggested modifying the definition of ‘intermediary or insurance intermediary’ as proposed so as to differentiate ‘Corporate Agents’ such as banks etc. who would be registered by the Authority from other ‘agents’ who would be registered/licensed by the insurance companies. The suggestion has been agreed to by the Ministry. The emphasis made by the Committee has been on IRDA continuing with its current role in the matter of registration/licensing of agents and thereby

ensuring effective regulation of the profession of agents. The Committee, therefore, while agreeing with the proposal for differentiating agents into 'Corporate Agents' and 'Agents' do not approve of the proposal to do a way with the role presently play by IRDA in registering/licensing individual insurance agents.

New Delhi;
09 December , 2011
18 Agrahayana, 1933 (Saka)

YASHWANT SINHA
Chairman,
Standing Committee on Finance.

APPENDIX I

NOTE OF DISSENT

Shri Moinul Hasan, MP

I am not in agreement with the recommendations of the Committee on Clause 107 of the Insurance Laws (Amendment) Bill 2008 and hence submit our note of dissent.

The recommendations of the Committee are as follows:

“33.6 The Committee, while agreeing with the amendment proposal enabling the general insurance companies and GIC to raise capital from the market to meet future capital requirements, expect that the aspect, reflecting the fact that the Government’s shareholding would not be allowed to come below 51 per cent at any point is suitably incorporated and specified in the section as agreed to.”

The General Insurance Corporation has a capital of Rs. 430 crore which is much above the requirement of Rs. 200 as per the IRDA Act. The GIC has reserves and surplus of Rs. 8596 crore as on 31st March 2010. It also has assets of Rs. 43842 crore as on 31.3.2010. It has maintained a solvency margin of 3.71% much above the limit prescribed by the IRDA. The four companies are also adequately capitalized and together have Reserves and Surplus of Rs. 14544 crore and an asset have of Rs. 90149 crore. These companies have also maintained solvency margins consistently higher than what is prescribed by IRDA. With sound financials, the GIC and four companies are capable of generating internal resources for expansion. Sub Section 1 (i) of Section 6A of Insurance Act allows insurance companies to raise capital other than equity capital. Therefore we do not agree with the proposal that these companies be allowed to raise capital from the market through disinvestment.

Therefore, we suggest the replacement of the recommendation on Clause 107 by the following:

The Committee does not see any reasonable ground for allowing the general insurance companies and GIC to raise capital from the market through disinvestment. The Committee recommends that these companies be permitted to raise capital in case of need in accordance with sub section

1 (i) of Section 6A of the Insurance Act. The Committee expects this would be properly specified in the proposed amendment.

Sd/-
(MOINUL HASSAN)

APPENDIX I

NOTE OF DISSENT

Shri Moinul Hasan, MP

The Insurance Laws (Amendment) Bill, 2008 intends to bring about wide ranging changes in the insurance laws. These changes would have impact on the public sector as well as the national economy. So we scrutinized the Bill in a very detailed manner. While we generally agree with most of the recommendations of the committee on the proposed amendments, we differ with the views of the committee on the issue of amendment to be General Insurance Business Nationalisation Act 1972. The amendment proposed under clause 107 will have serious implications on the character of the public sector general insurance companies. This clause provide for the following:

“In the General Insurance Business (Nationalisation) Act, 1972, after section 10A, the following section shall be inserted, namely:-

“10B. The General Insurance Corporation and the insurance companies specified in section 10A may, raise their capital for increasing their business in rural and social sectors, to meet solvency margin and such other purposes, as the Central Government may empower in this behalf.”

The question that we have to look into is; what is the necessity of increasing the capital of these companies; are they inadequately capitalized so as to affect fulfilling their rural and social obligations. Here we need to carefully look into the submissions made by the Ministry of Finance, GIPSA and the All India Insurance Employees' Association on the proposed amendment.

As noted in the Report of the Committee, the Ministry of Finance (Department of Financial Services) in a written reply stated inter-alia as under:-

‘In the coming scenario, GIPSA may be required to raise their Capital for various reasons and for this purpose, suitable provisions has been incorporated in GIBNA 1972 empowering the Central Government to allow the companies to do so. Keeping in view the fact that the Public Sector General Insurers may ask the Government to raise capital for various purposes such as for increasing penetration in rural areas, covering social sector, for diversification and

expansion and for meeting solvency margins, it is necessary to provide enabling provision for raising of capital if required. This enhancement may either come from the government budget or from the market. At any point of time stake of government is not envisaged to come below 51%.’

The Report also notes the evidence of the Chairman GIPSA as follows on the proposed amendment:

“The idea is again the market is going to grow. If the public sector companies have to continue their dominant position in the market, they would certainly need capital at a future point of time. I think, that is why the Government is taking an authority to make appropriate disinvestment at the right time. I understand that there is an assurance from the Government that the Government holding would not go below 51 per cent.”

The All India Insurance Employees’ Association has opposed the proposed amendment. The written submission made by this Association is as follows:

“The General Insurance Corporation is very sound financially. It has large asset base and reserves. It is capable of meeting the capital needs through internal resources. Similarly, the four companies are also financially very sound. They have assets worth Rs. 78198 crore and reserves of Rs. 13254 crore as on 31st March 2008. They have been regularly generating profits and making huge dividend pay outs to be government. Therefore, we firmly believe that these national institutions do not require approaching the capital markets to raise funds for their expansion. Privatising these successful institutions does not serve any national interest. Rather than this measure to privatise, the government must seriously consider the merger of the four companies into a single monolithic corporation on the lines of LIC, as suggested by the Parliamentary Committee on Public Undertakings. This would help them to serve the social and rural sector and fulfill the objectives of a public sector with greater amount of success.”

A close scrutiny of the statements of the Ministry of Finance and the Chairman, GIPSA makes it clear that the General Insurance Corporation and the four public sector companies do not have any need for capital at present. Both these statements vaguely point out to such a need arising out in the future and clear indications are given that the purpose of this enabling provision is to divest the

equity of these companies. The All India Insurance Employees' Association has argued against the proposed amendment quoting the strong financials of the public sector companies.

Therefore, it is necessary to look into the financials of the companies and find out if they are capable of generating internal resources or is there any real need for these companies to raise capital from the market for their expansion.

The General Insurance Corporation has a capital of Rs. 430 which is much above the requirement of Rs. 200 as per the IRDA Act. The GIC has reserves and surplus of Rs. 8596 crore as on 31st March 2010. It also has assets of Rs. 43842 crore as on 31.3.2010. It has maintained a solvency margin of 3.71% much above the limit prescribed by the IRDA.

The financial strength of the four public sector companies as at 31st March 2010 can be seen from the following table:

Name of the Company	Share Capital	Reserves & Surplus	Solvency Margin Ratio	Total Investments	Total Assets
National	100	1483	1.6	14179	18000
New India	200	7230	3.55	26203	36833
Oriental	100	1829	1.56	13808	18106
United India	150	4002	3.41	13448	17210

All figures in Rs. crores except Solvency Margin Ratio
(IRDA Annual Report 2009-10)

The GIC and the four companies have sound financials. They have generated the capital through their internal resources and there was no infusion of additional capital from the government funds since nationalization of these companies. The real strength of these companies is also demonstrated through the build up of huge reserves and surplus and their large asset base. If the fair value of the assets (current market price) is taken, the value of these assets is much larger. These companies have also maintained solvency margins consistently higher than what is prescribed by IRDA.

Such strong financials demonstrate the ability of these companies to generate resources internally if the need so arise. Notwithstanding this if they required additional capital in future; various options are available to them other

that divestment of equity. Such options are provided under Clause 13 of the Bill under discussion that seeks to amend Sub-Section 3 of Section 6A of the Insurance Act. On this amendment the recommendation of the committee is as follows :

“The Committee observe that though the proposed sub section 1(i) of Section 6A seeks to enable the insurers to raise ‘such other form of capital as may be specified’ apart from equity capital, the existing sub section (30 of the Section in terms of which no insurance company can issue shares other than equity shares, has not been proposed to be deleted. Enabling the insurance companies to raise other forms of capital apart from equity akin to banks would be beneficial to the Companies in meeting the business and solvency margin requirements. The Committee, therefore, expects that sub-section 3 of Section 6A, which is in contradiction with the amendment proposals of the Clause and is redundant is deleted.”

This provision of raising capital other the divesting equity is available to the GIC and the four companies in case they need to add further capital in future. This provision along with the sound financials of the public sector companies makes it clear that there is no justifiable reason to amend the GIBNA 1972.

Considering all these aspects, it becomes clear that the proposed enabling provision by amending the GIBNA is made only to invest the shares of the profitable and important companies in the public sector. This is neither in the interests of the public sector insurance industry nor the Indian economy. Rather than this measure, the government should look to consolidate the public sector general insurance industry on the lines suggested by the Parliamentary Committee on Public Undertakings.

We strongly see no reason for this amendment and therefore record our dissent to the proposed amendment.

Sd/-
(MOINUL HASSAN)

Minutes of the Third sitting of the Standing Committee on Finance

The Committee sat on Thursday, the 7 October, 2010 from 1130 hrs. to 1400 hrs.

PRESENT

Shri Yashwant Sinha - Chairman

MEMBERS

LOK SABHA

1. Dr. Baliram (Lalganj)
2. Shri C.M. Chang
3. Shri Bhakta Charan Das
4. Shri Khagen Das
5. Shri Gurudas Dasgupta
6. Shri Nishikant Dubey
7. Shri Bhartruhari Mahtab
8. Shri Mangani Lal Mandal
9. Shri Manicka Tagore
10. Dr. M. Thambidurai

RAJYA SABHA

11. Shri Raashid Alvi
12. Shri Piyush Goyal
13. Shri Moinul Hassan
14. Shri Mahendra Mohan
15. Shri Mahendra Prasad
16. Dr. K.V.P. Ramachandra Rao

SECRETARIAT

- | | | |
|---------------------------------|---|---------------------|
| 1. Shri A.K. Singh | - | Joint Secretary |
| 2. Shri T.G. Chandrasekhar | - | Additional Director |
| 3. Shri Ramkumar Suryanarayanan | - | Deputy Secretary |

WITNESSES

Ministry of Finance (Department of Financial Services)

1. Shri R. Gopalan, Secretary
2. Shri Rakesh Singh, Additional Secretary
3. Shri Tarun Bajaj, Joint Secretary
4. Shri Lalit Kumar, Director
5. Shri A. Giridhar, Executive Director, IRDA

2. The Committee heard the representatives of the Ministry of Finance (Department of Financial Services) in connection with the examination of the Insurance Laws (Amendment) Bill, 2008. Major issues discussed included, the rationale of the proposed hike in Foreign Direct Investment (FDI) in insurance sector from 26 to 49 percent, operation of foreign insurance companies in India, implications of the provision relating to raising additional capital by public sector general insurance companies, necessity of FDI in enabling insurance penetration and launching of new innovative products, implications of the proposal to allow branches of foreign re-insurance companies to operate in India, and permitting foreign insurance companies to operate in Special Economic Zones (SEZs), social sector obligations of insurance companies etc. The Chairman directed the representatives to furnish written replies to the questions posed by Members within ten days.

The witnesses then withdrew.

A verbatim record of the proceedings was kept.

Minutes of the Ninth sitting of the Standing Committee on Finance (2010-11)

The Committee sat on Tuesday, the 21st December, 2010 from 1115 hrs to 1715 hrs.

PRESENT

Shri Yashwant Sinha – Chairman

MEMBERS

LOK SABHA

2. Shri Sudip Bandyopadhyay
3. Shri Khagen Das
4. Shru Gurudas Dasgupta
5. Shri Nishikant Dubey
6. Shri Bhartruhari Mahtab
7. Shri Magunta Sreenivasulu Reddy
8. Shri Sarvey Sathyanarayana
9. Shri Manicka Tagore
10. Dr. M. Thambidurai
11. Shri Anjan Kumar M. Yadav

RAJYA SABHA

12. Shri Raashid Alvi
13. Shri Vijay Jawaharlal Darda
14. Shri Piyush Goyal
15. Shri Moinul Hassan
16. Shri Mahendra Mohan
17. Dr. Mahendra Prasad
18. Dr. K.V.P. Ramachandra Rao

SECRETARIAT

- | | | |
|---------------------------------|---|---------------------|
| 1. Shri A. K. Singh | – | Joint Secretary |
| 2. Shri T. G. Chandrasekhar | – | Additional Director |
| 3. Shri Ramkumar Suryanarayanan | – | Deputy Secretary |

PART- I
(1115 to 1345 hrs.)

WITNESSES

Confederation of Indian Industry (CII)

1. Shri Sanjiv Bajaj, MD, Bajaj Finance Services Ltd.
2. Shri Antony Jacob, Chief Executive Officer, Apollo Munich Health Insurance Company Ltd.
3. Shri Rajesh Relan, MD, Metlife Indian Insurance Co. Ltd.
4. Shri S. Narayanan, MD & CEO, Iffco-Tokio General Insurance Co. Ltd.
5. Shri Joydeep Roy, Chief Executive, L&T General Insurance Company Ltd.
6. Dr. P. Nandagopal, MD & CEO India First Life Insurance Company Ltd.
7. Shri Gaurav Garg, CEO & Managing Director, Tata AIG General Insurance Co. Ltd.
8. Shri Ranjit Gupta, President – Insurance, Bajaj Finance Services Ltd.

US-India Business Council (USIBC)

1. Mr. Rajesh Sud, Managing Director India, Max New York Life
2. Mr. Rajiv Mathur, Director Legal & Compliance, Max New York Life
3. Mr. Saibal Roy Choudhury, Associate Director, Metlife
4. Mr. Shrirang Samant, Country Head and Chief Representative – India, The Travelers Companies, Inc.
5. Mr. Sunil Mehta, Country Head and CEO, AIG India
6. Mr. Chandan Sinha, President , Insurance, Religare Enterprises
7. Ms. Shailaja Lall, Principal Associate, Amarchand Mangaldas
8. Ms. Nivedita Mehra, Program Director, U.S.-India Business Council

2. The Committee heard the representatives of the Confederation of Indian Industry (CII) and US-India Business Council (USIBC) in connection with the examination of the Insurance Laws (Amendment) Bill, 2008. Major issues discussed included, the fulfillment of objectives under the present 26% foreign equity, funds raised under the 26% foreign equity, need for raising the FDI limit in insurance sector to 49% from 26% and its impact, alternate source of raising the capital required for insurance companies, performance of private insurance companies in the fields like infrastructure, rural areas etc., road map of private insurance companies for the next 10 years particularly in targeting the most

marginalized section of the people, changes anticipated in management and operational control of the companies, reciprocity for Indian insurance companies to venture out internationally, definition of 'health insurance' and adequacy of equity fixed for it, need to permit foreign insurance companies to operate in Special Economic Zones (SEZs), appointment and regulation of insurance agents, surveyors and loss assessors, and generation of direct and indirect employment in insurance sector. The Chairman directed the representatives to furnish written replies to the questions posed by Members within seven days.

PART – II
(1445 TO 1715)

3.	XX	XX	XX	XX
	XX	XX	XX	XX

WITNESSES

4.	XX	XX	XX	XX
	XX	XX	XX	XX

The witnesses then withdrew
A verbatim record of the proceedings was kept

The Committee then adjourned.

Minutes of the Tenth sitting of the Standing Committee on Finance (2010-11)

The Committee sat on Wednesday, the 12th January, 2011 from 1130 hrs to 1630 hrs.

PRESENT

Shri Yashwant Sinha – Chairman

MEMBERS

LOK SABHA

1. Dr. Baliram (Lalganj)
2. Shri Harishchandra Chavan
3. Shri Bhakta Charan Das
4. Shri Khagen Das
5. Shri Gurudas Dasgupta
6. Shri Nishikant Dubey
7. Shri Bhartruhari Mahtab
8. Shri Mangani Lal Mandal
9. Shri Rayapati Sambasiva Rao
10. Shri G.M. Siddeshwara
11. Shri Manicka Tagore
12. Dr. M. Thambidurai
13. Shri Anjan Kumar M. Yadav

RAJYA SABHA

14. Shri Raashid Alvi
15. Shri Vijay Jawaharlal Darda
16. Shri Moinul Hassan
17. Shri Mahendra Mohan
18. Dr. Mahendra Prasad
19. Shri Y.P. Trivedi

SECRETARIAT

- | | | |
|-----------------------------|---|---------------------|
| 1. Shri A. K. Singh | – | Joint Secretary |
| 2. Shri T. G. Chandrasekhar | – | Additional Director |

PART- I

(1130 to 1400 hrs.)

WITNESSES

2.	XX	XX	XX	XX
	XX	XX	XX	XX

The witnesses then withdrew.

A verbatim record of proceedings was kept.

PART- II
(1500hrs. to 1630 hrs.)

WITNESSES

Ministry of Finance (Department of Financial Services)

1. Shri R. Gopalan, Secretary
2. Shri Rakesh Singh, Additional Secretary
3. Shri Tarun Bajaj, Joint Secretary
4. Shri Lalit Kumar, Director

3. The Committee took evidence of the representatives of the Ministry of Finance (Department of Financial Services) in connection with the examination of the Insurance Laws (Amendment) Bill, 2008. Major issues discussed included justification for raising foreign direct investment (FDI) from 26 to 49 per cent, penetration of insurance in rural areas after the opening up of the sector, observations of KPN Committee on raising the extent of foreign shareholding in Indian insurance companies, adequacy of domestic capital to finance capital needs of the insurance sector, lesser number of insurance products launched in public sector than in private sector, payment of commission to agents, rural and social sector obligations of insurance companies, new products introduced in the field of life and health insurance companies, level playing field between Indian insurance companies and foreign insurers in Special Economic Zones (SEZs) etc. The Chairman then directed the representatives to furnish replies to the points raised during the sitting within one week.

The witnesses then withdrew.

A verbatim record of proceedings was kept.

The Committee then adjourned.

Minutes of the Sixth sitting of the Standing Committee on Finance
The Committee sat on Thursday, the 08th December, 2011 from 1500 hrs. to 1615 hrs.

PRESENT

Shri Yashwant Sinha – Chairman

MEMBERS

LOK SABHA

2. Shri Shivkumar Udasi Chanabasappa
3. Shri Harishchandra Deoram Chavan
4. Shri Bhakta Charan Das
5. Shri Nishikant Dubey
6. Shri Chandrakant Khaire
7. Shri Bhartruhari Mahtab
8. Shri Prem Das Rai
9. Dr. Kavuru Sambasiva Rao
10. Shri Rayapati S. Rao
11. Shri Magunta Sreenivasulu Reddy
12. Shri G.M. Siddeswara
13. Shri Yashvir Singh
- 14.. Shri R. Thamaraiselvan
15. Dr. M. Thambidurai

RAJYA SABHA

16. Shri S.S. Ahluwalia
17. Shri Raashid Alvi
18. Shri Vijay Jawaharlal Darda
19. Shri Moinul Hassan
20. Shri Satish Chandra Misra
21. Shri Mahendra Mohan
22. Dr. Mahendra Prasad
23. Dr. K.V.P. Ramachandra Rao
24. Shri Yogendra P. Trivedi

SECRETARIAT

1. Shri A. K. Singh – Joint Secretary
2. Shri R.K. Jain – Director
3. Shri Ramkumar Suryanarayanan – Deputy Secretary

2. The Committee took up the following draft Reports for consideration and adoption:-

- (i) The Insurance Laws (Amendment) Bill, 2008;
- (ii) The Banking Laws (Amendment) Bill, 2011; and
- (iii) The National Identification Authority of India Bill, 2010.

3. The Committee adopted the above draft reports with some minor modifications/changes as suggested by Members. The Committee authorised the Chairman to finalise the Reports in the light of the modifications suggested and present these Reports to Parliament.

The Committee then adjourned.