

Statement under Rule 71(1) of the Rules of Procedure and Conduct of Business in Lok Sabha explaining circumstances which necessitated immediate legislation by promulgation of Securities and Insurance Laws (Amendment and Validation) Ordinance, 2010.

The Securities and Exchange Board of India Act, 1992 was enacted to provide for the establishment of a Board to protect the interests of investors in securities and to promote the development of, and to regulate, the securities market and for matters connected therewith or incidental thereto. The Insurance Act, 1938 contains the law relating to the business of insurance and the Insurance Regulatory and Development Authority Act, 1999 was enacted to provide for the establishment of an Authority to protect the interests of holders of insurance policies, to regulate, promote and ensure orderly growth of the insurance industry and for matters connected therewith or incidental thereto.

2. In January, 2010, the Securities and Exchange Board of India (SEBI) issued notices to show cause to some of the life insurance companies, on the ground that Unit Linked Insurance Policies (ULIPs) are akin to the mutual fund schemes and consequently can be sold only by entities which are registered with the SEBI and whose products meet with their approval. Further on 9th April, 2010 SEBI issued an order against fourteen insurance companies by virtue of powers conferred upon SEBI under section 19 of the Securities and Exchange Board of India Act, 1992 (SEBI Act) read with sections 11, 11B and 12(1B), directing them not to issue any offer document, advertisement, brochure soliciting money from investors or raise money from investors by way of new or additional subscription for any product (including ULIPs) having an investment component in the nature of mutual funds, till they obtain the requisite certificate of registration from SEBI.

3. Insurance Regulatory and Development Authority (IRDA) was of the opinion that the order of SEBI issued without offering the certain insurance companies any opportunity of hearing was bad in law and exercised without the necessary jurisdiction and would adversely affect the interests of the insurers and the investors in the market and put the policyholders to great losses. Hence, IRDA in exercise of the powers vested in the Authority under section 34 (1) (a) and (b) of the Insurance Act, 1938 and after consultation with members of the Consultative Committee, vide its order dated 10th April, 2010 directed all the fourteen insurance companies to note that notwithstanding the order of the SEBI, they shall continue to carry out insurance business as usual including offering, marketing and servicing of ULIPs in accordance with the Insurance Act, 1938, Rules, Regulations and Guidelines issued thereunder by the IRDA.


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4. For the purpose of sorting out the issue arisen due to issuance of SEBI order of 9th April, 2010, the Ministry of Law and Justice was consulted. The Ministry of Law and Justice opined that if primarily the product deals with insurance and incidentally touches upon the domain of 'securities', then the IRDA has the authority and jurisdiction to deal with that product. Further, till the SEBI order dated 9th April, 2010 is not set aside or stayed by the Securities Appellate Tribunal (SAT) or by a court of competent jurisdiction, it would have the force of law and any violation of the SEBI order may attract penalty as provided under section 15HB of the SEBI Act.

5. In order to clear uncertainties on the differences of opinion relating to jurisdiction of the securities market regulator i.e., the SEBI and the insurance regulator, i.e., the IRDA it has become necessary to clarify that 'life insurance business' also include any unit linked insurance policy and accordingly to amend the Insurance Act, 1938, the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992 for the said purpose.

6. In order to address the differences of opinion among certain statutory regulators which may arise in future, it was felt necessary to set up a joint mechanism, consisting of the Union Finance Minister, Secretary (Financial Services) and Chairpersons of the Insurance Regulatory and Development Authority, Securities and Exchange Board of India and the Pension Fund Regulatory and Development Authority (PFRDA) as its members, for resolving future differences of opinion as to whether any hybrid or composite instrument, having a component of money market investment or securities market instrument or a component of insurance or any other instrument falls within the jurisdiction of the IRDA or SEBI or RBI or PFRDA.

7. As both Houses of Parliament were not in Session and immediate action was required to be taken, the President promulgated the Securities and Insurance Laws (Amendment and Validation) Ordinance, 2010 on the 16th June, 2010 to achieve the above objectives


(PRANAB MUKHERJEE)
FINANCE MINISTER

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New Delhi