

THE INSURANCE ACT, 1938

AS AMENDED BY THE INSURANCE LAWS (AMENDMENT) ACT, 2015

23.10 INTRODUCTION

(Highlights of the Amendment Act, 2015)¹

The Insurance Laws (Amendment) Bill, 2015 was passed by the Lok Sabha on 4th March, 2015 and by the Rajya Sabha yesterday i.e. on 12th March, 2015. The passage of the Bill thus paved the way for major reform related amendments in the Insurance Act, 1938, the General Insurance Business (Nationalization) Act, 1972 and the Insurance Regulatory and Development Authority (IRDA) Act, 1999. The Insurance Laws (Amendment) Act 2015 deemed to *come into force on 26th December 2014*. The amendment Act paved way for removing archaic and redundant provisions in the legislations and incorporates certain provisions to provide Insurance Regulatory and Development Authority of India (IRDAI) with the flexibility to discharge its functions more effectively and efficiently. It also provides for enhancement of the foreign investment cap in an Indian Insurance Company from 26% to an explicitly composite limit of 49% with the safeguard of Indian ownership and control.

In addition to the provisions for enhanced foreign equity, the amended law will *enable capital raising* through new and innovative instruments under the regulatory supervision of IRDAI. Greater availability of capital for the capital intensive insurance sector would lead to greater distribution reach to under / un-served areas, more innovative product formulations to meet diverse insurance needs of citizens, efficient service delivery through improved distribution technology and enhanced customer service standards. The Rules to operationalize the new provisions in the Law related to foreign equity investors have already been notified on 19th February 2015 under powers accorded by the Ordinance.

The four public sector general insurance companies, presently required as per the General Insurance Business (Nationalisation) Act, 1972 (GIBNA, 1972) to be 100% government owned, are now allowed to raise capital, keeping in view the need for expansion of the business in the rural and social sectors, meeting the solvency margin for this purpose and achieving enhanced competitiveness subject to the Government equity not being less than 51% at any point of time.

Further, the amendments to the laws will enable the *interests of consumers to be better served* through provisions like those enabling penalties on intermediaries / insurance companies for misconduct and disallowing multilevel marketing of insurance products in order to curtail the practice of mis-selling. The amended Law has several provisions for levying higher penalties ranging from up to ₹ 1 Crore to ₹ 25 Crore for various violations including mis-selling and misrepresentation by agents / insurance companies. With a view to serve the interest of the policy holders better, the period during which a policy can be repudiated on any ground, including mis-statement of facts etc., will be confined to three years from the commencement of the policy and no policy would be called in question on any ground after three years. The amendments provide for an easier process for payment to the nominee of the policy holder, as the insurer would be discharged of its legal liabilities once the payment is made to the nominee. It is now obligatory in the law for insurance companies to underwrite third party motor vehicle

¹ Press Information Bureau, Ministry of Finance, Govt. of India, dt. 13th March, 2015

insurance as per IRDAI regulations. Rural and Social sector obligations for insurers are retained in the amended laws.

The Act will entrust responsibility of appointing insurance agents to insurers and provides for IRDAI to regulate their eligibility, qualifications and other aspects. It enables agents to work more broadly across companies in various business categories; with the safeguard that conflict of interest would not be allowed by IRDAI through suitable regulations. *IRDAI is empowered* to regulate key aspects of Insurance Company operations in areas like solvency, investments, expenses and commissions and to formulate regulations for payment of commission and control of management expenses. It empowers the Authority to regulate the functions, code of conduct, etc., of surveyors and loss assessors. It also expands the scope of insurance intermediaries to include insurance brokers, re- insurance brokers, insurance consultants, corporate agents, third party administrators, surveyors and loss assessors and such other entities, as may be notified by the Authority from time to time. Further, properties in India can now be insured with a foreign insurer with prior permission of IRDAI; which was earlier to be done with the approval of the Central Government.

The amendment Act *defines 'health insurance business'* inclusive of travel and personal accident cover and discourages non-serious players by retaining capital requirements for health insurers at the level of ₹ 100 Crore, thereby paving the way for promotion of health insurance as a separate vertical.

The amended law enables *foreign reinsurers to set up branches in India* and *defines 're-insurance'* to mean “the insurance of part of one insurer’s risk by another insurer who accepts the risk for a mutually acceptable premium”, and thereby excludes the possibility of 100% ceding of risk to a re-insurer, which could lead to companies acting as front companies for other insurers. Further, it enables Lloyds and its members to operate in India through setting up of branches for the purpose of reinsurance business or as investors in an Indian Insurance Company within the 49% cap.

The Life Insurance Council and General Insurance Council have now been made *self-regulating bodies* by empowering them to frame bye-laws for elections, meetings and levy and collect fees etc. from its members. Inclusion of representatives of self-help groups and insurance cooperative societies in insurance councils has also been enabled to broad base the representation on these Councils.

Appeals against the orders of IRDAI are to be preferred to SAT as the amended Law provides for any insurer or insurance intermediary aggrieved by any order made by IRDAI to prefer an appeal to the Securities Appellate Tribunal (SAT).

23.11 IMPORTANT DEFINITIONS (Section 2)

(1) "*Actuary*" means an actuary as defined in clause (a) of sub-section (1) of section 2 of the Actuaries Act, 2006.

(1A) "*Authority*" means the Insurance Regulatory and Development Authority of India established under sub-section (1) of section 3 of the Insurance Regulatory and Development Authority Act, 1999

(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 travel cover and personal accident cover.

(7A) "*Indian insurance company*" means any insurer, being a company which is limited by shares, and, (a) which is formed and registered under the Companies Act, 2013 as a public company or is converted into such a company within one year of the commencement of the Insurance Laws (Amendment) Act, 2015; (b) in which the aggregate holdings of equity shares by foreign investors, including portfolio investors, do not exceed forty-nine per cent of the paid up equity capital of such Indian insurance company, which is Indian owned and controlled, in such manner as may be prescribed. The expression "control" shall include the right to appoint a majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreements or voting agreements; (c) whose sole purpose is to carry on life insurance business or general insurance business or re-insurance business or health insurance business.

(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. 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) or any of its Members.

(16B) "*Re-insurance*" means the insurance of part of one insurer's risk by another insurer who accepts the risk for a mutually acceptable premium.

23.12 PROVISIONS RELATED TO INSURANCE

a) Indian properties not to be insured with foreign insurers (section 2CB)

Without the permission of the IRDA, 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.

b) Requirements as to Capital (Section 6)

| Type of Insurance Business | Minimum Paid-up equity capital required (with a provision for further enhancement & Paid-up equity excludes preliminary expenses incurred during formation and registration) |
|-------------------------------------|--|
| Life insurance or general insurance | ₹ 100 crore |
| Health insurance (exclusively) | ₹ 100 crore |
| Re-insurer (exclusively) | ₹ 200 crore (besides re-insurer shall not be registered unless he has net owned funds of not less than ₹ 5,000 crore) |

c) Further Conditions (Section 6A)

To carry on the business of life or general or health or re-insurance the following further requirements are to be satisfied by such companies:

- 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 the regulations;
- that the voting rights of shareholders are restricted to equity shares;
- 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.
- The aforesaid conditions shall not apply to a public company which before the commencement of the Insurance (Amendment) Act, 1950, has issued any shares other than ordinary shares each of which has a single face value or shares, the paid-up amount whereof is not the same for all them for a period of three years from such commencement.

d) Audit of accounts of insurance companies (Section 12) & Submission of returns (Section 15)

Unless subject to audit under the Companies Act, 2013, 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 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 147 of the Companies Act, 2013.

The audited accounts and statements 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. 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.

e) Actuarial Valuation/Report (section 13)

At least once a year, every insurer carrying on life insurance business shall cause an investigation 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. 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. If the investigation 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.

f) Record of Policies and claims (Section 14)

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

1. a record of policies, in which shall be entered, in respect of every policy issued by the insurer, the name and address of the policyholder, the date when the policy was effected and a record of any transfer, assignment or nomination of which the insurer has notice;

2. 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;
3. a record of policies and claims may be maintained in any such form, including electronic mode, as may be specified by the regulations made under this Act;
4. Every insurer shall, in respect of all business transacted by him, endeavour to issue policies above a specified threshold in terms of sum assured and premium in electronic form, in the manner and form to be specified by the regulations made under this Act.

g) Investment of Assets (Section 27)

Every insurer shall invest and at all times keep invested assets equivalent to not less than the sum of the amount of his liabilities to holders of life insurance policies in India on account of matured claims, and the amount required to meet the liability on policies of life insurance maturing for payment in India, less 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 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 following manner namely:-

1. 25% 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
2. the balance in any of the approved investments as may be specified by the regulations subject to the limitations, conditions and restrictions specified therein.

In the case of an insurer carrying on general insurance business, 25% 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.

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. (Section 27A)

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. (Section 27B)

An insurer may invest not more than five per cent in aggregate of his controlled fund or assets in the companies belonging to the promoters, subject to such conditions as may be specified by the regulations. (Section 27C)

h) Prohibition of loans (Section 29)

No insurer shall grant loans or temporary advances either on hypothecation of property or on personal security or otherwise, except loans on life insurance 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. This shall not apply to such loans made by an insurer to a banking company, as may be specified by the Authority. Further this shall not be applicable 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. The provisions of section 185 of the Companies Act, 2013 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.

i) Liability of directors for contravention (Section 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 policyholders, 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.

j) Obligations of Insurers in respect of third party risks of motor vehicles (Section 32D)

Every insurer carrying on general insurance business shall, after the commencement of the Insurance Laws (Amendment) Act, 2015, underwrite such minimum percentage of insurance business in third party risks of motor vehicles as may be specified by the regulations: The Authority may, by regulations, exempt any insurer who is primarily engaged in the business of health, re-insurance, agriculture, export credit guarantee, from the application of this section. 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. (Section 105B)

k) Power of investigation and inspection by authority (Section 33)

The Authority may, at any time, if it considers expedient to do so by order in writing, direct any person ("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: 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. Notwithstanding anything to the contrary contained in section 210 of the Companies Act, 2013, 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. 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 or inspection, 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. The Investigating officer shall make a report to the Authority on such inspection and the Authority may after giving such opportunity to the insurer or intermediary to make a representation. All expenses incidental to any investigation shall be defrayed by the insurer or intermediary or insurance intermediary and shall have priority over the debts due from the insurer and shall be recoverable as an arrear of land revenue.

l) Prohibition of payment by way of commission or otherwise for procuring business (Section 40)

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 the regulations. 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 in any form in respect of policies issued in India, by an insurer except in accordance with the regulations specified in this regard.

m) Appointment of insurance agents (Section 42)

An insurer may appoint any person to act as insurance agent for the purpose of soliciting and procuring insurance business. Such person should not suffer from any of the disqualifications. Further no person shall act as an insurance agent for more than one life insurer, one general insurer, one health insurer and one of each of the other mono-line insurers: The Authority shall, while framing regulations, ensure that no conflict of interest is allowed to arise for any agent in representing two or more insurers for whom he may be an agent.

n) Prohibition of insurance business through principal agent, special agent and multilevel marketing (Section 42A)

No insurer shall, on or after the commencement of the Insurance Laws (Amendment) Act, 2015, appoint any principal agent, chief agent, and special agent and transact any insurance business in India through them. No person shall allow or offer to allow, either directly or indirectly, as an inducement to any person to take out or renew or continue an insurance policy through multilevel marketing scheme. The Authority may, through an officer authorised in this behalf, make a complaint to the appropriate police authorities against the entity or persons involved in the multilevel marketing scheme. "multilevel marketing scheme" means any scheme or programme or arrangement or plan (by whatever name called) for the purpose of soliciting and procuring insurance business through persons not authorised for the said purpose with or without consideration of whole or part of commission or remuneration earned through such solicitation and procurement and includes enrolment of persons into a multilevel chain for the said purpose either directly or indirectly.

o) Policy not to be called in question after three years (Section 45)

No policy of life insurance shall be called in question on any ground whatsoever after the expiry of three 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. A policy of life insurance may be called in question at any time within three 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. The insurer shall 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.

p) Agent/intermediary not to be a director (Section 48A)

No insurance agent or intermediary or insurance intermediary shall be eligible to be or remain a director in insurance company. Any director holding office at the commencement of the Insurance Laws (Amendment) Act, 2015 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. 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 policyholders or to avoid conflict of interest.

q) Prohibition of business on dividing business (Section 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 policyholder depend wholly or partly on the number of policies becoming claims within certain time-limits: This does not 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.

r) Councils of Life and General Insurance (Section 64C)

On and from the date of commencement of this Act, the existing Life Insurance Council, a representative body of the insurers, who carry on the life insurance business in India; and 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.

s) Surveyors or loss assessors (Section 64UM)

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 Laws (Amendment) Act, 2015, unless he possesses such academic qualifications as may be specified by the regulations made under this Act; and is a member of a professional body of surveyors and loss assessors, namely, the Indian Institute of Insurance Surveyors and Loss Assessors. In the case of a firm or company, all the partners or directors or other persons, who may be called upon to make a survey or assess a loss reported, as the case may be, shall fulfil the same requirements. Every surveyor and loss assessor shall comply with the code of conduct in respect of his

duties, responsibilities and other professional requirements, as may be specified by the regulations made under the Act.

t) Assets and liabilities how to be valued (Section 64V)

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. 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. 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 the regulations.

u) Sufficiency of assets (Section 64V)

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. An insurer or re-insurer, as the case may be, who does not comply with shall be deemed to be insolvent and may be wound-up by the court on an application made by the Authority. 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 without prejudice to taking of any other remedial measures as deemed fit.

Thus, the amendments incorporate enhancements in the Insurance Laws in keeping with the evolving insurance sector scenario and regulatory practices across the globe. The amendments will enable the Regulator to create an operational framework for greater innovation, competition and transparency, to meet the insurance needs of citizens in a more complete and subscriber friendly manner. *The amendments are expected to enable the sector to achieve its full growth potential and contribute towards the overall growth of the economy and job creation.*