

Bill No. LXXII of 2008.

THE INSURANCE LAWS (AMENDMENT) BILL, 2008

A

BILL

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

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

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Insurance Laws (Amendment) Act, 2008.

Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

CHAPTER II

AMENDMENTS TO THE INSURANCE ACT, 1938

Substitution of references to certain expressions by certain other expressions	<p>2. In the Insurance Act, 1938 (hereafter in this Chapter referred to as the Insurance Act), throughout the Act, for the words and figures “the Indian Companies Act, 1913”, wherever they occur, the words and figures “the Companies Act, 1956” shall be substituted.</p>	4 of 1938. 7 of 1913. 1 of 1956.
Amendment of section 2.	<p>3. In section 2 of the Insurance Act,—</p> <p>(i) for clauses (I) and (IA), the following clauses shall be substituted, namely:—</p> <p style="padding-left: 40px;">‘(I) “actuary” means actuary as defined in clause (a) of sub-section (I) of section 2 of the Actuaries Act, 2006;</p> <p style="padding-left: 40px;">(IA) “Authority” means the Insurance Regulatory and Development Authority of India established under sub-section (I) of section 3 of the Insurance Regulatory and Development Authority Act, 1999;’;</p> <p>(ii) clause (5A) shall be omitted;</p> <p>(iii) after clause (6B), the following clause shall be inserted, namely:—</p> <p style="padding-left: 40px;">‘(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;’;</p> <p>(iv) for clause (7A), the following clause shall be substituted, namely:—</p> <p style="padding-left: 40px;">‘(7A) “Indian insurance company” means any insurer, being a company which is limited by shares, and,—</p> <p style="padding-left: 80px;">(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;</p> <p style="padding-left: 80px;">(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;</p> <p style="padding-left: 80px;">(c) whose sole purpose is to carry on life insurance business or general insurance business or re-insurance business or health insurance business.</p> <p style="padding-left: 40px;"><i>Explanation.</i>— 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);’;</p> <p>(v) in clause (8A),—</p> <p style="padding-left: 40px;">(I) for sub-clause (b), the following sub-clause shall be substituted, namely:—</p> <p style="padding-left: 80px;">“(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;”;</p> <p style="padding-left: 40px;">(II) in sub-clause (d), after the words “general insurance business”, the words “or health insurance business” shall be inserted;</p>	35 of 2006. 41 of 1999. 1 of 1956.

(vi) for clause (9), the following clause shall be substituted, namely:—

‘(9) “insurer” means —

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

(vii) in clause (10), the words and figures “licensed under section 42” shall be omitted;

(viii) in clause (11), in sub-clause (c), for the words “annuities payable out of any fund”, the words “benefit payable out of any fund” shall be substituted;

(ix) clauses (12), (13) and (15) shall be omitted;

7 of 1913.

(x) in clause (16), for the words, brackets, figures and letter “clauses (13) and (13A) of section 2 of the Indian Companies Act, 1913”, the words, brackets and figures “sub-clauses (iii) and (iv) of sub-section (1) of section 3 of the Companies Act, 1956” shall be substituted;

1 of 1956.

(xi) after clause (16), the following clauses shall be inserted, namely:—

‘(16A) “regulations” means the regulations framed by the Insurance Regulatory and Development Authority of India established under the Insurance Regulatory and Development Authority Act, 1999;

41 of 1999.

(16B) “re-insurance” means the insurance of all or part of one insurer’s risk by another insurer who accepts the risk for a mutually acceptable premium;

(16C) “Securities Appellate Tribunal” means the Securities Appellate Tribunal established under section 15K of the Securities and Exchange Board of India Act, 1992;’;

15 of 1992.

(xii) clause (17) shall be omitted.

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

Substitution of new section for section 2C.

“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:

Prohibition of transaction of insurance business by certain persons.

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

28 of 2005.

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

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

Amendment of section 2CA.

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

(ii) in clause (b), for the words, brackets, letters and figures “a body corporate referred to in clause (c) of sub-section (1) of section 2C”, the words “a body corporate

incorporated under the law of any country outside India not being of the nature of a private company” shall be substituted.

Insertion of new section 2CB. Properties in India not to be insured with foreign insurers except with the permission of Authority.

6. After section 2CA of the Insurance Act, the following section shall be inserted, namely :—

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

28 of 2005.

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

Omission of section 2E.

7. Section 2E of the Insurance Act shall be omitted.

Amendment of section 3.

8. In section 3 of the Insurance Act,—

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) if the Authority has reason to believe that any claim upon the

insurer arising in India under any policy of insurance remains unpaid for three months after final judgment in regular court of law, or

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

41 of 1999.

(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

1 of 1956.

57 of 1972.

42 of 1999.

15 of 2002.

(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

39 of 2002.

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

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

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

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

“(5C) Where a registration is suspended or cancelled under clause (a), clause (d), clause (e), clause (f) or clause (g) of sub-section (4), the Authority may at its discretion revive the registration, if the insurer within six months from the date on which the suspension or cancellation took effect complies with the provisions of section 64VA as to the excess of the value of his assets over the amount of his liabilities or has had an application under sub-section (4) of section 3A accepted, or satisfies the Authority that no claim upon him such as is referred to in clause (e) of sub-section (4) remains unpaid or that he has complied with any requirement of this Act or the Insurance Regulatory and Development Authority Act, 1999, or of any rule or any regulation, or any order made thereunder or any direction issued under those Acts, or that he has ceased to carry on any business other than insurance business or any prescribed business, as the case may be, and complies with any directions which may be given to him by the Authority.”

41 of 1999.

9. For section 3A of the Insurance Act, the following section shall be substituted, namely:—

“3A. (1) An insurer who has been granted a certificate of registration under section 3 shall pay such annual fee to the Authority in such manner as may be specified by the regulations.

Substitution of new section for section 3A.

Payment of annual fee by insurer.

(2) Any failure to deposit the annual fee shall render the certificate of registration liable to be cancelled.”.

Substitution of new section for section 4.

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

Minimum limits for annuities and other benefits secured by policies of life insurance.

“4. The insurer shall pay or undertake to pay on any policy of life insurance or a group policy issued, a minimum annuity and other benefits as may be determined by regulations excluding any profit or bonus provided that this shall not prevent an insurer from converting any policy into a paid-up policy of any value or payment of surrender value of any amount.”.

Amendment of section 5.

11. In section 5 of the Insurance Act,—

(i) in sub-section (2), both the provisos shall be omitted;

(ii) sub-section (3) shall be omitted.

Substitution of new section for section 6.

Requirement as to capital.

12. 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,—

41 of 1999.

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

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

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

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

Amendment of section 6A.

13. In section 6A of the Insurance Act,—

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

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

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

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

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

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

47 of 1950.

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

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

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

1 of 1956.

(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—

1 of 1956.

(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.

12 of 2003.

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

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

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

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

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

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

Omission of section 6AA.

15. In section 6B of the Insurance Act,—

Amendment of section 6B.

(i) in sub-section (1),—

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

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

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

Omission of sections 6C, 7, 8 and 9.

16. Sections 6C, 7, 8 and 9 of the Insurance Act, shall be omitted.

Amendment of section 10.

17. In section 10 of the Insurance Act,—

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

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

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

Substitution of new section for section 11.

18. For section 11 of the Insurance Act, the following section shall be substituted, namely:—

Accounts and balance-sheet.

“11. (1) Every insurer, on or after the commencement of the Insurance Laws (Amendment) Act, 2008, in respect of insurance business transacted by him and in respect of his shareholders’ funds, shall, at the expiration of each financial year, prepare with reference to that year, balance-sheet, a profit and loss account, a separate account of receipts and payments, a revenue account in accordance with the regulations as may be specified.

(2) Every insurer shall keep separate accounts relating to funds of shareholders and policy-holders.

(3) Unless the insurer is a company as defined in clause (10) of section 2 of the Companies Act, 1956, the accounts and statements referred to in sub-section (1) shall be signed by the insurer, or in the case of a company by the chairman, if any, and two directors and the principal officer of the company, or in case of an insurance co-operative society by the person in-charge of the society and shall be accompanied by a statement containing the names, descriptions and occupations of, and the directorships held by, the persons in charge of the management of the business during the period to which such accounts and statements refer and by a report on the affairs of the business during that period.”.

1 of 1956.

Substitution of new section for section 12.

19. For section 12 of the Insurance Act, the following section shall be substituted, namely:—

Audit.

“12. The balance-sheet, profit and loss account, revenue account and profit and loss appropriation account of every insurer, in respect of all insurance business transacted by him, shall, unless they are subject to audit under the Companies Act, 1956, be audited annually by an auditor, and the auditor shall in the audit of all such accounts have the powers of, exercise the functions vested in, and discharge the duties and be subject to the liabilities and penalties imposed on, auditors of companies by section 233 of the Companies Act, 1956.”.

1 of 1956.

Amendment of section 13.

20. In section 13 of the Insurance Act,—

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

“(1) Every insurer carrying on life insurance business shall, once at least every year cause an investigation to be made by an actuary into the financial condition of the life insurance business carried on by him, including a valuation

of his liabilities in respect thereto and shall cause an abstract of the report of such actuary to be made in accordance with the regulations:

Provided that the Authority may, having regard to the circumstances of any particular insurer, allow him to have the investigation made as at a date not later than two years from the date as at which the previous investigation was made:

41 of 1999.

Provided further that every insurer, on or after the commencement of the Insurance Regulatory and Development Authority Act, 1999, shall cause an abstract of the report of the actuary to be made in the manner specified by the regulations.”;

(ii) sub-section (3) shall be omitted;

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

“(4) There shall be appended to every such abstract a statement prepared in such form and in such manner as may be specified by the regulations:

Provided that, if the investigation referred to in sub-sections (1) and (2) is made annually by any insurer, the statement need not be appended every year but shall be appended at least once in every three years.”;

(iv) for sub-section (6), the following sub-section shall be substituted, namely:—

“(6) The provisions of this section relating to the life insurance business shall apply also to any such sub-class of insurance business included in the class “Miscellaneous Insurance” and the Authority may authorise such modifications and variations of regulations as may be necessary to facilitate their application to any such sub-class of insurance business:

Provided that, if the Authority is satisfied that the number and amount of the transactions carried out by an insurer in any such sub-class of insurance business is so small as to render periodic investigation and valuation unnecessary, it may exempt that insurer from the operation of this sub-section in respect of that sub-class of insurance business.”.

21. For section 14 of the Insurance Act, the following section shall be substituted, namely:—

Substitution of new section for section 14.

“14. Every insurer, in respect of all business transacted by him, shall maintain—

Record of policies and claims.

(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.”.

22. For section 15 of the Insurance Act, the following section shall be substituted, namely:—

Substitution of new section for section 15.

“15. (1) The audited accounts and statements referred to in section 11 or sub-section (5) of section 13 and the abstract and statement referred to in section 13 shall be printed, and four copies thereof shall be furnished as returns to the Authority within six months from the end of the period to which they refer.

Submission of returns.

(2) Of the four copies so furnished one shall be signed in the case of a company by the chairman and two directors and by the principal officer of the company and, if the company has a managing director by that managing director and one shall be signed by the auditor who made the audit or the actuary who made the valuation, as the case may be.”.

Omission of section 16.

23. Section 16 of the Insurance Act shall be omitted.

Omission of sections 17 and 17A.
Amendment of section 20.

24. Sections 17 and 17A of the Insurance Act shall be omitted.

25. In section 20 of the Insurance Act,—

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

“(1) Every return furnished to the Authority or certified copy thereof shall be kept by the Authority and shall be open to inspection; and any person may procure a copy of any such return, or of any part thereof, on payment of such fee as may be specified by regulations.”;

(ii) in sub-section (2), the words “or section 16” shall be omitted;

(iii) in sub-section (3), for the words “one rupee”, the words “such fee as may be specified by regulations” shall be substituted.

Amendment of section 21.

26. In section 21 of the Insurance Act,—

(i) in clause (d) of sub-section (1), the words and figures “or section 16” shall be omitted;

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

“(2) The Securities Appellate Tribunal may, on the application of an insurer and after hearing the Authority, cancel any order made by the Authority under clause (d) of sub-section (1) or may direct the acceptance of such a return which the Authority has declined to accept, if the insurer satisfies the Tribunal that the action of the Authority was in the circumstances unreasonable:

Provided that no application under this sub-section shall be entertained unless it is made before the expiration of four months from the date when the Authority made the order or declined to accept the return.”.

Amendment of section 22.

27. In section 22 of the Insurance Act,—

(i) in sub-section (1), the words “or an abstract of a valuation report furnished under clause (c) of sub-section (2) of section 16” shall be omitted;

(ii) in sub-section (2), the words “or, as the case may be, of sub-section (2) of section 16” shall be omitted.

Substitution of new sections for sections 27, 27A, 27B, 27C and 27D.

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

Investment of assets.

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

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

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

less—

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

(ii) any amount due to the insurer for loans granted on and within the surrender values of policies of life insurance maturing for payment in India issued by him or by an insurer whose business he has acquired and in respect of which he has assumed liability in the manner following, namely, twenty-five per cent. of the said sum in Government securities, a further sum equal to not less than twenty-five per cent. of the said sum in Government securities or other approved securities and the balance in any of the approved investments as may be specified in the regulations subject to the limitations, conditions and restrictions specified therein.

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

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

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

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

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

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

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

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

(5) Where an insurer has accepted re-insurance in respect of any policies of life insurance issued by another insurer and maturing for payment in India or has ceded re-insurance to another insurer in respect of any such policies issued by himself, the sum referred to in sub-section (1) shall be increased by the amount of the liability involved

in such acceptance and decreased by the amount of the liability involved in such cession.

(6) The Government securities and other approved securities in which assets are under sub-section (1) or (2) to be invested and kept invested shall be held by the insurer free of any encumbrance, charge, hypothecation or lien.

(7) The assets required by this section to be held invested by an insurer incorporated or domiciled outside India shall, except to the extent of any part thereof which consists of foreign assets held outside India, be held in India and all such assets shall be held in trust for the discharge of the liabilities of the nature referred to in sub-section (1) and shall be vested in trustees resident in India and approved by the Authority, and the instrument of trust under this sub-section shall be executed by the insurer with the approval of the Authority and shall define the manner in which alone the subject-matter of the trust shall be dealt with.

Explanation. —This sub-section shall apply to an insurer incorporated in India whose share capital to the extent of one-third is owned by, or the members of whose governing body to the extent of one-third consists of members domiciled elsewhere than in India.

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.

Further provisions regarding investments.

(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 sub-section (2) of section 27,—

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

(b) invest in the shares or debentures of any one company,

more than the percentage specified by the regulations.

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

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

referred to in sub-section (2) thereof in value which may, subject to such conditions and restrictions as may be prescribed, be offered as security for any loan taken for purposes of any investment), be held free of any encumbrance, charge, hypothecation or lien.

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

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

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

- (a) in the case of any insurer carrying on life insurance business—
 - (i) all his funds, if he carries on no other class of insurance business;
 - (ii) all the funds appertaining to his life insurance business if he carries on some other class of insurance business also; and
- (b) in the case of any other insurer carrying on life insurance business—
 - (i) all his funds in India, if he carries on no other class of insurance business;
 - (ii) all the funds in India appertaining to his life insurance business if he carries on some other class of insurance business also; but does not include any fund or portion thereof in respect of which the Authority is satisfied that such fund or portion thereof, as the case may be, is regulated by the law of any country outside India or in respect of which the Authority is satisfied that it would not be in the interest of the insurer to apply the provisions of this section.

27B. (1) All assets of an insurer carrying on general insurance business shall, subject to such conditions, if any, as may be prescribed, be deemed to be assets invested or kept invested in approved investments specified in section 27.

Provisions regarding investments of assets of insurer carrying general insurance business.

(2) All assets shall (except for a part thereof not exceeding one-tenth of the total assets in value which may subject to such conditions and restrictions as may be prescribed, be offered as security for any loan taken for purposes of any investment or for payment of claims, or which may be kept as security deposit with the banks for acceptance of policies) be held free of any encumbrance, charge, hypothecation or lien.

(3) Without prejudice to the powers conferred on the Authority by sub-section (5) of section 27A nothing contained in this section shall be deemed to require any insurer to realise any investment made in conformity with the provisions of sub-section (1) of section 27 after the commencement of the Insurance (Amendment) Act, 1968, which, after the making thereof, has ceased to be an approved investment within the meaning of this section.

62 of 1968.

27C. An insurer may invest not more than five per cent. in aggregate of his controlled fund or assets as referred to in sub-section (2) of section 27 in the companies

Investment by insurer in certain cases.

belonging to the promoters, subject to such conditions as may be specified by regulations.

Manner and condition of investment.

27D. (1) Without prejudice to anything contained in this section, the Authority may, in the interests of the policy-holders, specify by the regulations, the time, manner and other conditions of investment of assets to be held by an insurer for the purposes of this Act.

(2) The Authority may give specific directions for the time, manner and other conditions subject to which the funds of policy-holders shall be invested in the infrastructure and social sector as may be specified by regulations and such regulations shall apply uniformly to all the insurers carrying on the business of life insurance, general insurance, or health insurance or re-insurance in India on or after the commencement of the Insurance Regulatory and Development Authority Act, 1999. 41 of 1999.

(3) The Authority may, after taking into account the nature of business and to protect the interests of the policy-holders, issue to an insurer the directions relating to the time, manner and other conditions of investment of assets to be held by him:

Provided that no direction under this sub-section shall be issued unless the insurer concerned has been given a reasonable opportunity of being heard.

Prohibition for investment of funds outside india.

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

Substitution of new section for section 28, section 28A and section 28B.

29. For section 28, section 28A and section 28B of the Insurance Act, the following section shall be substituted, namely:—

Statement and return of investment of assets.

"28. Every insurer shall submit to the Authority returns giving details of investments made, in such form, time and manner including its authentication as may be specified by the regulations."

Substitution of new section for section 29.

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

Prohibition of loans.

"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. 1 of 1956.

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

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

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

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

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

31. For section 30 of the Insurance Act, the following section shall be substituted, namely:— Substitution of section 30.

“30. If by reason of a contravention of any of the provisions of section 27, 27A, 27B, 27C, 27D or section 29, any loss is sustained by the insurer or by the policy-holders, every director, manager or officer who is knowingly a party to such contravention shall, without prejudice to any other penalty to which he may be liable under this Act, be jointly and severally liable to make good the amount of such loss.”. Liability of directors, etc., for loss due to contravention of section 27, 27A, 27B, 27C, 27D or 29.

32. In section 31 of the Insurance Act, for sub-section (1), the following sub-section shall be substituted, namely:— Amendment of section 31.

“(1) None of the assets in India of any insurer shall, except in so far as assets are required to be vested in trustees under sub-section (7) of section 27, be kept otherwise than in the name of a public officer approved by the Authority, or in the corporate name of the undertaking, if a company or as the case may be an insurance co-operative society.”.

33. In section 31A of the Insurance Act,—

Amendment of section 31A.

(a) in sub-section (1), in clause (c) —

(I) in sub-clauses (i) and (ii) to the proviso, the following shall be substituted, namely:—

“(i) the payment of commission to an insurance agent, in respect of insurance business procured by or through him;”;

(II) clause (iii) to the proviso shall be omitted;

(b) in sub-section (3), for the words, letter and figure “or in section 86B of the Indian Companies Act, 1913”, the words “or in the provision relating to assignment of office under the Companies Act, 1956” shall be substituted.

Substitution of new section for section 31B. **34.** For section 31B of the Insurance Act, the following section shall be substituted, namely:—

Power to restrict payment of excessive remuneration. “31B. No insurer shall in respect of insurance business transacted by him, shall pay to any person by way of remuneration, whether by way of commission or otherwise in excess of such sum as may be specified by the regulations.” .

Omission of section 32. **35.** Section 32 of the Insurance Act shall be omitted.

Amendment of section 32A. **36.** In section 32A of the Insurance Act,—
 (i) in sub-section (1), the words, figures and letter, “specified in sub-clause (b) of clause (9) of section 2 and,” shall be omitted.
 (ii) sub-sections (2) and (3) shall be omitted.

Amendment of section 32B. **37.** In section 32B of the Insurance Act, for the words “rural or social sector, as may be specified in the Official Gazette by the Authority”, the words “rural and social sectors, as may be specified by regulations” shall be substituted.

Insertion of new section 32D. **38.** After section 32C of the Insurance Act, the following section shall be inserted, namely:—

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

Substitution of new section for section 33. **39.** For section 33 of the Insurance Act, the following section shall be substituted, namely:—

Power of investigation and inspection by Authority. “33. (1) The Authority may, at any time, if it considers expedient to do so by order in writing, direct any person (hereafter in this section referred to as “Investigating Officer”) specified in the order to investigate the affairs of any insurer or intermediary or insurance intermediary, as the case may be, and to report to the Authority on any investigation made by such Investigating Officer:

Provided that the Investigating Officer may, wherever necessary, employ any auditor or actuary or both for the purpose of assisting him in any investigation under this section.

(2) Notwithstanding anything to the contrary contained in section 235 of the Companies Act, 1956, the Investigating Officer may, at any time, and shall, on being directed so to do by the Authority, cause an inspection to be made by one or more of his officers of the books of account of any insurer or intermediary or insurance intermediary, as the case may be, and the Investigating Officer shall supply to the insurer or intermediary or insurance intermediary, as the case may be, a copy of the report on such inspection. 1 of 1956.

(3) It shall be the duty of every manager, managing director or other officer of the insurer including a service provider, contractor of an insurer where services are outsourced by the insurer, or intermediary or insurance intermediary, as the case may

be, to produce before the Investigating Officer directed to make the investigation under sub-section (1), or inspection under sub-section (2), all such books of account, registers, other documents and the database in his custody or power and to furnish him with any statement and information relating to the affairs of the insurer or intermediary or insurance intermediary, as the case may be, as the Investigating Officer may require of him within such time as the said Investigating Officer may specify.

(4) Any Investigating Officer, directed to make an investigation under sub-section (1), or inspection under sub-section (2), may examine on oath, any manager, managing director or other officer of the insurer including a service provider or contractor where the services are outsourced by the insurer or intermediary or insurance intermediary, as the case may be, in relation to his business.

(5) The Investigating Officer shall, if he has been directed by the Authority to cause an inspection to be made, make a report to the Authority on such inspection.

(6) On receipt of any report under sub-section (1) or sub-section (5), the Authority may, after giving such opportunity to the insurer or intermediary or insurance intermediary, as the case may be, to make a representation in connection with the report as, in the opinion of the Authority, seems reasonable, by order in writing, —

(a) require the insurer, to take such action in respect of any matter arising out of the report as the Authority may think fit; or

(b) cancel the registration of the insurer or intermediary or insurance intermediary, as the case may be; or

(c) direct any person to apply to the court for the winding up of the insurer or intermediary or insurance intermediary, as the case may be, if it is a company, whether the registration of the insurer or intermediary or insurance intermediary, as the case may be, has been cancelled under clause (b) or not.

(7) The Authority may by the regulations made by it specify the minimum information to be maintained by insurers or intermediary or insurance intermediary, as the case may be, in their books, the manner in which such information shall be maintained, the checks and other verifications to be adopted by insurers or intermediary or insurance intermediary, as the case may be, in that connection and all other matters incidental thereto as are, in its opinion, necessary to enable the Investigating Officer to discharge satisfactorily his functions under this section.

Explanation. — For the purposes of this section, expression “insurer” shall include in the case of an insurer incorporated in India—

(a) all its subsidiaries formed for the purpose of carrying on the business of insurance exclusively outside India; and

(b) all its branches whether situated in India or outside India.

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

(9) All expenses of, and incidental to, any investigation made under this section shall be defrayed by the insurer or intermediary or insurance intermediary, as the case may be, shall have priority over the debts due from the insurer and shall be recoverable as an arrear of land revenue.”.

40. In section 34B of the Insurance Act, for sub-section (4), the following sub-section shall be substituted, namely:—

Amendment of section 34B.

“(4) If any person in respect of whom an order is made by the Authority under sub-section (1) or under the proviso to sub-section (2), contravenes the provisions of this section, he shall be liable to a penalty of one lakh rupees for each

day during which such contravention continues or one crore rupees, whichever is less.”.

Amendment of section 34C.

41. In section 34C of the Insurance Act, for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) If the Authority is of opinion that in the public interest or in the interest of an insurer or his policy-holders it is necessary so to do, it may, from time to time, by order in writing, appoint, in consultation with the Central Government with effect from such date as may be specified in the order, one or more persons to hold office as additional directors of the insurer:

Provided that the number of additional directors so appointed shall not, at any time, exceed five or one-third of the maximum strength fixed for the Board by the articles of association of the insurer, whichever is less.”.

Amendment of section 34E.

42. In section 34E of the Insurance Act, for the word “Controller”, the word “Authority” shall be substituted.

Omission of section 34G.

43. Section 34G of the Insurance Act shall be omitted.

Amendment of section 34H.

44. In section 34H of the Insurance Act,—

(i) in sub-section (1), for the words “an officer authorised by the Authority”, the words “a Deputy Director” shall be substituted;

(ii) in sub-sections (7) and (8), for the words “Central Government”, the words “Securities Appellate Tribunal” shall be substituted.

Amendment of section 35.

45. In section 35 of the Insurance Act,—

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

“(1) Notwithstanding anything contained in any other law for the time being in force, no insurance business of an insurer shall be transferred to or amalgamated with the insurance business of any other insurer except in accordance with a scheme prepared under this section and approved by the Authority.”;

(ii) in sub-section (3), for clauses (b) and (c), the following clauses shall be substituted, namely :—

“(b) balance-sheets in respect of the insurance business of each of the insurers concerned in such amalgamation or transfer, prepared in such forms may be specified by regulation;

(c) actuarial reports and abstracts in respect of the life insurance business of each of the insurers so concerned, prepared in conformity with the regulations specified in this regard.”.

Substitution of new section for section 36.

46. For section 36 of the Insurance Act, the following section shall be substituted, namely:—

Sanction of amalgamation and transfer by Authority.

“36. When any application under sub-section (3) of section 35 is made to the Authority, the Authority shall cause, a notice of the application to be given to the holders of any kind of policy of insurer concerned alongwith statement of the nature and terms of the amalgamation or transfer, as the case may be, to be published in such manner and for such period as it may direct, and, after hearing the directors and considering the objections of the policy-holders and any other persons whom it considers entitled to be heard, may approve the arrangement, and shall make such consequential orders as are necessary to give effect to the arrangement.”.

47. In section 37A of the Insurance Act, for sub-section (4), the following sub-sections shall be substituted, namely:— Amendment of section 37A.

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

48. For sections 38, 39 and 40 of the Insurance Act, the following sections shall be substituted, namely:— Substitution of new sections for sections 38, 39 and 40.

“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. Assignment and transfer of insurance policies.

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

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

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

(5) Subject to the provisions in sub-section (2), the transfer or assignment shall be complete and effectual upon the execution of such endorsement or instrument duly attested but except, where the transfer or assignment is in favour of the insurer, shall not be operative as against an insurer, and shall not confer upon the transferee or assignee, or his legal representative, any right to sue for the amount of such policy

or the moneys secured thereby until a notice in writing of the transfer or assignment and either the said endorsement or instrument itself or a copy thereof certified to be correct by both transferor and transferee or their duly authorised agents have been delivered to the insurer:

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

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

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

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

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

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

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

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

(a) the proceeds under the policy will become payable to the 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:

Nomination by
policy-holder.

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

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

(3) The insurer shall furnish to the 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 policy-holder, will not cancel the nomination but shall affect the rights of the nominee only to the extent of the interest of the transferee or assignee, as the case may be, in the policy:

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

(5) Where the policy matures for payment during the lifetime of the person whose life is insured or where the nominee or, if there are more nominees than one, all the nominees die before the policy matures for payment, the amount secured by the policy shall be payable to the policy-holder or his heirs or legal representatives or the holder of a succession certificate, as the case may be.

(6) Where the nominee or if there are more nominees than one, a nominee or nominees survive the person whose life is insured, the amount secured by the policy shall be payable to such survivor or survivors.

(7) Subject to the other provisions of this section, where the holder of a policy of insurance on his own life nominates his parents, or his spouse, or his children, or his spouse and children, or any of them, the nominee or nominees shall be beneficially

entitled to the amount payable by the insurer to him or them under sub-section (6) unless it is proved that the holder of the policy, having regard to the nature of his title to the policy, could not have conferred any such beneficial title on the nominee.

(8) Subject as aforesaid, where the nominee, or if there are more nominees than one, a nominee or nominees, to whom sub-section (7) applies, die after the person whose life is insured but before the amount secured by the policy is paid, the amount secured by the policy, or so much of the amount secured by the policy as represents the share of the nominee or nominees so dying (as the case may be), shall be payable to the heirs or legal representatives of the nominee or nominees or the holder of a succession certificate, as the case may be, and they shall be beneficially entitled to such amount.

(9) Nothing in sub-sections (7) and (8) shall operate to destroy or impede the right of any creditor to be paid out of the proceeds of any policy of life insurance.

(10) The provisions of sub-sections (7), (8) and (9) shall apply to all policies of life insurance maturing for payment after the commencement of the Insurance Laws (Amendment) Act, 2008.

(11) Every policy-holder shall have an option to indicate in clear terms whether the person or persons being nominated by the policy-holder is/are a beneficiary nominee(s) or a collector nominee(s):

Provided where the policy-holder fails to indicate whether the person being nominated is a beneficiary nominee or a collector nominee it will be deemed that the person nominated is a beneficiary nominee.

Explanation.—For the purposes of this sub-section,—

(a) the expression ‘beneficiary nominee’ means a nominee who is entitled to receive the entire proceeds payable under a policy of insurance subject to other provisions of this Act; and

(b) the expression ‘collector nominee’ means a nominee other than a beneficiary nominee who is liable to make payment of the benefits arising out of policy to the beneficiary nominee or legal heirs of policy-holders or representative.

(12) The collector nominee shall make payment of the benefits arising out of policy to the beneficiary nominee or legal heirs or representative of the policy-holder in accordance with the regulations made by the Authority.

(13) Where a policy-holder dies after the maturity of the policy but the proceeds and benefit of his policy has not been made to him because of his death, in such a case, his nominee shall be entitled to the proceeds and benefit of his policy.

(14) The provisions of this section shall not apply to any policy of life insurance to which section 6 of the Married Women’s Property Act, 1874, applies or has at any time applied: 3 of 1874.

Provided that where a nomination made whether before or after the commencement of the Insurance Laws (Amendment) Act, 2008, in favour of the wife of the person who has insured his life or of his wife and children or any of them is expressed, whether or not on the face of the policy, as being made under this section, the said section 6 shall be deemed not to apply or not to have applied to the policy.

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.”.

49. Section 40A of the Insurance Act shall be omitted.

Omission of section 40A.

50. For section 40B and section 40C of the Insurance Act, the following sections shall be substituted, namely:—

Substitution of new sections for sections 40B and 40C.

"40B. Every insurer transacting life insurance business in India shall furnish to the Authority, the details of expenses of management in such manner and form as may be specified by regulations.

Limitation of expenses of management in life insurance business.

40C. Every insurer transacting general insurance, health insurance or re-insurance business shall submit to the Authority, the details of expenses of management in such manner and form as may be specified by regulations.".

Limitation of expenses of management in general, health insurance and re-insurance business.

51. In section 41 of the Insurance Act, for sub-section (2), the following sub-section shall be substituted, namely:—

Amendment of section 41.

"(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.”.

52. For section 42 of the Insurance Act, the following section shall be substituted, namely:—

Substitution of new section for section 42.

"(1) An insurer may appoint any person to act as insurance agent for the purpose of soliciting and procuring insurance business:

Appointment of insurance agents.

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."

Omission of sections 42A, 42B and 42C.

53. Sections 42A, 42B and 42C of the Insurance Act shall be omitted.

Amendment of section 42D.

54. In section 42D of the Insurance Act,—

(i) For the words "licence" and "licence issued", wherever they occur, the words "registration" and "registration made", shall respectively be substituted.

(ii) in sub-section (1), in clause (a) of the proviso, for the word, brackets and figure "sub-section (4)", the word, brackets and figure "sub-section (3)" shall be substituted;

(iii) in sub-section (3), for the words, letters, brackets and figures "in clauses (b), (c), (d), (e) and (f) of sub-section (4) of section 42", the following shall be substituted, namely:—

"in clauses (b), (c), (d), (e) and (g) of sub-section (3) of section 42."

Substitution of new section for section 42E.

55. For section 42E of the Insurance Act, the following section shall be substituted, namely:—

Condition for intermediary or insurance intermediary.

"42E. Without prejudice to the provisions contained in this Act, the Authority may, by regulations made in this behalf, specify the requirements of capital, form of business and other conditions, to act as an intermediary or an insurance intermediary."

Substitution of new section for section 43.

56. For section 43 of the Insurance Act, the following section shall be substituted, namely:—

Record of insurance agents.

"43. (1) Every insurer and every person who acting on behalf of an insurer employs insurance agents shall maintain a record showing the name and address of every insurance agent appointed by him and the date on which his appointment began and the date, if any, on which his appointment ceased.

(2) The record prepared by the insurer under sub-section (1), shall be maintained for a period of five years."

57. Section 44 of the Insurance Act shall be omitted.

Omission of section 44.

58. For sections 44A and 45 of the Insurance Act, the following sections shall be substituted, namely:—

Substitution of new sections for sections 44A and 45.

"44A. For the purposes of ensuring compliance with the provisions of sections 40, 40B, 40C the Authority may, by notice—

Power to call for information.

(a) require from an insurer such information, certified if so required by an auditor or actuary, as he may consider necessary;

(b) require an insurer to submit for his examination at the principal place of business of the insurer in India, any book of account, register or other document, or to supply any statement which may be specified in the notice;

(c) examine any officer of an insurer on oath, in relation to any such information, book, register, document or statement and the insurer, shall comply with any such requirement within such time as may be specified in the notice.

45. (1) No policy of life insurance shall be called in question on any ground whatsoever after the expiry of five years from the date of the policy, *i.e.*, from the date of issuance of the policy or the date of commencement of risk or the date of revival of the policy or the date of the rider to the policy, whichever is later.

Policy not be called in question on ground of mis-statement after five years.

(2) A policy of life insurance may be called in question at any time within five years from the date of issuance of the policy or the date of commencement of risk or the date of revival of the policy or the date of the rider to the policy, whichever is later, on the ground of fraud:

Provided that the insurer will have to communicate in writing to the insured or the legal representatives or nominees or assignees of the insured the grounds and materials on which such decision is based.

Explanation I.—For the purposes of this sub-section, the expression 'fraud' means any of the following acts committed by the insured or by his agent, with the intent to deceive the insurer or to induce the insurer to issue a life insurance policy:

(a) the suggestion, as a fact of that which is not true and which the insured does not believe to be true;

(b) the active concealment of a fact by the insured having knowledge or belief of the fact;

(c) any other act fitted to deceive; and

(d) any such act or omission as the law specially declares to be fraudulent.

Explanation II.—Mere silence as to facts likely to affect the assessment of the risk by the insurer is not fraud, unless the circumstances of the case are such that regard being had to them, it is the duty of the insured or his agent, keeping silence to speak, or unless his silence is, in itself, equivalent to speak.

(3) Notwithstanding anything contained in sub-section (2), no insurer shall repudiate a life insurance policy on the ground of fraud if the insured can prove that the mis-statement of or suppression of a material fact was true to the best of his knowledge and belief or that there was no deliberate intention to suppress the fact or that such mis-statement of or suppression of a material fact are within the knowledge of the insurer.

Explanation.—A person who solicits and negotiates a contract of insurance shall be deemed for the purpose of the formation of the contract, to be the agent of the insurer.

(4) A policy of life insurance may be called in question at any time within five years from the date of issuance of the policy or the date of commencement of risk or the date of revival of the policy or the date of the rider to the policy, whichever is later, on the ground that any statement of or suppression of a fact material to the expectancy of the life of the insured was incorrectly made in the proposal or other document on the basis of which the policy was issued or revived or rider issued:

Provided that the insurer will have to communicate in writing to the insured or the legal representatives or nominees or assignees of the insured the grounds and materials on which such decision to repudiate the policy of life insurance is based:

Provided further that in case of repudiation of the policy on the ground of mis-statement or suppression of a material fact, and not on the ground of fraud, the premiums collected on the policy till the date of repudiation shall be paid to the insured or the legal representatives or nominees or assignees of the insured within a period of ninety days from the date of such repudiation.

Explanation.—For the purposes of this sub-section, the mis-statement of or suppression of fact will not be considered material unless it has a direct bearing on the risk undertaken by the insurer, the onus is on the insurer to show that had the insurer been aware of the said fact no life insurance policy would have been issued to the insured.

(5) Nothing in this section shall prevent the insurer from calling for proof of age at any time if he is entitled to do so, and no policy shall be deemed to be called in question merely because the terms of the policy are adjusted on subsequent proof that the age of the life insured was incorrectly stated in the proposal."

Omission of sections 47A and 48.

59. Sections 47A and 48 of the Insurance Act shall be omitted.

Substitution of new section for section 48A.

60. For section 48A of the Insurance Act, the following section shall be substituted, namely:—

Insurance agent or intermediary or insurance intermediary not to be directors in insurance company.

"48A. No insurance agent or intermediary or insurance intermediary shall be eligible to be or remain a director in insurance company:

Provided that any director holding office at the commencement of the Insurance Laws (Amendment) Act, 2008 shall not become ineligible to remain a director by reason of this section until the expiry of six months from the date of commencement of the said Act:

Provided further that the Authority may permit an agent or intermediary or insurance intermediary to be on the Board of an insurance company subject to such conditions or restrictions as it may impose to protect the interest of policy-holders or to avoid conflict of interest."

Amendment of section 49.

61. In section 49 of the Insurance Act, in sub-section (1),—

(i) for the words "being an insurer specified in sub-clause (a) (ii) or sub-clause (b) of clause (9) of section 2" shall be omitted;

(ii) for the words "or to the Central Government under section 11 of the Indian Life Insurance Companies Act, 1912" shall be omitted.

7 of 1912.

Substitution of new sections for sections 52 and 52A.

62. For sections 52 and 52A of the Insurance Act, the following sections shall be substituted, namely:—

"52. No insurer shall commence any business upon the dividing principle, that is to say, on the principle that the benefit secured by a policy is not fixed but depends either wholly or partly on the result of a distribution of certain sums amongst policies becoming claims within certain time-limits, or on the principle that the premiums payable by a policy-holder depend wholly or partly on the number of policies becoming claims within certain time-limits:

Prohibition of business on dividing principle.

Provided that nothing in this section shall be deemed to prevent an insurer from allocating bonuses to holders of policies of life insurance as a result of a periodical actuarial valuation either as reversionary additions to the sums insured or as immediate cash bonuses or otherwise.

52A. (1) If at any time the Authority has reason to believe that an insurer carrying on life insurance business is acting in a manner likely to be prejudicial to the interests of holders of life insurance policies, it may, after giving such opportunity to the insurer to be heard appoint an Administrator to manage the affairs of the insurer under the direction and control of the Authority.

When Administrator for management of insurance business may be appointed.

(2) The Administrator shall receive such remuneration as the Authority may direct and the Authority may at any time cancel the appointment and appoint some other person as Administrator."

63. In section 52BB of the Insurance Act,—

Amendment of section 52BB.

(a) in sub-section (2), for the words "the Central Government and the Central Government", the words "Securities Appellate Tribunal and the Securities Appellate Tribunal" shall be substituted;

(b) in sub-section (3), for the words "Central Government", the words "Securities Appellate Tribunal", shall be substituted;

(c) in sub-section (10), in clause (a), the words "or the Central Government" shall be omitted.

64. For section 52D of the Insurance Act, the following section shall be substituted, namely:—

Substitution of section 52D.

"52D. If at any time, it appears to the Authority that the purpose of the order appointing the Administrator has been fulfilled or that, for any reason, it is undesirable that the order of appointment should remain in force, the Authority may cancel the order and thereupon the Administrator shall be divested of the management of the insurance business which shall, unless otherwise directed by the Authority, again vest in the person in whom it was vested immediately prior to the appointment of Administrator or any other person appointed by the insurer in this behalf."

Termination of appointment of Administrator.

65. In Section 52E the words "Central Government" are to be replaced by the word "Authority".

Amendment of section 52E.

66. In section 52F of the Insurance Act, for the words "punishable with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both", the words "liable to penalty of rupees ten thousand each day during which such failure continues or rupees ten lakh, whichever is less" shall be substituted.

Amendment of section 52F.

67. In section 52G of the Insurance Act, in sub-section (2), the words "Central Government or" shall be omitted.

Amendment of section 52G.

68. Sections 52H to 52N (both inclusive) of the Insurance Act, shall be omitted.

Omission of sections 52H to 52N.

69. In section 53 of the Insurance Act,—

Amendment of section 53.

(a) in sub-section (1), the following *Explanation* shall be inserted at the end, namely:—

“*Explanation.*—For the purpose of sections 53 to 61A, “Tribunal” means National Company Law Tribunal constituted under sub-section (1) of section 10FB of the Companies Act, 1956.”;

1 of 1956.

(b) In sub-section (2), in clause (b), sub-clause (i) shall be omitted.

Amendment of section 58.

70. In section 58 of the Insurance Act, for sub-section (4), the following sub-section shall be substituted, namely:—

“(4) An order of the Tribunal confirming a scheme under this section whereby the memorandum of a company is altered with respect to its objects shall as respects the alteration have effect as if it were an order confirmed under section 15 of the Companies Act, 1956, and the provisions of section 17 of that Act shall apply accordingly.”.

1 of 1956.

Omission of section 59.

71. Section 59 of the Insurance Act, shall be omitted.

Omission of sections 62, 63 and 64.

72. Sections 62 to 64 (both inclusive) of the Insurance Act, shall be omitted.

Amendment of heading.

73. In Part II A of the Insurance Act, for the heading “INSURANCE ASSOCIATION OF INDIA, COUNCILS OF THE ASSOCIATION AND COMMITTEES THEREOF” the following heading shall be substituted, namely:—

“LIFE INSURANCE COUNCIL AND GENERAL INSURANCE COUNCIL AND COMMITTEES THEREOF.”.

Omission of sections 64A and 64B.

74. Sections 64A and 64B of the Insurance Act, shall be omitted.

Substitution of new sections for sections 64C and 64D.

75. For sections 64C and 64D of the Insurance Act, the following sections shall be substituted, namely :—

“64C. On and from the date of commencement of the Insurance Laws (Amendment) Act, 2008,—

(a) the existing Life Insurance Council, a representative body of the insurers, who carry on the life insurance business in India; and

(b) the existing General Insurance Council, a representative body of insurers, who carry on general, health insurance business and re-insurance in India,

shall be deemed to have been constituted as the respective Councils under this Act.

Authorisation to represent in Councils.

64D. It shall be lawful for any member of the Life Insurance Council or the General Insurance Council to authorise any of its officer to act as the representative of such member at any meeting of the Council concerned.”.

Substitution of new section for section 64F.

76. For section 64F of the Insurance Act, the following section shall be substituted, namely:—

“64F. (1) The Executive Committee of the Life Insurance Council shall consist of the following persons, namely:—

(a) four representatives of members of the Life Insurance Council elected in their individual capacity by the members in such manner as may be laid down in the bye-laws of the Council;

Executive Committees of the Life Insurance Council and the General Insurance Council.

(b) an eminent person not connected with insurance business, nominated by the Authority; and

(c) three persons to represent insurance agents, intermediaries and policy-holders respectively as may be nominated by the Authority:

Provided that one of the representatives as mentioned in clause (a) shall be elected as the Chairperson of the Executive Committee of the Life Insurance Council.

(2) The Executive Committee of the General Insurance Council shall consist of the following persons, namely:—

(a) four representatives of members of the General Insurance Council elected in their individual capacity by the members in such manner as may be laid down in the bye-laws of the Council;

(b) an eminent person not connected with insurance business, nominated by the Authority; and

(c) four persons to represent insurance agents, third party administrators, surveyors and loss assessors and policy-holders respectively as may be nominated by the Authority:

Provided that one of the representatives as mentioned in clause (a) shall be elected as the Chairperson of the Executive Committee of the General Insurance Council.

(3) If any body of persons specified in sub-sections (1) and (2) fails to elect any of the members of the Executive Committees of the Life Insurance Council or the General Insurance Council, the Authority may nominate any person to fill the vacancy, and any person so nominated shall be deemed to be a member of the Executive Committee of the Life Insurance Council or the General Insurance Council, as the case may be, as if he had been duly elected thereto.

(4) Each of the said Executive Committees may make bye-laws for the transaction of any business at any meeting of the said Committee.

(5) The Life Insurance Council or the General Insurance Council may form such other committees consisting of such persons as it may think fit to discharge such functions as may be delegated thereto.

(6) The Secretary of the Executive Committee of the Life Insurance Council and of the Executive Committee of the General Insurance Council shall in each case be appointed by the Executive Committee concerned:

Provided that each Secretary appointed by the Executive Committee concerned shall exercise all such powers and do all such acts as may be authorised in this behalf by the Executive Committee concerned.”.

77. In section 64G of the Insurance Act, in sub-section (2), for the words “by nomination by the Authority”, the words “in such manner as may be laid down in the bye-laws of the Council concerned” shall be substituted. Amendment of section 64G.

78. Section 64-I of the Insurance Act, shall be omitted. Omission of section 64-I.

79. In section 64J of the Insurance Act, for sub-section (2), the following sub-section shall be substituted, namely:— Amendment of section 64J.

“(2) For the purpose of enabling it to effectively discharge its functions, the Executive Committee of the Life Insurance Council may collect such fees as may be laid down in the bye-laws made by the Council from the insurers carrying on life insurance business.”.

- Amendment of section 64L. **80.** In section 64L of the Insurance Act, for sub-section (2), the following sub-section shall be substituted, namely:—
- “(2) For the purpose of enabling it to effectively discharge its functions, the Executive Committee of the General Insurance Council may collect such fees as may be laid down in the bye-laws made by the Council from the insurers carrying on general insurance business.”.
- Amendment of section 64N. **81.** In section 64N of the Insurance Act, for the words “the Central Government may prescribe”, the words “the Authority may specify” shall be substituted.
- Amendment of section 64R. **82.** In section 64R of the Insurance Act, in sub-section (1),—
- (a) for clause (c), the following clause shall be substituted, namely:—
- “(c) keep and maintain up to date a copy of list of all insurers who are members of the either Council.”.
- (b) in clause (d), for the words “with the previous approval of the Authority make regulations for”, the words “make bye laws for” shall be substituted.
- Omission of section 64S and 64T. **83.** Sections 64S and 64T of the Insurance Act, shall be omitted.
- Omission of sections 64U to 64UL. **84.** Sections 64U to 64UL (both inclusive) of the Insurance Act, shall be omitted.
- Insertion of new section 64ULA. **85.** After section 64UL of the Insurance Act, the following section shall be inserted, namely:—
- 64ULA.** (1) Notwithstanding anything contained in this Part, until the rates, advantage and terms and conditions laid-down by the Advisory Committee under section 64UC are de-notified by the Authority with effect from such date as the Authority may by notification in the Official Gazette determine, and the rates, advantages and terms and conditions are decided by the insurer concerned, the rates, advantages and terms and conditions notified by the Advisory Committee shall continue to be in force and shall always be deemed to have been in force and any such rates, advantages and terms and conditions shall be binding on all the insurers.
- (2) The Authority shall, in consultation with the Central Government, prepare a scheme for the existing employees of the Tariff Advisory Committee on its dissolution, keeping in view the interests of such employees on such terms and conditions as it may, by order, determine.
- Substitution of new section for section 64UM. **86.** For section 64UM of the Insurance Act, the following section shall be substituted, namely:—
- “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.”.
- Surveyors or loss assessors. **87.** For sections 64V and 64VA of the Insurance Act, the following sections shall be substituted, namely:—
- 64V.** (1) For the purpose of ascertaining compliance with the provisions of section 64VA, assets shall be valued at value not exceeding their market or realisable value and certain assets may be excluded by the Authority in the manner as may be specified by the regulations made in this behalf.
- (2) A proper value shall be placed on every item of liability of the insurer in the manner as may be specified by the regulations made in this behalf.
- Substitution of new sections for sections 64V and 64VA. **87.** For sections 64V and 64VA of the Insurance Act, the following sections shall be substituted, namely:—
- 64V.** (1) For the purpose of ascertaining compliance with the provisions of section 64VA, assets shall be valued at value not exceeding their market or realisable value and certain assets may be excluded by the Authority in the manner as may be specified by the regulations made in this behalf.
- (2) A proper value shall be placed on every item of liability of the insurer in the manner as may be specified by the regulations made in this behalf.
- Assets and liabilities how to be valued. **87.** For sections 64V and 64VA of the Insurance Act, the following sections shall be substituted, namely:—
- 64V.** (1) For the purpose of ascertaining compliance with the provisions of section 64VA, assets shall be valued at value not exceeding their market or realisable value and certain assets may be excluded by the Authority in the manner as may be specified by the regulations made in this behalf.
- (2) A proper value shall be placed on every item of liability of the insurer in the manner as may be specified by the regulations made in this behalf.

(3) Every insurer shall furnish to the Authority along with the returns required to be filed under this Act, a statement, certified by an Auditor, approved by the Authority, in respect of general insurance business or an actuary approved by the Authority in respect of life insurance business, as the case may be, of his assets and liabilities assessed in the manner required by this section as on the 31st day of March of each year within such time as may be specified by regulations.

64VA. (1) Every insurer and re-insurer shall at all times maintain an excess of value of assets over the amount of liabilities of, not less than fifty per cent. of the amount of minimum capital as stated under section 6 and arrived at in the manner specified by the regulations.

Sufficiency of assets.

(2) An insurer or re-insurer, as the case may be, who does not comply with sub-section (1), shall be deemed to be insolvent and may be wound-up by the court on an application made by the Authority.

(3) The Authority shall by way of regulation made for the purpose, specify a level of solvency margin known as control level of solvency on the breach of which the Authority shall act in accordance with the provisions of sub-section (4) without prejudice to taking of any other remedial measures as deemed fit:

Provided that if in respect of any insurer the Authority is satisfied that either by reason of an unfavourable claim experience or because of a sharp increase in the volume of new business, or for any other reason, compliance with the provisions of this sub-section will cause undue hardship to the insurer, it may direct that for such period and subject to such conditions as it may specify, the provisions of this sub-section shall apply to that insurer with such modifications provided that such modifications shall not result in the control level of solvency being less than what is stipulated under sub-section (1).

(4) If, at any time, an insurer or re-insurer does not maintain the required control level of solvency margin, he shall, in accordance with the directions issued by the Authority, submit a financial plan to the Authority, indicating a plan of action to correct the deficiency within a specified period not exceeding six months.

(5) An insurer who has submitted a plan, as required under sub-section (4), the Authority shall propose modifications to the plan, if the Authority considers the same inadequate, and in such an eventuality, the Authority shall give directions, as may be deemed necessary, including direction in regard to transacting any new business, or, appointment of an administrator or both.

(6) An insurer or re-insurer, as the case may be, who does not comply with the provisions of sub-section (4) shall be deemed to have made default in complying with the requirements of this section.

(7) The Authority shall be entitled at any time to take such steps as it may consider necessary for the inspection or verification of the assets and liabilities of any insurer or re-insurer, or for securing the particulars necessary to establish that the requirements of this section have been complied with as on any date, and the insurer or re-insurer, as the case may be, shall comply with any requisition made in this behalf by the Authority, and in the event of any failure to do so within two months from the receipt of the requisition, the insurer or re-insurer, as the case may be, shall be deemed to have made default in complying with the requirements of this section.

(8) In applying the provisions of sub-section (1) to any insurer or re-insurer, as the case may be, who is a member of a group, the relevant amount for that insurer shall be an amount equal to that proportion of the relevant amount which that group, if considered as a single insurer, would have been required to maintain as the proportion of his share of the risk on each policy issued by the group bears to the total risk on that policy:

Provided that when a group of insurers ceases to be a group, every insurer in that group who continues to carry on any class of insurance business in India shall comply with the requirements of sub-section (1) as if he had not been an insurer in a group at any time:

Provided further that it shall be sufficient compliance of the provisions of the foregoing proviso if the insurer brings up the excess of the value of his assets over the amount of his liabilities to the required amount within a period of six months from the date of cessation of the group:

Provided also that the Authority may, on sufficient cause being shown, extend the said period of six months by such further periods as it may think fit, so, however that the total period may not in any case exceed one year.

(9) Every insurer shall furnish to the Authority return giving details of solvency margin in such form, time, manner including its authentication as may be specified by the regulations."

Substitution of new section for section 64VC. **88.** For section 64VC of the Insurance Act, the following section shall be substituted, namely:—

Restrictions on the opening of a new place of business. "64VC. No insurer shall, after the commencement of the Insurance (Amendment) Act, 1968, open a new place of business or close a place in India or outside India or change otherwise than within the same city, town or village, the location of an existing place of business situated in India or outside India, except in the manner as may be specified by regulations."

Omission of Part III and IIIA. **89.** PART III and IIIA of the Insurance Act, shall be omitted.

Omission of Part IV. **90.** PART IV of the Insurance Act, shall be omitted.

Amendment of section 102. **91.** For section 102 of the Insurance Act, for the words "not exceeding five lakh rupees for each such failure and punishable with fine", the words " of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less" shall be substituted.

Substitution of new sections for sections 103 and 104. **92.** For sections 103 and 104 of the Insurance Act, the following sections shall be substituted, namely:—

Penalty for carrying on insurance business in contravention of section 3. "103. If a person carries on the business of insurance without obtaining a certificate of registration under section 3, he shall be liable to a fine not exceeding rupees twenty-five crores and with imprisonment which may extend to ten years.

Penalty for contravention of sections 27, 27A, 27B, 27D and 27E. 104. If a person fails to comply with the provisions of section 27, section 27A, section 27B, section 27D and section 27E, he shall be liable to a penalty not exceeding twenty-five crore rupees."

Amendment of section 105. **93.** In section 105 of the Insurance Act, for the words "not exceeding two lakh rupees for each such failure", the words "not exceeding one crore rupees " shall be substituted.

Substitution of new sections for sections 105B and 105C. **94.** For sections 105B and 105C of the Insurance Act, the following sections shall be substituted, namely :—

Penalty for failure to comply with sections 32B, 32C and 32D. "105B. If an insurer fails to comply with the provisions of section 32B, section 32C and section 32D, he shall be liable to a penalty not exceeding twenty-five crore rupees.

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.

Power to
adjudicate.

(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:—

Factors to be
taken into
account by the
adjudicating
officer.

(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."

95. In section 106A of the Insurance Act, in sub-section (2), clauses (a), (b) and (f) shall be omitted and in clause (d), the words 'or a provident society' shall be omitted.

Amendment of
section 106A.

96. Sections 107 and 107A of the Insurance Act shall be omitted.

Omission of
section 107 and
107A.

97. For section 109 of the Insurance Act, the following section shall be substituted, namely:—

Substitution of
new section for
section 109.

"109. No court shall take cognizance of any offence punishable under this Act or any rules or any regulations made thereunder, save on a complaint made by an officer of the Authority or by any person authorised by it. "

Cognizance of
Offence.

98. For section 110 of the Insurance Act, the following section shall be substituted, namely:—

Substitution of
new section for
section 110.

"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

Appeal to
Securities
Appellate
Tribunal.

(b) by an order made by the Authority by way of adjudication under this Act, may prefer an appeal to the Securities Appellate Tribunal having jurisdiction in the matter.

(2) Every Appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order made by the Authority is received by him and it shall be in such a form and be accompanied by such fees as may be prescribed:

Provided that the Securities Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

(3) On receipt of an appeal under sub-section (1), the Securities Appellate Tribunal may after giving parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, conforming, modifying or setting aside the order appealed against.

(4) The Securities Appellate Tribunal shall make available copy of order made by it to the Authority and parties.

(5) The appeal filed before the Securities Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of receipt of appeal.

(6) The procedure for filing and disposing of an appeal shall be such as may be prescribed.

(7) The provision contained in section 15U, section 15V, section 15W, section 15Y and section 15Z of the Securities and Exchange Board of India Act, 1992 shall apply to the appeals arising out of the provisions of this Act, as they apply to the appeals under the Securities and Exchange Board of India Act, 1992. 15 of 1992.

Omission of section 110E.

99. Section 110E of the Insurance Act, shall be omitted.

Omission of sections 110G and 110H.

100. Sections 110G and 110H of the Insurance Act, shall be omitted.

Insertion of new section 110AA.

101. After section 110H of the Insurance Act, the following section shall be inserted, namely:—

Penalty to be recoverable as arrear of land revenue.

“110AA. Any penalty imposed by the Authority under this Act shall be recoverable as an arrear of land revenue.”.

Amendment of section 111.

102. In section 111 of the Insurance Act, the words "provident societies", wherever they occur, shall be omitted.

Substitution of new section for section 113.

103. For section 113 of the Insurance Act, the following section shall be substituted, namely:—

Acquisition of surrender value by policy.

“113. (1) A policy of life insurance shall acquire surrender value as per the norms specified by the regulations.

(2) Every policy of life insurance shall contain the formula as approved by the Authority for calculation of guaranteed surrender value of the policy.

(3) Notwithstanding any contract to the contrary, a policy of life insurance under a non-linked plan which has acquired a surrender value shall not lapse by reason of non-payment of further premiums but shall be kept in force to the extent of paid-up sum insured, calculated by means of a formula as approved by the Authority, and contained in the policy, and the reversionary bonuses that have already been attached to the policy:

Provided that a policy of life insurance under a linked plan shall be kept in force in the manner as may be specified by the regulations.

(4) The provisions of sub-section (3) shall not apply—

(i) where the paid-up sum insured by a policy, inclusive of attached bonuses, is less than the amount specified by the Authority or takes the form of annuity of amount less than the amount specified by the Authority; or

(ii) when the parties after the default has occurred in payment of the premium agree in writing to other arrangement.”.

104. In section 114 of the Insurance Act, in sub-section (2),—

Amendment of section 114.

(i) clauses (c) and (f) shall be omitted;

(ii) after clause (l), the following clauses shall be inserted, namely:—

“ (la) the manner of inquiry under sub-section (l) of section 105C;

(lb) the form in which an appeal may be preferred under sub-section (2) and the fee payable in respect of such appeal and the procedure for filing and disposing of an appeal under sub-section (6) of section 110.”.

105. In section 114A of the Insurance Act, in sub-section (2),—

Amendment of section 114A.

(i) for clauses (a) and (aa), the following clause shall be substituted, namely:—

"(a) manner of making application for registration and documents to be accompanied under sub-section (2) of section 3;"

(ii) for clause (d), the following clause shall be substituted, namely:—

"(d) such annual fee to the Authority and manner of payment under sub-section (l) of section 3A;"

(iii) after clause (d), the following clauses shall be inserted, namely:—

"(da) such minimum annuity and other benefits to be secured by the insurer under section 4;

(db) such equity capital and such forms of capital including hybrid capital required under sub-section (l) of section 6A;"

(iv) after clause (e), the following clause shall be inserted, namely:—

"(ea) separation of account of all receipts and payments in respect of each classes and sub-classes of insurance business as required under sub-section (l) and sub-section (2A) of section 10; and its waiver under the said section;"

(v) in clause (f), for the words "under sub-section (lA) of section 11", the words "under sub-section (l) of section 11" shall be substituted;

(vi) for clause (g), the following clause shall be substituted, namely:—

"(g) the manner in which an abstract of the report of the actuary to be specified and the form and manner in which the statement referred to in section 13 shall be appended;"

(vii) for clause (h), the following clause shall be substituted, namely:—

"(h) the fee for procuring a copy of return or any part thereof under sub-section (l) of section 20;"

(viii) for clause (i), the following clause shall be substituted, namely:—

"(i) investment of assets and further provisions regarding investments by an insurer and investment by insurers in certain cases under sections 27, 27A,

27B, 27C and time, manner and other conditions of investment of assets under section 27D;"

(ix) for clauses (ia), (ib), (ic), (id) and (ie), the following clauses shall be substituted, namely:—

"(ia) the form in which a return giving details of investments made, time and manner including its authentication under section 28;

(ib) the loans including the loans sanctioned to the full-time employees of the insurer under clause (a) of sub-section (3) of section 29;

(ic) the sum to be paid by the insurer to any person under section 31B;

(id) the obligation of insurer in respect of rural or social or unorganised sector and backward classes under section 32B and 32C;

(ie) the minimum percentage of insurance business in third party risks of motor vehicles under section 32D;"

(x) for clause (j), the following clause shall be substituted, namely:—

"(j) the minimum information to be maintained by insurers or intermediary or insurance intermediary, as the case may be, in their books, the manner in which such information shall be maintained, the checks and other verifications in that connection and all other matters incidental thereto under sub-section (7) of section 33;"

(xi) after clause (j), the following clauses shall be inserted, namely:—

"(ja) the form in which balance-sheets in respect of the insurance business of each of the insurers concerned and the manner in which actuarial reports and abstracts in respect of the life insurance business are to be prepared under clauses (b) and (c) of sub-section (3) of section 35;

(jb) the manner of assessment of compensation under the proviso to sub-section (4A) of section 37A;

(jc) the fee to be charged by the insurer under sub-section (3) of section 39;

(jd) the manner of payment of benefits under sub-section (12) of section 39;

(je) the manner and amount of remuneration or reward to be paid or received by way of commission or otherwise to an insurance agent or an intermediary or insurance intermediary under section 40;

(jf) the manner and form of expenses of management under section 40B and 40C.";

(xii) clauses (k) and (l), shall be omitted;

(xiii) for clause (m), the following clause shall be substituted, namely:—

"(m) the requisite qualifications or practical training or examination to be passed for appointment as an insurance agent under clause (e) of sub-section (3) of section 42;"

(xiv) clause (n), shall be omitted;

(xv) for clause (o), the following clause shall be substituted, namely:—

"(o) the code of conduct under clause (h) of sub-section (3) of section 42;"

(xvi) clause (p), shall be omitted;

(xvii) clause (va), shall be omitted;

(*xviii*) in clause (*vb*), the words, brackets and figure "sub-section (2) of" shall be omitted;

(*xix*) clause (*w*), shall be omitted;

(*xx*) for clause (*y*), the following clause shall be substituted, namely:—

"(*y*) the manner of exclusion of certain assets under sub-section (*I*), the manner of valuation of liabilities under sub-section (2) and time for furnishing statement under sub-section (3) of section 64V;"

(*xxi*) for clause (*za*), the following clause shall be substituted, namely:—

"(*za*) the matters specified under sub-section (*I*) of section 64VA relating to sufficiency of assets;"

(*xxii*) after clause (*zaa*), the following clauses shall be inserted, namely:—

"(*zab*) the form, time, manner including authentication of the return giving details of solvency margin under sub-section (9) of section 64VA;

(*zac*) the manner of opening and closing places of business under section 64VC;"

(*xxiii*) after clause (*zb*), the following clause shall be added, namely:—

"(*zba*) the norms for surrender value of life insurance policy under sub-section (*I*) of section 113;"

106. In the Insurance Act, the Fifth Schedule, the Sixth Schedule and the Eighth Schedule shall be omitted.

Omission of the Fifth, the Sixth and the Eighth Schedule.

CHAPTER III

AMENDMENT TO THE GENERAL INSURANCE BUSINESS (NATIONALISATION) ACT, 1972

57 of 1972.

107. In the General Insurance Business (Nationalisation) Act, 1972, after section 10A, the following section shall be inserted, namely:—

Insertion of a new section after section 10A.

"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."

Enhancement of equity capital of General Insurance companies.

57 of 1972.

108. Section 25 of the General Insurance Business (Nationalisation) Act, 1972 shall be omitted.

Omission of section 25.

CHAPTER IV

AMENDMENT TO INSURANCE REGULATORY AND DEVELOPMENT AUTHORITY ACT, 1999

41 of 1999.

109. In section 2 of the Insurance Regulatory and Development Authority Act, 1999, in sub-section (*I*),—

Amendment of section 2.

(*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.

41 of 1999.

110. In section 3 of the Insurance Regulatory and Development Authority Act, 1999, in sub-section (*I*), after the words "Development Authority" the words "of India" shall be inserted.

Amendment of section 3.

41 of 1999.

111. In section 16 of Insurance Regulatory and Development Authority Act, 1999, in sub-section (*I*) clause (*c*) shall be omitted.

Amendment of section 16.

STATEMENT OF OBJECTS AND REASONS

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

2. The Law Commission of India, at the request of IRDA, had reviewed these Acts and submitted its 190th report relating to the revision of the Insurance Act, 1938 and the Insurance Regulatory and Development Authority Act, 1999 to Government on 1st June, 2004. The report covered legal issues concerning repudiation of the life insurance policies; nominations; assignment and transfer of policies; merger of IRDA Act with the Insurance Act, 1938; setting up of the Grievance Redressal Authorities, Insurance Appellate Authority, amendment to definitions and deletion of redundant provisions. An expert committee under Shri K.P. Narsimhan (Ex-Chairman of the LIC) was set-up by the IRDA on the recommendation of the Law Commission. The KPN Committee examined various issues relating to Surveyors and Loss Assessors, Investments, Tariff, Shareholders and 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 finalised by the Government in consultation with General Insurers Public Sector's Association (GIPSA) and General Insurance Corporation of India (GIC) to amend the Insurance Act, 1938, General Insurance Business (Nationalisation) Act, 1972 and Insurance Regulatory and Development Authority Act, 1999.

3. The Insurance Laws (Amendment) Bill, 2008 proposes to amend the Insurance Act, 1938, the Insurance Regulatory and Development Authority Act, 1999 and the General Insurance Business (Nationalisation) Act, 1972. The said Bill, *inter alia*, seeks to:—

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

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

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

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

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

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

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

(viii) provide obligatory 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.

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

5. The Bill seeks to achieve the above objects.

NEW DELHI;

PAWAN KUMAR BANSAL.

The 4th December, 2008.

Notes on Clauses

Clause 2.—This clause seeks to substitute the words “Indian Companies Act, 1913” throughout the Insurance Act, 1938 (hereinafter referred to as the Act) with the words “the Companies Act, 1956”.

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

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

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

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

Clause 7.—This clause seeks to omit section 2E of the Act relating to insurers, who enter into new contracts before commencement of the Act, as it has become redundant.

Clause 8.—This clause seeks to amend section 3 of the Act to regulate the manner of making application for registration of insurers by regulation and provide for appeal to Securities Appellate Tribunal against the refusal of registration by the Authority and suspension or cancellation of registration in certain cases.

Clause 9.—This clause seeks to substitute section 3A of the Act to provide for annual fee in place of annual renewal of registration of insurers by regulation.

Clause 10.—This clause seeks to substitute section 4 of the Act to provide for minimum limit for annuities and other benefits secured by policy of life insurance by regulations.

Clause 11.—This clause seeks to amend section 5 of the Act to omit redundant provisions.

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

Clause 13.—This clause seeks to amend section 6A of the Act to regulate the capital structure, voting rights, maintenance of records of the shareholders, etc., of life, general, health insurance and re-insurance companies and to omit certain redundant provisions.

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

Clause 15.—This clause seeks to amend section 6B of the Act to include general, health insurance business and re-insurance for compliance of capital structure and empower the Authority to regulate the same in place of the Central Government.

Clause 16.—This clause seeks to omit sections 6C, 7, 8 and 9 of the Act relating to capital structure, company limited by guarantee and deposits by the insurers before registration.

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

Clause 18.—This clause seeks to substitute section 11 of the Act to empower the Authority to regulate preparation of annual accounts and balance-sheet by insurers.

Clause 19.—This clause seeks to substitute section 12 of the Act to provide audit of insurance business.

Clause 20.—This clause seeks to amend section 13 of the Act to omit the redundant provisions relating to actuarial investigation and empower the Authority to regulate the insurance business through actuaries.

Clause 21.—This clause seeks to substitute section 14 of the Act to provide for maintenance of records of policies and claims electronically also.

Clause 22.—This clause seeks to substitute section 15 of the Act to omit certain redundant provisions relating to submission of returns by insurers.

Clause 23.—This clause seeks to omit section 16 of the Act relating to returns by insurers established outside India.

Clause 24.—This clause seeks to omit sections 17 and 17A of the Act relating to exemption from certain provisions of the Indian Companies Act, 1913 and furnishing of balance sheet and accounts to Registrar of Companies and non-application of the Act to the preparation of accounts for the period prior to 1968.

Clause 25.—This clause seeks to amend section 20 of the Act to empower the Authority to regulate inspection and filing of copy of the returns of the insurers and fee.

Clause 26.—This clause seeks to amend section 21 of the Act to provide for appeal to the Security Appellate Tribunal by insurers against the final order of the Authority not accepting a return or other statement submitted to it.

Clause 27.—This clause seeks to amend section 22 of the Act to make consequential amendments relating to powers of the Authority.

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

Clause 29.—This clause seeks to substitute sections 28, 28A and 28B to empower the Authority to regulate statements, returns of investment of assets.

Clause 30.—This clause seeks to substitute section 29 of the Act to provide for granting of loans or advances to subsidiaries of insurance companies with the prior approval of the Authority.

Clause 31.—This clause seeks to substitute section 30 of the Act to provide for liability of directors, managers or officers for loss sustained by insurer or policy-holders due to contravention of the provisions relating to investments.

Clause 32.—This clause seeks to amend section 31 of the Act to provide that none of the assets in India of any insurer shall be kept otherwise than in the name of a public officer approved by the Authority.

Clause 33.—This clause seeks to amend section 31A of the Act to omit redundant provisions relating to management of the insurance companies.

Clause 34.—This clause seeks to substitute section 31B of the Act to empower the Authority to regulate the payment of excessive remuneration.

Clause 35.—This clause seeks to omit section 32 of the Act relating to employment of managing agents.

Clause 36.—This clause seeks to amend section 32A of the Act to prohibit the common officer for insurers and prescribe a full-time officer.

Clause 37.—This clause seeks to amend section 32B of the Act to provide for insurance business in rural and social sector in place of rural or social sector.

Clause 38.—This clause seeks to insert section 32D in the Act for obligation on all insurers in respect of third party risks of motor vehicles.

Clause 39.—This clause seeks to substitute section 33 of the Act to provide for coverage of intermediary or insurance intermediary for investigation and inspection by the Authority.

Clause 40.—This clause seeks to amend section 34B to enhance the penalty of one lakh rupees for each day during which such contravention continues or one crore rupees, whichever is less, for contravention of the orders of the Authority for removal of managerial person from office.

Clause 41.—This clause seeks to amend section 34C of the Act to provide for consultation with the Central Government for appointment of Additional Directors of the insurers by the Authority in public interest.

Clause 42.—This clause seeks to amend section 34E of the Act to substitute the word “Controller” with the word “Authority”.

Clause 43.—This clause seeks to omit section 34G of the Act relating to the power of the Authority to order closure of foreign branches of Indian insurance companies.

Clause 44.—This clause seeks to amend section 34H of the Act to designate Deputy Director of the Authority as authority for search and seizure ordered by the Authority and substitute the Securities Appellate Tribunal in place of the Central Government.

Clause 45.—This clause seeks to amend section 35 of the Act to empower the Authority to regulate amalgamation and transfer of insurance business.

Clause 46.—This clause seeks to substitute section 36 of the Act relating to the sanction of amalgamation and transfer of insurance business by the Authority by omitting redundant provisions.

Clause 47.—This clause seeks to amend section 37A of the Act to provide for the scheme for amalgamation to be notified in the Official Gazette after approval of the Central Government. It also gives rights to policy-holder or shareholder or member of each of the insurers to file an appeal in the Securities Appellate Tribunal against the recommendation of the Authority for amalgamation.

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

Clause 49.—This clause seeks to omit section 40A of the Act to omit the redundant provisions relating to limitation of expenditure on commission.

Clause 50.—This clause seeks to substitute sections 40B and 40C of the Act to regulate management expenses of life, general and health insurers and re-insurers.

Clause 51.—This clause seeks to amend section 41 of the Act by enhancing the penalty from five hundred rupees up to five lakh rupees in case an insurer contravenes the provision relating to prohibition of rebates.

Clause 52.—This clause seeks to substitute section 42 of the Act to regulate the appointment of insurance agents by insurers in respect of eligibility, disqualification and other aspects.

Clause 53.—This clause seeks to omit sections 42A, 42B and 42C of the Act relating to registration and regulation of principal agents, chief agents and special agents.

Clause 54.—This clause seeks to amend section 42D of the Act to provide for registration in place of licensing of intermediary or insurance intermediary by the Authority.

Clause 55.—This clause seeks to substitute section 42E of the Act to regulate requirement of capital, form of business and other conditions for intermediary or insurance intermediary.

Clause 56.—This clause seeks to substitute section 43 of the Act to enable the insurers to keep the records electronically.

Clause 57.—This clause seeks to omit section 44 of the Act relating to shifting of agents from one insurer to another insurer.

Clause 58.—This clause seeks to substitute sections 44A and 45 of the Act to provide that no policy of life insurance shall be called in question on any ground after the period of five years. It also provides that the policy can be called in question by the insurer within the period of five years only in case of fraud.

Clause 59.—This clause seeks to omit sections 47A and 48 of the Act relating to claims on small life insurance policies and directors of insurers being companies.

Clause 60.—This clause seeks to substitute section 48A of the Act to prohibit insurance agents or insurance intermediaries from becoming director in any insurance company.

Clause 61.—This clause seeks to amend section 49 of the Act relating to restriction of dividends and bonuses in order to omit certain redundant provisions.

Clause 62.—This clause seeks to substitute sections 52 and 52A of the Act in order to omit redundant provisions in the section relating to prohibition of the business on dividing principle. It further provides for appointment of an Administrator by the Authority to manage the affairs of the insurer.

Clause 63.—This clause seeks to amend section 52BB of the Act to provide for appeal to the Securities Appellate Tribunal in place of the Central Government against the order of attachment of property by the Authority.

Clause 64.—This clause seeks to substitute section 52D of the Act to provide for termination of appointment of an Administrator by the Authority in place of the Central Government.

Clause 65.—This clause seeks to amend section 52E of the Act to provide for final decision on appointment of an Administrator in place of the Central Government by the Authority.

Clause 66.—This clause seeks to amend section 52F of the Act to provide the penalty of ten thousand rupees for each day of withholding the documents of property from the Administrator appointed by the Authority during which such failure continues or ten lakh rupees, whichever is less.

Clause 67.—This clause seeks to amend section 52G of the Act to omit the words “Central Government” as a consequential change.

Clause 68.—This clause seeks to omit sections 52H to 52N (both inclusive) of the Act relating to acquisition of the undertakings of the insurers in certain cases by the Central Government, being redundant.

Clause 69.—This clause seeks to amend section 53 of the Act to provide for insertion of *explanation* defining Tribunal under the Companies Act, 1956.

Clause 70.—This clause seeks to make consequential amendments in section 58 of the Act to substitute relevant sections of the Companies Act, 1956 in place of Indian Companies Act, 1913.

Clause 71.—This clause seeks to omit section 59 of the Act relating to return of deposits as such deposits by insurers before registration are proposed to be discontinued.

Clause 72.—This clause seeks to omit sections 62 to 64 (both inclusive) of the Act relating to special provisions for external insurance companies.

Clause 73.—This clause seeks to amend the heading in Part II of the Act.

Clause 74.—This clause seeks to omit sections 64A and 64B of the Act relating to incorporation of the Insurance Association of India and entry of names of the members in the register.

Clause 75.—This clause seeks to substitute sections 64C and 64D of the Act to provide for consequential amendment to the section dealing with the Life Insurance Council and General Insurance Council.

Clause 76.—This clause seeks to substitute section 64F of the Act relating to composition, function and operational issues of the Life Insurance Council and the General Insurance Council to make them the self-regulatory organisations.

Clause 77.—This clause seeks to amend section 64G of the Act to empower the Executive Committees of Life Insurance Council and General Insurance Council to nominate members on casual vacancies by bye-laws.

Clause 78.—This clause seeks to omit section 64-I of the Act relating to holding of examination for insurance agents by the Life Insurance Council.

Clause 79.- This clause seeks to amend section 64J of the Act to enable the Life Insurance Council to collect fee by bye-laws from council members.

Clause 80.—This clause seeks to amend section 64L of the Act to enable the General Insurance Council to collect fee by bye-laws from council members.

Clause 81.—This clause seeks to amend section 64N of the Act to empower the Authority to specify the manner for holding of joint meeting of the Executive Committees of the Life and General Insurance Councils.

Clause 82.—This clause seeks to amend section 64R of the Act to empower the Life Insurance Council and the General Insurance Council to make bye-laws for elections, meetings, levy and collection of fees, etc.

Clause 83.—This clause seeks to omit sections 64S and 64T of the Act relating to transitory provisions.

Clause 84.—This clause seeks to omit sections 64U to 64UL (both inclusive) of the Act relating to Tariff Advisory Committee and control of rates in view of the de-tariffing with effect from 01-01-2007.

Clause 85.—This clause seeks to insert a new section 64ULA in the Act to provide transitory provisions for continuation of rates, terms and conditions fixed by the Tariff Advisory Committee.

Clause 86.- This clause seeks to substitute section 64UM of the Act to empower the Authority to regulate the functions, code of conduct, etc., of surveyors and loss assessors.

Clause 87.—This clause seeks to substitute sections 64V and 64VA of the Act to empower the Authority to regulate valuation of the assets and procedure for calculation of solvency margin of insurers.

Clause 88.—This clause seeks to substitute section 64VC of the Act to empower the Authority to regulate opening and closing of places of business of insurers.

Clause 89.—This clause seeks to omit Part III and Part IIIA of the Act relating to provident societies, which are no longer permitted to underwrite the insurance business. It also omits the provisions relating to insurance co-operative societies.

Clause 90.—This clause seeks to omit Part IV of the Act relating to mutual insurance companies and life insurance societies, as they are not allowed to underwrite insurance business in India.

Clause 91.—This clause seeks to amend section 102 of the Act to enhance the penalty for default in complying with, or act in contravention of, the Act to one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

Clause 92.—This clause seeks to substitute sections 103 and 104 of the Act to enhance the fine not exceeding twenty-five crore rupees and with imprisonment which may extend to ten years in case a person carries on business of insurance without obtaining a certificate of registration. It also enhances the penalty for contravention of provisions relating to investment of controlled fund or assets.

Clause 93.—This clause seeks to amend section 105 of the Act to enhance the penalty not exceeding one crore rupees in case any executive of the insurer wrongfully obtains or withholds the property under the Act.

Clause 94.—This clause seeks to substitute sections 105B and 105C of the Act to enhance penalty in case an insurer fails to comply with the obligations for rural or social sector or third party insurance for motor vehicles to not exceeding twenty-five crore rupees. It further provides for powers of adjudication to the Authority and provides penalty for contravention where there is no separate penalty provided in the Act.

Clause 95.—This clause seeks to amend section 106A of the Act to provide for consequential amendments.

Clause 96.—This clause seeks to omit sections 107 and 107A of the Act being redundant.

Clause 97.—This clause seeks to substitute section 109 of the Act to provide that no court shall take cognizance of any offence punishable under the Act save on a complaint made by an officer of the Authority.

Clause 98.—This clause seeks to substitute section 110 of the Act to provide for appeal to the Securities and Appellate Tribunal against the decision of the Authority and omit certain redundant provisions.

Clause 99.—This clause seeks to omit section 110E of the Act being redundant.

Clause 100.—This clause seeks to omit sections 110G and 110H of the Act relating to appeals in view of the provision for appeal to Securities Appellate Tribunal.

Clause 101.—This clause seeks to insert a new section 110A in the Act to provide for recovery of penalties imposed by the Authority as arrears of land revenue.

Clause 102.—This clause seeks to amend section 111 of the Act to omit the words “provident society”.

Clause 103.—This clause seeks to substitute section 113 of the Act to omit redundant provisions relating to acquisition of surrender value of life insurance policies.

Clause 104.—This clause seeks to amend section 114 of the Act to omit and insert the provisions relating to rule making powers in respect of which substantive provisions have been made in the Act.

Clause 105.—This clause seeks to amend section 114A of the Act to omit and insert the provisions relating to regulation making powers in respect of which substantive provisions have been made in the Act.

Clause 106.—This clause seeks to omit the Fifth Schedule, Sixth Schedule and Eighth Schedule from the Act being redundant.

Clause 107.—This clause seeks to amend the General Insurance Business (Nationalisation) Act, 1972 to insert section 10A to empower the Central Government to allow public sector General Insurance companies to raise money from the market to meet their capital requirements.

Clause 108.—This clause seeks to omit section 25 from the General Insurance Business (Nationalisation) Act, 1972 relating to properties in India not to be insured with foreign insurers except with permission of Central Government as the said provision has been kept in the Insurance Act, 1938.

Clause 109.—This clause seeks to amend section 2 of the Insurance Regulatory and Development Authority Act, 1999 in order to substitute “Insurance Regulatory and Development Authority” to “Insurance Regulatory and Development Authority of India”.

Clause 110.—This clause seeks to amend section 3 of the Insurance Regulatory and Development Authority Act, 1999 consequent upon the change of the name to Insurance Regulatory and Development Authority of India.

Clause 111.—This clause seeks to omit clause (c) of sub-section (1) of section 16 of the Insurance Regulatory and Development Authority Act, 1999 relating to imposition of levy by the Authority as a percentage of premium income of the insurers for Insurance Regulatory and Development Authority Fund.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 104 of the Bill seeks to amend section 114 of the Insurance Act, 1938 which empowers the Central Government to make rules. The matters on which rules may be made, *inter alia*, relate to the manner of inquiry under sub-section (1) of section 105C and the form in which an appeal may be preferred under sub-section (2) and the fee payable in respect of such appeal and the procedure for filing and disposing of an appeal under sub-section (6) of section 110.

Clause 105 of the Bill seeks to amend section 114A of the Insurance Act, 1938 which empowers the Insurance Regulatory and Development Authority to make regulations consistent with the Act and the rules made thereunder, to carry out the purposes of the Act. The matters on which regulations may be made, *inter alia*, relate to (i) manner of making application for registration and documents under sub-section (2) of section 3; (ii) annual fee to the Authority and manner of payment under sub-section (1) of section 3A; (iii) minimum annuity and other benefits to be secured by the insurer under section 4 and equity capital and such forms of capital including hybrid capital required under sub-section (1) of section 6A; (iv) separation of account of all receipts and payments in respect of each classes and sub-classes of insurance business under sub-section (1) and sub-section (2A) of section 10; and its waiver under the said section; (v) the manner in which an abstract of the report of the actuary to be specified; (vi) the fee for procuring a copy of return under sub-section (1) of section 20; (vii) investment of assets and further provisions regarding investments by an insurer under sections 27, 27A, 27B, 27C; and time, manner and other conditions of investment of assets under section 27D; (viii) the form in which a return giving details of investments made under section 28; (ix) the loans including the loans sanctioned to the full time employees of the insurer under clause (a) of sub-section (3) of section 29; (x) the sum to be paid by the insurer to any person under section 31B; (xi) the obligation of insurer in respect of rural or social or unorganised sector and backward classes under sections 32B and 32C; (xii) the minimum percentage of insurance business in third party risks of motor vehicles under section 32D; (xiii) the minimum information to be maintained by insurers or intermediary or insurance intermediary in their books and all other matters incidental thereto under sub-section (7) of section 33; (xiv) the form in which balance-sheets in respect of the insurance business of each of the insurers concerned and the manner in which actuarial reports and abstracts in respect of the life insurance business are to be prepared under clauses (b) and (c) of sub-section (3) of section 35; (xv) the manner of assessment of compensation under the proviso to sub-section (4A) of section 37A; (xvi) the fee to be charged by the insurer under sub-section (3) of section 39; (xvii) the manner of payment of benefits under sub-section (12) of section 39; (xviii) the manner and amount of remuneration or reward to be paid or received by way of commission or otherwise to an insurance agent or an intermediary or insurance intermediary under section 40; (xix) the manner and form of expenses of management under section 40B; (xx) the manner and form of expenses of management under section 40C; (xxi) the requisite qualifications or practical training or examination to be passed for appointment as an insurance agent under clause (e) of sub-section (3) of section 42; (xxii) the code of conduct under clause (h) of sub-section (3) of section 42; (xxiii) the manner of exclusion of certain assets, the manner of valuation of liabilities and time for furnishing statement under section 64V; (xxiv) the matters specified under sub-section (1) of section 64VA relating to sufficiency of assets; (xxv) the form, time, manner including authentication of the return giving details of solvency margin under sub-section (9) of section 64VA; (xxvi) the manner of opening and closing places of business under section 64VC; (xxvii) the norms for surrender value of life insurance policy under sub-section (1) of section 113.

2. The rules made under section 114 and the regulations made under section 114A of the Insurance Act, 1938, shall have to be laid, as soon as they are made, before both Houses of Parliament.

3. The matters in respect of which rules and regulations may be made are matters of procedure or administrative detail and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

ANNEXURE

EXTRACTS FROM THE INSURANCE ACT, 1938

(4 OF 1938)

* * * * *

2. In this Act, unless there is anything, repugnant in the subject or context,— Definitions.

(I) "actuary" means an actuary possessing such qualifications as may be specified by the regulations made by the Authority;

* * * * *

41 of 1999.

(IA) "Authority" means the Insurance Regulatory and Development Authority established under sub-section (I) of section 3 of the Insurance Regulatory and Development Authority Act, 1999;

* * * * *

(5A) "chief agent" means a person who, not being a salaried employees of an insurer, in consideration of any commission—

(i) performs any administrative and organising functions for the insurer, and

(ii) procures life insurance business for the insurer by employing or causing to be employed insurance agents on behalf of the insurer;

* * * * *

1 of 1956.

(7A) "Indian insurance company" means any insurer being a company—

(a) which is formed and registered under the Companies Act, 1956;

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

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

43 of 1961.

Explanation.—For the purposes of this clause, the expression "foreign company" shall have the meaning assigned to it under clause (23A) of section 2 of the Income-tax Act, 1961.

* * * * *

(8A) "insurance co-operative society" means any insurer being a co-operative society,—

(a) * * * * *

(b) having a minimum paid-up capital, (excluding the deposits required to be made under section 7) of rupees one hundred crores;

* * * * *

(d) whose sole purpose is to carry on life insurance business or general insurance business in India;

(9) "insurer" means—

(a) any individual or unincorporated body of individuals or body corporate incorporated under the law of any country other than India, carrying on insurance business not being a person specified in sub-clause (c) of this clause which—

(i) carries on that business in India, or

(ii) has his or its principal place of business or is domiciled in India,
or

(iii) with the object of obtaining insurance business, employs a representative, or maintains a place of business, in India;

(b) any body corporate (not being a person specified in sub-clause (c) of this clause) carrying on the business of insurance, which is body corporate incorporated under any law for the time being in force in India, or stands to any such body corporate in the relation of a subsidiary company within the meaning of the Indian companies Act, 1913, as defined by sub-section (2) of section 2 of that Act, and 7 of 1913.

(c) any person who in India as a standing contract with underwriters who are members of the Society of Lloyd's whereby such person is authorised within the terms of such contract to issue protection notes, cover notes, or other documents granting insurance cover to others on behalf of the underwriters,

but does not include a principal agent, chief agent, special agent, or an insurance agent or a provident society as defined in Part III;

(10) "insurance agent" means an insurance agent licensed under section 42 who receives or agrees to receive payment by way of commission or other remuneration in consideration of his soliciting or procuring insurance business including business relating to the continuance, renewal or revival of policies of insurance;

* * * * *

(11) "life insurance business" means the business of effecting contracts of insurance upon human life, including any contract where by the payment of money is assured on death (expect death by accident only) or the happening of any contingency dependent on human life, and any contract which is subject to payment of premiums for a term dependent on human life and shall be deemed to include—

* * * * *

(c) the granting of superannuation allowances and annuities payable out of any fund applicable solely to the relief and maintenance of persons engaged or who have been engaged in any particular profession, trade or employment or of the dependents of such persons;

(12) "manager" and "officer" have the meanings assigned to those expressions in clauses (9) and (11) respectively of section 2 of the Indian Companies Act, 1913; 7 of 1913.

(13) "managing agent" means a person, firm or company entitled to the management of the whole affairs of a company by virtue of an agreement with the company, and under the control and direction of the directors except to the extent, if any, otherwise provided for in the agreement, and includes any person, firm or company occupying such position by whatever name called.

Explanation.—If a person occupying the position of managing agent calls himself manager or managing director, he shall nevertheless be regarded as managing agent for the purposes of section 32 of this Act;

* * * * *

(15) "principal agent" means a person who, not being a salaried employee of an insurer, in consideration of any commission,—

(i) performs any administrative and organising functions for the insurer, and

(ii) procures general insurance business whether wholly or in part by employing or causing to be employed insurance agents on behalf of the insurer;

(16) "private company" and "public company" have the meanings respectively assigned to them in clauses (13) and (13A) of section 2 of the Indian Companies Act, 1913;

7 of 1913.

(17) "special agent" means a person who, not being a salaried employee of an insurer, in consideration of any commission, procures life insurance business for the insurer whether wholly or in part by employing or causing to be employed insurance agents on behalf of the insurer, but does not include a chief agent.

* * * * *

PART II

PROVISIONS APPLICABLE TO INSURERS

47 of 1950. **2C.** (1) Save as hereinafter provided, no person shall, after the commencement of the Insurance (Amendment) Act, 1950, being to carry on any class of insurance business in India and no insurer carrying of any class of insurance business in India shall after the expiry of one year from such commencement, continue to carry on any such business unless he is—

Prohibition of transaction of insurance business by certain persons.

(a) a public company, or

2 of 1912.

(b) a society registered under the Co-operative Societies Act, 1912, or under any other law for the time being in force in any State relating to co-operative societies, or

(c) a body corporate incorporated under the law of any country outside India not being of nature of a private company:

Provided that the Central Government may, by notification in the Official Gazette, exempt from the operation of this section to such extent for such period and subject to such conditions as it may specify, any person or insurer for the purpose of carrying on the business of granting superannuation allowances and annuities of the nature specified in sub-clause (c) of clause (11) of section 2 or for the purpose of carrying on any general insurance business:

Provided further that in the case of an insurer carrying of any general insurance business no such notification shall be issued having effect for more than three years at any one time:

41 of 1999.

Provided also that no insurer other than an Indian insurance company shall being to carry on any class of insurance business in India under this Act on or after the commencement of the Insurance Regulatory and Development Authority Act, 1999:

28 of 2005.

Provided also an insurer, being an Indian Insurance Company, insurance co-operative society or a body corporate referred to in clause (c) of this sub-section carrying on the business of insurance, may carrying on any business of insurance in any Special Economic Zone as defined in clause (za) of section 2 of the Special Economic Zones Act, 2005.

(2) Every notification issued under sub-section (1) shall be laid before Parliament as soon as may be after it is issued.

42 of 2002.

(3) Notwithstanding anything contained in sub-section (1), an insurance co-operative society may carry on any class of insurance business in India under this Act on or after the commencement of the Insurance (Amendment) Act, 2002.

Power of Central Government to apply provisions of this Act to special Economic Zones.

2CA. The Central Government may, by notification, direct that any of the provisions of this Act,—

(a) shall not apply to insurer, being an Indian Insurance Company, insurance co-operative society or a body corporate referred to in clause (c) of sub-section (1) of section 2C, carrying on the business of insurance, in any Special Economic Zones as defined in clause (za) of section 2 of the Special Economic Zones Act, 2005; or 44 of 2005.

(b) shall apply to any insurer being an Indian Insurance Company, insurance co-operative society or a body corporate referred to in clause (c) of sub-section (1) of section 2C, carrying on the business of insurance, in any Special Economic Zone as defined in clause (za) of section of the Special Economic Zones Act, 2005 only with such exceptions, modifications and adaptations as may be specified in the notification. 44 of 2005.

* * * * *

This Act not to apply to certain insurers, ceasing to enter into new contracts before commencement of Act.
Registration.

2E. The provisions of this Act shall not apply to an insurer as defined in paragraph (i) or (iii) of sub-clause (a) of Clause (9) of section 2 in relation to any class of his insurance business where such insurer has ceased, before the commencement of this Act, to enter into any new contracts of that class of business.

3. (1) * * * * *

(2) Every application for registration shall be made in such manner as may be determined by the regulations made be the Authority and shall be accompanied by—

(a) a certified copy of the memorandum and articles of association, where the applicant is a company and incorporated under the Indian Companies Act, 1913 , for 7 of 1913.
under the Indian Companies Act, 1882 , or under the Indian Companies Act, 1866, or 6 of 1882.
under any Act repealed thereby, or, in the case of any other insurer specified in sub-clause (a), (ii) or sub-clause (b), of clause (9) of section 2, a certified copy of the deed of partnership or of the deed of constitution of the company, as the case may be, or in the case of an insurer having his principal place of business or domicile outside India, the document specified in clause (a) of section 63 ; 10 of 1866.

(b) the name, address and the occupation, if any, of the directors where the insurer is a company incorporated under the Indian Companies Act, 1913 or under 7 of 1913.
the Indian Companies Act, 1882 or under the Indian Companies Act, 1886 or under 6 of 1882.
any Act repealed thereby, and in the case of an insurer specified in sub-clause (a) (ii) of clause (9) of section 2 of the names and addresses of the proprietors and of the manager in India, and in any other case the full address of the principal office of the insurer in India, and the names of the directors and the manager at such office and the name and address of some one or more persons resident in India authorised to accept any notice required to be served on the insurer; 10 of 1886

(c) a statement of the class or classes of insurance business done or to be done, and a statement that the amount required to be deposited by section 7 or section 98 before application for registration is made has been deposited together with a certificate from the Reserve Bank of India showing the amount deposited;

(d) where the provision of section 6 or section 97 apply, a declaration verified by an affidavit made by the principal officer of the insurer authorised in that behalf that the provisions of those sections as to paid-up equity capital or working capital have been complied with;

(e) in the case of an insurer having his principal place of business or domicile outside India, a statement verified by an affidavit made by the principal officer of the insurer setting forth the requirements (if any) not applicable to nationals of the country in which such insurer is constituted, incorporated or domiciled which are imposed by the laws or practice of that country upon Indian nationals as a condition of carrying on insurance business in that country;

(f) a certified copy of the published prospectus, if any, and of the standard policy forms of the insurer and statements of the assured rates, advantages, terms and conditions to be offered in connection with insurance policies together with a certificate in connection with life insurance business by an actuary that such rates, advantages, terms and conditions are workable and sound:

Provided that in the case of marine accident and miscellaneous insurance business other than workmen's compensation and motor car insurance the above requirements regarding prospectus, forms and statements shall be complied with only in so far as the prospectus, forms and statements may be available;

(g) the receipt showing payment of fee as may be determined by the regulations which shall not exceed fifty thousands rupees for each class of business as may be specified by the regulations made by the Authority;

(h) such other documents as may be specified by the regulations made by the Authority.

* * * * *

2A. If, on receipt of an application for registration and after making such inquiry as he deems fit, the Authority is satisfied that —

(a) the financial condition and the general character of management of the applicant are sound;

(b) the volume of business likely to be available to, and the capital structure and earning prospects of, the applicant will be adequate;

(c) the interests of the general public will be served if the certificate of registration is granted to the applicant in respect of the class or classes of insurance business specified in the application; and

(d) the applicant has complied with the provisions of sections 2C, 5, 31A and 32 and has fulfilled all the requirements of this section applicable to him,

the Authority may register the applicant as an insurer and grant him a certificate of registration.

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

(2D) The decision of the Central Government on such appeal shall be final and shall not be questioned before any court.

(3) Notwithstanding anything contained in sub-section (2A), in the case of any insurer having his principal place of business or domicile outside India the Authority shall withhold registration or shall cancel a reistration already made, if it is satisfied that in the country in which such insurer has his principal place of business or domicile Indian nationals are debarred by the law or practice of the country relating to, or applied to insurance from carrying on the business of insurance, or that any requirement imposed on such insurer under the provisions of section 62 is not satisfied.

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

(a) if the insurer fails to comply with the provisions of section 7 or section 98 as to deposits, or

(aa) if the insurer fails, at any time, to comply with the provisions of section 65VA as to the excess of the value of his assets over the amount of his liabilities, or

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

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

(d) if the whole of the deposit made in respect of insurance business has been returned to the insurer under section 9, or

(e) if, in the case of an insurer specified in sub-clause (c) of clause (9) of section 2, the standing contract referred to in that sub-clause is cancelled or is suspended and continues to be suspended for a period of six months, or

(ee) if the Central Government so directs under sub-section (4) of section 33, and the Authority may cancel the registration of an insurer—

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

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

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

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

41 of 1999.

(j) if the insurer makes a default in complying with or acts in contravention of, any requirement of the Companies Act, 1956 or the Life Insurance Corporation Act, 1956 or the General Insurance Business (Nationalisation) Act, 1972 or the Foreign Exchange Regulation Act, 1973.

1 of 1956.
31 of 1956.
57 of 1972.
46 of 1973.

(5) When the Authority withholds or cancels any registration under sub-section (3) clause (a), clause (aa) or clause (e), clause (ee), clause (f), clause (g), or clause (h) of sub-section (4), he shall give notice in writing to the insurer of its decision, and the decision shall take effect on such date as may specify in that behalf in the notice, such date not being less than one month nor more than two months from the date of the receipt of the notice in the ordinary course of transmission.

(5A) When the Authority cancels any registration under clause (b), clause (c), or clause (d), of sub-section (4) the cancellation shall take effect on the date on which notice of the order of cancellation is served on the insurer.

* * * * *

(5C) Where a registration is cancelled under clause (a), clause (aa), clause (e), clause (f), clause (g), or clause (h), or clause (i), or clause (j) of sub-section (4), the Authority may at discretion revive the registration, if the insurer within six months from the date on which the cancellation took effect makes the deposits required by section 7 or section 98, or complies with the provisions of section 64VA as to the excess of the value of his assets over the amount of his liabilities or has his standing contract restored or has had an application under sub-section (4) of section 3A accepted, or satisfies the Authority that no claim upon him such as is referred to in clause (g) of sub-section (4) remains unpaid or that he has complied with any requirement of this Act or the Insurance Regulatory and Development Authority Act, 1999, or of any rule or any regulation, or any order made thereunder or any direction issued under those Acts, or that he has ceased to carry on any business other than insurance business or any prescribed business, as the case may be, and complies with any directions which may be given to him by the Authority.

41 of 1999.

* * * * *

Renewal of
registration.

3A. (1) An insurer who has been granted a certificate of registration under section 3 shall have the registration renewed annually for each year after that ending on the 31st day of March, after the commencement of the Insurance Regulatory and Development Authority Act, 1999.

41 of 1999.

(2) An application for the renewal of a registration for any year shall be made by the insurer to the Authority before the 31st day of December of the preceding year, and shall be accompanied as provided in sub-section (3) by evidence of payment of the fee as determined by the regulations made by the Authority which may vary according to the total gross premium written direct in India, during the year preceding the year in which the application is required to be made under this section, by the insurer in the class of insurance business to which the registration relates but shall not—

(i) exceed one-fourth of one per cent. of such premium income or rupees five crores, whichever is less;

(ii) be less, in any case, than fifty thousand rupees for each class of insurance business:

Provided that in the case of an insurer carrying on solely re-insurance business, the provisions of this sub-section shall apply with the modification that instead of the total gross premium written direct in India, the total premiums in respect of facultative re-insurances accepted by him in India shall be taken into account.

(3) The fee as determined by the regulations made by the Authority for the renewal of a registration for any year shall be paid into the Reserve Bank of India or where there is no office of that Bank, into the Imperial Bank of India acting as the agent of that Bank, or into any Government treasury, and the receipt shall be sent along with the application for renewal of the registration.

(4) If an insurer fails to apply for renewal of registration before the date specified in sub-section (2) the Authority may, so long as an application to the court under sub-section (5D) of section 3 has not been made, accept an application for renewal of the registration on receipt from the insurer of the fee payable with the application and such penalty, not exceeding the fee as determined by the regulations made by the Authority, and payable by him, as the Authority may require:

Provided that an appeal shall lie to the Central Government from an order passed by the Authority imposing a penalty on the insurer.

(5) The Authority shall, on fulfilment by the insurer of the requirements of this section, renew the registration and grant him a certificate of renewal of registration.

* * * * *

4. (1) No insurer, not being a Co-operative Life Insurance Society to which Part IV of this Act applies, shall pay or undertake to pay on any policy of life insurance issued after the commencement of the Insurance (Amendment) Act, 1946, an annuity of less than one hundred rupees of a gross sum of less than one thousand rupees exclusive of any profit or bonus provided that this shall not prevent an insurer from converting any policy into a paid-up policy of any value or payment of surrender value of any amount.

Minimum limits for annuities and other benefits secured by policies of life insurance.

6 of 1946.

(2) Nothing contained in this section shall apply to any policy of the description known as a group policy, where the number of persons covered by the policy is not less than fifty or such smaller number as may be approved by the Authority and a standard form of the policy has been certified in writing by the authority to be a policy of such description or to any policy undertaking to pay a gross sum of more than five hundred rupees or an annuity of more than fifty rupees, issued—

(a) by an insurer to any person in his permanent employ in respect of the life of that person, or

(b) under any scheme, approved by the authority and complying with such conditions, if any, as he may think fit to impose, whereby premiums due from persons employed under any employer are collected by or under the supervision of the employer,

or to any policy issued by a Mutual Insurance Company to which Part IV applies and which the Authority may by order in writing exempt from the provisions of this section, for so long as the company complies with such conditions, if any, as may be prescribed.

5. (1) * * * * *

Restriction on name of insurer.

(2) If an insurer, through inadvertence or otherwise, is without such consent as aforesaid registered by a name identical with that by which an insurer already in existence whether previously registered or not is carrying on business or so nearly resembling it as to be calculated to deceive, the first-mentioned insurer shall, if called upon to do so by the Authority on the application of the second-mentioned insurer, change his name within a time to be fixed by the Authority:

Provided that nothing in this section shall apply to any insurer carrying on business before the 27th day of January, 1937, under the Indian Life Assurance Companies Act, 1912:

6 of 1912.

Provided further that in the application of this section to any insurer who begins to carry on insurance business after the commencement of the Insurance (Amendment) Act, 1946, the references to an insurer in existence in sub-section (1) and this sub-section shall be construed as including references to a provident society (as defined in Part III) in existence, whether or not the society is in the course of being dissolved.

6 of 1946

(3) No insurer other than a provident society as defined in Part III, who begins to carry on insurance business after the commencement of this Act, shall adopt as its name and no such insurer carrying on business before the commencement of this Act shall continue after the expiry of six months from the commencement thereof to use as its name any combination of words which includes the word "provident".

Requirement as to capital.

6. No insurer carrying on the business of life insurance, general insurance or re-insurance in India on or after the commencement of the Insurance Regulatory and Development Authority Act, 1999, shall be registered unless he has,—

41 of 1999.

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

(ii) a paid-up equity capital of rupees two hundred crores in case of a person carrying on exclusively the business as a re-insurer:

Provided that in determining the paid-up equity capital specified under clause (i) or clause (ii), the deposit to be made under section 7 and any preliminary expenses incurred in the formation and registration of the company shall be excluded:

Provided further that an insurer carrying on business of life insurance, general insurance or re-insurance in India before the commencement of the Insurance Regulatory and Development Authority Act, 1999 and who is required to be registered under this Act, shall have a paid-up equity capital in accordance with clause (i) and clause (ii), as the case may be, within six months of the commencement of that Act.

41 of 1999.

Requirements as to capital structure and voting rights and maintenance of registers of beneficial owners of shares.

6A. (1) No Public company limited by shares having its registered office in India, shall carry on life insurance business, unless it satisfies all the following conditions, namely:—

(i) that the capital of the company consists only of ordinary shares each of which has a single face value;

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

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

47 of 1950.

(2) Notwithstanding anything to the contrary contained in any law for the time being in force or in the memorandum or articles of association but subject to the other provisions contained in this section the voting right of every shareholder of any public company as aforesaid shall in all cases be strictly proportionate to the paid-up amount of the shares held by him.

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(4) A public company as aforesaid which carries on life insurance business—

(a) * * * * *

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

(i) unless, in addition to compliance being made with the provisions of section 34 of the Indian Companies Act, 1913 the transferee furnishes a

7 of 1913.

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 or where the transferee is a banking or an investment company, is likely to exceed two and a half per cent. of such paid-up capital, unless the previous approval of the Authority has been obtained to the transfer;

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

Explanation.—For the purposes of this sub-clause, the expressions "group" and "same management" shall have the same meanings respectively assigned to them in the Monopolies and Restrictive Trade Practices Act, 1969.

54 of 1969.

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47 of 1950.

(6) If the total paid-up holding of any person in the shares of a company referred to in sub-section (1) on the commencement of the Insurance (Amendment) Act, 1950, exceed two and a half per cent. of its paid-up capital where that person is a banking company or an investment company, or five per cent. of its paid-up capital in any other case, he shall not be entitled to any vote as a shareholder of the company in respect of such excess holding of shares.

47 of 1950.

(7) Where the total paid-up holding of any person in the shares of a company referred to in sub-section (1) on the date of the commencement of the Insurance (Amendment) Act, 1950, exceeds five per cent. of its paid-up capital where that person is a banking company or an investment company, or ten per cent. of its paid-up capital in any other case, he shall dispose of the excess holding of shares within three years from such commencement or such further period not exceeding two years as may be allowed to him by the Central Government.

(8) If, after the expiry of three years or of such further period as may be allowed to any person under sub-section (7), the total paid-up holding of any such person has not been reduced to the limits specified in that sub-section, any shares in excess of the limits specified in that sub-section shall vest in the Administrator-General of the State in which the registered office of the company concerned is situate and the Administrator General shall take such steps as may be necessary for taking charge of any property which has been so vested in him and shall dispose of the said shares and the proceeds thereof in such manner as may be prescribed.

7 of 1913.

(9) Subject to the other provisions contained in this section, but notwithstanding anything contained in the Indian Companies Act, 1913, or in the memorandum or articles of association of any such company as is referred to in sub-section (1), no such company shall refuse to register the transfer of any shares where the transfer is for the purpose of securing compliance with the provision of sub-sections (7) and (8).

(10) The Central Government may, subject to such restrictions as it may think fit to impose, exempt from the operation of sub-sections (6), (7) and (8) any insurance company, in any case where the total paid-up holding of such insurance company in the shares of any other insurance company exceeds the limits specified in the said sub-sections, if the other insurance company is or is to be made a subsidiary company of the insurance company.

62 of 1968.

(11) The provisions of this section, except those of sub-sections (7), (8) and (9) shall, on and from the commencement of the Insurance (Amendment) Act, 1968, also apply to

insures carrying on general insurance business subject to the following modifications, namely:—

(i) that references in sub-sections (1), (3), (5) and (6) to the Insurance (Amendment) Act, 1950, shall be construed as references to the Insurance (Amendment) Act, 1968; and

47 of 1950.
62 of 1968.

(ii) references in sub-section (10) to sub-section (7) and (8) shall be omitted.

Explanation.— For the purposes of this section, the holding of a person in the shares of a company shall be deemed to include—

(i) the total paid-up holding in such shares held by such person in the name of others; and

(ii) if any shares of the company are held—

(a) by a public limited company, of which such person is a member holding more than ten per cent. of the paid-up capital, or

(b) by a private limited company, of which such person is a member, or

(c) by a company, of which such person is a managing director, manager, managing agent or in which he has a controlling interests, or

(d) by a firm in which such person is a partner, or

(e) by such person jointly with others,

such part of the total paid-up holding of the company or firm or of the total joint holding in those shares, as is proportionate to the contribution made by such person to the paid-up capital of the company, the paid-up capital of the firm or the joint holding, as the case may be.

Manner of divesting excess shareholding by promoter in certain cases.

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

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

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

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

Provision for securing compliance with requirements relating to capital structure.

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

7 of 1913.

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

Provided that—

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

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

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

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

* * * * *

62 of 1968.

(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.

6C. (1) Where a public company limited by shares carrying on insurance business has passed a special resolution for converting itself into a public company limited by guarantee, it may apply to the Central Government with a scheme for putting the special resolution into effect, including any provision for the alteration of the memorandum or articles of association insofar as it may be necessary for this purpose.

Conversion of company limited by shares into company limited by guarantee.

(2) If the Central Government, after giving such notice to any person concerned as it thinks fit, is satisfied—

(a) that the scheme makes suitable provision with respect to the repayment, conversion or liquidation of the paid-up capital of the company,

(b) that the consent of the creditors to the conversion of the company limited by shares into a company limited by guarantee has been obtained, or that suitable provisions have been made for discharging, determining or securing the debts or claims of such creditors, and

(c) that the scheme is otherwise reasonable, it may sanction the scheme and thereupon the scheme shall become binding on the company and on all the persons concerned.

(3) Against the decision of the Central Government sanctioning a scheme under sub-section (2), any person aggrieved thereby may, within ninety days of the date of the order sanctioning the scheme, prefer an appeal to the High Court within whose jurisdiction the registered office of the insurer is situate.

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

(5) Where a scheme has been sanctioned under this section, the company shall file with the Registrar of Companies a certified copy of the scheme as sanctioned, and thereupon the provisions of the Indian Companies Act, 1913, relating to companies limited by guarantee shall become applicable to the company.

7 of 1913.

7. (1) Every insurer shall, in respect of the insurance business carried on by him in India, deposit and deep deposited with the Reserve Bank of India in one of the offices in India of the Bank for and on behalf of the Central Government the amount hereafter specified, either in cash or in approved securities estimated at the market value of the securities on the day of deposit, or partly in cash and partly in approved securities so estimated,—

Deposits.

(a) in the case of life insurance business, a sum equivalent to one per cent. of his total gross premium written in India in any financial year commencing after the 31st day of March, 2000, not exceeding rupees ten crores;

(b) in the case of general insurance business, a sum equivalent to three per cent. of his total gross premium written in India, in any financial year commencing after the 31st day of March, 2000, not exceeding rupees ten crores;

(c) in the case of re-insurance business, a sum of rupees twenty crores:

Provided that, where the business done or to be done in marine insurance only and relates exclusively to country craft or its cargo or both, the amount to be desposited under this sub-section shall be one hundred thousand rupees only:

Provided further that in respect of any insurer not having a share capital and carrying on only such insurance business as in the opinion of the Central Government is not carried on ordinarily by insurers under separate policies, the Central Government may, by notification in the Official Gazette, order that the provisions of this sub-section shall apply to such insurer with the modification that instead of the sum of rupees twenty lakhs or rupees ten lakhs, as the case may be, the deposit to be made by such insurer shall be such amount, being not less than one hundred and fifty thousand rupees, as may be specified in the said order.

(2) Where the insurer is an insurer specified in sub-clause (c) of clause (9) of section 2, he shall be deemed to have complied with the provisions of this section as to deposits, if in respect of insurance business carried on by him in India under a standing contract of the nature referred to in sub-clause (c) of clause (9) of section 2 a deposit of an amount one-and-a-half times that specified in sub-section (1) has been made in the Reserve Bank of India in one of the offices in India of the Bank for and on behalf of the Central Government in cash or approved securities estimated at the market value of securities on the day of deposit by or on behalf of the underwriters who are members of the Society of Lloyd's with whom he has his standing contract.

(3) Where the deposit is to be made by an insurer not carrying on insurance business in India immediately before the commencement of the Insurance (Amendment) Act, 1968, a deposit of rupees ten lakhs shall be made before the application for registration is made, and the provisions of clause (ii) of sub-section (1A) shall apply to such insurer after his registration as they apply to an insurer specified in clause (a) of sub-section (1). 62 of 1968.

(4) An insurer shall not be registered for any class of insurance business in addition to the class or classes for which is already registered until the full deposit required under sub-section (1) has been made.

(5) Where an insurer who intends to become a member of a group, does not carry on all the classes of insurance business carried on by the other insurers in such group, or, where out of the several insurers who desire to form themselves into a group, any insurer does not carry on all the classes of insurance business carried on by the other insurers who desire to form themselves into the group, such insurer may be registered for that class or those classes of insurance business which is or are carried on by the other insurers of the group or the proposed group, as the case may be, and where any application for registration is made by any such insurer, the Authority may, notwithstanding anything contained in sub-section (2A) of section 3 or sub-section (4), register such insurer for one or more additional classes of insurance, if the following conditions are fulfilled, namely:—

(a) the Authority is satisfied that registration for the proposed one or more additional classes of insurance business would qualify the insurer to become a member of a group;

(b) agreements have been executed by all the Insurers in the group or proposed group, as the case may be, and such agreements, in the opinion of the Authority, satisfy the requirements of the *Explanation* to sub-section (1B); and

(c) the insurer has, after the commencement of the Insurance (Amendment) Act, 1968 made deposit of a sum not less than the total of all the instalments of deposit which he would have been required to make after such commencement till the date of his becoming a member of the group, had he been a member of the group from such commencement. 62 of 1968.

(6) The Authority shall cancel the registration made in pursuance of the provisions of sub-section (5), if the insurer referred to therein fails to become, within a period of three months from the date of such registration, a member of the group or proposed group, as the case may be, and, where such registration has been cancelled, the provisions of this Act shall apply to the insurer as if he had not been registered for the class or classes of insurance business in relation to which his registration has been cancelled.

(7) Securities already deposited with the Authority of Currency in compliance with the Indian Life Assurance Companies Act, 1912, shall be transferred by him to the Reserve 6 of 1912.

Bank of India and shall, to the extent of their market value as at the date of the commencement of this Act, be deemed to be deposited under this Act, as the instalment or as part of the instalment to be made under the foregoing provisions of this section before the application for registration is made whether any such application is or is not in fact made.

(8) A deposit made in cash shall be held by the Reserve Bank of India to the credit of the insurance and shall except to the extent, if any, to which the cash has been invested in securities under sub-section (9A), be returnable to the insurer in cash in any case in which under the provisions of this Act a deposit is to be returned; and any interest accruing due and collected on securities deposited under sub-section (1) or sub-section (2) shall be paid to the insurer, subject only to deduction of the normal commission chargeable for the realisation of interest.

(9) The insurer may at any time replace any securities deposited by him under this section with the Reserve Bank of India either by cash or by other approved securities or partly by cash and partly by other approved securities, provided that such cash, or the value of such other approved securities estimated at the market rates prevailing at the time of replacement, or such cash together with such value, as the case may be, is not less than the value of the securities replaced estimated at the market rates prevailing when they were deposited.

(9A) The Reserve Bank of India shall, if so requested by the insurer,

(a) sell any securities deposited by him with the Bank under this section and hold the cash realised by such sale as deposit, or

(b) invest in approved securities specified by the insurer the whole or any part or a deposit held by it in cash or the whole or any part of cash received by it on the sale of or on the maturing of securities deposited by the insurer, and hold the securities in which investment is so made as deposit,

and may charge the normal commission on such sale or on such investment.

(9B) Where sub-section (9A) applies,—

(a) if the cash realised by the sale of or on the maturing of the securities (excluding in the former case the interest accrued) falls short of the market value of the securities at the date on which they were deposited with the bank, the insurer shall make good the deficiency by a further deposit either in cash or in approved securities estimated at the market value of the securities on the day on which they are deposited, or partly in cash and partly in approved securities so estimated, within a period of two months from the date on which the securities matured or were sold or where the securities matured or were sold before the 21st day of March, 1940, within a period of four months from the commencement of the Insurance (Amendment) Act, 1940; and unless he does so the insurer shall be deemed to have failed to comply with the requirements of this section as to the deposits; and

(b) if the cash realised by the sale of or on the maturing of the securities (excluding in the former case the interest accrued) exceeds the market value of the securities at the date on which they were deposited with the Bank, the Central Government may, if satisfied that the full amount required to be deposited under sub-section (1) is in deposit, direct the Reserve Bank to return the excess.

(10) If any part of a deposit made under this section is used in the discharge of any liability of the insurer, the insurer shall deposit such additional sum in cash or approved securities estimated at the market value of the securities on the day of deposit, or partly in cash and partly in such securities, as will make up the amount so used. The insurer shall be deemed to have failed to comply with the requirements of sub-section (1), unless the deficiency is supplied within a period of two months from the date when the deposit or any part thereof is so used for discharge of liabilities.

Reservation of deposits.

8. (1) Any deposit made under section 7 or section 98 shall be deemed to be part of the assets of the insurer but shall not be susceptible of any assignment or charge; nor shall it be available for the discharge of any liability of the insurer other than liabilities arising out of policies of insurance issued by the insurer so long as any such liabilities remain undischarged; nor shall it be liable to attachment in execution of any decree except a decree obtained by a policy-holder of the insurer in respect of a debt due upon a policy which debt the policy-holder has failed to realise in any other way.

(2) Where a deposit is made in respect of life insurance business the deposit made in respect thereof shall not be available for the discharge of any liability of the insurer other than liabilities arising out of policies of life insurance issued by the insurer.

Refund of deposit.

9. Where an insurer has ceased to carry on in India all classes of insurance business and his liabilities in India in respect of all classes of insurance business have been satisfied or are otherwise provided, for the court may, on the application of the insurer, order the return to the insurer of the deposit made by him under this Act.

Separation of accounts and funds.

10. (1) Where the insurer carries on business of more than one of the following classes, namely, life insurance, fire insurance, marine insurance or miscellaneous insurance, he shall keep a separate account of all receipts and payments in respect of each such class of insurance business and where the insurer carries on business of miscellaneous insurance whether alone or in conjunction with business of another class, he shall, unless the Authority waives this requirement in writing, keep a separate account of all receipts and payments in respect of each of such sub-classes of miscellaneous insurance business as may be prescribed in this behalf:

Provided that no sub-class of miscellaneous insurance business shall be, prescribed under this sub-section if the insurance business comprised in the sub-class consist of insurance contracts which are terminable by the insurer at intervals not exceeding twelve months and under which, if a claim arises, the insurer's liability to pay benefit ceases within one year of the date on which the claim arose.

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Accounts and balance-sheet.

11. (1) Every insurer, in the case of an insurer specified in sub-clause (a) (ii) or sub-clause (b) of clause (9) of section 2 in respect of all insurance business transacted by him, and in the case of any other insurer in respect of the insurance business transacted by him in India shall at the expiration of each financial year prepare with reference to that year—

(a) in accordance with the regulations contained in Part I of the First Schedule, a balance-sheet in the form set forth in Part II of that Schedule;

(b) in accordance with the regulations contained in Part I of the Second Schedule, a profit and loss account in the forms set forth in Part II of that Schedule, except where the insurer carries on business of one class only of the following classes, namely, life insurance, fire insurance or marine insurance and no other business;

(c) in respect of each class or sub-class of insurance business for which he is required under sub-section (1) of section 10 to keep a separate account of receipts and payments, a revenue account in accordance with the regulations, and in the form or forms, set forth in the Third Schedule applicable to that class or sub-class of insurance business.

(1A) Notwithstanding anything contained in sub-section (1), every insurer, on or after the commencement of the Insurance Regulatory and Development Authority Act, 1999, in respect of insurance business transacted by him and in respect of his shareholders' funds, shall, at the expiration of each financial year, prepare with reference to that year, a balance-sheet, a profit and loss account, a separate account of receipts and payments, a revenue account in accordance with the regulations made by the Authority.

41 of 1999.

(1B) Every insurer shall keep separate accounts relating to funds of shareholders and policy-holders.

7 of 1913. (2) Unless the insurer is a company as defined in clause (2) of sub-section (1) of section 2 of the Indian Companies Act, 1913 accounts and statements referred to in sub-section (1) shall be signed by the insurer, or in the case of a company by the chairman, if any, and two directors and the principal officer of the company, or in the case of a firm by two partners of the firm, and shall be accompanied by a statement containing the names, descriptions and occupations of, and the directorships held by, the persons in charge of the management of the business during the period to which such accounts and statements refer and by a report on the affairs of the business during that period.

6 of 1912. (3) Where an insurer carrying on the business of insurance at the commencement of this Act has prepared the balance-sheet and accounts required by the Indian Life Assurance Companies Act, 1912, or has based his accounts upon the financial and not the calendar year, the provisions of this section shall, if the Central Government so directs in any case, apply until the 31st day of December, 1939, as if sub-section (1) reference to the calendar year were references to the financial year.

7 of 1913. **12.** The balance-sheet, profit and loss account, revenue account and profit and loss appropriation account of every insurer, in the case of an insurer specified in sub-clause (a) (ii) or sub-clause (b) of clause (9) of section 2 in respect of all insurance business transacted by him, and in the case of any other insurer in respect of the insurance business transacted by him in India, shall, unless they are subject to audit under the Indian Companies Act, 1913 be audited annually by an auditor, and the auditor shall in the audit of all such accounts have the powers of, exercise the functions vested in, and discharge the duties and be subject to the liabilities and penalties imposed on, auditors of companies by section 145 of the Indian Companies Act, 1913. Audit.

13. (1) Every insurer carrying on life insurance business shall, in respect of the life insurance transacted by him in India, and also in the case of an insurer specified in sub-clause (a) (ii) or sub-clause (b) of clause (9) of section 2 in respect of all life insurance business transacted by him, once at least every year cause an investigation to be made by an actuary into the financial condition of the life insurance business carried on by him, including a valuation of his liability in respect thereto and shall cause an abstract of the report of such actuary to be made in accordance with the regulations contained in Part I of the Fourth Schedule and in conformity with the requirements of Part II of that Schedule: Actuarial report and abstract.

Provided that the Authority may, having regard to the circumstances of any particular insurer, allow him to have the investigation made as at a date not later than two years from the date as at which the previous investigation was made:

47 of 1950. Provided further that for an insurer carrying on life insurance business in India at the commencement of the Insurance (Amendment) Act, 1950, the last date as at which the first investigation after such commencement should be caused to be made by an actuary shall be—

(a) the 31st day of December, 1950, or the date of expiration of five years from the date at which the last investigation was made by an actuary before such commencement, whichever is earlier, where the said last investigation was at a date—

(i) before the 31st day of December, 1946 but not more than five years before such commencement, or

(ii) after the 30th day of December, 1946, but before the 31st day of December, 1947, and had disclosed a deficit in the life insurance fund; or

(b) the 31st day of December, 1951, where the last investigation by an actuary before such commencement was at a date—

(i) after the 30th day of December, 1946, but before the 31st day of December, 1947, and did not disclose a deficit in the life insurance fund; or

(ii) after the 31st day of December, 1947, but before the 31st day of December, 1948;

(c) the 31st day of December, 1952, where the last investigation by an actuary before such commencement was as at any date after 30th day of December, 1948, but before the 1st day of January, 1950:

Provided also that for an insurer carrying on life insurance business in India immediately before the Commencement of the Insurance Regulatory and Development Authority Act, 1999, the last date as which the first investigation after such commencement should be caused by an actuary, shall be the 31st day of March, 2001: 41 of 1999.

Provided also that, in the case of an insurer who has not caused an investigation to be made by an actuary as at any date prior to such commencement, the date of commencement of life insurance business in India shall, for the purpose of the preceding proviso, be deemed to be the date as at which the last investigation was made by an actuary before such commencement and such investigation shall be deemed to have disclosed no deficit in the life insurance fund:

Provided also that every insurer, on or after the commencement of the Insurance Regulatory and Development Authority Act, 1999, shall cause an abstract of the report of the actuary to be made in the manner specified by the regulations made by the Authority. 41 of 1999.

* * * * *

(3) There shall be appended to every such abstract as is referred to in sub-section (1) or sub-section (2) or a certificate signed by the principal officer of the insurer that full and accurate particulars of every policy under which there is a liability either actual or contingent have been furnished to the actuary for the purpose of the investigation.

(4) There shall be appended to every such abstract a statement, in conformity with their requirement of a Part II of the Fifth Schedule and prepared in accordance with the regulations contained in Part I of that Schedule of the life insurance business in force at the date to which the account of the insurer are made up for the purposes of such abstract:

Provided that, if the investigation referred to in sub-sections (1) and (2) is made annually by any insurer, the statement need not be appended every year but shall be appended at least once in every three years:

Provided further that the statement referred to in sub-section (4) shall be appended in the form and in the manner specified by the regulations made by the Authority.

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(6) The provisions of this section relating to the life insurance business shall apply also to any such sub-class of insurance business included in the class "Miscellaneous Insurance" as may be prescribed under sub-section (1) of section 10; and the Authority may authorise such modification and variation of regulations contained in Part I of the Forth and Fifth Schedules and of the requirement of Part II of those Schedules as may be necessary to facilitate their application to any such sub-class of insurance business:

Provided that, if the Authority is satisfied that the number and amount of transactions carried out by an insurer in any such sub-class of insurance business is so small as to render periodic investigation and valuation unnecessary, it may exempt that insurer from the operation of this sub-section in respect of that sub-class of insurance business.

Register of policies and register of claims.

14. Every insurer in the case of insurer specified in sub-clause (a) (ii) or sub-clause (b) of clause (9) of section 2 in respect of all business transacted by him, and in the case of any other insurer in respect of the insurance business transacted by him in India, shall maintain—

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

(b) a register of record of claims, in which shall be entered every claim made together with the date of the claim, the name and address of the claimant and the date on which the claim was discharged, or, in the case of a claim which is rejected, the date of rejection and the ground therefor.

15. (1) The audited accounts and statements referred to in section 11 or sub-section (5) of section 13 and the abstract and statement referred to in section 13 shall be printed, and four copies thereof shall be furnished as returns to the Authority within six months from the end of the period to which they refer: Submission of returns.

Provided that the said period of six months shall in the case of insurers having their principal place of business or domicile outside India and in the case of insurers constituted, incorporated or domiciled in India but also carrying on business outside India be extended by three months, and provided further that the Central Government may in any case extend the time allowed by this sub-section for the furnishing of such returns by a further period not exceeding three months.

(2) Of the four copies so furnished one shall be signed in the case of a company by the chairman and two directors and by the principal officer of the company and, if the company has a managing director or managing agent, by that director or managing agent, in the case of a firm, by two partners of the firm, and, in the case of an insurer being an individual, by the insurer himself and one shall be signed by the auditor who made the audit or the actuary who made the valuation, as the case may be.

(3) Where the insurer's principal place of business or domicile is outside India he shall forward to the Authority along with the documents referred to in section 11, the balance-sheet, profit and loss account and revenue account and the valuation reports and valuation statements, if any, which the insurer is required to file with the public authority of the country in which the insurer is constituted, incorporated or domiciled, or, where such documents are not required to be filed, a certified statement showing the total assets and liabilities of the insurer at the close of the period covered by the said documents and his total income and expenditure during that period.

16. (1) Where, by the law of the country in which an insurer, not being an insurer specified in sub-clause (a) (ii) or sub-clause (b) of clause (9) of section 2, is constituted, incorporated or domiciled, the insurer is required to prepare and to furnish to a public authority of that country documents of substantially the same nature as the documents required to be furnished as returns in accordance with the provisions of section 15, the provisions of sub-section (2) of this section shall apply to such insurer in lieu of the provisions of sections 11, 12, 13, and 15. Returns by insurers established outside India.

(2) The insurer shall, within the time specified in sub-section (1) of section 15, furnish to the Authority four certified copies in the English language of every balance-sheet, account, abstract, report and statement supplied to the public authority referred in sub-section (1) of this section, and in addition thereto, four certified copies in the English language of each of the following statements, namely:—

(a) a statement audited by an auditor or by a person duly qualified under the law of the insurer in India as at the date of any balance-sheet so furnished;

(b) for each class or sub-class of insurance business for which he is required under sub-section (1) of section 10 to keep a separate account of receipts and payments, a revenue account for the period covered by any account so furnished, prepared in accordance with the regulations and in the form or forms, set forth in the Third Schedule applicable to that class or sub-class of insurance business and similarly audited showing separately with respect to business transacted by the insurer in India the details required to be supplied in a revenue account furnished under this clause of this sub-section;

(c) a separate abstract of the valuation report in respect of all business transacted in India in each class or sub-class or insurance business to which section 13 refers, prepared in the manner required by that section; and

(d) a declaration in the prescribed form stating that all amounts received by the insured directly or indirectly whether from his head office or from any other source outside India have been shown in the revenue account except such sums as properly appertain to the capital account.

Exemption from certain provisions of the Indian Companies Act, 1913.

17. Where an insurer, being a company incorporated under the Indian Companies Act, 1913 or under the Indian Companies Act, 1882 or under the Indian Companies Act, 1866 or under any Act repealed thereby, in any year furnishes his balance-sheet and accounts in accordance with the provisions of section 15, he may at the same time send to the Registrar of Companies, copies of such balance-sheet and accounts; and where such copies are so sent, it shall not be necessary for the company to file copies of the balance-sheet and account with the Registrar as required by sub-section (1) of section 134 of the first mentioned Act and such copies so sent shall be chargeable with the same fees and shall be dealt with in all respects as if they were filed in accordance with that section. 7 of 1913. 6 of 1882. 10 of 1866.

This Act not to apply to preparation of accounts, etc., for periods prior to this Act coming into force.

17A. Nothing in this Act shall apply to the preparation of accounts by an insured and the audit and submission thereof in respect of any accounting year which has expired prior to the commencement of this Act, and notwithstanding the other provisions of this Act such accounts shall be prepared, audited and submitted in accordance with the law in force immediately before the commencement of this Act.

* * * * *

Custody and inspection of documents and supply of copies.

20. (1) Every return furnished to the Authority or certified copy thereof shall be kept by the Authority and shall be open to inspection; and any person may procure a copy of any such return, or of any part thereof, on payment of a fee of six annas for every hundred words or fractional part thereof required to be copied, any five figures being deemed equivalent to one word.

(2) A printed or certified copy of the accounts, statements and abstract furnished in accordance with the provisions of section 15 or section 16 shall, on the application of any shareholder or policy-holder made at any time within two years from the date on which the documents was so furnished, be supplied to him by the insurer within fourteen days when the insurer is constituted, incorporated or domiciled in India and in any other case within one month of such application.

(3) A copy of the memorandum and articles of association of the insurer, if a company shall on the application of any policy-holder, be supplied to him by the insurer on payment of one rupee.

Powers of Authority regarding returns.

21. (1) If it appears to the Authority that any return furnished to it under the provisions of this Act is incorrect or defective in any respect it may—

* * * * *

(d) decline to accept any such return unless the inaccuracy has been corrected or the deficiency has been supplied before the expiry of one month from the date on which the requisition asking for correction of the inaccuracy or supply of the deficiency was delivered to the insurer or of such further time as the Authority may specify in the requisition and if it declines to accept any such return, the insurer shall be deemed to have failed to comply with the provisions of section 15 or section 16 for section 28 or section 28A or section 28B or section 64V relating to the furnishing of returns.

(2) The Court may on the application of an insurer and after hearing the Authority cancel any order made by Authority under clauses (a), (b) or (c) of sub-section (1) or may direct the acceptance of any return which the Authority has declined to accept, if the insurer satisfied the Court the action of the Authority was in the circumstances unreasonable:

Provided that no application under this sub-section shall be entertained unless it is made before the expiration of four months from the time when the Authority made the order or declined to accept the return.

22. (1) If it appears to the Authority that an investigation or valuation to which section 13 refers or an abstract of a valuation report furnished under clause (c) of sub-section (2) of section 16 does not properly indicate the condition of the affairs of the insurer by reason of the faulty basis adopted in the valuation, it may, after giving notice to the insurer and giving him an opportunity to be heard, cause an investigation and valuation as at such date as the Authority may specify to be made at the expense of the insurer by an actuary appointed by the insurer for this purpose and approved by the Authority and the insurer shall place at the disposal of the actuary so appointed and approved all the material required by the actuary for the purposes of the investigation and valuation within such period, not being less than three months, as the Authority may specify.

Powers of Authority to order revaluation.

(2) The provisions of sub-sections (1) and (4) of section 13, and of sub-sections (1) and (2) of section 15 or, as the case may be, of sub-section (2) of section 16, shall apply in relation to an investigation and valuation under this section:

Provided that the abstract and statement prepared as the result of such investigation and valuation shall be furnished by such date as the Authority may specify.

* * * * *

Investment, Loans and Management

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

Investment of assets.

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

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

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

(ii) any amount due to the insurer for loans granted on and within the surrender values of policies of life insurance maturing for payment in India issued by him or by an insurer whose business he has acquired and in respect of which he has assumed liability, in the manner following, namely, twenty-five per cent. of the said sum in Government securities, a further sum equal to not less than twenty-five per cent. of the said sum in Government securities or other approved securities and the balance in any of the approved investments specified in sub-section (1) of section 27A or, subject to the limitations, conditions and restrictions specified in sub-section (2) of that section, in any other investment.

(2) For the purposes of sub-section (1),—

(a) the amount of any deposit made under section 7 or section 98 by the insurer in respect of his life insurance business shall be deemed to be assets invested or kept invested in Government securities;

(b) the securities of, or guaranteed as to principal and interest by, the Government of the United Kingdom shall be regarded as approved securities other than Government securities for a period of four years from the commencement of the Insurance (Amendment) Act, 1950, in the manner and to the extent hereinafter specified, namely:—

(i) during the first year, to the extent of twenty-five per cent. in value of the sum referred to in sub-section (1);

(ii) during the second year, to the extent of eighteen and three fourth per cent. in value of the said sum;

(iii) during the third year, to the extent of twelve and a half per cent. in value of the said sum; and

(iv) during the fourth year, to the extent of six and a quarter per cent. in value of the said sum:

Provided that, if the Authority so directs in any case, the securities specified in clause (b) shall be regarded as approved securities other than Government securities for a longer period than four years, but not exceeding six years in all, and the manner in which and the extent to which the securities shall be so regarded shall be as specified in the direction;

(c) any prescribed assets shall, subject to such conditions, if any, as may be prescribed, be deemed to be assets invested or kept invested in approved investments specified in sub-section (1) of section 27A.

(3) In computing the assets referred to in sub-section (1),—

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

(b) any investment made in the purchase of any immovable property outside India or on the security of any such property,

shall not be taken into account:

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

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

47 of 1950.

(4) Where an insurer has accepted reinsurance in respect of any policies of life insurance issued by another insurer and maturing for payment in India or has ceded reinsurance to another insurer in respect of any such policies issued by himself, the sum referred to in sub-section (1) shall be increased by the amount of the liability involved in such acceptance and decreased by the amount of the liability involved in such cession.

(5) The Government securities and other approved securities in which assets are under sub-section (1) to be invested and kept invested shall be held by the insurer free of any encumbrance, charge, hypothecation or lien.

(6) The assets required by this section to be held invested by an insurer incorporated or domiciled outside India shall, except to the extent of any part thereof which consists of foreign assets held outside India, be held in India and all such assets shall be held in trust for the discharge of the liabilities of the nature referred to in sub-section (1) and shall be vested in trustees resident in India and approved by the Authority and the instrument of trust under this sub-section shall be executed by the insurer with the approval of the Authority and shall define the manner in which alone the subject-matter of the trust shall be dealt with.

Explanation.—This sub-section shall apply to an insurer incorporated in India whose share capital to the extent of one-third is owned by, or the members of whose governing body to the extent of one-third consists of members domiciled elsewhere than in India.

27A. (1) No insurer shall invest or keep invested any part of his controlled fund otherwise than in any of the following approved investments, namely:—

(a) approved securities;

(b) securities of, or guaranteed as to principal and interest by the Government of the United Kingdom;

(c) debentures or other securities for money issued with the permission of the State Government by any municipality in a State;

(d) debentures or other securities for money issued by any authority constituted under any housing or building scheme approved by the Authority or a State Government or by any authority or body constituted by any Central Act or Act of a State Legislature;

(e) first mortgage on immovable property situated in India under any housing or building scheme of the insurer approved by the Authority or a State Government;

(f) debentures secured by a first charge on any immovable property, plant or equipment of any company which has paid interest in full for the five years immediately preceding or for at least five out of the six or seven years immediately preceding on such or similar debentures issued by it;

(g) debentures secured by a first charge on any immovable property, plant or equipment of any company where either the book value or the market value, whichever is less, of such property, plant or equipment is more than three times the value of such debentures;

(h) first debenture secured by a floating charge on all in its assets of any company which has paid dividends on its ordinary shares for the five years immediately preceding or for at least five out of the six or seven years immediately preceding;

(i) preference shares of any company which has paid dividends on its ordinary shares for the five years immediately preceding or for at least five out of the six or seven years immediately preceding;

(j) preference shares of any company on which dividends have been paid for the five years immediately preceding or for at least five out of the six or seven years immediately preceding and which have priority in payment over all the ordinary shares of the company in winding up;

(k) shares of any company which have been guaranteed by another company, such other company having paid dividends on its ordinary shares for the five years immediately preceding or for at least five out of the six or seven years immediately preceding;

Provided that the total amount of shares of all the companies under guarantee by the guaranteeing company is not in excess of fifty per cent. of the paid up amount of preference and ordinary shares of the guaranteeing company;

(l) shares of any company on which dividends of not less than four per cent. including bonus have been paid for the seven years immediately preceding or for at least seven out of the eight or nine years immediately preceding;

(m) first mortgages on immovable property situated in India or in any other country where the insurer is carrying on insurance business:

Provided that the property mortgaged is not leasehold property with an outstanding term of less than thirty years and the value of the property exceeding by one-third, or if it consists of buildings, exceeds by one-half, the mortgage money;

(n) immovable property situated in India or in any other country where the insurer is carrying on insurance business:

Provided that the property is free of all encumbrances;

(o) loans on life interests, or on policies of life insurance within their surrender values issued by him or by an insurer whose business he has acquired and in respect of which business he has assumed liability;

(p) life interests;

(q) fixed deposits with banks included for the time being in the Second Schedule to the Reserve Bank of India Act, 1934 or with co-operative societies registered under the Indian Co-operative Societies Act, 1912, or under any other law for the time being in force, the primary object of which is to finance other co-operative societies similarly registered;

(*r*) debentures of, or shares in co-operative societies registered under the Indian Co-operative Societies Act, 1912, or under any other law for the time being in force; 2 of 1912.

(*s*) such other investments as the Authority may, by notification in the Official Gazette, declare to be approved investments for the purposes of this section.

(2) Notwithstanding contained in sub-section (*I*), an insurer being a company or a co-operative life insurance society as defined in clause (*b*) of sub section (*I*) of section 95, may, subject to the provisions contained in the next succeeding sub-sections, invest or keep invested any part of his controlled fund otherwise than in an approved investment, if—

(*i*) after such investment, the total amounts of all such investments of the insurer do not exceed fifteen per cent. of the sum referred to in sub-section (*I*) of section 27,

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

(3) An insurer shall not out of his controlled fund invest or keep invested in the shares of any one banking company or investment company more than—

(*a*) two and a quarter per cent. of the sum referred to in sub-section (*I*) of section 27, or

(*b*) two per cent. of the subscribed share capital and debentures of the banking company or investment company concerned,

whichever is less.

(4) An insurer shall not out of the controlled fund invest or keep invested in the shares or debentures of any one company other than a banking company or investment company more than—

(*a*) two and a quarter per cent. of the sum referred to in sub-section (*I*) of section 27, or

(*b*) ten per cent. of the subscribed share capital and debentures of the company,

whichever is less:

Provided that nothing in this sub-section shall apply to any investment made with the previous consent of the Authority by an insurer, being a company with a view to forming a subsidiary company carrying on insurance business.

(5) An insurer shall not out of his controlled fund invest or keep invested any sum in the shares or debentures of any private limited company.

(6) Where an investment is in partly paid-up shares, the uncalled liability on such shares shall be added to the amount invested for the purpose of computing the percentages referred to in clause (*a*) of sub-section (3) and clause (*a*) of sub-section (4).

(7) Notwithstanding anything contained in sub-sections (3) and (4), where new shares are issued to the existing shareholders by a company the existing shares of which are covered by clause (*i*) or clause (*k*) or clause (*l*) of sub-section (*I*) and of which an insurer is already a shareholder, the insurer may subscribe to such new shares:

Provided that the proportion of new shares subscribed by him does not exceed the proportion which the paid-up amount on the shares held by him immediately before such subscription bears to the total paid-up capital of the company at the time of such subscription.

(8) If, on an application submitted through the Authority the Authority is satisfied that special grounds exist warranting such exemption, the Authority may for such period, to such extent and in relation to such particular investments and subject to such conditions as may be specified by it in this behalf, exempt an insurer from all or any of the provisions of sub-sections (3), (4) and (7).

2 of 1912.

(9) An insurer shall not keep more than three per cent. of the controlled fund in fixed deposit or current deposit, or partly in fixed deposit and partly in current deposit, with any one banking company or with any one co-operative society registered under the Indian Co-operative Societies Act, 1912, or under any other law for the time being in force and doing banking business:

Provided that in applying this sub-section to the amount in deposit with a banking company on any day all the premiums collected by that company on behalf of the insurer during the preceding thirty days shall be excluded:

Provided further that the Authority may permit a co-operative life insurance society as defined in clause (b) of sub-section (1) of section 95 to keep more than three per cent. of its controlled fund in fixed deposit with any co-operative society referred to in this sub-section, if the fixed deposit is secured by a first mortgage on any immovable property.

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

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

47 of 1950.

(12) Every insurer in existence at the commencement of the Insurance (Amendment) Act, 1950, whose investments or any part thereof at such commencement contravene or contravenes any of the provisions of this section, shall, within ninety days from such commencement, submit to the Authority a report specifying all such investments, and if the Authority is satisfied that it will not be in the interest of the insurer or any class of insurers generally to any such investments, it may, by order, direct that the provisions of this section other than the provisions contained in sub-section (11) shall not apply in relation to any such investments or to any class of investments generally for such period or periods as may be specified in the order.

(13) Without prejudice to the powers given to the Authority by sub-section (11), nothing contained in this section shall be deemed to require any insurer to realise any investment made in conformity with the provisions of sub-section (1) after the commencement of this Act which, after the making thereof, has ceased to be an approved investment within the meaning of this section.

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

Explanation—In this section "controlled fund" means—

(a) in the case of any insurer specified in sub-clause (a) (ii) or sub-clause (b) of clause (9) of section 2 carrying on life insurance business—

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

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

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

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

Further provisions regarding investments.

27B. (1) No insurer carrying on general insurance business shall, after the commencement of the Insurance (Amendment) Act, 1968, invest or keep invested any part of his assets otherwise than in any of the following approved investments, namely:—

(a) the investments specified in clauses (a) to (e), (n), (q) and (r) of sub-section (1) of section 27A;

(b) debentures secured by a first charge on any immovable property, plant or equipment of any company which has paid interest in full for the three years immediately preceding or for at least three out of the four or five years immediately preceding on such or similar debentures issued by it;

(c) debentures secured by a first charge on any immovable property, plant or equipment of any company where either the book value or the market value, whichever is less, of such property, plant or equipment is more than twice the value such debentures;

(d) first debentures secured by a floating charge on all its assets or by a fixed charge on fixed assets and floating charge on all other assets of any company which has paid dividends on its equity shares for the three years immediately preceding or for at least three out of the four or five years immediately preceding the date of the investment;

(e) preference shares of any company which has paid dividends on its equity shares for the three years immediately preceding or for at least three out of the four or five years immediately preceding;

(f) preference shares of any company on which dividends have been paid for the three years immediately preceding or for at least three out of the four or five years immediately preceding and which have priority in payment over all the equity areas of the company in winding up;

(g) shares of any company which have been guaranteed by another company, such other company having paid dividends on its equity shares for the three years immediately preceding or for at least three out of the four or five years immediately preceding;

Provided that the total amount of shares of all the companies under guarantee by the guaranteeing company is not in excess of fifty per cent. of the paid-up amount of preference and equity shares of the guaranteeing company;

(h) shares of any company on which dividends of not less than four per cent. including bonus have been paid for the three years immediately preceding or for at least three out of the four or five years immediately preceding;

(i) first mortgages on immovable property situated in India or in any other country where the insurer is carrying on insurance business:

Providing that the property mortgaged is not leasehold property with an outstanding term of less than fifteen years and the value of the property exceeds by one-third, or if it consists of buildings, exceeds, by one-half, the mortgage money;

(j) such other investments as the Authority may, by notification in the Official Gazette, declare to be approved investments for the purposes of this section.

(2) Any prescribed assets shall, subject to such conditions, if any, as may be prescribed, be deemed to be assets invested or kept invested in approved investment specified in sub-section (1).

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

(i) after such investment, the total amount of all such investments of the insurer do to exceed twenty-five per cent. of his assets, and

(ii) the investment is made, or, in the case of any investment already made, the continuance of such investment is with the consent of all the directors, other than the directors appointed under section 34C, present at a meeting and eligible to vote, special notice of which has been given to all the directors then in India, and all such investments, including investments in which any director is interested, are reported without delay to the Authority with full details of the investments and the extent of the director's interest in any such investment:

Provided that the making, or the continuance, of such investment is not objected to by any director appointed under section 34C.

(4) An insurer shall not invest or keep invested any part of his assets in the shares of any one banking company or investment company more than—

(a) ten per cent. of his assets, or

(b) two per cent. of the subscribed share capital and debentures of the banking company or investment company concerned,

whichever is less.

(5) An insurer shall not invest or keep invested any part of his assets in the shares or debentures of any one company other than a banking company or investment company more than—

(a) ten per cent. of his assets, or

(b) ten per cent. of the subscribed share capital and debentures of the company,

whichever is less:

Provided that nothing in this sub-section shall apply to any investment made by an insurer in the shares of any other insurer if such other insurer is a company within the meaning of section 3 of the Companies Act, 1956 and carries on insurance or re-insurance business in India.

(6) An insurer shall not invest or keep invested any part of his assets in the shares or debentures of any private company.

(7) Where an investment is in partly paid-up shares, the uncalled liability on such shares shall be added to the amount invested for the purpose of computing the percentages referred to in clause (a) of sub-section (4) and clause (a) of sub-section (5).

(8) Notwithstanding anything contained in sub-sections (4) and (5), where new shares are issued to the existing shareholders by a company, the existing shares of which are covered by clause (e) or clause (g) or clause (h) of sub-section (1) and of which an insurer is already a shareholder, the insurer may subscribe to such new shares:

Provided that the proportion of new shares subscribed by him does not exceed the proportion which the paid-up amount on the shares held by him immediately before such subscription bears to the total paid-up capital of the company at the time of such subscription.

(9) If, on an application submitted to the Authority is satisfied that special grounds exist warranting such exemption, may, for such period, to such extent and in relation to such particular investments and subject to such conditions as may be specified by it in this behalf, exempt an insurer from all or any of the provisions of sub-sections (4), (5) and (8).

(10) An insurer shall not keep more than ten per cent. of his assets in fixed deposit or current deposit, or partly in fixed deposit and partly in current deposit, with any one banking company or with any co-operative society registered under the Co-operative Societies Act, 1912, or under any other law for the time being in force and doing banking business: 2 of 1912.

Provided that in applying this sub-section to the amount in deposit with a banking company on any day, all the premiums crediting during the preceding sixty days, to the account of the insurer with such banking company and the amounts deposited, during the preceding thirty days, by such insurer with that banking company for payment of claims or out of re-insurance, recoveries, shall be excluded.

(11) All assets shall (except for a part thereof not exceeding one-tenth of the total assets in value which may subject to such conditions and restrictions as may be prescribed, be offered as security for any loan taken for purposes of any investment or for payment of claims, or which may be kept as security deposit with the banks for acceptance of policies) be held free of any encumbrance, charge, hypothecation or lien.

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

(13) Every insurer in existence at the commencement of the Insurance (Amendment) Act, 1968, whose investments or any part thereof at such commencement do or does not fulfil the requirements of this section, shall, within ninety days from such commencement, submit to the Authority a report specifying all such investments, and, if the Authority is satisfied that it will not be in the interest of the insurer or any class of insurers generally to realise any such investments it may, by order, direct that the provisions of this section, other than the provisions contained in sub-section (12), shall not apply in relation to any such investments or to any class of investments generally for such period or periods as may be specified in the order. 62 of 1968.

(14) Without prejudice to the powers conferred on the Authority by sub-section (12), nothing contained in this section shall be deemed to require any insurer to realise any investment made in conformity with the provisions of sub-section (1) after the commencement of the Insurance (Amendment) Act, 1968, which, after the making thereof, has ceased to be an approved investment within the meaning of this section. 62 of 1968.

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

(16) In this section, unless the context otherwise requires, "assets" means—

(a) in the case of an insurer carrying on life insurance business in India, all his assets to be shown under the column "Other Classes of Business" in the balance-sheet in Form A, in Part II of the First Schedule, but excluding any times against the head "Other Accounts (to be specified)".

(b) In the case of an insurer specified in sub-clauses (a) (ii) or sub-clause (b) of clause (9) of section 2, who is not carrying on life insurance business in India, all his assets required to be shown in the balance-sheet in Form A, in Part II of the First Schedule but excluding any items against the head "Other Accounts (to be specified)"; and

(c) In the case of an other insurer, the assets required to be shown in the statement in Form AA, in Part II of the First Schedule, but excluding office furniture, but does not include any assets specifically held against any funds or portion thereof in respect of which the Authority is satisfied that such fund or portion thereof, as the case may be, is regulated by the law of any country outside India or in respect of which the Authority is satisfied that it would not be in the interest of the insurer to apply the provisions of this section.

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

Prohibition for Investment of funds outside India.

27D. (1) Without prejudice to anything contained in sections 27, 27A and 27B, the Authority may, in the interests of the policy-holders, specify by the regulations made by it, the time, manner and other conditions of Investment of assets to be held by an insurer for the purposes of this Act.

Manner and conditions of Investment.

(2) The Authority may give specific directions for the time, manner and other conditions subject to which the funds of policy-holders shall be invested in the infrastructure and social sector as may be specified by regulations made by the Authority and such regulations shall apply uniformly to all the insurers carrying on the business of life insurance, general insurance, or re-insurance in India on or after the commencement of the Insurance Regulatory and Development Authority Act, 1999.

41 of 1999.

(3) The Authority may, after taking into account the nature of business and to protect the interests of the policy-holders, issue to an insurer directions relating to the time, manner and other conditions of Investment of assets to be held by him:

Provided that no direction under this sub-section shall be issued unless the insurer concerned has been given a reasonable opportunity of being heard.

28. (1) Every insurer carrying on the business of life insurance shall every year, within thirty-one days from the beginning of the year, submit to the Authority return showing as at the 31st day of December of the preceding year the assets held invested in accordance with section 27, and all other particulars necessary to establish that the requirements of that section have been complied with, and such return shall be certified by a principal officer of the insurer.

Statement of investment of assets.

(2) Every such insurer shall also furnish, within fifteen days from the last day of March, June and September, a return certified as aforesaid showing as at the end of each of each of said months the assets held invested accordance with section 27.

(2A) In respect of the Government securities and other approved securities invested and kept invested in accordance with sub-section (1) of section 27 an insurer shall submit along with the returns referred to in sub-sections (1) and (2) a certificate, where such assets are in the custody of a banking company, from that company, and in any other case, from the chairman, two directors and a principal officer, if the insurer is company, or otherwise from a principal officer of the insurer, to the effect that the securities are held free of any encumbrance, charge, hypothecation, or lien, and every such certificate after the first shall also state that since the date of the certificate immediately preceding all the securities have been so held.

(2B) In respect of the assets forming the controlled fund within the meaning of section 27A, and which do not form part of the Government securities and approved securities

invested and kept invested in accordance with section 27, an insurer shall submit, along with the returns referred to in sub-sections (1) and (2), a statement, where such assets are in the custody of a banking company, from that company, and, in any other case, from the chairman, two directors and a principal officer if the insurer is a company, or from a principal officer of the insurer if the insurer is not a company, specifying the assets, which are subjected to a charge and certifying that the other assets are held free of any encumbrance, charge, hypothecation, or lien, and every such statement after the first shall also specify the charges created in respect of any of those assets since the date of the statement immediately preceding, and, if any such charges have been liquidated, the date on which they were so liquidated.

(3) The Authority may at his discretion require any insurer to whom sub-section (1) applies to submit before the 1st day of August in each or any year a return of the nature referred to in sub-section (1), certified as required by that sub-section and prepared as at the 30th day of June.

(4) In the case of an insurer having his principal place of business or domicile outside India the Authority may, on application made by the insurer, extend the periods of fifteen and thirty-one days mentioned in the foregoing sub-sections to thirty days and sixty days, respectively.

(5) The Authority shall be entitled at any time to take such steps as it may consider necessary for the inspection or verification of the assets invested in compliance with section 27 or for the purpose of securing the particulars necessary to establish that the requirements of the section have been complied with. The insurer shall comply with any requisition made in this behalf by the Authority and if he fails to do so within two months from the receipt of the requisition he shall be deemed to have made default in complying with the requirements of this section.

Return of investments relating to controlled fund and changes therein.

28A. (1) Every insurer carrying on life insurance business, shall every year within thirty-one days from the beginning of the year submit to the Authority a return in the form specified by the regulations made by the Authority showing as at the 31st day of March of the preceding year, the investments made out of the controlled fund referred to in section 27A, and every such return shall be certified by a principal officer of the insurer.

(2) Every insurer referred to in sub-section (1) shall also submit to the Authority a return in the form specified by the regulations made by the Authority showing all the changes that occurred in the investments aforesaid during each of the quarters ending on the last day of March, June, September and December within thirty-one days from the close of the quarter to which it relates, and every such return shall be certified by a principal officer of the insurer.

Return of investments relating to the assets and changes therein.

28B. (1) Every insurer carrying on general insurance business, shall, every year, within thirty-one days from the beginning of the year, submit to the Authority a return in the form specified by the regulations made by the Authority showing as at the 31st day of March of the preceding year the investments made out of his assets referred to in section 27B, and every such return shall be certified by a principal officer of the insurer.

(2) Every insurer referred to in sub-section (1) shall also submit to the Authority a return in the form specified by the regulations made by the Authority showing all the changes that occurred in the Investments aforesaid during each of the quarters ending on the last day of March, June, September and December within thirty-one days from the close of the quarter to which it relates, and every such return shall be certified by a principal officer of the insurer.

(3) Every insurer shall submit, along with the returns referred to in sub-sections (1) and (2), a statement, where any part of the assets are in the custody of a banking company, from that company, and in any other case, from the chairman, two directors and a principal officer, if the insurer is a company, or from a principal officer of the insurer, if

the insurer is not a company, specifying the assets, which are subject to a charge and certifying that the other assets are held free of any encumbrance, charge, hypothecation or lien, and every such statement after the first shall also specify the charges created in respect of any of those assets since the date of the statement immediately preceding, and, if any such charges have been liquidated, the date on which they were so liquidated.

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

Provided that nothing contained in this sub-section shall apply to loans made by an insurer to a banking company:

Provided further that nothing in this section shall prohibit a company from granting such loans or advances to a subsidiary company or to any other company of which the company granting the loan or advance is a subsidiary company and where any such loan or advance is made out of any life insurance fund the matter shall be reported within thirty days of the making of such loan or advance to the Authority.

7 of 1913.

(2) The provisions of section 96D of the Indian Companies act, 1913 shall not apply to a loan granted to a director of an insurer being a company, if the loan is one granted on the security of a policy on which the insurer bears the risk and the policy was issued to the director on his own life, and the loan is within the surrender value of the policy.

(3) Subject to the provisions of sub-section (1), no insurer carrying on life insurance business shall grant—

(a) any loans or temporary advances either on hypothecation of property or on personal security or otherwise, except such loan as are specified in sub-section (1) of section 27A;

(b) temporary advances to any chief, special or insurance agent to facilitate the carrying out of his functions as such except in cases where such advances do not exceed in the aggregate—

(i) in the case of a chief agent, the over-riding renewal commission earned by him during the year immediately preceding,

(ii) in the case of a special agent, the renewal commission earned by him during the year immediately preceding,

(iii) in the case of an insurance agent, the renewal commission earned by him during the year immediately preceding.

Explanation.— The temporary advance referred to in clause (b) of this sub-section shall also be admissible in the case of any special agent or insurance agent newly appointed, but such advance—

(a) shall be repayable within two years from the date on which such special agent or insurance agent was first appointed, and

(b) shall not exceed, in the case of the special agent, five hundred rupees, and in the case of the insurance agent, one hundred rupees, and the total amount of all advances so made shall not exceed ten thousand rupees in the case of any insurer whose business in force is one crore of rupees or more and five thousand rupees in any other case.

(4) Every loan or advance existing at the commencement of the Insurance (Amendment) Act, 1950 which contravenes the provision of sub-section (3) shall be notified by the insurer to the Authority within thirty days of such commencement and shall, notwithstanding any contract to the contrary be repaid within one year from such commencement. 47 of 1950.

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

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

Liability of directors, etc., for loss due to contravention of sections 27, 27A, 27B and 29.

30. If by reason of a contravention of any of the provisions of section 27, section 27A section 27B or section 29, any loss is sustained by the insurer or by the policy-holders, every director, manager, managing agent, officer or partner who is knowingly a party to such contravention shall, without prejudice to any other penalty to which he may be liable under this Act, be jointly and severally liable to make good the amount of such loss.

Assets of insurer how to be kept.

31. (1) None of the assets in India of any insurer shall, except in the case of deposits made with the Reserve Bank of India under section 7 or section 98 or in so far as assets are required to be vested in trustees by sub-section (4) of section 27, be kept otherwise than in the name of a public officer approved by the Authority or in the corporate name of the undertaking, if a company, or in the name of the partners, if a firm, or in the name of the proprietor, if an individual.

* * * * *

Provisions relating to managers, etc.

31A. (1) Notwithstanding anything to the contrary contained in the Indian Companies Act, 1913, or in the articles of association of the insurer, if a company, or in any contract or agreement, no insurer shall after expiry of one year from the commencement of the Insurance (Amendment) Act, 1950,— 7 of 1913. 47 of 1950.

(a) be directed or managed by, or employ as manager or officer,

(b) be directed or managed by, or employ as manager or officer or in any capacity, any person whose remuneration or any part thereof takes the form of commission or bonus or a share in the valuation surplus in respect of the life insurance business of the insurer, or

(c) be directed or managed by, or employ as manager or officer or in any capacity, any person whose remuneration or any part thereof takes the form of commission or bonus in respect of the general insurance business of the insurer:

Provided that nothing in this sub-section shall be deemed to prohibit—

(i) the payment of commission to a chief agent, special agent or an insurance agent, in respect of life insurance business procured by or through him;

(ii) the payment of commission to a principal agent or an insurance agent in respect of general insurance business procured by or through him;

(iii) the payment of commission, with the approval of the Central Government and for such period as it may determine, to a person not being an officer of an insurer who was, on the 1st day of November, 1944, employing on behalf of an insurer, chief agents or special agents and continues so to do in respect of insurance business procured by or through him;

* * * * *

(iv) the employment of any individual in a clerical or other subordinate capacity who, as an insurance agent, receives commission in respect of insurance business procured by him;

47 of 1950.

(v) the employment as an officer of any individual who receives renewal commission in respect of life insurance business procured by him in his capacity as an insurance agent or as an employer of agents before such employment, or before the commencement of the Insurance (Amendment) Act, 1950, whichever is later;

(vi) the payment of a share in the profits of general insurance business;

(vii) the payment of bonus in any year on a uniform basis to all salaried employees or any class of them by way of additional remuneration.

7 of 1913.

(3) If in the case of any insurance company provision is made by the articles of association of the company or by an agreement entered into between any person and the company for empowering a director or manager or other officer of the company to assign his office to any other person, any assignment of office made in pursuance of the said provision, shall, notwithstanding anything to the contrary contained in the said provision or in section 86B of the Indian Companies Act, 1913 be void.

* * * * *

31B. (1) The Authority may if it is satisfied that any insurer, in the case of an insurer specified in sub-clause (a)(ii) or sub-clause (b) of clause (9) of section 2 in respect of all insurance business transacted by him, and in the case of any other insurer in respect of the insurance business transacted by him in India, is paying any person remuneration, whether by way of commission or otherwise, on a scale disproportionate, according to the normal standards prevailing in insurance business, to the resources of the insurer, call upon the insurer to comply within six months with such directions as it may think fit to issue in the matter, and if compliance with the directions so issued requires the alteration of any of the terms of the contract entered into by the insurer with such person, no compensation shall be payable to such person by the insurer by reason only of such alteration or of the resignation of such person if the altered terms are not acceptable to him and no payment by way of renewal commission or otherwise shall be made to such person by the insurer in respect of any premiums paid after the date of such resignation except at such rate as may be approved by the Authority in this behalf.

Power to restrict payment of excessive remuneration.

(2) Every insurer shall, before the close of the month following every year, submit to the Authority a statement, in the form specified by the regulations made by the Authority showing the remuneration paid, whether by way of commission or otherwise, to any person in cases where such remuneration exceeds such sum as may be specified by the regulations made by the Authority.

(3) Where any person not being a chief agent, principal agent or special agent is in receipt of remuneration exceeding the sum of five thousand rupees in any year, the Authority may, by notice in writing, require the insurer to submit certified copies of the agreement entered into between the insurer and any such person, and in the insurer shall comply with any such requisition within the time specified in the notice.

(4) Every direction under this section shall be issued by an order made by the Authority:

Provided that no order under this section shall be made unless the person concerned has been given an opportunity of being heard.

32. (1) No insurer shall, after the commencement of this Act, appoint a managing agent for the conduct of his business.

Limitation on employment of managing agents and on the remuneration payable to them.

(2) Where any insurer engaged in the business of insurance before the commencement of this Act employs a managing agent for the conduct of his business, then, notwithstanding anything to the contrary contained in the Indian Companies Act, 1913, and notwithstanding anything to the contrary contained in the articles of the insurer, if a company, or in any agreement entered into by the insurer, such managing agent shall cease to hold office on the expiry of three years from the commencement of this Act and no compensation shall be payable to him by the insurer by reason only of the premature termination of his employment as managing agent. 7 of 1913.

(3) After the commencement of this Act, notwithstanding anything contained in the Indian Companies Act, 1913, and notwithstanding anything to the contrary contained in any agreement entered into by an insurer or in the articles of association of an insurer being a company, no insurer shall pay to a managing agent and no managing agent shall accept from an insurer as remuneration for his services as managing agent more than two thousand rupees per month in all, including salary and commission and other remuneration payable to and receivable by him, for his services as managing agent. 7 of 1913.

Prohibition of common officers and requirement as to whole-time officers.

32A. (1) No insurer shall, after commencement of this Act, appoint a managing agent for the conduct of his business.

(2) Where an insurer specified in sub-clause (b) of clause (9) of section 2 has a life insurance fund or more than twenty-five lakhs of rupees or insurance funds totalling more than fifty lakhs of rupees, the manager, managing director or other officer of the insurer shall be a whole-time employee of this insurer:

Provided that the Authority may, for such period as it thinks fit, permit the employment of any specified person as a part-time manager, managing director or other officer of such insurer.

(3) Nothing in this section shall prevent—

(a) the manager, managing director or other officer of an insurer being the manager, managing director or other officer of a subsidiary company of the insurer with the previous approval of the Authority;

(b) the manager, managing director or other officer of an insurer, exclusively carrying on life insurance business being the manager, managing director or other officer of an insurer not carrying on life insurance business;

(c) any officer of a branch of one insurer carrying on general insurance business from being any officer of a branch in the same town of another insurer carrying on general insurance business;

(d) an officer in the employment of an insurer from giving professional advice.

Explanation.—In this section the expression "officer" does not include a director.

Insurance business in rural or social sector.

32B. Every insurer shall, after the commencement of the Insurance Regulatory and Development Authority Act, 1999, undertake such percentages of life insurance business and general insurance business in the rural or social sector as may be specified, in the Official Gazette by the Authority, in this behalf. 41 of 1999.

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Investigation

Power of investigation and inspection by Authority.

33. (1) The Authority may, at any time, by order in writing, direct any person (hereafter in this section referred to as "Investigating Authority") specified in the order to investigate the affairs of any insurer and to report to the Authority on any investigation made by such Investigating Authority:

Provided that the Investigating Authority may, wherever necessary, employ any auditor or actuary or both for the purpose of assisting him in any investigation under this section.

10 of 1956.

(2) Notwithstanding anything to the contrary contained in section 235 of the Companies Act, 1956, the Investigating Authority may, at any time, and shall, on being directed so to do by the Authority, cause an inspection to be made by one or more of his officers books of account; of any insurer and his and the Investigating Authority shall supply to the insurer a copy of his report on such inspection.

(3) It shall be the duty of every manager, managing director or other officer of the insurer to produce before the Investigating Authority directed to make the investigation under sub-section (1), or inspection under sub-section (2), all such books of account, registers and other documents in his custody or power and to furnish him with any statement and information relating to the affairs of the insurer as the said Investigating Authority may require of him within such time as the said Investigating Authority may specify.

(4) Any Investigating Authority, directed to make an investigation under sub-section (1), or inspection under sub-section (2), may examine on oath, any manager, managing director or other officer of the insurer in relation to his business and may administer oaths accordingly.

(5) The Investigating Authority shall, if he has been directed by the Authority may to cause an inspection to be made, and may, in any other case, report to the Authority on any inspection made under this section.

(6) On receipt of any report under sub-section (1) or sub-section (5), the Authority may, after giving such opportunity to the insurer to make a representation in connection with the report as, in the opinion of the Authority, seems reasonable, by order in writing,—

- (a) require the insurer, to take in such action respect of any matter arising out of the report as the Authority may think fit; or
- (b) cancel the registration of the insurer; or
- (c) direct any person to apply to the court for the winding up of the insurer, if a company, whether the registration of the insurer has been cancelled under clause (b) or not.

(7) The Authority may, after giving reasonable notice to the insurer, publish the report submitted by the Investigating Authority under sub-section (5) or such portion thereof as may appear to it to be necessary.

(8) The Authority may by the regulations made by it specify the minimum information to be maintained by insurers in their books, the manner in which such information shall be maintained, the checks and other verifications to be adopted by insurers in that connection and all other matters incidental thereto as are, in its opinion, necessary to enable the Investigating Authority to discharge satisfactorily his functions under this section.

Explanation.—For the purposes of this section, expression "insurer" shall include in the case of an insurer incorporated in India—

- (a) all its subsidiaries formed for the purpose of carrying on the business of insurance exclusively outside India; and
- (b) all its branches whether situated in India or outside India.

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

(10) All expenses of, and incidental to, any investigation made under this section shall be defrayed by the insurer, shall have priority over that debts due from the insurer and shall be recoverable as an arrear of land revenue.

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34B.(1)* * * * *

(4) If any person in respect of whom an order is made by the Authority under sub-section (1) or under the proviso to sub-section (2) contravenes the provisions of this section, he shall be punishable with fine which may extend to two hundred and fifty rupees for each day during which such contravention continues.

* * * * *

Power of Authority to remove managerial persons from office.

Power of Authority to appoint additional director.

34C. (1) If the Authority is of opinion that in the public interest or in the interest of an insurer, or his policy-holders it is necessary so to do, it may, from time to time, by order in writing, appoint, with effect from such date as may be specified in the order, one or more persons to hold office as additional directors of the insurer:

Provided that the number of additional directors so appointed shall not, at any time, exceed five or one-third of the maximum strength fixed for the Board by the articles of association of the insurer, whichever is less.

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Further powers.

34E. The controller may,—

(a) caution or prohibit insurers, generally or any insurer in particular against entering into any particular transaction or class of transactions and generally give advice to any insurer;

(b) at any time, if he is satisfied that in the public interest or in the interests of the insurer or for preventing the affairs of the insurer being conducted in a manner detrimental to the interests of the insurer or his policy-holders, it is necessary so to do, by order in writing and on such terms and conditions as may be specified therein—

(i) require the insurer to call a meeting of his directors for the purpose of considering any matter relating to or arising out of the affairs of the insurer;

(ii) depute one or more of his officers to watch the proceedings at any meeting of the Board of directors of the insurer or of any committee or of any other body constituted by it; require the insurer to give an opportunity to the officers so deputed to be heard at such meetings and also require such officers to send a report of such proceeding to the Authority;

(iii) require the Board of directors of the insurer or any committee or any other body constituted by it to give in writing to any officer specified by the Authority in this behalf at his usual address all notices of, and other communications relating to, any meeting of the Board, committee or other body constituted by it;

(iv) appoint one or more of his officers to observe the manner in which the affairs of the insurer or of his offices or branches are being conducted and make a report thereon;

(v) require the insurer to make, within such time as may be specified in the order, such changes in the management as the Authority may consider necessary.

Power of Authority to order closure of foreign branches.

34G. Without prejudice to the generality of the powers conferred by sub-section (1) of section 34, the Authority may, if it has reason to believe that the working of any branch outside India of an insurer being an insurer specified in sub-clause (b) of clause (9) of section 2, is generally resulting in a loss or that the affairs of that branch are being conducted in a manner prejudicial to the interests of the policy-holders or the public interest, it may, after giving an opportunity to the insurer of being heard, direct that the insurer shall cease, within such period, not being less than one year, as may be specified in the order, to carry on insurance business in the country in which such branch is situated and if the insurer fails to comply with such order he shall be deemed to have failed to comply with the provisions of this Act.

Search and seizure.

34H. (1) Where the Chairperson of the Authority in consequence of information in his possession, has reason to believe that—

(a) Any person who has been required under sub-section (2) of section 33 to produce, or cause to be produced, any books, accounts or other documents in his custody or power has omitted or failed to produce, or cause to be produced, such books, accounts or other documents, or

(b) Any person to whom a requisition to produce any books, accounts or other documents as aforesaid has been or might be issued will not, or would not, produce or cause to be produced, any books, accounts or other documents which will be useful for, or relevant to, an investigation under sub-section (I) of section 33 or an inspection under sub-section (IA) of that section, or

(c) a contravention of any provision of this Act has been committed or is likely to be committed by an insurer, or

(d) any claim which is due to be settled by an insurer, has been or is likely to be rejected or settled at a figure higher than a reasonable amount, or

(e) any claim which is due to be settled by an insurer, has been or is likely to be rejected or settled at a figure lower than a reasonable amount, or

(f) any illegal rebate or commission has been paid or is likely to be paid by an insurer, or

(g) any books, accounts receipts, vouchers, survey reports or other documents, belonging to an insurer are likely to be tampered with, falsified or manufactured, he may authorise any subordinate officer of his, not lower in rank than an officer authorised by the Authority (hereafter referred to as the authorised officer) to—

(i) enter and search any building or place where he has reason to suspect that such books, accounts or other documents, or any books or papers relating to any claim, rebate or commission or any receipts, vouchers, reports or other documents are kept;

(ii) break open the lock of any door, box, locker, safe, almirah or other receptacle for exercising the powers conferred by clause (i) where the keys thereof are not available;

(iii) seize all or any such books, accounts or other documents, found as a result of such search;

(iv) place marks of identification on such books, accounts or other documents or make or cause to be made extracts or copies therefrom.

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(7) If a person legally entitled to the books, accounts, papers, receipts, vouchers, reports or other documents seized under sub-section (I) objects for any reason to the approval given by the Chairperson of the Authority under sub-section (5), he may make an application to the Central Government stating therein the reason for such objection and requesting for the retrun of the books, accounts, papers, receipts, vouchers, reports or other documents.

(8) On receipt of the application under sub-section (7), the Central Government may, after giving the applicant an opportunity of being heard, pass such orders as it thinks fit.

35. (1) No life insurance business of an insurer specified in sub-clause (a) (ii) or sub-clause (b) of clause (9) of section 2 shall be transferred to any person or transferred to or amalgamated with the life insurance business of any other insurer except in accordance with a scheme prepared under this section and approved by the Authority.

Amalgamation and transfer of insurance business.

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(3) Before an application is made to the Authority to approve any such scheme notices of the intention to make the application together with a statement of the nature of the amalgamation or transfer, as the case may be, and of the reason therefor shall, at least two months before the application is made, be sent to the Authority and certified copies, four in number, of each of the following documents shall be furnished to the Authority, and other such copies shall during the two months aforesaid be kept open for the inspection of the members and policy-holders at the principal and branch officers and chief agencies of the insurers concerned, namely:—

* * * * *

(b) balance-sheets in respect of the insurance business of each of the insurers concerned in such amalgamation or transfer, prepared in the form set forth in Part II of the First Schedule and in accordance with the regulations contained in Part I of the Schedule;

(c) actuarial reports and abstracts in respect of the life insurance business of each of the insurers so concerned, prepared in conformity with the requirements of Part II of the Fourth and Fifth Schedules and in accordance with the regulations contained in Part I of the Schedule concerned;

Sanction of amalgamation and transfer by Authority.

36. (1) When any application such as is referred to in sub-section (3) of section 35 is made to the Authority, the Authority shall cause, if for special reasons it so directs, notice of the application to be sent to every person resident in India who is the holder of a life policy of any insurer concerned and shall cause a statement of the nature and terms of the amalgamation or transfer, as the case may be, to be published in such manner and for such period as it may direct, and, after hearing the directors and such policy-holders as apply to be heard and any other persons whom it considers entitled to be heard, may approve the arrangement, if it is satisfied that no sufficient objection to the arrangement has been established and shall make such consequential orders as are necessary to give effect to the arrangement, including orders as to the disposal of any deposit made under section 7 or section 98.

Provided that—

(a) no part of the deposit made by any party to the amalgamation or transfer shall be returned except where, after effect is given to the arrangement, the whole of the deposit to be made by the insurer carrying on the amalgamated business or the person to whom the business is transferred is completed,

(b) only so much shall be returned as is no longer required to complete the deposit last mentioned in clause (a), and

(c) while the deposit last mentioned in clause (a) remains incomplete no accession, resulting from the arrangement, to the amount already deposited by the insurer carrying on the amalgamated business or the person to whom the business is transferred shall be appropriated as payment or part payment of any instalment of deposit subsequently due from him under section 7 or section 98.

(2) If the arrangement involves a reduction of the amount of the insurance and other contracts of the transfer or insurer or of any or all of the insurers concerned in the amalgamation, the Authority may approve the arrangement reducing the amount of such contracts upon such terms and subject to such conditions as he may think proper, and the reduction of contracts as approved by the Authority shall be valid and binding on all the parties concerned.

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Power of Authority to prepare scheme of amalgamation.

37A. * * * * *

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

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

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Assignment and transfer of insurance policies.

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

(2) The transfer or assignment shall be complete and effectual upon the execution of such endorsement or instrument duly attested but except where the transfer or assignment

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

Provided that where the insurer maintains one or more places of business in India, such notice shall be delivered only at the place in India mentioned in the policy for the purpose or at his principal place of business in India.

(3) The date on which the notice referred to in sub-section (2) is delivered to the insurer shall regulate the priority of all claims under a transfer or assignment as between persons interested in the policy; and where there is more than one instrument of transfer or assignment the priority of the claims under such instruments shall be governed by the order in which the notices referred to in sub-section (2) are delivered.

(4) Upon the receipt of the notice referred to in sub-section (2), the insurer shall record the fact of such transfer or assignment together with the date thereof and the name of the transferee or the assignee and shall, on the request of the person by whom the notice was given, or of the transferee or assignee, on payment of a fee not exceeding one rupee, grant a written acknowledgement of the receipt of such notice; and any such acknowledgement shall be conclusive evidence against the insurer that he has duly received the notice to which such acknowledgement relates.

(5) Subject to the terms and conditions of the transfer or assignment, the insurer shall, from the date of receipt of the notice referred to in sub-section (2) recognise the transferee or assignee named in the notice as the only person entitled to benefit under the policy, and such person shall be subject to all liabilities and equities to which the transferor or assignor was subject at the date of the transfer or assignment and may institute any proceedings in relation to the policy without obtaining the consent of the transferor or assignor or making him a party to such proceedings.

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

(7) Notwithstanding any law or custom having the force of law to the contrary, an assignment in favour of a person made with the condition that it shall be inoperative or that the interest shall pass to some other person on the happening of a specified event during the lifetime of the person whose life is insured, and an assignment in favour of the survivor or survivors of a number of persons, shall be valid.

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:

Nomination by
policy-holder.

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

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

(3) The insurer shall furnish to the policy-holder a written acknowledgement of having registered a nomination or cancellation or change thereof, and may charge a fee not exceeding one rupee for registering such cancellation or change.

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

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

(5) Where the policy matures for payment during the lifetime of the person whose life is insured or where the nominee or, if there are more nominees than one, all the nominees die before the policy matures for payment, the amount secured by the policy shall be payable to the policy-holder or his heirs or legal representatives or the holder of a succession certificate, as the case may be.

(6) Where the nominee or, if there are more nominees than one, a nominee or nominees survive the person whose life is insured, the amount secured by the policy shall be payable to such survivor or survivors.

(7) The provisions of this section shall not apply to any policy of life insurance to which section 6 of the Married Women's Property Act, 1874 applies or has at any time applied: 3 of 1874.

Provided that where a nomination made whether before or after the commencement of the Insurance (Amendment) Act, 1946, in favour of the wife of the person who has insured his life or of his wife and children or any of them is expressed, whether or not on the face of the policy, as being made under this section, the said section 6 shall be deemed not to apply or not to have applied to the policy.

Prohibition of payment by way of commission or otherwise for procuring business.

40. (1) No person shall, after the expiry of six months from the commencement of this Act, pay or contract to pay any remuneration or reward whether by way of commission or otherwise for soliciting or procuring insurance business in India to any person except an insurance agent or an intermediary or insurance intermediary.

(1A) In this section and sections 40A, 41 and 43, reference to an insurance agent shall be construed as including reference to an individual soliciting or procuring insurance business exclusively in the territories which, immediately before the 1st November, 1956, were comprised in a Part B State notified in this behalf by the Central Government in the Official Gazette and holding a valid licence as insurance agent under the law of that Part B State.

(2) No insurance agent shall be paid or contract to be paid by way of Commission or as remuneration in any form an amount exceeding, in the case of life insurance business, forty per cent. of the first year's premium payable on any policy or policies effected through him and five per cent. of a renewal premium, payable on such a policy or, in the case of business of any other class, fifteen per cent. of the premium:

Provided that insurers, in respect of life insurance business only, may pay, during the first ten years of their business to their insurance agents fifty-five per cent. of the first year's premium payable on any policy or policies effected through them and six per cent. of the renewal premiums payable on such policies:

Provided further that nothing in this sub-section shall apply in respect of any policy of life insurance issued after the 31st day of December, 1950, or in respect of any policy of general insurance issued after the commencement of the Insurance (Amendment) Act, 1950. 47 of 1950.

(2A) Save as hereinafter provided, no insurance agent or intermediary or insurance intermediary shall be paid or contract to be paid by way of commission or as remuneration in any form any amount in respect of any policy not effected through him:

Provided that where a policy of life insurance has lapsed, and it cannot under the terms and conditions applicable to it be revived without further medical examination of the person whose life was insured thereby, an insurer, after giving by notice in writing to the insurance agent through whom the policy was effected if such agent continues to be an agent of the insurer an opportunity to effect the revival of the policy within a time specified

in the notice, being not less than one month from the date of the receipt by him of the notice, may pay to another insurance agent who effects the revival of the policy an amount calculated at a rate not exceeding half the rate of commission at which the agent through whom the policy was effected would have been paid had the policy not lapsed, on the sum payable on revival of the policy on account of arrear premiums (excluding any interest on such arrear premiums) and also on the subsequent renewal premiums payable on the policy.

(3) Nothing in this section shall prevent the payment under any contract existing prior to the 27th day of January, 1937, of gratuities or renewal commission to any person, whether an insurance agent within the meaning of this Act or not, or to his representatives after his decease in respect of insurance business effected through him before the said date.

40A. (1) No person shall pay or contract to pay to an insurance agent, shall receive or contract to receive by way of commission or remuneration in any form in respect of any policy of life insurance issued in India by an insurer after the 31st day of December, 1950, and effected through an insurance agent, an amount exceeding—

Limitation of
expenditure on
commission.

(a) where the policy grants an immediate annuity or a deferred annuity in consideration of a single premium, or where only one premium is payable on the policy, two per cent. of that premium.

(b) where the policy grants a deferred annuity in consideration of more than one premium, seven and a half per cent. of the first year's premium, and two per cent. of each renewal premium, payable on the policy, and

(c) in any other case, thirty-five per cent. of the first year's premium seven and a half per cent. of the second and third year's renewal premium and thereafter five per cent. of each renewal premium payable on the policy:

Provided that in a case referred to in clause (c) an insurer, during the first ten years of his business, may pay to an insurance agent, and an insurance agent may receive from such an insurer, forty per cent. of the first year's premium payable on the policy:

Provided further that in a case referred to in clause (c), where the rate of commission payable on the first year's premium is equal to or less than twenty-one per cent. thereof, and the rate on the fourth and fifth years' premiums does not exceed six per cent. thereof, the Life Insurance Corporation of India may pay to an insurance agent, and the insurance agent may receive from it, commission on the sixth and subsequent years' renewal premiums payable on the policy at a rate not exceeding six per cent. of each renewal premium.

(2) No person shall pay or contract to pay to a special agent, and no special agent shall receive or contract to receive, by way of commission or as remuneration in any form, in respect of any policy of life insurance issued in India by an insurer after the 31st day of December, 1950, and effected through a special agent, an amount exceeding—

(a) in a case referred to in clause (a) of sub-section (1), one half per cent. of the premium,

(b) in a case referred to in clause (b) of sub-section (1), two per cent. of the first year's premium payable on the policy, and

(c) in a case referred to in clause (c) of sub-section (1), fifteen per cent. of the first year's premium payable on the policy:

Provided that in a case referred to in clause (c), an insurer, during the first ten years of his business, may pay to a special agent, and a special agent may receive from such an insurer, seventeen and a half per cent. of the first year's premium payable on the policy.

(3) No person shall pay or contract to pay to an insurance agent, and no insurance agent shall receive or contract to receive, by way of commission or remuneration in any form, in respect of any policy of general insurance issued in India by an insurer after the commencement of the Insurance (Amendment) Act, 1968 and effected through an insurance agent, an amount exceeding fifteen per cent. of the premium payable on the policy where the policy relates to fire or marine insurance or miscellaneous insurance.

(4) No person shall pay or contract to pay to a principal agent, and no principal agent shall receive or contract to receive, by way of commission or remuneration in any form, in respect of any policy of general insurance issued in India by an insurer after the commencement of the Insurance (Amendment) Act, 1950, and effected through a principal agent an amount exceeding—

(a) in the case referred to in clause (a) of sub-section (3), twenty per cent. of the premium payable on the policy, and

(b) in the case referred to in clause (b) of that sub-section, fifteen per cent. of the policy,

less any commission payable to any insurance agent in respect of the said policy:

Provided that the Authority may, in such circumstances and to such extent and for such period as may be specified, authorise the payment of commission or remuneration exceeding the limits specified in this sub-section to a principal agent of an insurer incorporated or domiciled elsewhere than in India, if such agent carries out and has continuously carried out in his own office duties on behalf of the insurer which would otherwise have been performed by the insurer.

(5) Without prejudice to the provisions of section 102 in respect of a contravention of any of the provisions of the preceding sub-section by an insurer, any insurance agent who contravenes the provisions of sub-section (1) or sub-section (3) shall be punishable with the fine which may extend to one hundred rupees.

Limitation of expenses of management in life insurance business.

40B. (1) Every insurer transacting life insurance business in India shall furnish to the Authority, within such time as may be prescribed, statements in the prescribed form certified by an actuary on the basis of premiums currently used by him in regard to new business in respect of mortality, rate of interest, expenses and bonus loading.

(2) After the 31st day of December, 1950, no insurer shall, in respect of life insurance business transacted by him in India, spend as expenses of management in any calendar year an amount in excess of the prescribed limits and in prescribing any such limits regard shall be had to the size and age of the insurer and the provision generally made for expenses of management in the premium rates of insurers:

Provided that where an insurer has spent such expenses in any year an amount in excess of the amount permissible under this sub-section, he shall not be deemed to have contravened the provisions of this section, if the excess amount so spent is within such limits as may be fixed in respect of the year by the Authority after consultation with the Executive Committee of the Life Insurance Council constituted under section 64F, by which the actual expenses incurred may exceed the expenses permissible under this sub-section.

(3) In respect of any statement mentioned in sub-section (1), the Authority may require that it shall be submitted to another actuary appointed by the insurer for the purpose and for certification by him, whether with or without modifications.

(4) Every insurer transacting life insurance business in India shall incorporate in the revenue account—

(a) a certificate signed by the chairman and two directors and by the principal officer of the insurer, and an auditor's certificate, certifying that all expenses of management in respect of life insurance business transacted by the insurer in India have been fully debited in the revenue account as expenses, and

(b) if the insurer is carrying on any other class of insurance business in addition to life insurance business an auditor's certificate certifying that all charges incurred in respect of his life insurance business and in respect of his business over than life insurance business have been fully debited in the respective revenue accounts.

Explanation.—In this section,—

(a) "calendar year" or "year" means, in relation to an insurer who is required to furnish returns in accordance with sub-section (2) of section 16, the period covered by the revenue account furnished by such insurer under clause (b) of that sub-section;

(b) "expenses of management" means all charges wherever incurred whether directly or indirectly, and includes—

(i) commission payments of all kinds;

(ii) any amount of expenses capitalised;

(iii) in the case of an insurer having his principal place of business outside India, a proper share of head office expenses which all not be less than such percentage as may be prescribed of the total premiums (less re-insurances) received during that year in respect of life insurance business transacted by him in India,

but does not include in the case of an insurer having his principal place of business in India any share of head office expenses in respect of life insurance business transacted by him outside India.

40C. (1) After the 31st day of December, 1949, no insurer shall, in respect of any class of general insurance business transacted by him in India, spend in any calendar year as expenses of management including commission of remuneration for procuring business an amount in excess of the prescribed limits and in prescribing any such limits regard shall be had to the size and age of the insurer:

Limitation of expenses of management in general insurance business.

Provided that where an insurer has spent as such expenses in any year an amount in excess of the amount permissible under this sub-section, he shall not be deemed to have contravened the provisions of this section, if the excess amount so spent is within such limits as may be fixed in respect of the year by the Authority after consultation with Executive Committee of the General Insurance Council constituted under section 64F, by which the actual expenses incurred may exceed the expenses permissible under this sub-section.

(2) Every insurer as aforesaid shall incorporate in the revenue account a certificate signed by the chairman and two directors and by the principal officer of the insurer, and by an auditor certifying that all expenses of management wherever incurred, whether directly or indirectly, in respect of the business referred to in this section have been fully debited in the revenue account as expenses.

Explanation.—In this section,—

(a) "calendar year" shall have the meaning assigned to it in section 40B;

(b) "expenses of management" means all charges, wherever incurred whether directly or indirectly, including commission payments of all kinds and, in the case of an insurer having his principal place of business outside India, a proper share of head office expenses, which shall not be less than such percentage as may be prescribed, of his gross premium income (that is to say, the premium income without taking into account premiums or reinsurance ceded or accepted) written direct in India during the year, but in computing the expenses of management in India the following, and only the following, expenses may be excluded, namely:—

(i) in the case of an insurer having his principal place of business in India, a share of head office expenses in respect of general insurance business transacted by him outside India not exceeding such percentage of his gross direct premium written outside India as may be prescribed;

(ii) in the case of an insurer having his principal place of business outside India, a share of the expenses of his office in India in respect of general insurance business transacted by him outside India through his office in India, not exceeding such percentage of his gross direct premium written outside India through his office in India, as may be prescribed;

(iii) any expenses debited to profit and loss account relating exclusively to the management of capital, and dealings with share-holders and a proper share of managerial expenses calculated in such manner as may be prescribed; and

(iv) any expenses debited to claims in the revenue account in Form F of Part II of the Third Schedule;

(c) "insurance business transacted in India" includes insurance business wherever effected relating to any property situate in India or to any vessel or aircraft registered in India.

Prohibition of rebates.

41. (1) * * * * *

(2) Any person making default in complying with the provisions of this section shall be punishable with fine which may extend to five hundred rupees.

Licensing of insurance agents.

42. (1) The Authority or an officer authorised by it in this behalf shall, in the manner determined by the regulations made by it and on payment of the fee determined by the regulations, which shall not be more than two hundred and fifty rupees, issue to any person making an application in the manner determined by the regulations, a licence to act as an insurance agent for the purpose of soliciting or procuring insurance business:

Provided that,—

(i) in the case of an individual, he does not suffer from any of the disqualifications mentioned in sub-section (4); and

(ii) in the case of a company or firm, any of its directors or partners does not suffer from any of the said disqualifications:

Provided further that any licence issued immediately before the commencement of the Insurance Regulatory and Development Authority Act, 1999 shall be deemed to have been issued in accordance with the regulations which provide for such licence.

(2) A licence issued under this section shall entitle the holder to act as an insurance agent for any insurer.

(3) A licence issued under this section, after the date of the commencement of the Insurance Regulatory and Development Authority Act, 1999, shall remain in force for a period of three years only from the date of issue, but shall, if the applicant, being an individual does not, or being a company or firm any of its directors or partners does not, suffer from any of the disqualifications mentioned in clauses (b), (c), (d), (e), (f) and (g) of sub-section (4) and the application of renewal of licence reaches the issuing authority at least thirty days before the date on which the licence ceases to remain in force, be renewed for a period of three years at any one time on payment of the fee determined by the regulations made by the Authority which shall not be more than rupees two hundred and fifty, and additional fee of an amount determined by the regulations not exceeding rupees one hundred by way of penalty, if the application for renewal of the licence does not reach the issuing authority at least thirty days before the date on which the licence ceases to remain in force.

41 of 1999.

(3A) No application for the renewal of a licence under this section shall be entertained if the application does not reach the issuing authority before the licence ceases to remain in force:

Provided that the Authority may, if satisfied that undue hardship would be caused otherwise, accept any application in contravention of this sub-section on payment by the applicant of a penalty of seven hundred and fifty rupees.

(4) The disqualifications above referred to shall be the following:—

(a) that the person is a minor;

(b) that he is found to be of unsound mind by a court of competent jurisdiction;

(c) that he has been found guilty of criminal misappropriation or criminal breach of trust of cheating or forgery or an abetment of or attempt to commit any such offence by a court of competent jurisdiction:

Provided that where at least five years have elapsed since the completion of the sentence imposed on any person in respect of any such offence, the Authority shall ordinarily declare in respect of such person that his conviction shall cease to operate as a disqualification under this clause;

(d) that in the course of any judicial proceeding relating to any policy of insurance or the winding up of an insurance company or in the course of an investigation of the affairs of an insurer it has been found that he has been guilty of or has knowingly participated in or connived at any fraud, dishonesty or misrepresentation against an insurer or an insured;

(e) that in the case of an individual, he does not possess the requisite qualifications and practical training for a period not exceeding twelve months, as may be specified by the regulations made;

(ea) that in the case of a company or firm making an applicaiton under sub-section (1) or sub-section (3), a director or a partner or one or more of its officers or other employees so designated by it and in the case of any other person, the chief executive, by whatever name called, or one or more of his employees designated by him, do not possess the requisite qualificaitons and practical training and have not passed such an examination as required under clauses (e) and (f);

(f) that he has not passed such examiantion as may be specified by the regulations made by the authority in this behalf:

Provided that a person who had been issued a licence under sub-section (1) of this section or sub-section (1) of section 64UM shall not be required to possess the requisite qualifications, practical training and pass such examination as required by clauses (e) and (f);

(g) that he violates the code of conduct as may be specified by the regulations made by the Authority.

(5) If it be found that an insurance agent being an individual is, or being a company or firm contains a director or partner who is suffering from any of the disqualifications mentioned in sub-section (4), then, without prejudice to any other penalty to which he may be liable, the Authority shall, and if the insurance agent has knowingly contravened any of the provisions of this Act may, cancel the licence issued to the agent under this section.

(6) The Authority may issue a duplicate licence to replace a licence lost, destroyed or mutilated, on payment of such fee not exceeding fifty rupees as may be determined by the regulations.

(7) Any person who acts as an insurance agent without holding a licence issued under this secton to act as such shall be punishable with fine which may extend to five hundred rupees, and any insurer or any person acting on behalf of an insurer, who appoints as an insurance agent any person not licensed to act as such or transacts any insurance business in India through any such person shall be punishable with fine which may extend to one thousand rupees.

(8) Where the person contravening sub-section (7) is a company or a firm, then, without prejudice to any other proceedings which may be taken against the company or firm, every director, manager, secretary or other officer of the company, and every partner of the firm who is knowingly a party to such contravention shall be punishable with fine which may extend to five thousand rupees.

42A. (1) The Authority or an officer authorised by it in this behalf shall in the prescribed manner and on payment of the prescribed fee which shall not be more than twenty-five rupees for a principal agent or a chief agent and ten rupees for a special agent, register any person who makes an application to it in the prescribed manner if—

Registration of principal agents, chief agents and special agents.

(a) in the case of an individual, he does not suffer from any of the disqualifications mentioned in sub-section (4) of section 42, or

(b) in the case of a company or firm, any of its directors or partners does not suffer from any of the said disqualifications,

and a certificate to act as a principal agent, chief agent or special agent, as the case may be, for the purpose of procuring insurance business shall be issued to him.

(2) A certificate issued under this section shall entitle the holder thereof to Act as a principal agent, chief agent or special agent, as the case may be, for any insurer,

(3) A certificate issued under this section shall remain in force for a period of twelve months only from the date of issue, but shall, on application made in this behalf, be renewed from year to year on production of a certificate from the insurer concerned that the provisions of clauses 2 and 3 of the Part A of the Sixth Schedule in the case of a principal agent, the provisions of clauses 2 and 4 of Part B of the said Schedule in the case of a chief agent, and the provisions of clauses 2 and 3 of the Part C of the said Schedule in the case of a special agent, have been complied with, and on payment of the prescribed fee, which shall not be more than twenty-five rupees, in the case of a principal agent or a chief agent, and ten rupees in the case of a special agent, and an additional fee of the prescribed amount not exceeding five rupees by way of the penalty, in cases where the application for renewal of the certificate does not reach the issuing authority before the date on which the certificate ceases to remain in force:

Provided that, where the applicant is an individual, he does not suffer from any of the disqualifications mentioned in clauses (b) to (d) of sub-section (4) of section 42, and where the applicant is a company or a firm, any of its directors or partners does not suffer from any of the said disqualifications.

(4) Where it is found that the principal agent, chief agent or special agent being an individual is, or being a company or firm contains a director or partner who is suffering from any of the disqualifications mentioned in sub-section (4) of section 42, without prejudice to any other penalty to which he may be liable, the Authority shall, and where a principal agent, chief agent or special agent has contravened any of the provisions of this Act may, cancel the certificate issued under this section to such principal agent, chief agent or special agent.

(5) The authority which issued any certificate under this section may issue a duplicate certificate to replace a certificate lost, destroyed or mutilated on payment of the prescribed fee, which shall not be more than two rupees.

(6) Any person who acts as a principal agent, chief agent or special agent, without holding a certificate issued under this section to act as such, shall be punishable with fine which may extend to five hundred rupees, and any insurer or any person acting on behalf of an insurer, who appoints as a principal agent, chief agent or special agent any person not entitled to act as such or transacts any insurance business in India through and such person, shall be punishable with fine which may extend to one thousand rupees.

(7) Where the person contravening sub-section (6) is a company or a firm, then, without prejudice to any other proceedings which may be taken against the company or firm, every director, manager, secretary or any other officer of the company, and every partner of the firm who is knowingly a party to such contravention shall be punishable with fine which may extend to five hundred rupees.

(8) The provisions of sub-sections (6) and (7) shall not take effect until the expiry of six months from the commencement of the Insurance (Amendment) Act, 1950 . 47 of 1950.

(9) No insurer shall, on or after the commencement of the Insurance (Amendment) Act, 2002, appoint or transact any insurance business in India through any principal agent, chief agent or special agent.

Regulation of
employment of
principal
agents.

42B. (1) No insurer shall, after the expiration of seven years from the commencement of the Insurance (Amendment) Act, 1950, appoint, or transact any insurance business in India, through a principal agent. 47 of 1950.

(2) Every contract between an insurer and a principal agent shall be in writing and the terms contained in part A of the Sixth Schedule shall be deemed to be incorporated in, and form part of, every such contract.

(3) No insurer shall, after the commencement of the Insurance (Amendmen) Act, 1950, appoint any person as a principal agent except in a presidency town unless the appointment is by way of renewal of any contract subsisting at such commencement. 47 of 1950.

47 of 1950.

(4) Within sixty days of the commencement of the Insurance (Amendment) Act, 1950, every principal agent shall file with the insurer concerned a full list of insurance agents employed by him indicating the terms of the contract between the principal agent and each of such insurance agents, and, if any principal agent fails to file such a list within the period specified, any commission payable to such principal agent on premiums received from the date of expiry of the said period of sixty days until the date of the filing of the said list shall, notwithstanding anything in any contract to the contrary, cease to be so payable.

(5) A certified copy of every contract as is referred to in sub-section (2) shall be furnished by the insurer to the Authority within thirty days of his entering into such contract, and intimation of any change in any such contract shall be furnished by the insurer with full particulars thereof to the Authority within thirty days of the making of any such change.

(6) If the commission due to any insurance agent in respect of any general insurance business procured by such agent is not paid by the principal agent for any reason, the insurer may pay the insurance agent the commission so due and recover the amount so paid from the principal agent concerned.

47 of 1950.

(7) Every contract as is referred to in sub-section (2), subsisting at commencement of the Insurance (Amendment) Act, 1950 shall, with respect to terms regarding remuneration, be deemed to have been so altered as to be in accordance with the provisions of sub-section (4) of section 40A.

(8) If any dispute arises as to whether a person is or was a principal agent, the matter shall be referred to the Authority, whose decision shall be final.

(9) Every insurer shall maintain a register in which the name and address of every principal agent appointed by him, the date of such appointment and the date, if any, on which the appointment ceased shall be entered.

42C. (1) Every contract between an insurer carrying on life insurance business and a chief agent shall be in writing, and shall specify the area (not being less in extent than a district or the equivalent thereof) for which the chief agent is appointed, and the terms contained in Part B of the Sixth Schedule shall be deemed to be incorporated in, and form part of every such contract.

Regulation of
employment of
chief agents
and special
agents.

(2) No chief agent shall, either directly or through insurance agents or special agents employed by or through him procure life insurance business for the insurer in any area outside the area for which he has been appointed or in any area for which another chief agent has been appointed or in any area in which the head office or any branch office of the insurer is operating and, neither the head office or any branch office of the insurer shall operate in any area for which a chief agent has been appointed:

47 of 1950.

Provided that nothing in this sub-section shall be deemed to prohibit the head office of an insurer which had been operating at the commencement of the Insurance (Amendment) Act, 1950 for a period of not less than ten years before such commencement within the municipal limits of any town where the head office is situate, and a chief agent who, in pursuance of an agreement in writing, had been operating for a similar period within such limits, from continuing to operate within the said limits:

Provided further that nothing in this sub-section shall be deemed to prohibit an insurance agent from procuring life insurance business in or from any area and submitting the proposals direct to the principal office of the insurer in India.

47 of 1950.

(3) Within sixty days of the commencement of the Insurance (Amendment) Act, 1950 every chief agent shall file with the insurer concerned a full list of the insurance agents employed by him, indicating the terms of the contract between the chief agent and each of such insurance agents and the business secured by each of such agents, and if any chief agent fails to file such a list with the period specified, any commission payable to such chief agent on premiums received from the date of the expiry of the said period of sixty days until the date of the filing of the said list, shall, notwithstanding anything in any contract to the contrary, cease to be so payable.

(4) Every contract between an insurer carrying on life insurance business and special agent, or between a chief agent of such insurer and a special agent, shall be in writing and the terms contained in Part C of the Sixth Schedule shall be deemed to be incorporated in, and form part of, every such contract:

Provided that the Authority may, in the case of a contract between a co-operative life insurance society as defined in clause (b) of sub-section (1) of section 95 and a co-operative society registered under the Indian Co-operative Societies Act, 1912, or under any other law for the time being in force and acting as a special agent, alter, to such extent as he thinks fit, all or any of the said terms. 2 of 1912.

(5) A certified copy of every contract as is referred to in sub-section (1) or sub-section (4) shall be furnished by the insurer or the chief agent to the Authority within thirty days of his entering into such contract, and intimation of any change in any such contract shall be furnished by the insurer or the chief agent with full particulars thereof to the Authority within thirty days of the making of any such change.

(6) No such contract as is referred to in sub-section (1) or sub-section (4) shall be entered into or renewed for a period exceeding ten years at any one time, and, notwithstanding the terms of any contract to the contrary, no option to renew any such contract given to any of the parties shall be enforceable with the consent of the other.

(7) Every contract between an insurer and person acting on behalf of such insurer who before the commencement of the Insurance (Amendment) Act, 1950, has been employing insurance agents for the purpose of life insurance business, which is subsisting on such commencement, shall terminate after the expiration of ten years from such commencement, if it does not terminate earlier: 47 of 1950.

Provided that every such contract shall be modified by the parties before the 1st day of January, 1951, to bring it into conformity with this Act, and any such modification shall—

(i) as respects remuneration, whether in respect of business already procured or in respect of business to be procured thereafter, be such as may be mutually agreed upon between the parties, subject, in the case of remuneration payable on business procured before such commencement, to a maximum of an over-riding commission of two and a half per cent. plus a further commission not exceeding three-quarters per cent. On premiums in respect of which no commission is payable to any insurance agent;

(ii) be deemed to include all the terms specified in Part B or Part C of the Sixth Schedule, as the case may be:

Provided further that, in the event of any dispute as to the terms of any fresh contract, the matter shall be referred to arbitration.

(8) Any such contract as is referred to in sub-section (7) which was subsisting on the 1st day of January, 1949, but has terminated or has been terminated before the commencement of the Insurance (Amendment) Act, 1950, shall be subject to the maximum limits specified in clause (i) of the proviso to sub-section (7) as respects remuneration, if any, payable on business procured before the termination of the contract. 47 of 1950.

(9) Nothing in this section shall be deemed to prevent any special agent from receiving any renewal commission on policies effected through him as an insurance agent at any time before his appointment as such special agent.

(10) If any dispute arises as to whether a person is or was a chief agent or a special agent for the purposes of this Act, the matter shall be referred to the Authority whose decision shall be final.

(11) Every insurer shall maintain a register in which the name and address of every chief agent appointed by him, the date on which the appointment was made and the date, if any, on which the appointment ceased shall be entered, and a separate register in which

similar particulars relating to every special agent shall be entered, and every chief agent shall maintain a register in which similar particulars relating to every special agent appointed by him shall be entered.

42D. (1) The Authority or an officer authorised by it in this behalf shall, in the manner determined by the regulations made by the Authority and on payment of the fees determined by the regulations made by the Authority, issue to any person making an application in the manner determined by the regulations, and not suffering from any of the disqualifications herein mentioned, a licence to act as an intermediary or an insurance intermediary under this Act:

Issue of licence to intermediary or insurance intermediary.

Provided that,—

(a) in the case of an individual, he does suffer from any of the disqualifications mentioned in sub-section (4) of section 42, or

(b) in the case of a company, or firm, any of its directors or partners does not suffer from any of the said disqualifications.

* * * * *

(3) A licence issued under this section shall remain in force for a period of three years only from the date of issue, but shall, if the applicant, being an individual does not, or being a company or firm any of its directors or partners does not suffer from any of the disqualifications mentioned in clauses (b), (c), (d), (e) and (f) of sub-section (4) of section 42 and the application for renewal of licence reaches the issuing authority at least thirty days before the date on which the licence ceases to remain in force, be renewed for a period of three years at any one time on payment of the fee, determined by regulations, made by the Authority and additional fee for an amount determined by the regulations, not exceeding one hundred rupees by way of penalty, if the application of renewal of the licence does not reach the issuing authority at least thirty days before the date on which the licence ceases to remain in force.

* * * * *

42E. (1) No intermediary or insurance intermediary shall be paid or contract to be paid by way of commission, fee or as remuneration in any form, an amount exceeding thirty per cent of the premium payable as may be specified by the regulations made by the Authority, in respect of any policy or policies effected through him:

Commission, brokerage or fee payable to intermediary or insurance intermediary.

Provided that the Authority may specify different amounts payable by way of commission, fee or as remuneration to an intermediary or insurance intermediary or different classes of business of insurance.

(2) Without prejudice to the provisions contained in this Act, the Authority may, by the regulations made in this behalf, specify the requirements of capital form of business and other conditions to act as an intermediary or insurance intermediary.

* * * * *

43. Every insurer and every person who acting on behalf of an insurer employs insurance agents shall maintain a register showing the name and address of every insurance agents appointed by him and the date on which his appointment began and the date, if any, on which his appointment ceased.

Register of insurance agents.

44. (1) Notwithstanding anything to the contrary contained in any contract between any person and an insurance agent, providing for the forfeiture or stoppage of payment of renewal commission to such insurance agent no such person shall, in respect of life insurance business transacted in India, refuse payment to an insurance agent of commission due to him on renewal premium under the agreement by reason only of the termination of his agreement, except for fraud:

Prohibition of cessation of payments of commission

Provided that—

(a) such agent ceases to act for the insurer concerned after the Central Government has notified in the Official Gazette that it is satisfied that the circumstances

in which the said insurer is placed are such as to justify the agent's ceasing to act for him; or

(b) such agent has served the insurer continually and exclusively in respect of life insurance business for at least five years and policies assuring a total sum of not less than fifty thousand rupees effected through him for the insurer were in force on a date one year before his ceasing to act as such agent for the insurer, and that the commission on renewal premiums due to him does not exceed four per cent. in any case; or

(c) such agent has served the insurer continually and exclusively for at least ten years and after his ceasing to act as such agent he does not directly or indirectly solicit or procure insurance business for any other person.

Explanation.— For the purposes of this sub-section, service of an insurance agent under a chief agent of the insurer, whether before or after the commencement of the Insurance (Amendment) Act, 1950, shall be deemed to be service under the insurer.

47 of 1950.

(2) Any commission payable to an insurance agent, under the provisions of clauses (b) and (c) of the proviso to sub-section (1) shall, notwithstanding the death of the agent, continue to be payable to his heirs for so long as such commission would have been payable had such insurance agent been alive.

Power to call for information.

44A. For the purposes of ensuring compliance with the provisions of sections 40A, 40B, 40C, 42B and 42C the Authority may by notice—

(a) require from an insurer, principal agent, chief agent or special agent such information, certified if so required by an auditor or actuary, as he may consider necessary;

(b) require an insurer, principal agent, chief agent or special agent to submit for his examination at the principal place of business of the insurer in India any book of account, register or other document, or to supply any statement which may be specified in the notice;

(c) examine any officer of an insurer or a principal agent, chief agent or special agent on oath, in relation to any such information, book, register, document or statement and administer the oath accordingly,

and an insurer, principal agent, chief agent or special agent shall comply with any such requirement within such time as may be specified in the notice.

SPECIAL PROVISIONS OF LAW

Policy not to be called in question on ground of mis-statement after two years.

45. No policy of life insurance effected before the commencement of this Act shall after the expiry of two years from the date of commencement of this Act and no policy of life insurance effected after the coming into force of this Act shall after the expiry of two years from the date on which it was effected, be called in question by an insurer on the ground that a statement made in the proposal for insurance or in any report of a medical officer, or referee, or friend of the insured, or in any other document leading to the issue of the policy, was inaccurate or false, unless the insurer, shows that such statement was on a material matter or suppressed facts which it was material to disclose and that it was fraudulently made by the policy-holder and that the policy-holder knew at the time of making if that the statement was false or that it suppressed facts which it was material to disclose:

Provided that nothing in this section shall prevent the insurer from calling for proof of age at any time if he is entitled to do so, and no policy shall be deemed to be called in question merely because the terms of the policy are adjusted on subsequent proof that the age of the life insured was incorrectly stated in the proposal.

* * * * *

Claims on small life insurance policies.

47A. (1) In the event of any dispute relating to the settlement of a claim on a policy of life insurance assuring a sum not exceeding two thousand rupees (exclusive of any profit

or bonus not being a guaranteed profit or bonus) issued by an insurer in respect of insurance business transacted in India, arising between a claimant under the policy and the insurer who issued the policy or has otherwise assumed liability in respect thereof, the dispute may at the option of the claimant be referred to the Authority for decision, and the Authority may after giving an opportunity to the parties to be heard and after making such further inquiries as it may think fit, decide the matter.

(2) The decision of the Authority under this sub-section shall be final and shall not be called in question in any court, and may be executed by the court which would have been competent to decide the dispute if it had not been referred to the Authority as if it were a decree passed by that court.

(3) There shall be charged and collected in respect of the duties of the Authority under this section such fees whether by way of percentage or otherwise as may be prescribed.

48. (1) Where the insurer is a company incorporated under the Indian Companies Act, 1913 or under the Indian Companies Act, 1882, or under the Indian Companies Act, 1866, or under any Act repealed thereby and carries on the business of life insurance, not less than one-fourth of the whole number of the directors of the company the number to be elected not being less than two in any case shall, notwithstanding anything to the contrary in the Articles of Association of the company, be elected in the prescribed manner by the holders of policies of life insurance issued by the company.

Directors of insurers being companies.

7 of 1913.
6 of 1882.
10 of 1866.

(2) Only and all persons holding otherwise than as assignees policies of life insurance issued by the company of such minimum amount and having been in force for such minimum period as may be prescribed shall unless disqualified under sub-section (2A) be eligible for election as directors under sub-section (1), and only and all persons holding policies of life insurance issued by the company and having been in force at the time of the election for not less than six months shall be eligible to vote at such elections:

Provided that the assignment of a policy to the person who took out the policy shall not disqualify that person for being eligible for election as a director under sub-section (1).

(2A) A person shall be ineligible for election as a director under sub-section (1) of any company if he is a director, officer, employee, or legal or technical adviser of that company or of any other insurer, and shall cease to be a director under sub-section (1) if after election he acquires any disqualification specified in this sub-section or no longer holds the qualifications required by sub-section (2):

Provided that nothing in this sub-section shall disqualify a person who is an elected director under sub-section (1) and is not otherwise disqualified under this sub-section, from being re-elected:

Provided further that the Authority may exempt any director of a subsidiary company of the insurer from any disqualification imposed by this sub-section.

(3) The Central Government may, for such period, or to such extent and subject to such conditions as may be specified by it in this behalf, exempt from the operation of this section—

(a) any Mutual Insurance Company as defined in clause (a) of sub-section (1) of section 95, in respect of which the Authority certifies that in its opinion owing to the conditions governing membership of the company or to the nature of the insurance contracts undertaken by it the application of the provisions of this section to the company is impracticable, or

(b) any company in respect of which the Authority certifies that in its opinion the company, having taken all reasonable steps to achieve compliance with the provisions of this section, has been unable to obtain the required number of directors with the required qualifications.

(4) This section shall not take effect, in respect of any company in existence at the commencement of this Act, until the expiry of one year therefrom, and in respect of any company incorporated after the commencement of this Act, until the expiry of two years from the date of registration to carry on life insurance business.

Life insurance agents not to be directors of life insurance companies.

48A. No insurance agent who solicits or procures life insurance business, and no chief agent or special agent, shall be eligible to be or remain a director of any insurance company carrying on life insurance business:

Provided that any director holding office at the commencement of the Insurance (Amendment) Act, 1946, shall not become ineligible to remain a director by reason of this section until the expiry of six months from the commencement of that Act. 6 of 1946.

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Restriction on dividends and bonuses.

49. (1) No insurer, being an insurer specified in sub-clause (a) (ii) or sub-clause (b) of clause (9) of section 2, who carries on the business of life insurance or any other class or sub-class of insurance business to which section 13 applies shall, for the purpose of declaring or paying any dividend to shareholders or any bonus to policy-holders or of making any payment in service of any debentures, utilize directly or indirectly any portion of the life insurance fund or of the fund of such other class or sub-class of insurance business, as the case may be, except a surplus shown in the valuation balance-sheet in such form as may be specified by the regulations made by the Authority submitted to the Authority as part of the abstract referred to in section 15 as a result of an actuarial valuation of the assets and liabilities of the insurer; nor shall he increase such surplus by contributions out of any reserve fund or otherwise unless such contributions have been brought in as revenue through the revenue account applicable to that class or sub-class of insurance business on or before the date of the valuation aforesaid, except when the reserve fund is made up solely of transfers from similar surpluses disclosed by valuations in respect of which returns have been submitted to the Authority under section 15 of this Act or to the Central Government under section 11 of the Indian Life Assurance Companies Act, 1912: 6 of 1912.

Provided that payments made out of any such surplus in service of any debentures shall not exceed fifty per cent. of such surplus including any payment by way of interest on the debentures, and interest paid on the debentures shall not exceed ten per cent. of any such surplus except when the interest paid on the debentures is offset against the interest credited to the fund or funds concerned in deciding the interest basis adopted in the valuation disclosing the aforesaid surplus:

Provided further that the share of any such surplus allocated to or reserved for the shareholders (including any amount for the payment of dividends guaranteed to them, whether by way of first charge or otherwise) shall not exceed such sums as may be specified by the Authority and such share shall in no case exceed ten per cent. of such surplus in case of participating policies and in other cases the whole thereof.

* * * * *

Prohibition of business on dividing principle.

52. (1) No insurer shall after the commencement of this Act begin, or after three years from that date continue to carry on, any business upon the dividing principle, that is to say, on the principle that the benefit secured by a policy is not fixed but depends either wholly or partly on the results of a distribution of certain sums amongst policies becoming claims within certain time-limits, or on the principle that the premiums payable by a policy-holder depend wholly or partly on the number of policies becoming claims within certain time-limits:

Provided that nothing in this section shall be deemed to prevent an insurer from allocating bonuses to holders of policies of life insurance as a result of a periodical actuarial valuation either as reversionary additions to the sums insured or as immediate cash bonuses or otherwise:

Provided further that an insurer who continues to carry on insurance business on the dividing principle after the commencement of this Act shall withhold from distribution a sum of not less than forty per cent. of the premiums received during each year after the commencement of this Act in which such business is continued so as to make up the amount required for investment under section 27.

(2) On the expiry of the period of three years referred to in sub-section (1), or on the insurer's ceasing before such expiry but at any time after the commencement of the Insurance

13 of 1941. (Amendment) Act, 1941 to carry on business on the dividing principle, the insurer shall forthwith cause an investigation to be made by an actuary, who shall determine the amount accumulated out of the contributions received from the holders of all policies to which the dividing principle applies and the extent of the claims of those policy-holders against the realisable assets of the insurer, and shall, before the expiration of six months from the date on which he is entrusted with the investigation, make recommendations regarding the distribution, whether by cash payments or by the allocation of paid-up policies or by a combination of both methods, of such assets as he finds to appertain to such policy-holders; and the insurer shall, before the expiry of six months from the date on which the actuary makes his recommendations, distribute such assets in accordance with those recommendations.

13 of 1941. (3) Where at any time prior to the commencement of the Insurance (Amendment) Act, 1941, an insurer has ceased to carry on business on the dividing principle, the insurer shall, before the expiration of two months from the commencement of that Act, report to the Authority the measures taken or proposed by him for the distribution among holders of policies to which the dividing principle applies of the assets due to them; and the Authority may either sanction such measures or refuse its sanction, and, if it refuses its sanction or if the insurer does not report to him as required by this sub-section the provisions of sub-section (2) shall apply to the insurer forthwith.

MANAGEMENT BY ADMINISTRATOR

52A. (1) If at any time the Authority has reason to believe that an insurer carrying on life insurance business is acting in a manner likely to be prejudicial to the interests of holders of life insurance policies, he may, after giving such opportunity to the insurer to be heard as he thinks fit, make a report thereon to the Central Government.

When Administrator for management of insurance business may be appointed.

(2) The Central Government, if it is of opinion after considering the report that it is necessary or proper to do so, may appoint an Administrator to manage the affairs of the insurer under the direction and control of the Authority.

(3) The Administrator shall receive such remuneration as the Central Government may direct and the Central Government may at any time cancel the appointment and appoint some other person as Administrator.

* * * * *

52BB. (1)* * * * *

Powers of Administrator respecting property liable to attachment under section 106.

(2) Any person aggrieved by an order made by the Administrator under sub-section (1) may, within fourteen days from the date on which the order is served on him, appeal against such order to the Central Government and the Central Government may pass such order thereon as it thinks fit.

(3) An order made by the Administrator under sub-section (1) shall, subject to any other order made by the Central Government on appeal, be in force for a period of three months from the date of the order unless, before the expiry of the said period, an application is made under sub-section (1) of section 106 to the court competent to exercise jurisdiction under that sub-section and when such an application is made, the order shall, subject to any order made by that court, continue in force as if it were an order of attachment made by that court in proceeding under that section.

* * * * *

(10) Save as provided in this section or in section 106, and notwithstanding anything contained in any other law for the time being in force,—

(a) no suit or other legal proceeding shall lie in any court to set aside or modify any order of the Administrator or the Central Government made under this section, and

* * * * *

Termination of appointment of Administrator.

52D. If at any time, on a report made by the authority in this behalf, it appears to the Central Government that the purpose of the order appointing the Administrator has been fulfilled or that for any reason it is undesirable that the order of appointment should remain in force, the Central Government may cancel the order and thereupon the Administrator shall be divested of the management of insurance business which shall, unless otherwise directed by the Central Government, again vest in the person in whom it was vested immediately prior to the date of appointment of the Administrator.

Finality of decision appointing Administrator.

52E. Any order or decision of the Central Government made in pursuance of section 52A or section 52D shall be final and shall not be called in question in any Court.

Penalty for withholding documents of property from Administrator.

52F. If any director or officer of the insurer of any other person fails to deliver to the Administrator any books of account, registers or any other documents, in his custody relating to the business of the insurer, the management of which has vested in the Administrator, or retains any property of such insurer, he shall be punishable with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Protection of action taken under sections 52A to 52D.

52G. (1) * * * * *

(2) No suit or other legal proceeding shall lie against the Central Government or the Authority for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under section 52A, section 52B, or section 52D.

ACQUISITION OF THE UNDERTAKINGS OF INSURERS IN CERTAIN CASES

Power of Central Government to acquire undertakings of insurers in certain cases.

52H. (1) If, upon receipt of a report from the Authority, the Central Government is satisfied that an insurer,—

(a) has persistently failed to comply with—

(i) any direction given to him under section 34, section 34F or section 34G, or

(ii) any order made under section 34E; or

(b) is being managed in a manner detrimental to the public interest or to the interests of his policy-holders, or share-holders, and that—

(i) in the public interest, or

(ii) in the interests of the policy-holders or share-holders of such insurer,

it is necessary to acquire the undertaking of such insurer, the Central Government may, by notified order, acquire the undertaking of such insurer (hereafter in this section and in sections 52-I, 52J and 52N and in the Eighth Schedule referred to as the acquired insurer, with effect from such date as may be specified in the order (hereinafter in this section and in sections 52-I and 52J and in the Eighth Schedule referred to as the appointed day):

Provided that no undertaking of an insurer shall be so acquired unless such insurer has been given a reasonable opportunity of showing cause against the proposed action.

Explanation.—For the purposes of this section and of sections 52-I to 52N—

(a) "notified order" means an order published in the Official Gazette,

(b) "undertaking", in relation to an insurer incorporated outside India, means the undertaking of the insurer in India.

(2) Subject to the other provisions contained in this section and in sections 52-I to 52M, on the appointed day all the assets and liabilities of the undertaking of the acquired insurer shall stand transferred to, and vest in, the Central Government.

(3) The assets and liabilities of the undertaking of the acquired insurer shall be deemed to include all rights, powers, authorities and privileges and all property, whether movable or immovable, including, in particular cash balances, reserve funds, investments, deposits and all other interests and rights in, or arising out of, such property, as may be in the possession of, or held by, the acquired insurer immediately before the appointed day and all books, accounts and documents relating thereto, and shall also be deemed to include all debts, liabilities and obligations, of whatever kind, then existing of the acquired insurer.

(4) Notwithstanding anything contained in sub-section (2), the Central Government may, if it is satisfied that all the assets and liabilities of the undertaking of the acquired insurer should, instead of vesting in the Central Government, or continuing to so vest, vest in a corporation or company, whether established under the scheme made under section 52-I or not (hereafter in this section and in sections 52-I to 52N and in the Eighth Schedule referred to as the acquiring insurer), by order, direct that the assets and liabilities of the said undertaking, shall vest in the acquiring insurer, either on the publication of the notified order or on such other date as may be specified in this behalf in the direction.

(5) Where the undertaking of the acquired insurer vests in an acquiring insurer under sub-section (4), the acquiring insurer shall, on and from the date of such vesting, be deemed to have become the transferee of the acquired insurer and all the rights and liabilities in election to the acquired insurer shall, on and from the date of such vesting be deemed to have been the rights and liabilities of such acquiring insurer.

(6) Unless otherwise expressly provided by or under this section or sections 52-I to 52M, all contracts, deeds, bonds, agreements, power-of-attorney, grants of legal representation and other instruments of whatever nature subsisting or having effect immediately before the appointed day and to which the acquired insurer is a party or which are in favour of the acquired insurer shall be of as full force and effect against or in favour, of the Central Government or, as the case may be, the acquiring insurer, and may be enforced or acted upon as fully and effectually as if in the place of the acquired insurer the Central Government or the acquiring insurer had been a party thereto or as if they had been issued in favour of the Central Government or the acquiring insurer, as the case may be.

(7) If, on the appointed day, any suit, appeal or other proceeding of whatever nature, is pending by or against the acquired insurer, the same shall not abate, be discontinued or be, in any way prejudicially affected by reason of the transfer of the undertaking of the acquired insurer or of anything contained in this section or in sections 52-I to 52M, but the suit, appeal or other proceeding may be continued, prosecuted and enforced by or against the Central Government or the acquiring insurer, as the case may be.

52.-I (1) The Central Government may make a scheme for carrying out the purposes of sections 52H and 52J to 52M (both inclusive) in relation to the acquired insurer.

Power of
Central
Government to
make Scheme.

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

(a) transfer of the undertaking, including the property, assets and liabilities of the acquired insurer to an acquiring insurer, and the capital, constitution, name and office of the acquiring insurer;

(b) the constitution of the first board of management (by whatever name called) of the acquiring insurer and all such matters in connection therewith or incidental thereto as the Central Government may consider to be necessary or expedient;

(c) the continuance of the services of all the employees of the acquired insurer (excepting such of them as, not being workmen within the meaning of the Industrial Disputes Act, 1947, are specifically mentioned in the scheme) in the Central Government or in the acquiring insurer, as the case may be, on the same terms and conditions, so far as may be, as are specified in clauses (i) and (j) of sub-section (2) of section 37A so far as they may apply; 14 of 1947.

(d) the continuance of the rights of any person who, on the appointed day, is entitled to, or is in receipt of, a pension or other superannuation or compassionate allowance or benefit from the acquired insurer or any provident, pension or other fund or any authority administering such fund to be paid by, and to receive from the Central Government or the acquiring insurer, as the case may be, or any provident, pension or other fund or any authority administering such fund, the same pension, allowance or benefit so long as he observes the conditions on which the pension, allowance or benefit was granted, and if any question arises whether he had so observed such condition, the question shall be determined by the Central Government and the decision of the Central Government thereon shall be final;

(e) the manner of payment to the acquired insurer in full satisfaction of his claim in relation to the compensation payable in accordance with the provisions of section 52J;

(f) the provision, if any, for completing the effectual transfer to the Central Government or the acquiring insurer of any asset or liability which forms part of the undertaking of the acquired insurer in any country outside India;

(g) such incidental, consequential and supplemental matters as may be necessary to secure that the transfer of the undertaking, property, assets and liabilities of the acquired insurer to the Central Government or the acquiring insurer, as the case may be, is effectual and complete.

(3) The Central Government may, by notification in the Official Gazette, and to, amend or vary any scheme made under this section.

(4) Every scheme made under this section shall be published in the Official Gazette.

(5) Copies of every scheme made under this section shall be laid before each House of Parliament as soon as may be after it is made.

(6) The provisions of sections 52H and 52J to 52M and of any scheme made under this section shall have effect notwithstanding anything to the contrary contained in any other provision of this Act or in any other law or any agreement, award or other instrument for the time being in force.

Compensation to be given to the acquired insurer.

52J. (1) The acquired insurer shall be given by the Central Government or the acquiring insurer, as the case may be, such compensation in respect of the transfer of the undertaking of the acquired insurer as is determined in accordance with the principles contained in the Eighth Schedule.

(2) The amount of compensation to be given in accordance with the principles contained in the Eighth Schedule shall be determined, in the first instance, by the Central Government or the acquiring insurer, as the case may be, in consultation with the Authority, and shall be offered by it to the acquired insurer, in full satisfaction thereof.

(3) If the amount of compensation offered in terms of sub-section (2) is not acceptable to the acquired insurer, he may, before such date as may be notified by the Central Government in the Official Gazette, request the Central Government in writing to have the matter referred to the Tribunal constituted under section 52K.

(4) If before the date notified under sub-section (3) the Central Government does not receive request as provided in that sub-section, the amount of compensation offered under sub-section (2), or where a reference has been made to the Tribunal, the amount determined by it, shall be compensation payable under sub-section (1) and shall be final and binding on all the parties concerned.

(5) Where the Central Government does not receive request as provided in sub-section (3), the compensation payable in pursuance of the provisions of this section shall become due for payment on the expiry of one year from the appointed day, and where a reference has been made to the Tribunal under sub-section (3), the amount determined by the Tribunal as compensation shall become due for payment on the expiry of one year from the appointed day or on the date of decision of the Tribunal, whichever is earlier.

(6) If between the appointed day and the date on which the compensation becomes due in pursuance of sub-section (5), any facts come to light which call for revision of the amount of the compensation, the necessary modification of the amount of the compensation shall be made and the amount of the compensation so determined shall be compensation payable in pursuance of sub-section (1).

(7) There shall also be paid simple interest at the rate of three per cent. per annum on the amount of the compensation for the period from the appointed day to the date on which payment of the compensation becomes due.

52K. (1) The Central Government may, for the purposes of sections 52H to 52J, constitute a Tribunal which shall consist of a chairman and two other members.

Constitution of
the Tribunal.

(2) The chairman shall be a person who is, or has been, a Judge of a High Court or of the Supreme Court and of the two other members, one shall be a person who, in the opinion of the Central Government has had experience of matters connected with general insurance and the other shall be a person who is chartered accountant within the meaning of the Chartered Accountants Act, 1949.

38 of 1949.

(3) If, for any reason, a vacancy occurs in the office of the chairman or any other member of the Tribunal, the Central Government may fill the vacancy by appointing another person thereto in accordance with the provisions of sub-section (2), and any proceeding may be continued before the Tribunal so constituted from the stage at which the vacancy occurred.

(4) The Tribunal may, for the purpose of determining any compensation payable under section 52J, choose one or more persons having special knowledge or experience of any relevant matter to assist it in the determination of such compensation.

52 L. (1) The Tribunal shall have the powers of a Civil Court, while trying a suit, under the Code of Civil Procedure, 1908, in respect of the following matters, namely:—

5 of 1908.

Tribunal to
have powers of
Civil Court.

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

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) issuing commissions for the examination of witnesses or documents.

(2) Notwithstanding anything contained in sub-section (1) or in any other law for the time being in force, the Tribunal shall not compel the Central Government or the Authority—

(a) to produce any books of account, or other documents which the Central Government or the Authority claims to be a confidential nature;

(b) to make any such books or documents a part of the record of the proceedings before the Tribunal;

(c) to give inspection of any such books or documents to any party before it and to any other person.

(3) Any proceeding before the Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code and the Tribunal shall be deemed to be a Civil Court for the purposes of section 195 and Chapter XXXV of the Code of Criminal Procedure, 1898.

45 of 1860.

5 of 1898.

Procedure of the Tribunal.

52M. (1) The Tribunal shall have power to regulate its own procedure.

(2) The Tribunal may hold the whole or any part of its inquiry *in camera*.

(3) Any clerical or arithmetical error in any order of the Tribunal or any error arising therein from any accidental slip or omission may, at any time, be corrected by the Tribunal either of its own motion or on the application of any of the parties.

Special provisions for the dissolution of acquired insurers.

52N. Where any acquired insurer, being a company, has in accordance with the provisions of this Act, collected and distributed any monies paid to him by the Central Government or the acquiring insurer, as the case may be, by way of compensation or otherwise, and has also complied with any directions given to him by the Central Government or the acquiring insurer, as the case may be, for the purpose of securing that the ownership of any property or any right is effectively transferred to the Central Government or the acquiring insurer, as the case may be, the Central Government may, on application being made to it in this behalf by such insurer, grant a certificate to the insurer that there is no reason for the continued existence of the insurer and upon the publication of such certificate, the insurer shall be dissolved.

WINDING UP

Winding up by the Court.

53. (1) The Tribunal may order the winding up in accordance with the Companies Act, 1956 of any insurance company and the provisions of the Act shall subject to the provisions of this Act, apply accordingly. 1 of 1956.

(2) In addition to the grounds on which such an order may be based, the Tribunal may order the winding up of an insurance company—

(a) * * * * *

(b) if the Authority who is hereby authorized to do so, applies in this behalf to the Tribunal on any of the following grounds, namely:—

(i) that the company has failed to deposit or to keep deposited with the Reserve Bank of India the amounts required by section 7 or section 98;

* * * * *

Scheme for partial winding up of insurance companies.

58. (1)* * * * *

(4) An order of the Tribunal confirming a scheme under this section whereby the memorandum of a company is altered with respect to its object shall as respects the alteration have effect as if it were on order confirmed under section 12 of the Indian Companies Act, 1913, and the provisions of sections 15 and 16 of that Act shall apply accordingly. 7 of 1913.

Return of deposits.

59. In the winding up of an insurance company otherwise than in a case of which section 58 applies and in the insolvency of any other insurer the liquidator or assignee as the case may be shall apply to the Tribunal for an order for the return of the deposit made by the company or the insurer as the case may be under section 7 or section 98 and the Tribunal shall on such application order a return of the deposit subject to such terms and conditions as it shall direct.

* * * * *

SPECIAL PROVISIONS RELATING TO EXTERNAL COMPANIES

Power of Central Government to impose reciprocal disabilities on non-Indian Companies.

62. Where by the law or practice of any country outside India in which an insurer carrying on insurance business in India is constituted, incorporated or domiciled, insurance companies incorporated in India are required as a condition of carrying on insurance business in that country to comply with any special requirement whether as to the keeping of deposits or assets in that country or otherwise which is not imposed upon insurers of that country under this Act, the Central Government shall, if satisfied of the existence of such special requirement, by notification in the Official Gazette, direct that the same requirement, or requirements as similar thereto as may, be, shall be imposed upon insurers of that country as a condition of carrying on the business of insurance in India.

63. Every insurer, having his principal place of business or domicile outside India, who establishes a place of business within India, or appoints a representative in India with the object of obtaining insurance business, shall, within three months from the establishment of such place of business or the appointment of such representative, file with the Authority—

Particulars to be filed by insurers established outside India.

(a) a certified copy of the charter, statutes, deed of settlement or memorandum and articles or other instrument constituting or defining the constitution of the insurer and, if the instrument is not written in the English language, a certified translation thereof,

(b) a list of the directors, if the insurer is a company,

(c) the name and address of some one or more persons resident in India authorised to accept on behalf of the insurer service of process and any notice required to be served on the insurer, together with a copy of the power-of-attorney granted to him,

(d) the full address of the principal office of the insurer in India,

(e) a statement of the classes of insurance business to be carried on by the insurer, and

(f) a statement verified by an affidavit setting forth the special requirements, if any, of the nature specified in section 62 imposed in the country of origin of the insurer on Indian nationals,

and, in the event of any alteration being made in the address of the principal office or in the classes of business to be carried on, or in any instrument here referred to, or in the name of any of the persons here referred to, or in the matters specified in clause (f) above, the company shall forthwith furnish to the Authority particulars of such alteration.

64. Every insurer having his principal place of business or domicile outside India shall keep at his principal office in India such books of account, registers and documents as will enable the accounts, statements and abstracts which he is required under this Act to furnish to the Authority in respect of the insurance business transacted by him, in India to be compiled and, if necessary, checked by the Authority and shall furnish to the Authority on or before the last day of January in every calendar year a certificate from an auditor to the effect that the said books of account, register and documents are being kept as required at the principal office of the insurer in India.

Books to be kept by insurers established outside India.

PART II A

INSURANCE ASSOCIATION OF INDIA, COUNCILS OF THE ASSOCIATION AND COMMITTEES THEREOF

47 of 1950.

64A. (1) All insurers carrying on insurance business in India at the commencement of the Insurance (Amendment) Act, 1950, all insurers who may after such commencement begin to carry on insurance business in India, and, if the Central Government, by notification in the Official Gazette, so declares all provident societies carrying on insurance business in India on the date of such notification and all provident societies which may begin to carry on insurance business in India after such date are hereby constituted body corporate by the name of the Insurance Association of India.

Incorporation of the Insurance Association of India.

(2) All insurers and provident societies incorporated or domiciled in India shall be known as members of the Insurance Association of India, and all insurers and provident societies incorporated or domiciled elsewhere than in India shall be known as associate members of that Association.

(3) The Insurance Association of India shall have perpetual succession and a common seal and shall have power to acquire, hold and dispose of all property, both movable and immovable, and shall by the said name sue and be sued.

Entry of names of members in the register.

64B. (1) The Authority shall take or cause to be taken through such agency as he thinks fit such steps as may be necessary to have the names of all insurers and provident societies, who or which are entitled to have their names entered in the register of members and associate members of the Insurance Association of India maintained for this purpose entered therein.

(2) Where any insurer or provident society has ceased to carry on business as such, the Authority shall cause such steps to be taken as may be necessary to have the name of such insurer or provident society, as the case may be, removed from the register.

Councils of the Insurance Association of India.

64C. There shall be two Councils of the Insurance Association of India, namely:—

(a) the Life Insurance Council consisting of all the members and associate members of the Association who carry on life insurance business in India, and

(b) the General Insurance Council consisting of all the members and associate members of the Association who carry on general insurance business in India.

Authority of members of Association to act through agents.

64D. It shall be lawful for any member of the Life Insurance Council or the General Insurance Council to authorise any individual, whether an officer of the insurer or not, to act as the representative of such member at any meeting of the Council concerned or to stand as a candidate for any election held by that Council.

* * * * *

Executive Committees of the Life Insurance Council and the General Insurance Council.

64E. (1) The Executive Committee of the Life Insurance Council shall consist of the following persons, namely:—

(a) two official nominated by the Authority one as the chairman and the other as a member;

(b) eight representatives of members of the Insurance Association of India carrying on life insurance business elected in their individual capacity by the said members in such manner, from such groups of members and from such areas as may be specified by the Authority.

(c) one non-official not connected with any insurance business, nominated by the Authority; and

(d) five persons connected with life insurance business, nominated by the Authority for the purpose of representing such groups of insurers carrying on life insurance business or such areas as have not been able to secure adequate representation on the Executive Committee of the Life Insurance Council or for any other purpose.

(2) The Executive Committee of the General Insurance Council shall consist of the following persons, namely:—

(a) two officials nominated by the Authority one as the chairman and the other as a member;

(b) eight representatives of members of the Insurance Association of India carrying on general insurance business elected in their individual capacity by the said members in such manner, from such groups of members and from such areas as may be specified by the Authority;

(c) one non-official not connected with any insurance business, nominated by the Authority; and

(d) five persons connected with life insurance business, nominated by the Authority for the purpose of representing such groups of insurers carrying on general insurance business or such areas as have not been able to secure adequate representation on the Executive Committee of the General Insurance Council or for any other purpose.

(3) If anybody of persons specified in sub-sections (1) and (2) fails to elect any of the members of the Executive Committees of the Life Insurance Council or the General Insurance

Council, the Authority may nominate any person to fill the vacancy, and any person so nominated shall be deemed to be member of the Executive Committee of the Life Insurance Council or the General Insurance Council, as the case may be, as if he had been duly elected thereto.

(4) No official nominated by the Authority shall be entitled, whether as chairman or as a member, to vote in respect of any matter coming up before any meeting of the Executive Committee of the Life Insurance Council or the Executive Committee of the General Insurance Council, as the case may be, and subject thereto each of the said Executive Committees may, with the approval of the Authority, make bye-law as for the transaction of any business at any meeting of the said Committee, and any such bye-law may provide that any member of the Committee who is interested in any matter for the time being before that. Committee may not be present at or take part in any meeting thereof.

(5) The Life Insurance Council or the General Insurance Council may from such other committees consisting of such persons as it may think fit to discharge such functions as may be delegated thereto:

Provided that any action taken by any of the said Councils under this sub-section shall be with the previous consent of the Authority and nothing in this sub-section shall derogate from any of the powers vested in the Executive Committees.

(6) The secretary of the Executive Committee of the Life Insurance Council and of the Executive Committee of the General Insurance Council shall in each case be an official nominated by the Authority.

64G.(1) * * * * *

(2) Casual vacancies in the Executive Committee of the Life Insurance Council or of the General Insurance Council, whether caused by resignation, death or otherwise, shall be filled by nomination by the Authority and any person nominated to fill the vacancy shall hold office until the dissolution the Committee to which he has been nominated.

Resignation and filling up of casual vacancies.

* * * * *

64I. The Life Insurance Council may, with the approval of the Authority, authorise its Executive Committee to hold examinations for individuals wishing to qualify themselves as insurance agents for the purpose of procuring life insurance business, and, if the Authority, by notification in the Official Gazette, so declares then, notwithstanding anything contained in section 42, only individuals who have passed any such examination shall be eligible to apply for a licence under section 42:

Power of Executive Committee of Life Insurance Council to hold examinations for insurance agents.

Provided that nothing in this sub-section shall affect the right of any individual, who has been licensed to act as an insurance agent under section 42 before the date of such notification, to act as such, or to have his licence renewed from time to time.

64J. (1)* * * * * *

(2) For the purpose of enabling it effectively to discharge its functions, the Executive Committee of the Life Insurance Council may collect such sums of money, whether by way of fees or otherwise, as may be prescribed from all members and associated members of the Insurance Association of India who carry on life insurance business.

Functions of Executive Committee of Life Insurance Council.

* * * * *

64L.(1)* * * * * *

(2) For the purpose of enabling it effectively to discharge its functions, the Executive Committee of General Insurance Council may collect such fees as may be prescribed from all insurers carrying on general insurance business:

Functions of the Executive Committee of General Insurance Council.

Provided that if the General Insurance Council thinks fit, it may by a resolution passed by it, waive the collection of the prescribed fees for any year and where any such resolution has been approved by the Authority, the Executive Committee of the General Insurance Council shall not collect any fees in relation to that year.

* * * * *

64N. The Central Government may prescribe the circumstances in which, the manner in which, and the conditions subject to which, the Executive Committee of the Life Insurance Council and the Executive Committee of the General Insurance Council may hold joint

Powers of the Executive Committees to act together in certain cases.

meetings for the purpose of dealing with any matter of common interest to both Committees, and it shall be lawful for the two Committees at any such joint meeting to delegate any matter under consideration for the determination of a sub-committee appointed for this purpose from amongst the members of the two Committees.

General powers of Life Insurance Council and General Insurance Council.

64R. (1) For the efficient performance of its duties, the Life Insurance Council or the General Insurance Council, as the case may be, may—

* * * * *

(c) keep and maintain up to date a copy of the list of all insurers who are members or associate members of the Insurance Association of India;

(d) with the previous approval of the Authority, make regulations for—

(i) the holding of elections other than the first elections;

(ii) the summoning and holding of meetings, the conduct of business thereat and the number of persons necessary to form a quorum;

(iii) the submission by insurers to the Executive Committee of the Life Insurance Council, or the General Insurance Council, of such statements or information as may be required of them and the submission of copies thereof by the insurers to the Authority;

(iv) the levy and collection of any fees;

(v) the regulation of any other matter which may be necessary for the purpose of enabling it to carry out its duties under this Act.

* * * * *

Power of Central Government to remove difficulties.

64S. The Central Government may exercise such powers as may be necessary for bringing the Life Insurance Council, the General Insurance Council or the Executive Committee of any of the said Councils, as the case may be, into effective existence for the purposes of this Part, and any such powers shall include—

(a) the power to hold, in such manner as may be directed by the Central Government, the first elections to the Executive Committees of the Life Insurance Council and the Central Insurance Council;

(b) where a notification under sub-section (1) of section 64A has been issued declaring provident societies to be members of the Insurance Association of India, the powers to associate provident societies effectively in the exercise of all powers and the discharge of all functions of the Life Insurance Council and the Executive Committee thereof;

(c) the power to make the provisions of section 40B applicable to the provident societies specified in clause (b) in the same manner as they apply to insurers.

Power to exempt.

64T. The Central Government may, subject to such conditions and restrictions as it may think fit to impose, exempt any insurers specified in sub-clause (c) of clause (9) of section 2 from the operation of all or any of the provisions of this Part.

PART IIB

TARIFF ADVISORY COMMITTEE AND CONTROL OF TARIFF RATES

Establishment of Tariff Advisory Committee.

64U. (1) With effect from the commencement of the Insurance (Amendment) Act, 1968, there shall be established a Committee, to be called the Tariff Advisory Committee (hereafter in this Part referred to as the Advisory Committee) to control and regulate the rates, advantages, terms and conditions that may be offered by insurers in respect of general insurance business.

62 of 1968.

(2) The Advisory Committee shall be a body corporate having perpetual succession and a common seal, with power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to contract, and may, by the said name, sue and be sued.

64UA. (1) The Advisory Committee shall consist of the following members, namely:—

- (a) the Chairperson of the Authority *ex officio*, who shall be the Chairman;
- (b) a senior officer of the office of the authority nominated by the Authority who shall be the Vice-Chairman;
- (c) not more than ten representatives of Indian insurers, elected (in their individual capacities) by such insurers in such manner, from such areas and from among such insurers or groups of insurers as may be prescribed;
- (d) not more than four representatives of insurers incorporated or domiciled elsewhere than in India but registered in India, elected (in their individual capacities) by such insurers in such manner, and from among such insurers or groups of insurers as may be prescribed.

Composition of the Advisory Committee.

(2) The Secretary to the Advisory Committee shall be an officer of the office of the Authority nominated by the Authority.

64UB. (1) The Authority may, by notification in the Official Gazette, make regulations to carryout the purposes of this Part.

Power to make rules in respect of matters in this Part.

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

- (a) the functions to be discharged by the Advisory Committee;
- (b) the term of office of the members of the Advisory Committee, the procedure for their election and the manner of filling casual vacancies in the Advisory Committee;
- (c) the travelling and other allowances payable to the members of the Advisory Committee;
- (d) the procedure for holding the meetings of the Advisory Committee and for transaction of business thereat.

(3) The Advisory committee may, by notification in the Official Gazette, with the previous approval of the Authority make regulations for all or any of the following matters, namely:—

- (a) the constitution, powers and duties of Regional Committees and of sub-committees constituted by the Advisory Committee or any Regional Committee;
- (b) the method of election of candidates for Regional Committees and sub-committees, their eligibility, term of office and method of filling casual vancancies;
- (c) the procedure for convening meetings and transaction of business by Regional Committees and sub-committees;
- (d) the appointment of officers and other employees of the Advisory Committee and of Regional Committees or sub-committees constituted by or under the Advisory Committee or any Regional Committee and the terms and conditions of their service including travelling and other allowances;
- (e) such other matters pertaining to procedure as are not inconsistent with the provisions of this Act or rules made thereunder,

and may, from time to time, with the previous approval of the Authority add to amend or vary any such regulations.

(4) The regulations made by the Tariff Committee of the General Insurance Council under section 64-O as they were in force immediately before the commencement of the Insurance (Amendment) Act, 1968, shall, after such commencement, continue to be in force until rules are made by the Authority under sub-section (1) and immediately after such rules have come into effect, the regulations aforesaid shall cease to be valid.

(5) The Chairperson of the Authority shall be in direct charge of the establishment of the Advisory Committee and the Secretary of the Advisory Committee shall work under his direction and control.

64UC. (1) The Advisory Committee may, from time to time and to the extent it deems expedient, control and regulate the rates, advantages, terms and conditions that may be offered by insurers in respect of any risk or of any class or category of risks, the rates, advantages, terms and conditions of which, in its opinion, it is proper to control and regulate, and any such rates, advantages, terms and conditions shall be binding on all insurers:

Power of the Advisory Committee to regulate rates, advantages, etc.

Provided that the Authority may, permit any insurer to offer, during such period (being not more than two years but which may be extended by periods of not more than two years at a time) and subject to such conditions as may be specified by him, rates, advantages, terms and conditions different from those fixed by the Advisory Committee in respect of any particular category of risks, if it is satisfied that such insurer generally issues policies only to a restricted class of the public or under a restricted category of risks.

(2) In fixing, amending or modifying any rates, advantages, terms or conditions, relating to any risk, the Advisory Committee shall try to ensure, as far as possible, that there is no unfair discrimination between risks of essentially the same hazard, and also that consideration is given to past and prospective loss experience:

Provided that the Advisory Committee may, at its discretion, make suitable allowances for the degree of credibility to be assigned to the past experience, including allowances for random fluctuations and may also, at its discretion, make suitable allowances for future fluctuations and unforeseen future contingencies, including hazards of conflagration or catastrophe or both.

(3) Every decision of the Advisory Committee shall be valid only after and to the extent it is ratified by the Authority, and every such decision shall take effect from the date on which it is so ratified by the Authority or, if the Authority so orders in any case, from such earlier date as he may specify in the order.

(4) The decisions of the Advisory Committee in pursuance of the provisions of this section shall be final.

(5) Where an insurer is guilty of breach of any rate, advantage, term or condition fixed by the Advisory Committee, he shall be deemed to have contravened the provisions of this Act:

Provided that instead of proceeding against the insurer for such contravention, the Authority may, if the insurer removes the contravention by recovering the deficiency in the premium, or where it is not practicable to do so, modifies suitably or cancels the contract of insurance, compound the offence on payment to the Advisory Committee of such fine, not exceeding rupees one thousand, as he may decide in consultation with the Advisory Committee.

Transitional provisions.

64UD. (1) Notwithstanding anything contained in this Part, until the names of the members of the Advisory Committee elected for the first time after the commencement of the Insurance (Amendment) Act, 1968, are notified, the Tariff Committee of the General Insurance Council appointed under regulations made under sub-section (2) of section 64-O as it was in force immediately before the commencement of the Insurance (Amendment) Act, 1968, and in existence on each commencement (hereafter in this Part referred to as the Tariff Committee) shall continue to function and shall be deemed to be the Advisory Committee duly elected under this Part and the Authority of Insurance shall become the Chairman of that Committee with effect from the commencement of the Insurance (Amendment) Act, 1968, and function as such, and any Chairman of the Tariff Committee holding office immediately before such commencement shall cease to be the Chairman thereof from the date of such commencement but shall continue to be an ordinary member of the Advisory Committee:

62 of 1968.

Provided that the Chairperson of the Authority shall become the Chairman of the Advisory Committee with effect from the commencement of the Insurance Regulatory and Development Authority Act, 1999 and function as such, and any Chairman of the Tariff Committee holding office immediately before such commencement shall cease to be the Chairman.

41 of 1999.

(2) Notwithstanding anything contained in this Part, the constitutions of the Regional Councils established under section 64P, as in force immediately before the commencement of the Insurance (Amendment) Act, 1968 (hereafter referred to as the Regional Councils), and of the Sectional Committees formed thereunder, existing immediately, before such

62 of 1968.

commencement, shall continue to be in full force and be of full effect, until the regulations made by the Advisory Committee for the first time under section 64UB come into effect and as soon as such regulations have come into effect such constitutions shall cease to have effect.

62 of 1968. (3) Notwithstanding anything contained in this Part, until the Secretary to the Advisory Committee is nominated under sub-section (2) of section 64UA, the Secretary to the Tariff Committee holding office immediately before the commencement of the Insurance (Amendment) Act, 1968, shall function as the Secretary and shall be deemed to have been duly nominated under this Part.

62 of 1968. (4) All rates, advantages, terms and conditions fixed by the Tariff Committee or the Regional Councils prior to the commencement of the Insurance (Amendment) Act, 1968, and in force immediately before such commencement shall continue, except to such extent as they may be altered, replaced or abolished by the Advisory Committee, to be valid and fully in force as if they were rates, advantages, terms and conditions fixed by the Advisory Committee.

64UE. (1) The Advisory Committee require, by notice in writing, any insurer to supply to it such information or statements, periodical or *ad hoc*, as it may consider necessary, to enable it to discharge its functions under this Part and every insurer shall comply with such requirements within such period as may be specified by the Advisory Committee in this behalf, failing which the insurer shall be deemed to have contravened the provisions of this Act.

Power of the Advisory Committee to require information, etc.

(2) Any information supplied under this section shall be certified by a principal officer of the insurer or where the Advisory Committee has agreed in advance, by such other officer or officers of the insurer as the principal officer of the insurer may nominate for the purpose and if the notice so requires, also by an auditor.

(3) The Authority may, at any time, in writing, depute any subordinate of it to make a personal inspection of the books of account, ledgers, policy-registers and other books or documents of any insurer to verify the accuracy of any return or statement furnished by him under sub-section (1), or to verify that full particulars have been supplied by him in respect of all policies issued by him, and the insurer shall provide all facilities for such inspection and make available to such person all the books of account, ledgers, policy-registers and other books or documents of the insurer which might be needed by him for such verification and the person deputed may himself extract from out of the books and records of the insurer such information as may be needed to fill up or complete the returns required to be submitted to the Advisory Committee under this section.

(4) The advisory Committee may, at any time, on the application of an insurer, make arrangements for the inspection of an organisation which is concerned with the inspection of risks, adjustment of losses or fire-fighting appliances, and may, whenever necessary, advise insurers about the adequacy of the arrangements for the inspection of risks and adjustment of losses or the suitability of such appliance:

Provided that no such inspection shall be made without the written permission of the concerned organisation.

62 of 1968. **64UF.** (1) On the commencement of the Insurance (Amendment) Act, 1968, all the assets and liabilities of the General Insurance Council appertaining to its Tariff Committee and to its Regional Councils and their Sectional Committees existing on that day shall be transferred to, and vest in, the Advisory Committee.

Assets and liabilities of the General Insurance Council to vest in the advisory Committee.

(2) The assets appertaining to the Tariff Committee, the Regional Councils, and their Sectional Committees shall be deemed to include all rights and powers and all property, whether movable or immovable including, in particular, cash balances, reserve funds, investments, deposits and all other interests and rights in, or arising out of, such property as may be in the possession of the Tariff Committee, Regional Councils and their Sectional Committees and all books of account or documents thereof; and liabilities

shall be deemed to include all debts, liabilities and obligations of whatever kind existing and appertaining to the work of the Tariff Committee, the Regional Councils and their Sectional Committees.

(3) Where the General Insurance Council has established a provident or superannuation fund or any other fund for the benefit of the employees of its Tariff Committee or Regional Councils and constituted a trust in respect thereof (hereafter in this section referred to as an existing trust), the monies standing to the credit of any fund at the commencement of the Insurance (Amendment) Act, 1968, shall, subject to the provisions of sub-section (4), stand transferred to, and vest in, on such commencement, the Advisory Committee. 62 of 1968.

(4) Where any employee of the Tariff Committee, or the Regional Councils, of the General Insurance Council does not become an employee of the Advisory Committee, the monies and other assets appertaining to any fund referred to in sub-section (3) shall be apportioned between the trustees of the fund and the Advisory Committee in the prescribed manner; and in case of any dispute regarding such apportionment, the decision of the Central Government thereon shall be final.

(5) The Advisory Committee shall, as soon as may be after the commencement of the Insurance (Amendment) Act, 1968, constitute in respect of the monies and other assets which are transferred to, and vested in, it under sub-section (3), one or more trusts having, as far as practicable, objects similar to the objects of the existing trust. 62 of 1968.

(6) Where all the monies and other assets belonging to an existing trust are transferred to, and vested in, the Advisory Committee under sub-section (3), the trustees of such trust shall, on the commencement of the Insurance (Amendment) Act, 1968, be discharged from the trust except as respects things done or omitted to be done by them before such commencement. 62 of 1968.

Contracts, etc., to be effective by or against the Advisory Committee.

64UG. (1) Unless otherwise expressly provided by or under this Act, all contracts, agreements and other instruments of whatever nature subsisting or having effect immediately before the commencement of the Insurance (Amendment) Act, 1968, and to which the Tariff Committee, or any Regional Council is a part or which is in favour of that Committee or that Council, shall be of as full force and effect against or in favour of the Advisory Committee and may be enforced or acted upon as fully and effectually as if, instead of the Tariff Committee, or the Regional Council, the Advisory Committee had been a party thereto or as if they had been entered into or issued in favour of the Advisory Committee. 62 of 1968.

(2) If, at the commencement of the Insurance (Amendment) Act, 1968, any suit, appeal or other legal proceeding of whatever nature is pending by or against the Tariff Committee, or any Regional Council then it shall not abate, be discontinued or in any way be prejudicially effected by reason of the transfer to the Advisory Committee of the assets and liabilities of the Tariff Committee, and the Regional Councils or of anything done under this Act, but the suit, appeal or other proceeding may be continued prosecuted or enforced by or against the Advisory Committee. 62 of 1968.

Employees, etc., to continue.

64UH. (1) Every whole-time employee of the Tariff Committee, or the Regional Councils who was employed by that Committee or those Councils wholly or mainly in connection with its or their statutory duties immediately before the commencement of the Insurance (Amendment) Act, 1968, shall, on and from such commencement, become an employee of the Advisory Committee and shall hold his office in it by the same tenure, at the same remuneration, and upon the same terms and conditions and with the same rates and privileges as to pension, gratuity and other matters as he would have held on such commencement if this Part had not been enacted, and shall continue to do so until his employment under the Advisory Committee is terminated or until the remuneration, terms and conditions, are duly altered by the Advisory Committee: 62 of 1968.

62 of 1968. Provided that nothing contained in this sub-section shall apply to any employee who has given notice to the Central Government in writing either prior to or within two months from the commencement of the Insurance (Amendment) Act, 1968, intimating his intention of not becoming an employee of the Advisory Committee.

14 of 1947. (2) Where the Central Government is satisfied that for the purpose of securing uniformity in the scales of pay, remuneration and other terms and conditions of service applicable to employees of the Tariff Committee, or the Regional Councils, it is necessary so to do, or that a reduction in the remuneration payable or revision of the other terms and conditions of service applicable to employees or any class of them is called for, the Central Government may, notwithstanding anything contained in sub-section (1), or in the Industrial Disputes Act, 1947, or in any other law for the time being in force or in any award, settlement, or agreement for the time being in force, alter (whether by way of reduction or otherwise) the remuneration and other terms and conditions of service to such extent and in such manner as it thinks fit; and if the alteration is not acceptable to any employee, the Advisory Committee may terminate his employment by giving him compensation equivalent to three months' remuneration, unless the contract of service with such employees provides for a shorter notice of termination.

Explanation.—The compensation payable to an employee under this sub-section shall be in addition to, and shall not affect any pension, gratuity, provident fund money or any other benefit to which the employee may be entitled under his contract of service.

62 of 1968. (3) If any question arises as to whether any person was a wholetime employee of the Tariff Committee, or the Regional Council, on the commencement of the Insurance (Amendment) Act, 1968, or as to whether any employee was employed wholly or mainly in connection with the statutory duties of the Tariff Committee, or any Regional Council, immediately before such commencement, the question shall be referred to the Central Government whose decision thereon shall be final.

14 of 1947. (4) Notwithstanding anything contained in the Industrial Disputes Act, 1947, or in any other law for the time being in force, the transfer of the services of any employees of the Tariff Committee, or the Regional Councils, to the Advisory Committee, shall not entitle any such employee to any compensation under that Act or other law, and no such claim shall be entertained by any court, Tribunal or other authority.

64UI. (1) Where any property of the Tariff Committee, or the Regional Councils (appertaining to its or their statutory duties) has been transferred to, and vested in, the Advisory Committee, then,—

(a) every person in whose possession, custody or control any such property may be, shall deliver the property to the Advisory Committee forthwith;

62 of 1968. (b) any person, who, on the commencement of the Insurance (Amendment) Act, 1968, has in his possession, custody or control any books, documents and other papers relating to the Tariff Committee, or the Regional Councils, shall be liable to account for the said books, documents and papers to the Advisory Committee and shall deliver them to the Advisory Committee or to such person as the Committee may direct.

(2) Without prejudice to the provisions contained in this section, it shall be lawful for the Advisory Committee to take all necessary steps for securing possession of all properties which have been transferred to, and vested in, it under this Act.

64UJ. (1) The Advisory Committee may constitute such Regional Committees as and when it deems fit for one or more of the prescribed regions.

(2) Each Regional Committee shall consist of not more than seven persons of which not more than five shall be elected by such groups of insurers carrying on general insurance business in the region as may be prescribed and not more than two shall be nominated by the Authority.

Duty of person having custody or control of property to deliver such property to the Advisory Committees.

Power of the Advisory Committee to constitute Regional Committees.

(3) For the purpose of enabling it effectively to discharge its duties, any Regional Committee may constitute such sub-committees as it may think fit, whether consisting of members of the Regional Committee or not.

(4) It shall be the duty of every Regional Committee to advise the Advisory Committee on any question connected with the fixation of rates, advantages, terms and conditions for risks in its region which may be referred to it by the Advisory Committee for advice, and in addition, every Regional Committee shall perform such other functions as may be delegated to it by the Advisory Committee by regulations made by it with the previous approval of the Central Government.

(5) Where, in the exercise of any functions delegated to it under this section, any Regional Committee or any sub-committee thereof restrains an insurance agent from procuring or causing to be procured general insurance business in any area, such agent may prefer an appeal to the Authority against such order within thirty days from the date of service of that order on him and the Authority may, after giving such agent an opportunity of being heard, pass such orders thereon as it may think fit and the orders made by the Authority on such appeal shall be final.

(6) Notwithstanding anything contained in this section, every Regional Council and every Sectional or other Committee of such Regional Council, in existence immediately before the commencement of the Insurance (Amendment) Act, 1968, shall, until it is abolished by the Advisory Committee, be deemed to be a Regional Committee or sub-committee as the case may be, established in accordance with the provisions of this section and shall function as such and shall have all the powers and responsibilities which it had immediately before such commencement, and if the term of any such Council or Committee expires before Regional Committees constituted under sub-section (1) and sub-committees constituted under sub-section (3) come into existence, such terms shall be deemed to have been validly extended up to the time when such Regional Committees and sub-committees are established.

62 of 1968.

Levy of fees by
the Advisory
Committee.

64UK. (1) Every insurer shall annually before the prescribed date make payment to the Advisory Committee in the prescribed manner of such fees, not exceeding for any year, in the case of an insurer doing only re-insurance business in India, one per cent. of his total premiums in respect of facultative re-insurance accepted by him in India in the preceding year and in the case of any other insurer, one per cent. of the total gross premium written direct by him in India in the preceding year, as may be specified by the Advisory Committee for the purpose of this Part.

(2) The Advisory Committee may collect, in addition to the fees mentioned in sub-section (1), reasonable fees and charges from any person to cover the cost of any specific services rendered by it.

(3) If an insurer fails to make payment within the prescribed date of any fee required to be paid under sub-section (1) he shall be deemed to have failed to comply with the provisions of this Act.

(4) The Authority may, so long as an application to the court under sub-section (5D) of section 3 has not been made, revive the registration which might have been cancelled for failure to make payment of the fee required to be made under sub-section (1), if the insurer makes payment of such fee together with such penalty not exceeding the actual amount of fee payable as the Authority may require.

Power to
remove
difficulties.

64UL. If any difficulty arises in giving effect to the provisions of this Part, the Central Government may, by order, make such provisions or give such directions not inconsistent with the provisions of this Act as may appear to it to be necessary or expedient for the removal of the difficulty:

Provided that no such power shall be exercised after the expiry of a period of four years from the commencement of this Part.

62 of 1968. **64UM.** (1) (A) Save as otherwise provided in this section, no person shall act as a surveyor or loss assessor in respect of general insurance business after the expiry of a period of one year from the commencement of the Insurance (Amendment) Act, 1968, unless he holds a valid licence issued to him by the Authority.

62 of 1968. (B) Every person who intends to act as a surveyor, or loss assessor after the expiry of a period of one year from the commencement of the Insurance (Amendment) Act, 1968 but before the commencement of the Insurance Regulatory and Development Authority Act, 1999, shall make an application to the Authority within such time, in such form, in such manner and on payment of such fee, not exceeding rupees two hundred and fifty, as may be prescribed.

41 of 1999. (BA) Every person who intends to act as a surveyor or loss assessor after the expiry of a period of one year from the commencement of the Insurance Regulatory and Development Authority Act, 1999, shall make an application to the Authority within such time, in such manner and on payment of such fee as may be determined by the regulations made by the Authority:

41 of 1999. Provided that any licence issued immediately before the commencement of the Insurance Regulatory and Development Authority Act, 1999, shall be deemed to have been issued in accordance with the regulations providing for such licence.

(C) Every licence issued under this section shall remain in force, unless cancelled earlier, for a period of five years from the date of issue thereof, and may be renewed for a period of five years at a time, on payment of such fee, not exceeding rupees two hundred, as may be determined by the regulations.

(D) No licence to act as a surveyor or loss assessor shall be issued unless—

(i) the applicant, where he is an individual, satisfies the Authority that he—

41 of 1999. (a) has been in practice as a surveyor or loss assessor on the date of commencement of the Insurance Regulatory and Development Authority Act, 1999, or,

(b) holds a degree of a recognized University in any branch of engineering, or

(c) is a fellow or associate member of the Institute of Chartered Accountants of India or the Institute of Cost and Works Accountants of India, or

(d) possesses actuarial qualifications or holds a degree or diploma of any recognized University or Institute in relation to insurance, or

(e) holds a diploma in insurance granted or recognized by the Government, or

(f) possesses such other technical qualifications as may be specified by the regulations made by the Authority, and

(g) does not suffer from any of the disqualifications mentioned in sub-section (4) of section 42;

(ii) the applicant, where he is a company or firm, satisfies the Authority that all his directors or partners, as the case may be, possess one or more of the qualifications specified in clause (i) and none of such directors or partners suffer from any of the disqualifications mentioned in sub-section (4) of section 42.

(E) Every application for the renewal of the licence shall be made at least thirty days before the expiry of the period of validity thereof.

(F) The Authority may, if he is satisfied that any licence issued or renewed under this section has been lost or destroyed, issue a duplicate licence on payment of a fee of rupees

five and the duplicate licence so issued shall remain in force for the remainder of the period of validity of the licence in lieu of which it is issued.

(G) Without prejudice to the powers conferred by sub-section (7), the Authority, if satisfied that the holder of any licence has made a statement which is false in material particulars with regard to his eligibility for obtaining such licence or has, after the issue or renewal of such licence, acquired any of the disqualifications mentioned in sub-section (4) of section 42, may, after giving a reasonable opportunity to the holder of such licence of being heard, by order cancel such licence and notify such cancellation in the Official Gazette.

(IA) Every surveyor and loss assessor shall comply with the code of conduct in respect of their duties, responsibilities and other professional requirements as may be specified by the regulations made by the Authority.

(2) No claim in respect of a loss which has occurred in India and requiring to be paid or settled in India equal to or exceeding twenty thousand rupees in value on any policy of insurance, arising or intimated to an insurer at any time after the expiry of a period of one year from the commencement of the Insurance (Amendment) Act, 1968, shall, unless otherwise directed by the Authority, be admitted for payment or settled 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 surveyor or loss assessor (hereafter referred to as "approved surveyor or loss assessor"):

62 of 1968.

Provided that nothing in this sub-section shall be deemed to take away or abridge the right of the insurer to pay or settle any claim at any amount different from the amount assessed by the approved surveyor or loss assessor.

(3) The Authority may, at any time, in respect of any claim of the nature referred to in sub-section (2), call for an independent report from any other approved surveyor or loss assessor specified by him and such surveyor or loss assessor shall furnish such report to the Authority within such time as may be specified by the Authority or if no time limit has been specified by it within a reasonable time and the cost of, or incidental to such report shall be borne by the insurer.

(4) The Authority may, on receipt of a report referred to in sub-section (3), issue such directions as it may consider necessary with regard to the settlement of the claim including any direction to settle a claim at a figure less than, or more than, that at which it is proposed to settle it or it was settled and the insurer shall be bound to comply with such directions:

Provided that where the Authority issues a direction for settling a claim at a figure lower than that at which it has already been settled, the insurer shall be deemed to comply with such direction if he satisfies the Authority that all reasonable steps, with due regard to the question whether the expenditure involved is not disproportionate to the amount required to be recovered, have been taken with due despatch by him:

Provided further that no direction for the payment of a lesser sum shall be made where the amount of the claim has already been paid and the Authority is of opinion that the recovery of the amount paid in excess would cause undue hardship to the insured:

Provided also that nothing in this section shall relieve the insurer from any liability, civil or criminal, to which he would have been subject but for the provisions of this sub-section.

(5) No insurer shall, after the expiry of a period of one year from the commencement of the Insurance (Amendment) Act, 1968, pay to any person any fee or remuneration for surveying, verifying or reporting on a claim of loss under a policy of insurance unless the person making such survey, verification or report is an approved surveyor or loss assessor.

62 of 1968.

(6) Where, in the case of a claim of less than twenty thousand rupees in value on any policy of insurance it is not practicable for an insurer to employ an approved

surveyor or loss assessor without incurring expenses disproportionate to the amount of the claim, the insurer may employ any other person (not being a person disqualified for the time being for being employed as a surveyor or loss assessor) for surveying such loss and may pay such reasonable fee or remuneration to the person so employed as he may think fit.

(7) If the Authority is satisfied that an approved surveyor or loss assessor has been guilty of wilfully making a false statement knowing it to be false or of being knowingly a party to the settlement of a claim in a fraudulent manner, he may, after giving such surveyor or loss assessor an opportunity of being heard, cancel the licence issued to him with effect from such date as may be specified by him and shall notify such cancellation in the Official Gazette.

(8) Any surveyor or loss assessor whose licence has been cancelled shall not be eligible for having a licence to act as a surveyor or loss assessor for a period of three years from the date on which the cancellation is notified in the Official Gazette.

(9) The Authority may, in respect of any claim of value of less than twenty thousand rupees on an insurance policy, if the claim has not been or is not proposed to be reported upon by a surveyor or loss assessor, direct that such claim shall be reported upon by an approved surveyor, or loss assessor and where the Authority makes such direction, the provisions of sub-sections (3) and (4) shall apply in respect of such claim.

(10) Where, in relation to any class of claims, the Authority is satisfied that it is customary to entrust the work of survey or loss assessment to any person other than a licensed surveyor or loss assessor, or it is not practicable to make any survey or loss assessment, it may, by an order published in the Official Gazette, exempt such class of claims from the operation of this section.

PART IIC

SOLVENCY MARGIN, ADVANCE PAYMENT OF PREMIUM AND RESTRICTIONS ON THE OPENING OF A NEW PLACE OF BUSINESS

64V. (1) For the purpose of ascertaining compliance with the provisions of section 64VA,—

Assets and liabilities how to be valued.

(i) assets shall be valued at values not exceeding their market or realisable value and the assets hereafter mentioned shall be excluded to the extent indicated, namely:—

(a) agent's balances and outstanding premiums in India, to the extent they are not realised within a period of thirty days;

(b) agents' balances and outstanding premium outside India, to the extent they are not realisable;

(c) sundry debts, to the extent they are not realisable;

(d) advances of an unrealisable character;

(e) furniture, fixtures, dead stock and stationery;

(f) deferred expenses;

(g) profit and loss appropriation account balance and any fictitious assets other than pre-paid expenses;

(h) such other asset or assets as may be specified by the regulations made in this behalf;

(ii) a proper value shall be placed on every item of liability and liabilities in respect of share capital, general reserve and other reserves of similar nature not created

to meet specific liabilities and investment reserve, reserve for bad and doubtful debts, and depreciation fund shall be excluded and liabilities thereafter mentioned shall be included to the extent indicated, namely:—

(a) provision for dividends declared or recommended, and outstanding dividends in full;

(b) reserves for unexpired risks in respect of—

(i) fire and miscellaneous business, 50 per cent.

(ii) marine cargo business, 50 per cent, and

(iii) marine full business, 100 per cent.,

of the premium, net of re-insurances, during the preceding twelve months;

(c) estimated liability in respect of outstanding claims, in full;

(d) amount due to insurance companies carrying on insurance business, in full;

(e) amounts due to sundry creditors, in full;

(f) provision for taxation, in full;

(g) such other liability which may be made in this behalf to be included for the purpose of clause (ii).

Explanation.—In case of an insurer whose principal place of business or domicile is outside India, where, in the accounts filed with the public authority of the country in which the insurer is constituted, incorporated or domiciled, in respect of marine insurance business, the provisions for unexpired risks and outstanding claims are not shown separately, the liabilities under items (b) and (c) of clause (ii) in respect of marine insurance business shall be taken together at a figure of not less than the total premium less re-insurances in respect of that class of business during the preceding twelve months.

(2) Every insurer shall furnish to the Authority with his returns under section 15 or section 16; as the case may be, a statement certified by an auditor approved by the Authority in respect of general insurance business, or an actuary approved by the Authority in respect of life insurance business, as the case may be, of his assets and liabilities assessed in the manner required by this section as on the 31st day of March of the preceding year.

(3) Every insurer shall value his assets and liabilities in the manner required by this section and in accordance with the regulations which may be made by the authority in this behalf.

Sufficiency of assets.

64VA. (1) An insurer shall, at all times before the commencement of the Insurance Regulatory and Development Authority Act, 1999, maintain an excess of the value of his assets over the amount of his liabilities of not less than the amount arrived at as follows (hereafter in this section referred to as the "relevant amount"), namely:—

41 of 1999.

(i) in the case of an insurer whose total premium income less re-insurances in respect of general insurance business (hereafter in this sub-section referred to as the "said income") in the preceding twelve months did not exceed five crores of rupees, one-fifth of the said income subject to a minimum of—

(a) five lakhs of rupees in the case of an insurer who is a co-operative society registered under the Co-operative Societies Act, 1912, or any other law for the time being in force in any State relating to co-operative societies, or

2 of 1912.

(b) ten lakhs of rupees in the case of any other insurer; and

(ii) in the case of an insurer whose said income in the preceding twelve months exceeded five crores of rupees, the aggregate of one-fifth of the first five crores of rupees of the said income and one-tenth of the amount by which the said income in the preceding twelve months exceeded five crores of rupees:

Provided that where a number of insurers occupying the status of parent and subsidiary companies prepare, under the laws of the country of origin of the parent company, a consolidated balance-sheet, the provisions of this sub-section shall apply to such of them as are not members of any group as if they constituted a single insurer, subject to the further condition that the relevant amount shall, in no case, be less than a sum equal to—

(i) the number of such insurers multiplied by ten lakhs of rupees, or

2 of 1912. (ii) where all the insurers are co-operative societies registered under the Cooperative Societies Act, 1912, or any other law for the time being in force in any State relating to co-operative societies, the number of such insurers multiplied by five lakhs of rupees:

Provided further that if in respect of any insurer the Central Government is satisfied that either by reason of an unfavourable claim experience or because of a sharp increase in the volume of new business, or for any other reason, compliance with the provisions of this sub-section would cause undue hardship to the insurer, it may direct that for such period and subject to such conditions as it may specify, the provisions of this sub-section shall apply to that insurer with the modification that instead of the proportion of one-fifth, wherever mentioned in this sub-section, such other proportion being not less than one-tenth as may be specified by that Government shall be applicable to that insurer:

62 of 1968. Provided also that in the case of an insurer carrying on insurance business at the commencement of the Insurance (Amendment) Act, 1968, it shall be sufficient compliance with the provisions of this sub-section until the 31st December, 1972 or until such subsequent date, not being later than 31st December, 1976 as the Central Government may, at its discretion, allow for any particular insurer, if he progressively brings up the excess of the value of his assets over the amount of his liabilities, in such manner as may be prescribed, to the relevant amount.

41 of 1999. (1A) Every insurer shall, at all times, on or after the commencement of the Insurance Regulatory and Development Authority Act, 1999, maintain an excess of the value of his assets over the amount of his liabilities of not less than the amount arrived at as follows (hereinafter to in this section as the "required solvency margin" namely:—

(i) in the case of an insurer carrying on life insurance business, the required solvency margin shall be the higher of the following amounts—

(a) fifty crores of rupees (one hundred crores of rupees in case of re-insures); or

(b) the aggregate sums of the results arrived at in items (I) and (II) stated below:—

(I) the aggregate of the results arrived at by applying the calculation described in item (A) below (Step I) and the calculation described in item (B) below (Step II):

(A) for Step I—

(A.1) there shall be taken, a sum equal to a percentage determined by the regulations not exceeding five per cent. of the mathematical reserves for direct business and re-insurance acceptances without any deduction for re-insurance cessions;

(A.2) the amount of mathematical reserves at the end of the preceding financial year after the deduction of

re-insurance cessions shall be expressed as a percentage of the amount of those mathematical reserves before any such deduction; and

(A.3) the sum mentioned in item (A.1) above shall be multiplied—

(A.3.1) where the percentage arrived at under item (A.2) above is greater than eighty-five per cent. (or in the case of a re-insurer carrying on exclusive re-insurance business, fifty per cent.) by that greater percentage; and

(A.3.2) in any other case, by eighty-five per cent. (or in the case of a re-insurer carrying on exclusive re-insurance business, by fifty per cent.);

(B) for Step II—

(B.1) there shall be taken, a sum equal to a percentage determined by the regulations made by the Authority not exceeding one per cent. of the sum at risk for the policies on which the sum at risk is not a negative figure, and

(B.2) the amount of sum at risk at the end of the preceding financial year for policies on which the sum at risk is not a negative figure after the deduction of re-insurance cession shall be expressed as a percentage of the amount of that sum at risk before any such deduction, and

(B.3) the sum arrived at under item (B.1) above shall be multiplied—

(B.3.1) where the percentage arrived at under item (B.2) above is greater than fifty per cent. by that greater percentage; and

(B.3.2) in any other case by fifty per cent.

(II) a percentage determined by the regulations made by the Authority of the value of assets determined in accordance with the provisions of section 64V;

(ii) in the case of an insurer carrying on general insurance business, the required solvency margin, shall be the highest of the following amounts:—

(a) fifty crores of rupees (one hundred crores of rupees in case of re-insurer);

or

(b) a sum equivalent to twenty per cent. of net premium income; or

(c) a sum equivalent to thirty per cent. of net incurred claims.

subject to credit for re-insurance in computing net premiums and net incurred claims being actual but a percentage, determined by the regulations not exceeding fifty per cent:

Provided that if in respect of any insurer, the Authority is satisfied that either be reason of an unfavourable claim experience or because of sharp increase in the volume of the business, or for any other reason, compliance with the provisions of this sub-section would cause undue hardship to the insurer, the Authority may direct, for such period and subject to such conditions, such solvency margin not being less than the lower of the amount mentioned in sub-clause (i) or sub-clause (ii) above, as the case may be.

Explanation.—For the purpose of this sub-section, the expressions—

(i) "mathematical reserves" means the provision made by an insurer to cover liabilities (excluding liabilities which have fallen due and liabilities arising from deposit back arrangement in relation to any policy whereby an amount is deposited by re-insurer with the cedant) arising under or in connection with policies or contracts

for life insurance business. Mathematical reserves also include specific provision for adverse deviations of the bases, such as mortality and morbidity rates interest valuation for this purpose;

(ii) "net incurred claims" means the average of the net incurred claims during the specified period of not exceeding three preceding financial years;

(iii) "sum at risk", in relation to a life insurance policy, means a sum which is—

(a) in any case in which an amount is payable in consequence of death other than a case falling within sub-clause (b) below, the amount payable on death, and

(b) in any case in which the benefit under the policy in question consists of the making, in consequence of death, of the payments of annuity, payment of a sum by instalments or any other kind of periodic payments, the present value of that benefit, less in either case the mathematical reserves in respect of the relevant policies.

(2) An insurer who does not comply with the provisions of sub-section (1) shall be deemed to be insolvent any may be wound-up by the court.

(2A) If, at any time an insurer does not maintain the required solvency margin in accordance with the provisions of this section, he shall, in accordance with the directions issued by the Authority, submit a financial plan, indicating a plan of action to correct the deficiency to the Authority within a specified period not exceeding three months.

(2B) An insurer who has submitted a plan under sub-section (2A) to the Authority shall propose modifications to the plan if the Authority considers it inadequate, and shall give effect to any plan accepted by the Authority as adequate.

(2C) An insurer who does not comply with the provisions of sub-section (2A) shall be deemed to be insolvent and may be wound-up by the court.

(3) The Authority shall be entitled at any time to take such steps as he may consider necessary for the inspection or verification of the assets and liabilities of any insurer or for securing the particulars necessary to establish that the requirements of this section have been complied with as on any date and the insurer shall comply with any requisition made in this behalf by the Authority, and if he fails to do so within two months from the receipt of the requisition, he shall be deemed to have made default in complying with the requirements of this section.

(4) The provisions of this section shall not apply to an insurer, specified in sub-clause (c) of clause (9) of section 2.

(5) In applying the provisions of sub-section (1) to any insurer, who is a member of a group, the relevant amount for that insurer shall be an amount equal to that proportion of the relevant amount which that group, if considered as a single insurer, would have been required to maintain as the proportion of his share of the risk on each policy issued by the group bears to the total risk on that policy:

Provided that when a group of insurers ceases to be a group, every insurer in that group who continues to carry on any class of insurance business in India, shall comply with the requirements of sub-section (1) as if he had not been an insurer in a group at any time:

Provided further that it shall be sufficient compliance with the provisions of the foregoing proviso if the insurer brings up the excess of the value of his assets over the amount of his liabilities to the required amount within a period of six months from the date of cessation of the group:

Provided also that the Central Government may, on sufficient cause being shown, extend the said period of six months by such further periods as it may think fit, so however that the total period may not in any case exceed one year.

(6) The Central Government may, by notification in the Official Gazette, reduce the sum of ten lakhs of rupees or five lakhs of rupees, as the case may be, referred to in sub section (1) to a lower figure not less than one hundred thousand rupees in respect of a country craft insurer or in respect of an insurer not having a share capital and carrying on

only such insurance business as, in the opinion of the Central Government, is not carried on ordinarily by insurers under separate policies.

(7) Every insurer shall furnish to the Authority his returns under section 15 or section 16, as the case may be, in case of life insurance business a statement certified by an actuary approved by the Authority, and in case of general insurance business a statement certified by an auditor approved by the Authority, of the required solvency margin maintained by the insurer in the manner required by sub-section (1A).

* * * * *

Restrictions on the opening of a new place business.

64VC. (1) No insurer shall, after the commencement of the Insurance (Amendment) Act, 1968, open a new place of business in India or change otherwise than within the same city, town or village, the location of an existing place of business situated in India without obtaining the prior permission of the Authority.

62 of 1968.

(2) The Authority may grant permission under sub-section (1) subject to such conditions as he may think fit to impose either generally or with reference to any particular case.

(3) Where, in the opinion of the Authority, an insurer has, at any time, failed to comply with any of the conditions imposed on him under this section, the Authority may, by order in writing and after affording reasonable opportunity to the insurer for showing cause against the action proposed to be taken against him, revoke any permission granted under this section.

Explanation.—For the purposes of this section, "place of business" includes a branch, a sub-branch, inspectorate, organisation office and any other office, by whatever name called.

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PART III

PROVIDENT SOCIETIES

Defination of "provident society".

65. (1) In this Part "provident society" means, a person who, or a body of persons (whether corporate or unincorporate) which, not being an insurer registered for the time being under Part II of this Act, carries on the business of insuring the payment, on the happening of any of the contingencies mentioned in sub-section (2), of—

(a) an annuity of or equivalent to one hundred rupees or less payable for an uncertain period, or

(b) a gross sum of one thousand rupees or less, whether paid or payable in a lump sum or in two or more instalments over a certain period,

exclusively in both cases (a) and (b) of any profit or bonus not being a guaranteed profit or bonus.

Explanation.—For the purposes of this sub-section, a period is "certain" if its duration is ascertainable in advance and "uncertain" if its duration is not so ascertainable.

(2) The contingencies referred to in sub-section (1) are the following, namely:—

(a) the birth, marriage or death of any person or the survival by a person of a stated or implied age or contingency;

(b) failure of issue;

(c) the occurrence of a social, religious or other ceremonial occasion;

(d) loss of or retirement from employment;

(e) disablement in consequence of sickness or accident;

(f) the necessity of providing for the education of a dependent;

(g) any other contingency which may be prescribed or which may be authorised by the State Government with the approval of the Central Government.

(3) For the purposes of sub-sections (1) and (2)—

(a) contracts entered into before the commencement of this Act shall not be taken into account;

(b) two or more policies issued to one person shall, for the purposes of determining whether the limits fixed by sub-section (1) have or have not been exceeded, be deemed to be one policy if the contingencies on the happening of which the sums are payable under the policies (whether the contingencies be the same or different) relate to one person only, whether he be the policy-holder or some other person.

5 of 1912. (4) Every person or body of persons for the time being registered as a provident society under the Provident Insurance Societies Act, 1912, and every person or body of persons for the time being registered as a provident society under this Act shall be deemed to be a provident society for all the purposes of this Act.

(5) If the question arises whether any person or body of persons is or is not a provident society within the meaning of this section Authority shall decide the question and its decision shall be final.

47 of 1950. **65A.** No person shall, after the commencement of the Insurance (Amendment) Act, 1950, begin to carry on in India any business specified in sub-section (1) of section 65, and no provident society carrying on any such business in India shall, after the expiry of one year from such commencement, continue to carry on any such business, unless he or it is—

(a) a public company, or

2 of 1912. (b) a society registered under the Co-operative Societies Act, 1912 or under any other law for the time being in force in any State relating to co-operative societies, or

(c) a body corporate incorporated under the law of any country outside India not being of the nature of a private company.

66. No provident society shall undertake any form of insurance not falling within the limits fixed by sub-section (1) of section 65, nor shall any provident society be eligible to be registered under section 3.

67. No provident society established after the commencement of this Act shall adopt as its name, and no provident society established before the commencement of this Act shall continue after the expiry of six months from the commencement thereof to use as its name, any combination of words which fails to include the word "provident" or which includes the word "life".

47 of 1950. **68.** [Rep. by the Insurance (Amendment) Act, 1950, sec. 48 (w.e.f. 1-6.1950).]

69. (1) No provident society shall carry on any business upon the dividing principle, that is to say, on the principle that the benefit secured by a policy is not fixed but depends either wholly or partly on the results of a distribution of certain sums amongst policies becoming claims within certain time-limits, or on the principle that the premiums payable by a policy-holder depend wholly or partly on the number of policies becoming claims within certain time-limits.

(2) The Authority shall, as soon as possible, take steps to have any provident society which carries on business on dividing principle wound-up:

Provided that, where any such provident society in existence at the commencement of this Act applies within three months of such commencement to the Authority for permission to continue carrying on its business with a view meanwhile to reorganise its business in accordance with the provisions of this Act, the Authority may at its discretion, with due

Prohibition of transaction of insurance business by provident societies other than public companies or co-operative societies.

Restrictions on provident societies.

Name.

Dividing business.

regard to the past history of the society, permit the society to continue business for a period not exceeding two years from the date of receipt of such permission, so however that no new business on the dividing principle is undertaken by the society.

(3) Where after the commencement of the Insurance (Amendment) Act, 1941, a provident society is to be wound-up in pursuance of this section, or where, whether before or after the commencement of that Act, a provident society ceases to carry on business on the dividing principle, the provisions of sub-section (2) and sub-section (3) of section 52 shall, so far as may be, apply in like manner as they apply to an insurer ceasing to carry on business on the dividing principle. 13 of 1941.

Registration. **70.** (1) No provident society except a provident society registered under the provisions of the Provident Insurance Societies Act, 1912, shall receive any premium or contribution until it has obtained from the Authority, before the date of commencement of the Insurance Regulatory and Development Authority Act, 1999, a certificate of registration. 5 of 1912. 41 of 1999.

(2) Every application for registration shall be accompanied by—

(a) a certified copy of the rules of the society, and when the society is a company incorporated under the Indian Companies Act, 1913 or under the Indian Companies Act, 1882 or under the Indian Companies Act, 1866 or under any Act repealed thereby, a certified copy of the Memorandum and Articles of Association or where the society is not such a company a certified copy of the deed of constitution of the society; 7 of 1913. 6 of 1882. 10 of 1866.

(b) the names and addresses of the proprietors or directors, and the managers of the society, the full address of the registered office of the society, the full address of the principle office of the society in India, the name of the manager at such office, and the name and address of some one or more persons resident in India authorised to accept any notice required to be served on the society;

(c) a certificate from the Reserve Bank of India that the initial deposit referred to in section 73 has been made;

(d) a declaration verified by an affidavit made by the principal officer of the society authorised in that behalf that the minimum working capital required by section 72, is available; and

(e) the receipt showing payment in the prescribed manner of the prescribed fee for registration being not more than two hundred rupees.

(3) The Authority may refuse to issue a certificate of registration until he is satisfied that the rules of the society comply with the provisions of this Act and that the society complies with the provisions of sections 65A, 67, 71, 72, 73, and 73A but if he is so satisfied he shall register the society and its rules.

(4) The Authority may, after giving previous notice in writing in such manner as he thinks fit specifying the grounds for the proposed cancellation, and allowing the society concerned an opportunity of being heard, apply to the Court and obtain sanction for cancellation of the registration made under this section or made under the provisions of the Provident Insurance Societies Act, 1912— 5 of 1912.

(a) if it is satisfied from the returns furnished under the provisions of this Act or as the result of an inquiry made under section 87—

(i) that the society is insolvent or is likely to become so, or

(ii) that the business of the society is conducted fraudulently or not in accordance with the rules thereof, or what it is in the interests of the policy-holders that the society should cease to carry on business, or

(c) if the society, having failed to comply with any requirement or having contravened any provision of this Act, has continued such failure or contravention for a period of one month after notice of such failure or contravention has been conveyed to the society by the Authority:

Provided that the Authority may, if it thinks, fit, instead of applying for cancellation of the registration under sub-clause (i) of clause (a) of this sub-section make a recommendation to the court that the contracts of the society should be reduced in such manner and subject to such conditions as he may indicate:

Provided further that the Authority may, without previous notice and without application to the court for sanction,—

(a) cancel the registration of a provident society which has failed to have its registration renewed, or

(aa) cancel the registration of a provident society if any deposit required by section 73, has not been made, or

(b) cancel, on such terms and conditions as it think fit, the registration of any provident society which applies to it for such cancellation if it is satisfied that the society has ceased to carry on insurance business and that all its liabilities in respect of insurance policies are either satisfied or otherwise provided for, or

(c) cancel the registration of a provident society if he has reason to believe that any claim upon the society arising in India under any policy of insurance remains unpaid for three months after final judgment in regular course of law.

(5) When a registration is cancelled the provident society shall not, after the cancellation has taken effect, enter into any new contracts of insurance, but all rights and liabilities in respect of contracts of insurance entered into by it before such cancellation takes effect shall, subject to the provisions of section 88, continue as if the cancellation had not taken place.

(6) Where a registration is cancelled under clause (b) of sub-section (4), or clause (c) of the second proviso to that sub-section, or because the society has failed to have its registration renewed, the Authority may at its discretion revive the registration of the provident society, within six months from the date on which the cancellation took effect, makes the deposits required by section 73 or satisfies the Authority that no claim upon it such as is referred to in the said clause (c) remains unpaid or has had an application under sub-section (3) of section 70A accepted, as the case may be, and complies with any directions which may be given to it by the authority.

(7) The Authority may, on payment of the prescribed fee which shall not exceed five rupees, issue a duplicate certificate of registration to replace a certificate lost, destroyed or mutilated, or in any any other case where it is of opinion that the issue of a duplicate certificate is necessary.

Renewal of registration.

70A. (1) Every provident society registered under this Act, or under the Provident Insurance Societies Act, 1912, shall have its registration renewed annually for each period of twelve months after that ending on the 30th day of June, 1942. 5 of 1912.

(2) An application for the renewal of a registration shall be made by the society to the Authority before the 30th day of June preceding the period for which renewal is sought, and shall be accompanied as provided in sub-section (3) by evidence of payment of the prescribed fee which shall not exceed two hundred rupees but may vary according to the volume of insurance business done by the society.

(3) The prescribed fee for the renewal of a registration for any year shall be paid into the Reserve Bank of India, or, where there is no office of that Bank, into the Imperial Bank of India acting as the agent of that Bank, or into any Government treasury, and the receipt, shall be sent along with the application for renewal of the registration.

(4) If a provident society fails to apply for renewal of registration before the date specified in sub-section (2) the Authority may, so long as it has taken no action under section 88 to have the society wound-up, accept an application for renewal of registration on receipt from the society of the fee payable with the applications and such penalty, not exceeding the prescribed fee payable by the society, as he may require.

(5) The Authority shall, on being satisfied that the society has fulfilled the requirements of this section, renew the registration and grant it a certificate of renewal of registration.

Supplementary information and reports of alterations in particulars furnished with application for registration.

70B. (1) Every provident society registered under section 70 before the commencement of the Insurance (Amendment) Act, 1941 shall, before the expiration of three months from the commencement of the Insurance (Amendment) Act, 1941 furnished to the Authority such particulars in addition to those already supplied for the purpose of obtaining registration as are required by sub-section (2) of section 70 of this Act as amended by the Insurance (Amendment) Act, 1941. 13 of 1941.

(2) Every provident society registered under the provisions of the Provident Insurance Societies Act, 1912, shall, before the expiration of three months from the commencement of the Insurance (Amendment) Act, 1941 furnished to the Authority so far as it has not already done so the documents and information required by clauses (a) and (b) of sub-section (2) of section 70 to accompany an application by a provident society for registration under the section. 5 of 1912. 13 of 1941.

(3) When any alteration occurs or is made which affects any of the matters which are required under the provisions of sub-section (2) of section 70 to accompany an application by a provident society for registration under that section, or are to be furnished to the

Authority under this section, the provident society shall furnish forthwith to the Authority full particulars duly authenticated of such alternation.

71. The provisions of sub-sections (2) and (3) of section 10, section 20, sub-section (1) of section 27, sections 27A, 28, 29, 31A, 31B, 32, 46 and 53 shall apply to provident societies as they apply to insurers, and in such application references to shareholders of an insurer shall be construed as references to members of a provident society and references to section 7 or section 98 shall be construed as references to section 73:

Certain provisions of Part II to apply to provident societies.

Provided that a provident society may charge a fee not exceeding one rupee for supplying a copy of any document referred to in sub-section (2) of section 20.

72. No provident society shall be registered unless it has a paid-up capital sufficient to provide as working capital a net sum of not less than five thousand rupees exclusive of deposits made under this Act and exclusive in the case of a company of any expenses incurred in connection with the formation of the company.

Working Capital.

73. (1) Every provident society shall, if established before the commencement of this Act within one year from such commencement, or, if established after the commencement of this Act before the society applies for registration under section 70, deposit and keep deposited with the Reserve Bank of India in one of the offices in India of the Bank, for and on behalf of the Central Government, cash or approved securities amounting at the market value of the securities on the date of deposit to five thousand rupees, and shall thereafter make in each calendar year a further deposit amounting to not less than one-fifth of the premium income for the preceding calendar year as shown in the revenue account of the society (including admission fees and other fees received by the society) until the total amount so deposited and kept is fifty thousand rupees.

Deposits.

(2) The provisions of sub-sections 8, 9, 9A, 9B and 10 of section 7 and of sub-section (1) of section 8 and of section 9 shall apply to the deposits made under this section as they apply to deposits made by an insurer.

73A. (1) A provident society shall not be registered by a name identical with that by which an insurer or another provident society in existence is already registered, or so nearly resembling that name as to be calculated to deceive, except when the provident society in existence is in the course of being dissolved and signifies its consent, or the insurer in existence signifies his consent, to Authority.

Restriction on name of provident society.

(2) If a provident society, through inadvertence or otherwise, is without such consent as aforesaid registered by a name identical with that by which an insurer or another provident society already in existence is registered, or so nearly resembling it as to be calculated to deceive, the first-mentioned society shall, if called upon to do so by the Authority on the application of the insurer or the second-mentioned society, change its name within a time to be fixed by the Authority:

Provided that nothing in this section shall apply to any provident society carrying on business before the commencement of the Insurance (Amendment) Act, 1946.

Rules.

74. (I) Every provident society shall in its rules set forth—

(a) the name, the object and the location of the registered office of the society;

(b) the contingencies or classes of contingency on the happening of which money is to be paid;

(c) the conditions to be complied with before, and the payments to be made on, admission to society;

(d) the rates of premium or contribution, and the periods for which or the times at which premiums or contributions are payable;

(e) the maximum amount payable to a subscriber or policy-holder;

(f) the nature and amounts of the benefits provided for by the society;

(g) the circumstances in which a bonus may be paid to a policy-holder;

(h) the nature of the evidence required for the proof of the happening of any contingency on which money is to be paid;

(i) the circumstances in which policies may be forfeited or renewed or the whole or a part of the premiums paid on a policy may be returned, or surrender value of a policy may be granted;

(j) the penalties for delay in paying or failure to pay premiums or contributions;

(k) the proportion of the annual income of society which may be disbursed on and the provisions to be made for meeting the expenses of the management of the society;

(l) the person or persons who or the authority which shall have power to invest the funds of the society;

(m) the provisions for appointment of auditors and their remunerations;

(n) the procedure to be adopted in altering the rules of the society;

(o) unless these are provided for in the articles of association of a society which is a company incorporated under the Indian Companies Act, 1913 or under the Indian Companies Act, 1882, or under the Indian Companies Act, 1866, or under any Act repealed thereby,—

7 of 1913.
6 of 1982.
10 of 1866.

(i) the mode of appointment and removal, the qualification and the powers of a director, manager, secretary or other officer of the society;

(ii) the manner of raising additional capital; and

(iii) the provisions for the holding of general meetings of the members and policy-holders and for the powers to be exercised and procedure to be followed thereat; and

(p) such other matters as may be prescribed.

5 of 1912. (2) Where the rules of any provident society registered under the Provident Insurance Societies Act, 1912 fail to comply with the expiry of twelve months from the commencement of this Act amend the rules so as to comply with these provisions.

75. (1) No amendment of any rule of a provident society shall be valid until it has been sent to the Authority and has been registered by it. Amendment of rules.

(2) The Authority on being satisfied that the proposed amendment is not contrary to the provisions of this Act shall, unless it is of opinion that the amendment unfairly affects the rights of existing members or policy-holders of the society, issue to the society an acknowledgement of the registration of the amended rule.

76. Every provident society shall on demand deliver free of cost to any member of the society a copy of the rules of the society and to any person other than a member a copy of such rules on the payment of a sum not exceeding one rupee. Supply of copy of rules.

77. Every provident society shall have in India a principal office (on the outside of which it shall keep displayed its name in a conspicuous position in legible characters) to which all communications and notices may be addressed, and shall give notice to the Authority of any change in the location thereof within twenty-eight days of its occurrence. Registered office.

78. Where any notice, advertisement or other official publication of a provident society contains a statement of the amount of the authorised capital of the society, the publication also contain a statement of the amount the capital which has been subscribed and the amount paid-up. Publication of authorised capital to contain also subscribed and paid-up capital.

79. Every provident society shall keep at its principal office in India—

(a) such registers in such form as may be prescribed;

(b) a cash-book in which shall be entered separately for each class of contingency separately specified in section 65 all sums received and expended by the society and the matters in respect of which the receipt or expenditure takes place;

(c) a ledger;

(d) a journal.

Registers and books.

80. (1) Every provident society shall at the expiry of the calendar year prepare a revenue account and balance-sheet in the prescribed form verified in the prescribed manner, together with a report on the general state of the society's affairs and shall cause the revenue account and balance-sheet to be audited by an auditor, and the auditor shall so far as may be in the audit of a provident society have the powers of, exercise the functions vested in, and discharge the duties and be subject to the liabilities imposed on, an auditor of companies by section 145 of the Indian Companies Act, 1913.

Revenue account, balance-sheet and annual statements.

7 of 1913.

(2) Every provident society shall at the expiry of the calendar year prepare with respect to that year—

(a) a statement showing separately for each class of contingency separately specified in section 65—

(i) the number of new policies effected, the total amount insured thereby and the total premium income received in respect thereof and the number of existing policies discontinued during the year with the total amount insured thereby, and

(ii) the total amount of claims made and the total amount paid in satisfaction thereof;

(b) a statement showing details of every insurance effected on a life other than the life of the person insuring; and

(c) a statement showing the total amount paid as allowances to agents and canvassers.

(3) Until the expiry of two years from the commencement of this Act this section and section 73 shall apply to provident societies registered before the commencement of this Act under the Provident Insurance Societies Act, 1912 as if the reference to the calendar year were a reference to either the financial year or the calendar year. 5 of 1912.

Actuarial report
and abstract.

81. (1) Every provident society shall once in every five years or at such shorter intervals as may be laid down by the rules of the society cause an investigation to be made as at the last day of a calendar year into its financial condition including the valuation of its liabilities and assets by an actuary.

(2) The report of the actuary shall contain an abstract in which shall be stated—

(a) the general principle adopted in the valuation, including the method by which the valuation age of lives was ascertained,

(b) the rate at each age of the mortality and any other factor assumed and the annuity values used in valuation,

(c) the reserve values held against policies effected,

(d) the rate of interest assumed, and

(e) the provision made for expenses,

and shall have appended to it a certificate signed by a principal officer of the society that all material necessary for proper valuation has been placed at the disposal of the actuary and that full and accurate particulars of every policy under which there is a liability either actual or contingent have been furnished to the actuary for the purpose of the investigation.

(3) If the actuary finds that the financial condition of the society is such that no surplus exists for distribution as bonus to the policy-holders, or as dividend to the shareholders, he shall state in his report whether in his opinion the society is insolvent and, if so, whether it should be wound up or not, and the extent to which in his opinion existing contracts should be modified or existing rates of premium should be adjusted to make good the deficiency in the assets.

Submission of
returns to
Authority.

82. (1) The revenue account and balance-sheet with the auditor's report thereon and the report on the general state of the society's affairs referred to in sub-section (1) of section 80 shall be printed and four copies of these and of the statements referred to in sub-section (2) of section 80, shall be furnished as returns to the Authority within six months from the end of the period to which they relate.

(2) All the material necessary for the proper valuation of the liabilities of the society under the provisions of section 81 shall be placed at the disposal of the actuary within three months from the end of the period to which such material relates, and the report and abstract referred to in section 81 shall be furnished as a return to the Authority within a further period of three months:

Provided that the Central Government may in any case extend the time allowed by this sub-section for the furnishing of such return by a period not exceeding three months.

(3) The provisions of sub-section (2) of section 15 relating to the copies therein referred to shall apply to the returns referred to in sub-section (1) of this section, and the provisions of section 17 shall apply to the accounts and balance-sheet of a provident society

7 of 1913.
6 of 1882.
10 of 1866.

being a company incorporated under the Indian Companies Act, 1913, or under the Indian Companies Act, 1882, or under the Indian Companies Act, 1866 or under any Act repealed thereby, as they apply to the accounts and balance-sheet of an insurer, and the Authority may exercise, in respect of returns made by a provident society and in respect of an investigation or valuation to which section 81 refers, the same powers as are exercisable by it under section 21 and section 22, respectively, in the case of an insurer.

5 of 1912.

83. (1) Every provident society, registered after the commencement of this Act, shall cause every scheme of insurance which it proposes to put into operation, and every provident society registered before the commencement of this Act under the provisions of the Provident Insurance Societies Act, 1912, shall cause any scheme which it proposes to put into operation for the first time, after such commencement to be examined by an actuary, and shall not receive any premium or contribution in connection with the scheme until the actuary has certified that the rates, advantages, terms and conditions of the scheme are workable and sound and such certificate has been forwarded to the Authority.

Actuarial
examination of
schemes.

(2) The provisions of sub-section (1) shall apply to any alteration of a scheme already in operation, but the Authority may, if it is of opinion that the alteration unfairly affects the interests of existing policy-holders, prohibit the alteration, and, if he does so, the society shall not put the altered scheme into operation, unless it first discharges to the satisfaction of the Authority all its liabilities to those of the existing policy-holders who dissent from the alteration.

5 of 1912.

(3) Every provident society registered before the commencement of this Act under the provisions of the Provident Insurance Societies Act, 1912 shall, as soon as may be and in any event before the expiry of six months from the commencement of this Act, submit all scheme of insurance which the society has in operation at the commencement of this Act to examination by an actuary and shall, before the expiration of six months from the commencement of the Insurance (Amendment) Act, 1941 send the report of the actuary thereon to the Authority.

13 of 1914.

(4) The report of the actuary shall state in respect of each scheme whether the rates, advantages, terms and conditions are workable and sound and, where no actuarial report such as is referred to in section 81 has been made within the two years preceding the examination, the report shall also state whether the assets of the society are sufficient to meet its liabilities under the existing schemes, and, if not, how in the opinion of the actuary the existing contracts should be modified.

(5) If the rates, advantages, terms and conditions of any scheme are not reported by the actuary to be workable and sound, the Authority shall give notice to the society prohibiting the scheme, and the society shall not after its receipt of such notice enter into any new contract of insurance under the scheme, but all rights and liabilities in respect of contracts of insurance entered into by the society before receipt of the notice shall, subject to the provisions of sub-section (6), continue as if the notice has not been given.

(6) Where a scheme is prohibited under the provisions of sub-section (5) the society shall, where its assets are sufficient to meet all existing liabilities, set apart out its assets the sum sufficient in the opinion of the actuary to meet the liabilities incurred under the scheme so prohibited and where its assets are not so sufficient, within three months from the date of the Prohibition, apply to the court for a modification of its existing contracts or failing such modification for the winding-up of the society.

84. Where a provident society effects policies of insurance in connection with more than one of the classes of contingency separately specified in sub-section (2) of section 65, the receipts and payments in respect of each such class shall be recorded in a separate account in the cash-book kept in accordance with section 79.

Separation of
accounts and
funds.

Investment
funds.

85. (1) * * * * *

(2) No funds or investments of a provident society except a deposit made under section 73 or under the law of any state or country relating to insurance shall be kept otherwise than in the name of the society for in the name of a public officer approved by the Central Government.

(3) No loan shall be made out of the assets of a provident society to any director, manager, managing agent, auditor, actuary, officer or partner of the society, except on the security of a policy of insurance held in the society and within its surrender value and no such loans shall be made to any concern of which a director, manager, managing agent, actuary, officer or partner of the society is a director, manager, managing agent, actuary, officer or partner:

Provided that nothing in this sub-section shall apply to loans made by a provident society to a banking company:

Provided further that where any event occurs giving rise to circumstances, the existence of which at the time of the grant of any subsisting loan would have made such grant a contravention of this sub-section, such loan shall, notwithstanding any contract to the contrary, be repaid within three months from the occurrence of such event or from the commencement of the Insurance (Amendment) Act, 1946 whichever is later; and in case of default, the director, manager, auditor, actuary or partner concerned shall without prejudice to any other penalty which he may incur, ceases to hold office in the society on the expiry of the said three months. 6 of 1946.

(3A) Any loan prohibited under sub-section (3), made before and outstanding at the commencement of the Insurance (Amendment) Act, 1940 shall be repaid before the 1st day of January, 1941, and in case of default the director, manager, managing agent, auditor, actuary, officer or partner who has received the loan or is connected with the concern which has received the loan, as the case may be, shall cease to hold office in or be partner of the society and shall be ineligible to hold office in or to be a partner of the society until the loan is repaid. 20 of 1940.

(4) Any director, manager, managing agent, auditor, actuary, officer or partner, of a society which contravenes the provisions of sub-section (3), who is knowingly a party to the contravention, shall without prejudice to any other penalty which he may incur be jointly and severally liable to the society for the amount of the loan, and such amount, together with interest from the date of the loan at such rate not exceeding twelve per cent. per annum as the Authority may fix, shall on application by the Authority to any Civil Court of competent jurisdiction be recoverable by execution as if a decree for such amount had been passed by that court.

(5) The provisions of section 86D of the Indian Companies Act, 1913 shall not apply to a loan granted to a director of a provident society being a company if the loan is one granted on the security of a policy on which the society bears the risk and the policy was issued to the director on his own life and the loan is within the surrender value of the policy. 7 of 1913.

Inspection of
books.

86. The books of every provident society shall at all reasonable times be open to inspection by the Authority or any person appointed by it in this behalf by any member or policy-holder of the society who has, on application in this behalf, been permitted by the Authority, subject to such condition, if any, as it impose, to make such inspection.

Inquiry by or on
behalf of
Authority.

87. (1) The Authority shall at least once in two years and may, if it thinks fit, at any time visit personally or depute a suitable person to visit the principal office of a provident society or the principal office in India of a society having its principal place of business or domicile outside India and inquire into the affairs of the society, or may, after giving notice to the society any giving it an opportunity to be heard, direct such an inquiry to be made by an auditor or actuary appointed by it or by both an auditor and an actuary appointed simultaneously, or first by an auditor only or an actuary only and afterwards by an actuary or auditor.

(2) For the purposes of any such inquiry the Authority or the auditor or actuary, at the case may be, shall be entitled to examine all books and documents of the society and may demand from the society or any officer of the society such explanations as he may require on any matter relating to the affairs of the society.

(3) The results of any such inquiry shall be recorded in writing by the person making the inquiry, and four copies of the record shall be supplied to the Authority and when the inquiry is completed, a copy of the record, or of each such record where more than one are made in the course of the same inquiry, shall be sent by the Authority to the society concerned and shall be open to inspection by any member or policy-holder of the society.

(4) All expenses of an incidental to any inquiry made by an auditor or actuary under sub-section (1) including any expenses incurred before the date on which the Authority receives notice of an appeal under clause (e) of sub-section (1) of section 110 shall be defrayed by the provident society, shall have priority over other debts due from the society, and shall be recoverable as an arrear of land revenue.

(5) The Authority may by notice in writing require the provident society to comply within a time to be specified therein (not being less than fifteen days from the receipt of the notice by the society) with any directions he may issue to remedy defects disclosed by an inquiry under this section.

(6) If the society fails to comply with any directions issued under sub-section (5), the Authority may, after giving notice to the society and giving it an opportunity to be heard, apply to the Court for the winding up of the society.

87A. (1) The insurance business of a provident society may be transferred to any person or transferred to or amalgamated with the insurance business of any other provident society in accordance with a scheme prepared under this section and sanctioned by the Authority.

Amalgamation and transfer of insurance business.

(2) Any scheme prepared under this section shall set out the agreement under which the transfer or amalgamation is proposed to be effect, and shall contain such further provisions as may be necessary for giving effect to the scheme.

(3) Before an application is made to the Authority to sanction any such scheme, notice of the intention to make the application together with a statement of the nature of the amalgamation or transfer, as the case may be, and of the reason therefor, shall at least two months before the application is made, be sent to the Authority and certified copies, four in number, of each of the following documents shall be furnished to him and other such copies shall during the two months aforesaid, be kept open for the inspection of the members and policy-holders at the principal and branch offices of the provident societies concerned, namely:—

(a) a draft of the agreement or deed under which it is proposed to effect the amalgamation or transfer,

(b) balance-sheets in respect of the insurance business of each of the provident societies concerned in such amalgamation or transfer,

(c) actuarial reports and abstracts in respect of the insurance business of each of the provident societies so concerned,

(d) a report on the proposed amalgamation or transfer prepared by an independent actuary,

(e) any other reports on which the scheme of amalgamation or transfer was founded,

and the balance-sheets, reports and abstracts referred to in clauses (b), (c) and (d) shall be prepared as at the date at which the amalgamation or transfer if sanctioned by the Authority is to take effect, which date shall not be more than twelve months before the date on which the application to the Authority is made under this section:

Provided that the Authority may exempt the provident society or societies concerned from furnishing to him and from keeping open for inspection any one or more of the above documents.

(4) When any application such as is referred to in sub-section (3) is made to the Authority he may require, if for special reasons he so directs, notice of the application to be sent to every person resident in India who is the holder of a policy of any provident society concerned and may cause a statement of the nature and terms of the amalgamation or transfer, as the case may be, to be published in such manner and for such periods as he may direct, and after hearing the societies concerned, such policy-holders as apply to be heard and such other persons as he may deem fit, may sanction the arrangement, if he is satisfied that no sufficient objection to the arrangement has been established and shall make such consequential orders as are necessary to give effect to the arrangement, including orders as to the disposal of any deposit made under section 73:

Provided that—

(a) no part of the deposit made by any party to the amalgamation or transfer shall be returned except where, after effect is given to the arrangement the whole of the deposit to be made by the provident society carrying on the amalgamated business or the person to whom the business is transferred is completed;

(b) only so much shall be returned as is no longer required to complete the deposit last mentioned in clause (a);

(c) while the deposit last mentioned in clause (a) remains uncompleted, no accession, resulting from the arrangement, to the amount already deposited by the provident society carrying on the amalgamated business or the person to whom the business is transferred shall be appropriated as payment or part payment of any instalment of deposit subsequently due from it or him under section 73.

(5) A copy of the order under sub-section (4) sanctioning or refusing to sanction the arrangement shall be sent to each of the societies concerned and to each of the policy-holders who applied to be heard.

(6) If the scheme involves a reduction of the amount of the insurance and other contracts of the transfer or society or of any or all of the societies concerned in the amalgamation, the Authority may sanction the scheme, reducing the amount of such contracts upon such terms and subject to such conditions as he may think proper, and the reduction of the contracts as sanctioned by the Authority shall be valid and binding on all the parties concerned.

Winding up by court and voluntary winding up.

88. (1) The court may order the winding up of a provident society being a company incorporated under the Indian Companies Act, 1913 or under the Indian Companies Act, 1882 or under the Indian Companies Act, 1866 or under any Act repealed thereby and the provisions of the Indian Companies Act, 1913 shall subject to the provisions of this Part, apply accordingly. 7 of 1913.
6 of 1882.
10 of 1866.

(2) In addition to the grounds on which such an order may be based, the court may order the winding up of a provident society if the Authority, who is hereby authorised to do so, applies in this behalf to the court on any of the following grounds, namely:—

(a) that the registration of the society has been cancelled under sub-section (4) of section 70;

(b) that it appears from the returns furnished under the provisions of this Act or as the result of an inquiry made under section 87 that the society is insolvent;

(c) that the continuance of the society is prejudicial to the interests of the policy-holders.

(3) A provident society being a company incorporated under the Indian Companies Act, 1913 or under the Indian Companies Act, 1882 or under the Indian Companies Act, 7 of 1913.
6 of 1882.

10 of 1866.
7 of 1913.

1866 or under any Act repealed thereby may be wound up voluntarily in accordance with the provisions of the Indian Companies Act, 1913 but shall not be so wound up except for the purpose of effecting an amalgamation or reconstruction of the society or on the ground that by reason of its liabilities it cannot continue its business.

7 of 1913.
6 of 1882.
10 of 1866.

(4) A provident society not being a company incorporated under the Indian Companies Act, 1913 or under the Indian Companies Act, 1882 or under the Indian Companies Act, 1866 or under any Act repealed thereby, may be wound up voluntarily under this Act, if a resolution is passed by proprietors that the society should be wound up voluntarily for the purpose or on the ground specified in sub-section (3), and the Authority may, in any case where he has ordered the cancellation of the registration of a society under sub-section (4) of section 70, order the winding up of the society under this Act.

89. The court may make an order reducing the amount of the insurance contracts of a provident society upon such terms and subject to such conditions as the court think just—

Reduction of
Insurance
contracts.

(a) if the Authority as an alternative to cancelling the registration of a society under sub-section (4) of section 70 applies to the court in this behalf;

(b) if while a society is in liquidation the court thinks fit;

(c) if when a society has been proved to be insolvent, the court thinks fit to do so in place of making an order for the winding up of the society; or

(d) if the court is satisfied on an application made in this behalf by the society supported by the report of an actuary, and after giving the policy-holders an opportunity to be heard that it is desirable to do so.

7 of 1913.

90. (1) Where a provident society is to be wound up whether under the Indian Companies Act, 1913 or under this Act, the society shall, within seven days from the date of the order of the court ordering the winding up or the passing of the resolution authorising the winding up, as the case may be, give notice thereof to the Authority, and, except where the winding up is done by an order of the Court, the Authority shall appoint the liquidator and shall determine the remuneration to be paid to him:

Appointment of
liquidator.

Provided that if the Authority is not satisfied that the assets of the society are sufficient to meet the costs of liquidation including the remuneration of the liquidator, he may decline to make such appointment, and in such a case the society shall itself appoint a liquidator who shall carry out the liquidation as if the winding up was being done by an order of the court.

(2) Any liquidator appointed by the Authority under sub-section (1) may be removed by the Authority if satisfied that the duties entrusted to him are not being properly discharged.

7 of 1913.

90A. Notwithstanding anything to the contrary contained in the Indian Companies Act, 1913 the provisions of sections 91, 92 and 93 shall apply to any liquidator appointed to wind up a provident society, whether by the court, the Authority or the society itself.

Application of
Act to
liquidators.

91. (1) A liquidator appointed to wind up a society shall have power—

Powers of
liquidator.

(a) to institute or defend any legal proceedings on behalf of the society by his name of office;

(b) to determine the contribution to be made by members of the society respectively to the assets of the society;

(c) to investigate all claims against the society and to decide questions of priority arising between claimants;

(d) to determine by what persons and in what proportion the costs of the

liquidation including the remuneration of the liquidator and any expenses incurred under clause (g) of this sub-section are to be borne;

(e) to give such directions in regard to the collection and distribution of the assets of the society as may appear to him to be necessary for winding up the affairs of the society;

(f) to summon, and enforce the attendance of, witnesses and to compel the production of documents by the same means and as far as may be in the same manner as is provided in the case of a Civil Court by the Code of Civil Procedure, 1908, 5 of 1908.

(g) with the sanction of the Authority to employ such establishment and to obtain such assistance from an actuary or an auditor as may be necessary for the discharge of his duties;

(h) to sell the immovable and movable property of the society by public auction or private contract, with power to transfer the whole thereof to any person or society or to sell the same in parcels.

(2) The liquidator shall, for settling the list of contributories and realising the amount of contributions, have the same powers as an official liquidator appointed by the court for the winding up of a company under the Indian Companies Act, 1913. 7 of 1913.

Procedure at liquidation

92. (1) As soon as a liquidator is appointed to wind up a society he shall take charge of all property movable or immovable of the society and of all its books and documents.

(2) If any proprietor or officer of the society or any other person retains any portion of the assets of the society or fails to deliver to the liquidator any book or document when so required by the liquidator, he shall be punishable with imprisonment which may extend to six months, or with fine which may extend to five hundred rupees, or with both, and the court may order the delivery of the assets or book or document to the liquidator.

(3) The liquidator shall within fifteen days of his appointment send notice by post to all persons who appear to him to be creditors of the society that a meeting of the creditors of society will be held on a date not being less than twenty-one or more than twenty-eight days after his appointment, and at a place and hour to be specified in the notice, and shall advertise notice of the meeting once in the local Official Gazette and once at least in two newspapers circulating in the State in which the society is situated.

(4) At the meeting so held the creditors shall determine whether an application shall be made for the appointment of any person as liquidator in the place of or jointly with the liquidator already appointed, or for the appointment of a committee of inspection, and, if they so resolve and an application accordingly is made at any time not later than fourteen days after the date of the meeting by any creditor appointed for the purpose at the meeting, the Authority may, if it thinks fit, appoint a suitable person in place of or jointly with the liquidator already appointed, and, determine the remuneration to be paid to him and if he considers it desirable, may also appoint a committee of inspection.

(5) The committee of inspection shall, subject to any prescribed conditions have a general power of supervision over the acts of the liquidator and shall have the right to inspect his accounts at all reasonable times.

(6) The liquidator shall, with such assistance from an actuary as may be required, ascertain as soon as practicable the amount of the society's liability to every person appearing by the society's books to be entitled to or interested in any policy issued by the society, and shall give notice of the amount so found to each such person in the prescribed manner and each such person on receiving such notice shall be bound by the value so ascertained.

(7) The liquidator shall make a valuation of the assets of the society and an estimate of the costs of the winding up, and shall on the basis of these settle the list of contributories.

(8) The liquidator shall apply to the Authority for an order for the return of the deposit made by the society under section 73 and the Authority shall on such application order the return of the deposit subject to such terms and conditions as he may think fit.

(9) In administering and distributing the assets of the society the liquidator shall have regard to any directions that may be given by the creditors or contributories at a general meeting or by the Authority.

(10) The liquidator shall keep books of account in which he shall record the proceedings at all meetings attended by him, all amounts received or expended by him and any other matter that may be prescribed, and these books may, with the sanction of the Authority be inspected by any creditor or contributory.

(11) If the winding up continues for more than a year the liquidator shall summon a meeting of the creditors and contributories at the end of the first year and of each succeeding year, and shall lay before them an account of his acts and dealings and of the conduct of the winding up, and that account together with any views expressed thereon by the meeting shall be forwarded by the liquidator within one week after the meeting to the Authority.

(12) So far as is not otherwise provided herein or is not otherwise prescribed under this Act, the liquidator shall so far as practicable follow the procedure to be followed by an official liquidator appointed by the court for the winding up of a company under the Indian Companies Act, 1913.

7 of 1913.

(13) The costs of the liquidation including the remuneration of the liquidator and any expenses incurred under clause (g) of sub-section (1) of section 91 or shall, if the liquidator decides that they shall be payable of the assets of the society, be payable in priority to all other claims.

93. (1) As soon as the affairs of a provident society are fully wound up the liquidator shall prepare an account of the winding up showing how the winding up has been conducted and the property of the society has been disposed of and shall call a meeting of the members, creditors and contributories for the purpose of laying before it the account and giving any explanation thereof.

Dissolution of
p r o v i d e n t
society.

(2) Notice of the meetings shall be sent to each person individually and shall be advertised in the local Official Gazette and in at least two newspapers circulating in the State in which the society is situated.

(3) Within one week after the meeting of the liquidator shall send to the Authority a copy of the account and shall report to the holding of the meeting and its date and shall forward to it a copy of the proceedings of the meeting.

(4) The Authority may return the account to the liquidator if it is incomplete or unsatisfactory and may require the liquidator to carry out any further steps necessary to complete the winding up and the liquidator shall comply with such requirement and shall submit a further report to the Authority within six months.

(5) If the Authority is satisfied that the affairs of the society have been fully wound up he shall register the account of the liquidator who shall forthwith make over to the Authority sums, if any, remaining undisposed of; and on the expiry of three months from the registering of the account the Authority shall declare the society dissolved and cause the dissolution of the society to be notified in the local Official Gazette, and the liquidator shall thereupon be discharged from further responsibility.

(6) If within a period of five years from the date on which any sums have been made over to the Authority under sub-section (5) an order of a court of competent jurisdiction has not been obtained at the instance of any claimant to such sums for their disposal, the said sums shall become the property of Government.

Nominations
and assign-
ments.

94. (1) The provisions of section 38 and section 39 relating to assignment, transfer and nomination in the case of life insurance policies shall, subject to the provisions of this section, apply to policies of insurance issued by any provident society covering any of the contingencies specified in clause (a) of sub-section (2) of section 65.

PART III A

INSURANCE CO-OPERATIVE SOCIETIES

Insurance co-
operative
society to be an
insurer.

94A. (1) Every insurance co-operative society shall be deemed to be an insurer for the purposes of this Act.

(2) Save as otherwise provided in this Act, all the provisions applicable to an insurer being an Indian insurance company shall, so far as may be, apply to an insurance co-operative society:

Provided that the Authority may, by notification, direct that any of the provisions of this Act,—

(a) shall not apply to any insurance co-operative society; or

(b) shall apply to any insurance co-operative society only with such exceptions, modifications and adaptations as may be specified in the notification.

(3) A copy of every notification proposed to be issued under proviso to sub-section (2), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses.

PART IV

MUTUAL INSURANCE COMPANIES AND CO-OPERATIVE LIFE INSURANCE SOCIETIES

Definitions.

95. (1) In this Part, before the date of commencement of the Insurance Regulatory and Development Authority Act, 1999—

41 of 1999.

(a) "Mutual Insurance Company" means an insurer, being a company incorporated under the Indian Companies Act, 1913 or under the Indian Companies Act, 1882, or under the Indian Companies Act, 1866, or under any Act, repealed thereby, which has no share capital and of which by its constitution only and all policy-holders are members; and

7 of 1913.

6 of 1882.

10 of 1866.

(b) "Co-operative Life Insurance Society" means an insurer being a society registered under the co-operative Societies Act, 1912, or under an Act of a State, Legislature governing the registration of co-operative societies which carries on the business of life insurance and which has no share capital on which dividend or bonus is payable and of which by its constitution only original members on whose application the society is registered and all policy-holders are members:

2 of 1912.

Provided that any Co-operative Life Insurance Society in existence at the commencement of this Act shall be allowed a period of one year to comply of this Act.

(2) Notwithstanding anything contained in sub-section (1), other co-operative societies may be admitted as members of a Co-operative Life Insurance Society, without being eligible to any dividend, profit or bonus.

(3) A State Government may, subject to any rules made by the Central Government, empower the Registrar of co-operative societies of the State to register co-operative societies for the insurance of cattle or crops or both under the provisions of the Co-operative Societies Act in force in the State.

(4) A State Government may make rules not inconsistent with any rules made by the Central Government to govern such societies, and the provisions of this Act, in so far as they are inconsistent with those rules, shall not apply to such societies.

96. The provisions of sections 6 and 7 and of sub-section (2) of section 20, so far as those provisions are inconsistent with the provisions of this Part, shall not apply, and the provisions of this Part shall apply, to Co-operative Life Insurance Societies.

Application of Act to Mutual Insurance Companies and Co-operative Life Insurance Societies.

2 of 1912.

97. No co-operative life insurance society registered after the 26th day of January 1937 under the Co-operative Societies Act, 1912, or under an Act of a State Legislature governing the registration of co-operative societies shall be registered under this Act, unless it has as working capital a sum of fifteen thousand rupees, exclusive of the deposit to be made before or at the time of application for registration in accordance with sub-section (2) of section 98 of this Act and of the preliminary expenses, if any, incurred in the formation of the company or society.

Working capital of Mutual Insurance Companies and Co-operative Life Insurance Societies.

98. (1) Every Co-operative Life Insurance Society shall, in respect of the life insurance business carried on by it in the States deposit and keep deposited with one of the offices in India of the Reserve Bank of India, for and on behalf of the Central Government, a sum of two hundred thousand rupees in cash or in approved securities estimated at the market value of the securities on the day of deposit:

Deposits to be made by Mutual Insurance Companies and Co-operative Life Insurance Societies.

The deposit referred to in sub-section (1), may be made in instalments, of which the first shall be a payment, made before or at the time the application for registration under this Act is made of not less than twenty-five thousand rupees or such sum as with any deposit previously made by the insurer under the provisions of the Indian Life Insurance Companies Act, 1912, brings the amount deposited up to not less than twenty-five thousand rupees and the subsequent instalments shall be annual instalments made before the expiry of each subsequent calendar year of an amount in cash or in approved securities estimated at the market value of the securities on the day of payment of the instalment, equal to not less than one-third of the premium income in the preceding calendar year as shown in the revenue account.

6 of 1912.

(3) The provisions of sub-section (7) of section 7 shall apply in respect of a Co-operative Life Insurance Society as if for the words 'under the foregoing provisions of this section' the words and figures 'under the provisions of section 98' were substituted.

98A. The provisions of section 29 shall apply to Co-operative Life Insurance Societies as they apply to other insurers.

Prohibition of loans.

99. No transferee or assignee of a policy issued by an insurer to whom this Part applies shall become a member of a Mutual Insurance Company or a Co-operative Life Insurance Society merely by reason of any such transfer or assignment.

Transferees and assignees of policies not to become members.

7 of 1913.

100. Notwithstanding the provisions of section 79 and section 131 of the Indian Companies Act, 1913, a Mutual Insurance Company or a Co-operative Life Insurance Society may, instead of sending the notices and the copies of the balance-sheet, revenue account and other documents which they are required to send to the members under those sections, publish such notice together with a summary in the prescribed form of the balance-sheet and revenue account once in a newspaper published in the English language and in newspaper published in an Indian language circulating in the place where the principal office of the company is situated:

Publication of notices and documents of Mutual Insurance Companies and Co-operative Life Insurance Societies.

Provided that, where any members of the company are domiciled in a State other than that in which the principal office of the company is situated, publication of the notice of the meetings shall be made in a newspaper or newspapers published in the principal languages of that State and circulating therein and any member of the company domiciled in that State shall be entitled on application to the company to receive from it a copy of the balance-sheet and revenue account.

Supply of documents to members.

101. Every Mutual Insurance company and every Co-operative Life Insurance Society shall, on the application of any member made within two years from the date on which any such document is furnished to the Registrar of companies under the provisions of section 134 of the Indian Companies Act, 1937, or to the Registrar of Co-operative Societies of the State in which the Co-operative Life Insurance Society is registered, furnish a copy of the document free of cost to the member within fourteen days of the application.

7 of 1913.

* * * * *

PART V

MISCELLANEOUS

Penalty for default in complying with, or act in contravention of this Act.

102. If any person, who is required under this Act, or rules or regulations made thereunder,—

(a) to furnish any document, statement, account, return or report to the Authority, fails to furnish the same; or

(b) to comply with the directions, fails to comply with such directions;

(c) to maintain solvency margin, fails to maintain such solvency margin;

(d) to comply with the directions on the insurance treaties, fails to comply with such directions on the insurance treaties,

he shall be liable to a penalty not exceeding five lakh rupees for each such failure and punishable with fine.

Penalty for carrying on insurance business in contravention of sections 3, 7 and 98.

103. If a person makes a statement, or furnishes any document, statement, account return or which is false and which he either knows or believes to be false or does not believe to be true,—

(a) he shall be liable to a penalty not exceeding five lakh rupees for each such failure, and

(b) he shall be punishable with imprisonment which may extend to three years or with fine for each such failure.

Penalty for false statement in document.

104. If a person fails to comply with the provisions of section 27 or section 27A or section 27B or section 27C or section 27D, he shall be liable to a penalty not exceeding five lakh rupees for each such failure.

Wrongfully obtaining or withholding property.

105. If any director, managing director, manager or other officer or employees of an insurer wrongfully obtains possession of any property or wrongfully applies to any purpose of the Act, he shall be liable to a penalty not exceeding two lakh rupees for each such failure.

* * * * *

Penalty for failure to comply with section 32B.

105B. If an insurer fails to comply with the provisions of section 32B, he shall be liable to a penalty not exceeding five lakh rupees for each such failure and shall be punishable with imprisonment which may extend to three years or with fine for each such failure.

* * * * *

106A. (1) * * * * * Notice to an hearing of Authority.

(2) The orders to which this section applies are the following, namely:—

(a) an order for the attachment in execution of a decree of any deposit made under section 7 or section 98;

(b) an order under section 9 or section 59 for the return of any such deposit;

* * * * *

(f) an order under section 89 reducing the amount of the insurance contracts of a provident society.

107. (1) Except where proceedings are instituted by the Authority or an Administrator appointed under section 52A no proceedings under this Act against an insurer or any director, managing agent, manager, secretary or other officer of an insurer or any liquidator or any employee or agent of an insurer or any person who is liable under sub-section (2) of section 41 or any other person shall be instituted by any person unless he has previous thereto obtained the sanction of the Advocate-General of the State where the principal place of business in India of such insurer is situate to the institution of such proceedings: P r e v i o u s sanction of Advocate-General for institution of proceedings.

Provided that where the principal place of business of such insurer is situated in a Union territory references in this section to the Advocate-General of the Province shall be construed as references to the Attorney-General for India.

(2) This section shall apply in respect of a provident society as defined in Part III as it applies in respect of an insurer.

45 of 1860.

107A. Every whole-time chairman, whole-time director, auditor, liquidator, manager and any other employee of insurer shall be deemed to be a public servant for the purposes of Chapter IX of the Indian Penal Code. Chairman, etc., to be public servants.

* * * * *

109. (1) No court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence under this Act. Cognizance of offences.

(2) No court shall take cognizance of any offence punishable under sub-section (4) of section 34B or sub-section (1A) of section 102 except upon complaint in writing made by an officer of the Central Government generally or specially authorised in writing, in this behalf by the Authority and no Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any such offence.

110. (1) An appeal shall lie to the court having jurisdiction from any of the following orders, namely:— Appeals.

(a) an order under section 3 cancelling the registration of an insurer;

(b) an order under section 5 directing the insurer to change his name;

(c) an order under section 42 cancelling the licence issued to an agent;

(d) an order under section 75 refusing to register an amendment of rules;

(e) an order under section 87 or section 87A;

(f) an order made in the course of the winding up or insolvency of a porovident society.

(2) The court having jurisdiction for the purposes of sub-section (1) shall be the principal court of civil jurisdiction within whose local limits the principal place of business of the insurer concerned is situate.

(3) An appeal shall lie from any order made under sub-section (1) to the authority authorised to hear appeals from the decisions of the court making the same and the decision on such appeal shall be final.

(4) No appeal under this section shall be entertained unless it is made before the expiration of four months from the date on which the order appealed against was communicated to the appellant.

* * * * *

Sections 3A, 27B, 28B, 33, etc., to apply to general insurance business of the Life Insurance Corporation of India.

110E. Notwithstanding anything contained in the Life Insurance Corporation Act, 1956, the provisions of sections 3A, 27B, 28B, 33, 34A, clause (a) of sections 34E, 34F, 40C, 44A, 64U to 64UM (both inclusive), 64V, 64VA, 64VB, 64VC, 101C, 110D, 110G and 110H, shall also apply, so far as may be, to and in relation to the general insurance business carried on by the Life Insurance Corporation of India and the provisions of section 37A shall also apply to that Corporation if it becomes an acquiring insurer.

31 of 1956.

* * * * *

Constitution of Consultative Committee.

110G. (1) The Central Government shall constitute a Consultative Committee consisting of the Chairperson of the Authority (who shall be the Chairman thereof) and not more than four other members having special knowledge and experience of the business of insurance.

(2) The term of office of, and the allowances payable to the members of the Consultative Committee, the procedure to be followed by, and the quorum necessary for the transaction of business of, the Consultative Committee and the manner of filing casual vacancies therein shall be such as may be prescribed.

(3) Before making any order under sections 34, 34A, 34B, 34C, 34E, 34F, 34G, sub-sections (4) and (7) of sections 64UM and section 64VC, the Chairperson of the Authority shall consult the Consultative Committee constituted under sub-section (1).

Appeals.

110H. (1) Any person aggrieved by any order made by the Authority under sections 27D, 34A, 34B, 34C, 34E, 34F, 34G, sub-sections (1), (4) and (7) of section 64UM or section 64VC may, within a period of thirty days from the date of such order prefer an appeal against such order to the Central Government and that Government may, by order, confirm, modify or reverse the order made by the Authority and the order so made by the Government shall be final.

(2) No claim for compensation shall lie in favour of any person for anything done in pursuance of an order of the Authority so long as such order was effective.

(3) The Central Government may, on the application of an appellant, stay, until the decision of the appeal, the operation of any order made under section 34 or sub-section (5) of section 34B or sub-clause (v) of clause (b) of section 34E.

Service of notices.

111. (1) Any process or notice required to be served on an insurer or provident society shall be sufficiently served if addressed to any person registered with the Authority as a person authorised to accept notices on behalf of the insurer of provident society and left at, or sent by registered post to the address of such person as registered with the Authority.

(2) Any notice or other document which is by this Act required to be sent to any policy-holder may be addressed and sent to the person to whom notices respecting such policy are usually sent and any notice so addressed and sent shall be deemed to be notice to the holder of such policy:

Provided that, where any person claiming to be interested in a policy as transferee, assignee or nominee has given to an insurer or to a provident society notice in writing of his interest, any notice which is by this Act required to be sent to policy-holders shall also be sent to such person at the address specified by him in his notice.

* * * * *

113. (1) A policy of life insurance under which the whole of the benefits become payable either on the occurrence, or at a fixed interval or fixed intervals after the occurrence, of a contingency which is bound to happen, shall, if all premiums have been paid for at least three consecutive years in the case of a policy issued by an insurer, or five years in the case of a policy issued by a provident society as defined in Part III, acquire a guaranteed surrender value, to which shall be added the surrender value of any subsisting bonus already attached to the policy, and every such policy issued by an insurer shall show the guaranteed surrender value of the policy at the close of each year after the second year of its currency or at the close of each period of three years throughout the currency of the policy:

Acquisition of
surrender
values by
policy.

Provided that the requirements of this sub-section as to the addition of the surrender value of the bonus attaching to a policy at surrender shall be deemed to have been complied with where the method of calculation of the guaranteed surrender value of the policy makes provisions for the surrender value of the bonus attaching to the policy:

Provided further that the requirements of this sub-section as to the showing of the guaranteed surrender value on a policy shall be deemed to have been complied with where the insurer shows on the policy the guaranteed surrender value of the policy by means of a formula accepted in this behalf by the Authority as satisfying the said requirements:

Provided further that the provisions of this sub-section as to the showing of the guaranteed surrender value on a policy shall not take effect until after the expiry of six months from such date as the Authority may, by notification in the Official Gazette appoint in this behalf.

(2) Notwithstanding any contract to the contrary, a policy which has acquired a surrender value shall not lapse by reason of the non-payment of further premiums but shall be kept alive to the extent of paid-up sum insured, and the paid-up sum insured shall for the purposes of this sub-section include in full all subsisting reversionary bonuses that have already attached to the policy, and shall, where the policy is one on which the maximum number of annual premiums payable is fixed and the premiums are of uniform amount, before the inclusion of such bonuses not less than the amount bearing to the total sum insured by the policy exclusive of bonuses the same proportion as the total period for which premiums have already been paid bears to the maximum period for which premiums were originally payable.

(3) A policy kept alive to the extent of the paid-up sum insured under sub-section (2) shall not be entitled by virtue of that sub-section to participate in any profits declared distributable after the conversion of the policy into a paid-up policy.

(4) Sub-section (2) and sub-section (3) shall not apply—

(a) where the paid-up sum insured by a policy, being a policy issued by an insurer, is less than one hundred rupees inclusive of any attached bonus, or takes the form of an annuity of less than twenty-five rupees, or where the paid-up sum insured by a policy, being a policy issued by a provident society, as defined in Part III, is less than fifty rupees inclusive of any attached bonus or takes the form of an annuity of less than twenty-five rupees, or

(b) where the parties after the default has occurred in the payment of the premium agree in writing to some other arrangement, or

(c) to policies in which the surrender value is automatically applied under the terms of the contract to maintaining the policy in force after its lapse through non-payment of premium.

Power of
C e n t r a l
Government to
make rules.

114. (1) * * * * *

(2) In particular and without prejudice to the generality of the foregoing power, such rules may prescribe—

* * * * *

(c) the procedure to be followed by the Reserve Bank of India in dealing with deposits made in pursuance of this Act, including the receipt of, custody of, withdrawal of, and payment of interest on securities lodged as such deposits, and their inspection and verification by the Authority.

* * * * *

Power of
Authority to
make regulations.

114A. (1) * * * * *

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

(a) the qualifications to be possessed by actuaries;

(aa) the matters including fee relating to the registration of insurers under section 3;]

(b) the manner of suspension or cancellation of registration under sub-section (5E) of section 3;

(c) such fee, not exceeding five thousand rupees, as may be determined by the regulations for issue of a duplicate certificate of registration under sub-section (7) of section 3;

(d) the matters relating to the renewal of registration and fee therefor under section 3A;

(e) the manner and procedure for divesting excess share capital under sub-section (2) of section 6AA;

(f) the preparation of balance-sheet, profit and loss account and a separate account of receipts and payments and revenue account under sub-section (1A) of section 11;

(g) the manner in which an abstract of the report of the actuary to be specified under the fifth proviso to sub-section (1) of section 13;

(h) the form and manner in which the statement referred to in sub-section (4) of section 13 shall be appended;

(i) the time, manner and other conditions of investment of assets held by an insurer under sub-sections (1), (1A) and (2) of section 27D;

(ia) the form in which a return showing the investments made out of the controlled fund shall be submitted by an insurer carrying on life insurance business under sub-section (2) of section 28A;

(ib) the form in which a return showing all the changes that occurred in the investments shall be submitted by an insurer carrying on life insurance business under sub-section (2) of section 28A;

(ic) the form in which a return showing the investment made out of assets shall be submitted by an insurer carrying on general insurance business under sub-section (1) of section 28B;

(id) the form in which a return showing all the changes that occurred in the investment shall be submitted by an insurer carrying on general insurance business under sub-section (2) of section 28B;

(ie) the form of the statement and the sum to be specified under sub-section (2) of section 31B;]

(j) the minimum information to be maintained by insurer in their books, the manner in which such information should be maintained, the checks and other verifications to be adopted by insurers in that connection and all other matters incidental thereto under sub-section (8) of section 33;

(k) the manner for making an application, the manner and the fee for issue of a licence to act as an insurance agent under sub-section (1) of section 42;

(l) the fee and the additional fee to be determined for renewal of licence of insurance agent under sub-section (3) of section 42;

(m) the requisite qualifications and practical training to act as an insurance agent under clause (e) of sub-section (4) of section 42;

(n) the passing of examination to act as an insurance agent under clause (f) of sub-section (4) of section 42;

(o) the code of conduct under clause (g) of sub-section (4) of section 42;

(p) the fee not exceeding rupees fifty for issue of duplicate licence under sub-section (6) of section 42;

(q) the manner and the fees for issue of a licence to an intermediary or an insurance intermediary under sub-section (1) of section 42D;

(r) the fee and the additional fee to be determined for renewal of licence of intermediaries or insurance intermediaries under sub-section (3) of section 42D;

(s) the requisite qualifications and practical training of intermediaries or insurance intermediaries under clause (e) of sub-section (5) of section 42D;

(t) the examination to be passed to act as an intermediary or insurance intermediary under clause (f) of sub-section (5) of section 42D;

(u) the code of conduct under clause (g) of sub-section (5) of section 42D;

(v) the fee for issue of duplicate licence under sub-section (7) of section 42D;

(va) the amount of commission, fee or as remuneration in any form not exceeding thirty per cent. to be paid or contract to be paid under sub-section (1) of section 42E;

(vb) the requirements of capital, form of business and other conditions to act as an intermediary or insurance intermediary under sub-section (z) of section 42E;

(vc) the form of balance-sheet, as may be specified by the Authority under sub-section (1) section 49;

(w) such matters as specified under sub-section (2) of section 64UB relating to the Tariff Advisory Committee;

(x) the matters relating to licensing of surveyors and loss assessors, their duties, responsibilities and other professional requirements under section 64UM;

(y) such other asset or assets as may be specified under clause (h) of sub-section (1) of section 64V for the purposes of ascertaining sufficiency of assets under section 64VA;

(z) the valuation of assets and liabilities under sub-section (3) of section 64V;

(za) the matters specified under sub-section (1A) of section 64VA relating to sufficiency of assets;

(zb) the manner of receipt of premium to be specified under sub-section (6) of section 64VB;

(zc) the matters relating to re-insurance under sections 101 A and 101B;

(zd) the matters relating to redressal of grievances of policy-holders to protect their interest and to regulate, promote and ensure orderly growth of insurance industry; and

(ze) any other matter which is to be, or may be, specified by the regulations made by the Authority or in respect of which provision is to be made or may be made by the regulations;

(zf) the matters to be prescribed for the purposes of section 48;

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THE FIFTH SCHEDULE

(See section 13)

REGULATIONS FOR PREPARING STATEMENTS OF BUSINESS IN FORCE AND REQUIREMENTS APPLICABLE TO SUCH STATEMENTS

PART I

REGULATIONS

1. Statements prepared under this Schedule must be prepared, so far as practicable, in tabular form and must be identified by numbers and letters corresponding with those of the paragraphs of Part II of this Schedule.

2. Except with respect to rates of premium or contribution, items in statements prepared under this Schedule are to be shown to the nearest rupee.

3. Extra premium shown in the Forms of Summary and Valuation prepared under the Fourth Schedule to this Act must not be included in statements prepared under this Schedule.

4. Every statement prepared under this Schedule shall be signed by the actuary making the investigation in connection with which it is prepared.

5. For the purposes of this Schedule the following expressions have the meanings hereby respectively assigned to them, namely:—

- (a) "annual loading" means the provision made for future expenses and profits;
- (b) "extra premiums" means a charge for any risk not provided for in the minimum contract premium;
- (c) "net premiums" means the premiums taken credit for in the valuation in connection with which any statement is prepared; and
- (d) "valuation date" means as respects any valuation the date as at which the valuation is made.

PART II

REQUIREMENTS FOR STATEMENTS APPLICABLE TO LIFE INSURANCE

The statements required to be prepared under this Part of this Schedule are as follows, namely:—

1. Statements, separately prepared in respect of policies with and without participation in profits, showing:—

- (a) as respects policies for the whole term of life, the rates of office premiums charged, in accordance with the published tables in use, for new policies giving the rates for decennial ages at entry from 20 to 70 inclusive; and

- (b) as respects endowment insurance policies, the rates of office premiums charged, in accordance with the published tables in use, for new policies with original terms of ten, fifteen, twenty, thirty and forty years, giving the rates for decennial ages at entry from 20 to 40 inclusive, but excluding policies under which the age at maturity exceeds 60.

2. Statements, separately prepared in respect of policies with immediate profits, with deferred profits, with profits under discounted bonus systems, and without profits, showing in quinquennial groups—

- (a) as respects policies for the whole term of life—
 - (i) the total amount assured (specifying sums assured and reversionary bonuses separately), grouped according to ages attained;
 - (ii) the amount per annum, after deducting abatements made by application of bonus, of office premiums payable throughout life, and of the corresponding net premiums, grouped according to ages attained; and
 - (iii) the amount per annum, after deducting abatements made by application of bonus, of office premiums payable for a limited number of years and, either, the corresponding net premiums grouped in accordance with the grouping adopted for the purposes of the valuation, or, the annual loading reserved for the remaining duration of the policies, grouped according to ages attained.
- (b) as respects endowment insurance policies—
 - (i) the total amount assured (specifying sums assured and reversionary bonuses separately) grouped in accordance with the grouping adopted for the purposes of the valuation; and
 - (ii) the amount per annum, after deducting abatements made by application of bonus, of office premiums payable and of the corresponding net premiums, grouped in accordance with the grouping adopted for the purposes of the valuation:

Provided that—

- (a) as respects endowment insurance policies which will reach maturity in less than five years, the information required by sub-paragraph (b) (i) of this paragraph must be given for each year instead of in quinquennial groups; and
- (b) where the office premiums payable under policies for the whole term of life for a limited number of years, or the office premiums payable under endowment insurance policies, or the corresponding net premiums, are grouped for the purposes of the valuation otherwise than according to the number of years' payments remaining to be made, or where the sums assured under endowment insurance policies are grouped for the purposes of the valuation otherwise than according to the years in which the policies will mature for payment or in which they are assumed to mature if earlier than the true year, then, in any such case the valuation constants and an explanation of the method by which they are calculated must be given for each group, and in the case of the sums assured under endowment insurance policies a statement must also be given of the amount assured maturing for payment in each of the two years following the valuation date.

3. Statements as respects any policies in force under which premiums cease to be payable, whether permanently or temporarily, during disability arising from sickness or accident, showing the total amount of the office premiums payable.

4. Statements as respects immediate annuities on single lives for the whole term of life, separately prepared in respect of annuities on male and female lives, showing in quinquennial age groups the total amount of such annuities.

5. Statements as respects deferred annuities, separately prepared in respect of annuities on male and female lives, showing the specimen reserve values for annuities of one hundred rupees which will be produced on maturity on the basis of valuation adopted at ages, in the case of male lives, 60 and 65, and in the case of female lives, 55 and 60; the said statements must show the specimen reserve values which will be produced under the table of annual premiums in use for new policies, and if under any other table of annual premiums in use for any other deferred annuity policies in force smaller reserve values will be produced, the like specimens of these must also be given.

6. Statements as respects any policies of insurance upon the lives of a group of persons, whereby sums assured are payable in respect of the several persons included in the group, showing the total claims paid since the date as at which the last statements were prepared under this Part of this Schedule or, where no such statements have been prepared, since the date on which the insurer began to carry on the class of business to which the statements relate, and the reserve for unexpired risks and outstanding claims.

THE SIXTH SCHEDULE

PART A

[See section 42B(1)]

TERMS DEEMED TO BE INCLUDED IN EVERY CONTRACT BETWEEN AN INSURER CARRYING ON GENERAL INSURANCE BUSINESS AND A PRINCIPAL AGENT

1. All payments of commission to insurance agents shall be made by the principal agent on behalf of the insurer.

2. The principal agent shall procure or cause to be procured through insurance agents such an amount of general insurance business of any class for the procurement of which he has been appointed, as will yield a gross premium income of not less than twenty thousand rupees in each calendar year.

3. In the event of the principal agent failing in any calendar year to comply with the requirements of clause 2, he shall forfeit to the insurer—

- (i) one-quarter of the total remuneration payable to him by the insurer for that year, if the class of business for the procurement of which he has been appointed is fire or miscellaneous insurance business, or
- (ii) one-third of the total remuneration payable to him by the insurer for that year, if the class of business for the procurement of which he has been appointed is marine insurance business.

4. In the event of the principal agent failing to comply with the requirements of clause 2 in any two successive calendar years, the contract shall without prejudice to the provisions of clause 3, terminate on the 31st day of March immediately following the second calendar year.

5. Except in cases where the business relates to any property under his immediate control, a principal agent shall not by himself procure any class of the general insurance business without utilising the services of an insurance agent.

PART B

[See section 42C (1)]

TERMS DEEMED TO BE INCLUDED IN EVERY CONTRACT BETWEEN
AN INSURER CARRYING ON LIFE INSURANCE BUSINESS
AND A CHIEF AGENT

1. All payments of commission to insurance agents shall be made by the insurer direct or by the chief agent, who may make the payment either directly or through a special agent on behalf of the insurer.

2. The chief agent shall employ or cause to be employed for and on behalf of the insurer either directly or through special agents at least six insurance agents in cases where the business in force of the insurer is less than one crore of rupees and in any other case at least twelve agents each of whom will procure in each calendar year new business amounting to not less than ten thousand rupees.

3. Save as provided in respect of cases specified in clause 7 of the part, the remuneration payable to the chief agent in respect of life insurance business effected through him for the insurer shall only be in the form of an overriding commission.

4. In the event of the chief agent failing in two successive calendar years to comply with the requirements of clause 2, he shall forfeit to the insurer one-half of the total remuneration payable to him by the insurer for those years.

5. In the event of the chief agent failing to comply with the requirements of clause 2 in four successive calendar years, the contract shall, without prejudice to the provisions of clause 4, terminate on the 31st day of March immediately following the last of such calendar years.

6. Not more than one intermediary to be remunerated by the insurance concerned, whether on a salary basis or by way of commission, shall be employed between the chief agent and any insurance agent, but the chief agent may employ as many persons as he thinks fit on a salary basis, provided such salaries are paid out of his overriding commission.

7. In cases where the commission payable on a policy of life insurance effected through an insurance agent working under a chief agent is stopped on or after the 1st day of January, 1949 and not paid to the insurance agent, an amount not exceeding one-quarter of such commission payable to the insurance agent concerned shall also be payable to the chief agent, if he continues to render service in connection with that policy and if such commission is otherwise payable to him.

PART C

[See section 42C(4)]

TERMS DEEMED TO BE INCLUDED IN EVERY CONTRACT BETWEEN AN INSURER
CARRYING ON LIFE INSURANCE BUSINESS AND A SPECIAL AGENT OR
BETWEEN A CHIEF AGENT AND A SPECIAL AGENT

1. All payments of commission to insurance agents shall be made by the insurer direct or, on behalf of the insurer, either by the chief agent under whom the special agent is working or by the special agent.

2. The special agent shall employ at least two insurance agents and shall procure or cause to be procured through insurance agents employed under him in each calendar year new business amounting to not less than fifty thousand rupees assured on which at least the first year's premiums have been paid in full.

3. In the event of the special agent failing in any calendar year to comply with the requirements of clause 2, he shall forfeit to the insurer fifty per cent, of the total remuneration payable to him by the insurer, or, as the case may be, by the chief agent, for that year.

4. In the event of the special agent failing to comply with the requirements of clause 2 in two successive calendar years, the contract shall, without prejudice to the provisions of clause 3 of this Part terminate on the 31st day of March immediately following the second calendar year.

5. In the event of the special agent procuring life insurance business without utilising the services of an insurance agent, the special agent shall be entitled only to the commission that is ordinarily payable in respect of business so procured to an insurance agent.

6. The remuneration payable to the special agent in respect of policies of life insurance procured by him through insurance agents shall only be in the form of an overriding commission.

Explanation.— In this Schedule "business in force" means the total sum assured with bonuses, without taking into account reinsurances, ceded or accepted, by an insurer in respect of the whole of the life insurance business on the working day of the calendar year or the period covered by the revenue account furnished by such insurer under clause (b) or sub-section (2) of section 16, as the case may be, preceding the calendar year in question.

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THE EIGHTH SCHEDULE

(See section 52J)

PRINCIPLES OF COMPENSATION

The compensation to be given under section 52J shall be an amount equal to the value of the assets of the acquired insurer as on the day immediately before the appointed day, computed in accordance with the provisions of Part I of this Schedule less the total amount of liabilities thereof as on that day, computed in accordance with the provisions of Part II of this Schedule.

PART I

ASSETS

For the purposes of this Part, "value of asset" means the total of the following:—

- (a) the market value of any land or buildings;
- (b) the market value of any securities, shares, debentures, bonds and other investments, held by the acquired insurer.

Explanation—For the purposes of this clause,—

- (i) Securities of the Central Government, such as Post Office certificates and Treasury Savings Deposit Certificates and any other securities or certificates issued or to be issued under the Small Saving Scheme of the Central Government, shall be valued at their encashable value as on the appointed day;
- (ii) Where the market value of any Government security such as the zamindari abolition bonds or other similar security, in respect of which the principal is payable in instalments, is not ascertainable or is, for any reason, not considered as reflecting the fair value thereof or as otherwise appropriate,

the security shall be valued at such an amount as is considered reasonable, having regard to the instalments of principal and interest remaining to be paid, the period during which such instalments are payable, the yield of any security, issued by the Government to which the security pertains and having the same or approximately the same maturity, and other relevant factors;

- (iii) Where the market value of any security, share, debenture, bond or other investment is not considered reasonable by reason of its having been affected by abnormal factors, the investment may be valued on the basis of its average market value over any reasonable period;
- (iv) Where the market value of any security, share, debenture, bond or other investment is not ascertainable, only such value, if any, shall be taken into account as is considered reasonable, having regard to the financial position of the issuing concern, the dividend paid by it during the preceding five years and other relevant factors;
- (c) the total amount of the premiums paid by the acquired insurer in respect of all leasehold properties, reduced in the case of each such premium by an amount which bears to such premium the same proportion as the expired term of the lease in respect of which such premium shall have been paid bears to the total term of the lease;
- (d) the written down value as per books, or the realisable value, as may be considered reasonable, of all furniture, fixtures and fittings;
- (e) the amount of debts due to the insurer, whether secured or unsecured, to the extent to which they are reasonably considered to be recoverable;
- (f) the amount of cash held by the insurer whether in deposit with a bank or otherwise;
- (g) the market or realisable value, as may be appropriate, of other assets appearing on the books of the insurer, no value being allowed for capitalised expenses, such as share selling commission, organizational expenses and brokerage, losses incurred and similar other items.

PART II

LIABILITIES

The total amount of the liabilities of the insurer shall include—

- (i) reserves for unexpired risks being in respect of each policy, such portion of the last premium paid as is proportionate to the unexpired portion of the policy in respect of which the premium was paid;
- (ii) the total amount of all other liabilities of the insurer existing on the appointed day, including all contingent liabilities which the Central Government of the acquiring insurer may reasonably be expected to be required to meet out of its own resources on or after the appointed day.

CERTAIN DIVIDENDS NOT TO BE TAKEN INTO ACCOUNT

No separate compensation shall be payable for any profits or any dividend in respect of any period immediately preceding the appointed day, for which, in the ordinary course, profits would have been transferred or dividend declared after the appointed day.

EXTRACT FROM THE GENERAL INSURANCE BUSINESS NATIONALISATION ACT, 1972

(57 OF 1972)

* * * * *

Properties in India not to be with foreign insurer except with permission of Central Government.

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

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

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EXTRACTS FROM THE INSURANCE REGULATORY AND DEVELOPMENT AUTHORITY ACT, 1999

(41 OF 1999)

* * * * *

Definitions.

2. (1) In this Act, unless the context otherwise requires,—

(b) “Authority” means the Insurance Regulatory and Development Authority established under sub-section (1) of section 3;

(f) “intermediary or insurance intermediary” includes insurance brokers, reinsurance brokers, insurance consultants, surveyors and loss assessors;

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CHAPTER II

INSURANCE REGULATORY AND DEVELOPMENT AUTHORITY

Establishment and incorporation of Authority.

3. (1) With effect from such date as the Central Government may, by notification, appoint, there shall be established, for the purposes of this Act, an Authority to be called “the Insurance Regulatory and Development Authority”.

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CHAPTER IV

DUTIES, POWERS AND FUNCTIONS OF AUTHORITY

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Duties, powers and functions of Authority.

14. (1) Subject to the provisions of this Act and any other law for the time being in force, the Authority shall have the duty to regulate, promote and ensure orderly growth of the insurance business and re-insurance business.

(2) Without prejudice to the generality of the provisions contained in sub-section (1), the powers and functions of the Authority shall include,—

* * * * *

(i) control and regulation of the rates, advantages, terms and conditions that may be offered by insurers in respect of general insurance business not so controlled and regulated by the Tariff Advisory Committee under section 64U of the Insurance Act, 1938;

* * * * *

(n) supervising the functioning of the Tariff Advisory Committee;

* * * * *

16. (1) There shall be constituted a fund to be called “the Insurance Regulatory and Development Authority Fund” and there shall be credited thereto— Constitution of Fund.

* * * * *

(c) the percentage of prescribed premium income received from the insurer.

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

(Shri Pawan Kumar Bansal, Minister of State in the Ministry of Finance and Minister of State in the Ministry of Parliamentary Affairs)