



Amendments to the Insurance Laws (Amendment) Bill, 2008

The Insurance Laws (Amendment) Bill, 2008 was introduced in Rajya Sabha on December 22, 2008. It proposes to amend the Insurance Act, 1938 (the Act), the General Insurance Business (Nationalisation) Act, 1972 and the Insurance Regulatory and Development Authority Act, 1999. The Standing Committee on Finance submitted its recommendations on December 13, 2011. The government circulated some amendments to the Bill on July 30, 2014.

This note compares the provisions of the Act, with the Bill, Standing Committee recommendations and the proposed amendments.^{1,2,3,4}

Act	Bill (as introduced)	Standing Committee recommendation	2014 amendment(s)
Foreign shareholding (Page 2 - Clause 3 (iv) of the Bill)			
Shareholding by a foreign company (direct and indirect) should not exceed 26% of paid-up capital of an Indian insurance company.	Shareholding by a foreign company (direct and indirect) should not exceed 49% of paid-up capital of an Indian insurance company.	Further hike in Foreign Direct Investment may not be in the interest of the Indian insurance industry. The government should consider the alternate route of tapping domestic capital markets for raising the capital required for the growth of the sector.	Shareholding of foreign investors (including FII)s should not exceed 49% of paid-up capital of an Indian insurance company, which is Indian owned and controlled as per the prescribed manner.
Collector nominee (Page 22- Clause 48)			
No concept of collector nominee.	Defines 'collector nominee' as 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. Such payments have to be made in accordance with the regulations made by the Insurance Regulatory and Development Authority (IRDA).	No recommendation.	Removes the stipulation that such payments have to be made in accordance with the regulations made by IRDA.
Power of insurer to call a life insurance policy into question (Page 26 - Clause 58 of the Bill)			
No life insurance policy can be called into question after 2 years on the ground of mis-statement.	No life insurance policy can be called into question after 5 years on any ground. Within 5 years, it may be called into question on the ground of: (i) fraud, and (ii) misstatement of or suppression of a material fact regarding the life expectancy of the insured.	The period in which the policy can be questioned should be reduced to three years.	A life insurance policy may be called in question within 3 years on the same two grounds.
Shareholding by an Indian promoter in excess of 26% (Page 7 - Section 14 and Page 35 – Clause 104 and 105 of the Bill)			
Indian promoters will have to reduce their shareholding in insurance companies to 26% within 10 years. The government/IRDA can make rules/regulations regarding such excess shareholding.	The provision mandating Indian promoters to reduce shareholding to 26% is being deleted. The government/IRDA's power to make rules/regulations was left intact.	The requirement of Indian promoters having to reduce their stake to 26% within 10 years should be retained. The divestment of shares may be done even before 10 years.	The government/IRDA's power to make rules/regulations is being deleted. Instead the government will have the power to make rules regarding the manner of ownership and control of Indian insurance company.

Act	Bill (as introduced)	Standing Committee recommendation	2014 amendment(s)
Definition of "health insurance business (Page 2 - Clause 3)			
No separate definition.	Defines "health insurance business" as 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.	The term "health insurance business" should be revised to state that health insurance policies would cover sickness benefits for domestic as well as international travel.	Defines "health insurance business" as contracts which provide for sickness benefits or medical, surgical or hospital expense benefits, whether in-patient or out-patient travel cover and personal accident cover.
Operation of foreign insurers in India (Page 3 - Clause 4, 5 and 6 and Page 28 - Clause 72)			
A registered foreign insurer can conduct insurance business in a SEZ. The government may exempt any insurer operating in SEZ from application of any of the provisions of the Act .	An unregistered foreign insurer can conduct insurance business in a SEZ. A foreign insurer may be allowed to carry on the business of re-insurance in India through its branch office. The Bill also proposed to realign the definition of foreign insurers allowed to operate in SEZs.	The Standing Committee observed that permitting unregistered foreign entities to operate in SEZs would not serve the purpose of developing a well-regulated insurance market in India and would risk domestic capital flight.	Deletes provisions of the Bill and reinstates provisions of the Act.
Section 25 of the General Insurance Business (Nationalisation) Act, 1972 states that foreign insurers cannot issue insurance policies in India without prior government permission.	Foreign insurers cannot issue insurance policies in India without prior IPRDA permission, except for the properties situated in SEZs.	The Standing Committee suggested removal of the exception given to properties insured in SEZs.	Foreign insurers cannot issue insurance policies in India without prior IPRDA permission.
The Act has certain provisions regarding foreign insurers operating in India, e.g. reciprocal regulations, furnishing of documents to IRDA and maintenance of books of account, registers etc.	The Bill deletes these provisions.	No recommendation.	The amendment maintains these provisions.
IRDA's power to withhold or cancel registration of an insurer (Page 4 - Clause 8)			
IRDA shall withhold or cancel registration of a foreign insurer if he has been debarred by law or practice of his country to carry on insurance business.	IRDA may withhold or cancel registration of an insurer if his foreign partner in a joint venture has been debarred by law or practice of its country to carry on insurance business.	IRDA should be allowed to decide on cancellation by taking into consideration facts of individual cases.	IRDA may withhold registration of an insurer if his foreign partner in a joint venture has been debarred by law or practice of its country to carry on insurance business.
IRDA shall withhold or cancel registration of an insurer if his business has been transferred to another person or amalgamated with any other insurer.	IRDA may suspend or cancel registration of an insurer, completely or in part, if he has transferred or amalgamated any part of his business with another insurer.	No recommendation.	IRDA may suspend or cancel registration of an insurer, if he has transferred or amalgamated any part of his business with another insurer, without IRDA's approval.

Act	Bill (as introduced)	Standing Committee recommendation	2014 amendment(s)
Capital requirements (Page 6 -Clause 12 and 13)			
The minimum equity capital requirement is Rs 100 crore for life insurance or general insurance and Rs 200 crore for a person exclusively in the business of re-insurance.	The minimum equity capital requirement is Rs 50 crore for a person exclusively in the business of health insurance.	The minimum paid up capital for a for a person exclusively in the business of health insurance should be increased to Rs 100 crore..	Same as the Bill.
The statutory deposits with RBI and preliminary expenses incurred in the formation and registration of the company shall be excluded in calculation of paid-up equity capital of an insurer.	The preliminary expenses and statutory deposits with RBI shall be included while calculating the equity capital of any insurer.	The Committee recommended that any preliminary expenses incurred in the formation and registration of insurers be excluded from calculation of equity capital.	The preliminary expenses shall be excluded while calculating the equity capital of any insurer.
A life insurer, which is a public limited company, cannot have or issue any shares other than ordinary equity shares of single face value and equal voting rights.	An insurer, which is a public limited company, can have or issue equity shares of single face value or other forms of capital (as specified by regulations). Life insurers cannot issue any shares other than ordinary shares.	The prohibition on life insurers to issue shares other than ordinary equity shares should be removed.	An insurer, which is a public limited company, can have or issue equity shares of single face value or other forms of capital (as specified by regulations).
Appeals against IRDA decisions (Page 7 - Clause 15 and Page 17 - Clause 39)			
The government can appoint an officer to ensure compliance of a life or general insurer with capital structure requirements. The decision of such an officer can be appealed in the High Court within whose jurisdiction insurer's registered office is situated.	IRDA can appoint an officer to ensure compliance of an insurer with capital structure requirements. The decision of such an officer can be appealed in the High Court within whose jurisdiction insurer's registered office is situated.	The appeals against the officer's decision should lie with the Securities Appellate Tribunal.	IRDA can appoint an officer to ensure compliance of an insurer with capital structure requirements. The decision of such an officer can be appealed in the Securities Appellate Tribunal.
IRDA may conduct an investigation into the affairs of an insurer. On completion of the investigation, it may (i) ask the insurer to take certain action, or (ii) cancel his registration, or (iii) direct any person to apply to the court for the winding up of the insurer. Its orders (except cancellation of registration) cannot be challenged in any court.	IRDA may conduct an investigation into the affairs of an insurer or its intermediary. On completion of the investigation, it may (i) ask the insurer to take certain action, or (ii) cancel his registration, or (iii) direct any person to apply to the court for the winding up of the insurer. Its orders (except cancellation of registration) cannot be challenged in any court.	The Bill should provide a system of appeal for the aggrieved parties in such cases.	All such decisions to be challenged in the Securities Appellate Tribunal.
Accounts, funds and records (Page 8 - Clause 17 and Page 8 - Clause 20 and 21)			
No existing provision.	A general insurer should create separate accounts and funds for receipts due in each class of his insurance business.	The Committee recommended that the provision be made applicable to all insurers.	An insurer should create separate accounts and funds for receipts due in each class of his insurance business.

Act	Bill (as introduced)	Standing Committee recommendation	2014 amendment(s)
A life insurer's actuarial report should contain a certificate signed by its principal officer that full and accurate particulars of every policy have been furnished to the actuary.	The Bill proposed to remove this provision.	The Committee recommended that the provision as provided in the Act, be retained.	The amendment retains the provision.
Every insurer has to maintain records of all policies and claims.	Every insurer has to maintain records of all policies and claims.	Insurers should not be mandated to maintain the records in electronic form only.	An insurer can maintain records of policies and claims in electronic form (as allowed by IRDA). Each insurer shall also try to issue policies above a specified threshold in electronic form.
Investment of assets (Page 11 - Clause 28)			
Investments in immovable property outside India shall be excluded from the calculation of statutory investments to be made by an insurer, in order to meet his liabilities on account of matured claims on life insurance policies.	Investments in immovable property outside India shall be excluded from the calculation of statutory investments to be made by a life insurer (to meet his liabilities on account of matured claims) or general insurer.	No specific recommendation.	Investments in immovable property outside India shall be included in calculation of statutory investments to be made by a life insurer (to meet his liabilities on account of matured claims) or general insurer.
Assignment and transfer of insurance policies (Page 19, 20 and 22- Clause 48)			
A transfer or assignment of a life insurance policy needs to be communicated to the insurer. The insurer cannot reject a transfer or assignment.	The insurer may reject a transfer or assignment if it believes that the transfer or assignment is: (i) not bona fide, or (ii) is not in the interest of the policy-holder, or (iii) is not in public interest.	The Bill should specifically debar speculative assignments of policies instead of leaving it to the discretion of insurers.	The insurer may reject a transfer or assignment if it believes that the transfer or assignment is: (i) not bona fide, or (ii) is not in the interest of the policy-holder, or (iii) is not in public interest, or (iv) is for the purpose of trading of insurance policy.
Management expenses and rebates (Page 23 - Clause 50 and 51)			
An insurer's annual management expenses should be within the prescribed limits. Life insurers have to furnish details of expenses to the Controller of Insurance.	Each insurer should submit details of management expenses to IRDA.	The Bill should incorporate suitable provisions empowering IRDA to specify the limit on management expenses of insurance companies.	Each insurer should keep annual management expenses below the limit set by IRDA and submit details of such expenses to IRDA.
Each insurer should re insure a minimum percentage of their exposure with Indian re-insurers, as specified by IRDA.	Same as the Act.	No recommendation.	No insurer shall receive reimbursement of expenses or commission on this mandatory re-insurance from Indian re-insurers.

Act	Bill (as introduced)	Standing Committee recommendation	2014 amendment(s)
The Act prohibits offering of unauthorised rebates on commission or premium for a policy. A defaulter could be punished with a fine up to Rs 500.	The Bill proposes to raise this fine to Rs 5 lakh.	Agreed with the proposal of the Bill to increase penalty to Rs 5 lakh.	The amendment raises the fine to Rs 10 lakh.
Agents, intermediaries and surveyors and loss assessors (Page 23, 24, 25 and 30 - Clause 52, 53, 54, 56 and 86)			
IRDA has the power to issue licenses to insurance agents. There was no restriction on the number of insurers for whom a person could be an agent.	The requirement of licensing of agents by IRDA will be removed; instead insurers can appoint agents. No person can be an agent for more than one life insurer and one general insurer.	IRDA's present role in licensing of insurance agents should not be eliminated.	No person can be an agent for more than one life insurer and one general or health insurer.
No existing provision.	Same as the Act.	No recommendation.	Insurers shall be responsible for all the acts and omissions of their agents including violation of code of conduct. They shall be liable to a penalty of up to Rs 1 crore for such acts and omissions of their agents.
The Act provides for the registration of principal agents, special agents and chief agents for the purpose of insurance business.	The Bill deletes these provisions but does not address the case of such agents who are currently in operation.	The Bill should incorporate appropriate provisions to discourage use of multi-level marketing schemes.	The amendment explicitly prohibits employment of such agents and also prohibits the operation of insurance business through multi-level marketing schemes.
The Act specifies a fine for operating as an intermediary without a license, but does not specify the quantum of fine.	Same as the Act.	The fine applicable on insurance intermediaries and companies for acting as or appointing intermediary without license should be addressed in the Bill.	The amendment specifies a maximum fine of Rs 5 lakh for the intermediary and Rs 1 crore for the insurer and additionally, Rs 10 lakh for every officer of the company who is knowingly a party to such a contravention.
Every insurer must maintain a register of the name and address of his insurance agents, the date on which the agent's appointment began and ceased (if applicable).	Such record should be maintained for a period of five years.	The Bill should specify that the records of agents are to be maintained for a period of five years from the date of cessation of the engagement of an agent.	Such record should be maintained as long as the agent is in service and for a further period of five years after the end of his appointment.

Act	Bill (as introduced)	Standing Committee recommendation	2014 amendment(s)
No person shall act as a surveyor or loss assessor for general Insurance business unless licensed by IRDA.	The requirement of licensing will be removed. Surveyors and loss assessors for general insurers can only operate in accordance with relevant IRDA regulations.	The provisions should be modified to provide for only independent and licensed surveyors to practice the profession. Further, measures need to be taken to strengthen the Indian Institute of Loss Assessors and Surveyors, to function as the regulator for this profession.	Surveyors and loss assessors must: (i) possess academic qualifications as may be specified by regulations, (ii) be a member of the Indian Institute of Loss Assessors and Surveyors, and (iii) adhere to a code of conduct as may be laid down by regulation.
IRDA's power to make regulations (Page 35-37 - Clause 105)			
IRDA can make regulations regarding certain subjects.	The Bill further permits IRDA to make regulations regarding various matters, including the manner of payment of benefits to the nominee.	IRDA's power to make regulations regarding qualifications, practical training or examination to be passed for appointment as an insurance agent should be maintained.	The amendment removes the power to make regulations regarding the manner of payment of benefits to the nominee. It additionally permits IRDA to make regulations regarding: (i) determination of preliminary expenses that may be excluded for calculation of the paid-up equity capital for the insurers, (ii) maintenance of records of policies and claims, (iii) manner and form of issuance of policies in electronic form, (iv) code of conduct for insurance agents, (v) academic qualifications and code of conduct for surveyors and loss assessors, and (vi) the period for which a person may act as a surveyor or loss assessor.
Raising of capital by public sector general insurers (Page 37 – Clause 107)			
No existing provision.	The Bill permits the General Insurance Corporation and other public sector general insurers to raise capital for increasing their business in rural and social sectors, to meet solvency margin and for other purposes.	The provision should specify that government's shareholding would not be allowed to decline below 51%.	The amendment specifies that government shall always maintain at least 51% shareholding in these insurers.
Removal of Section 114 (2) (w) of the Act (Page 35 – Clause 104)			
No provision.	No provision.	No recommendation.	The amendment says that Section 114 (2) (w) of the Act shall be omitted. This appears to be a drafting error as the Act does not contain Section 114 (2) (w).

Other Standing Committee recommendations and observations:

- **Health insurance:** IRDA's regulations/guidelines should encompass the roles of all the parties involved in providing health insurance i.e. insurers, third-party administrators (TPAs) and health care providers/hospitals. Health insurance policies should be issued in dematerialised form, which would ensure ready and quick access to information.
- **Inclusion of Lloyd's as a foreign company:** The Bill proposes to include Lloyd's, covered by the Lloyd's Act, 1871 of the UK under the definition of "foreign company". The Committee proposed that only those syndicates of Lloyd's that have underwriting desks in India be covered under the definition of "foreign company".
- **Agents:** The Bill proposes to do away with stipulations on the percentage of premium payable to agents as commission and leave the matter to IRDA regulations. It also seeks to empower insurance companies to appoint agents instead of IRDA licensing agents. The Committee expressed its disagreement with these proposals.
- **Penalties:** Clauses 92, 93 and 94 of the Bill specify penalties for: (i) conducting insurance business without registration, (ii) contravention of provisions regarding investment of controlled fund or assets, (iii) wrongful gain of property by an executive of the insurer, and (iv) insurer's non-compliance with the obligations for rural or social sector or third party insurance for motor vehicles. The Committee observed that the penalties should be rational and justifiable vis-à-vis the nature of the offence, and recommended a relook at the penalties proposed.
- **Security Appellate Tribunal:** Once the Securities Appellate Tribunal is made the appellate authority for insurance matters (as proposed in the Bill), its composition as well as the qualifications for the members should be reviewed to provide for appointment of insurance experts as its members.

¹ "The Insurance Laws (Amendment) Bill, 2008", Rajya Sabha, December 22, 2008, http://www.prsindia.org/uploads/media/1230002517/1230002517_Insurance_Bill.pdf.

² "Notice of amendments, The Insurance Laws (Amendment) Bill, 2008", Rajya Sabha, July 30, 2014, <http://www.prsindia.org/uploads/media/Insurance/Official%20Amendments%20as%20on%2030%20july%202014.pdf>.

³ "Notice of amendments, The Insurance Laws (Amendment) Bill, 2008", Rajya Sabha, August 2, 2013, <http://www.prsindia.org/uploads/media/Insurance/Official%20amendments%20Insurance%20Laws%20Amendment%20Bill.pdf>.

⁴ "41st report: The Insurance Laws (Amendment) Bill, 2008", Standing Committee on Finance, December 13, 2011, <http://www.prsindia.org/uploads/media/1230002517/SCR%20Insurance%20Laws%20Bill.pdf>.

DISCLAIMER: This document is being furnished to you for your information. You may choose to reproduce or redistribute this report for non-commercial purposes in part or in full to any other person with due acknowledgement of PRS Legislative Research ("PRS"). The opinions expressed herein are entirely those of the author(s). PRS makes every effort to use reliable and comprehensive information, but PRS does not represent that the contents of the report are accurate or complete. PRS is an independent, not-for-profit group. This document has been prepared without regard to the objectives or opinions of those who may receive it.