

19. The Insurance Act, 1938

Definitions (Sec. 2)

- **Actuary:** means any actuary possessing such qualifications as may be specified the regulation made by the authority.
- **Authority:** means the IRDA established under section 3(1) of the IRDA act, 1999.
- **Policy Holder:** includes a person to whom the whole of the interest of the policy-holder in the policy is assigned once and for all, but does not include an assignee thereof whose interest in the policy is defeasible.
- **Approved securities:**
 - ✓ GS and other securities granted fully as regards principal and interest by the CG or SG.
 - ✓ Debentures or other securities for money issued under the authority of any central act or act of state legislature.
 - ✓ Shares of a corporation established by law and guaranteed fully by the CG or the government of a state as to the repayment of the principal.
- **Chief Agent:** means a person who, not being a salaried employee of an insurer, in consideration of any commission –
 - ✓ Performs any administrative and organising function of the insurer, and
 - ✓ Produces life insurance business for the insurer by employing or causing to be employed insurance agent in behalf of the insurer.
- **Controller of insurance:** means the officers appointed by the CG under section 2B to exercise all the powers, discharge the functions and to perform the duties of the authority under this act.
- **Insurer:** means
 - ✓ Any individual or unincorporated body of individual or body corporate incorporated under the law of any country other than India, carrying on insurance business.
 - ✓ Any body corporate carrying on the business of insurance, which is a body corporate incorporated under any law for the time being in force in India.
- **Life Insurance Business:** means the business of effecting contracts of insurance upon human life, including any contract whereby the payment of money is assured on death 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-
 - ✓ The granting of disability and double or triple indemnity accident benefits, if so provided in the contract of insurance;
 - ✓ The granting of annuities upon human life; and
 - ✓ The granting of superannuation allowances and annuities payable out of any fund applicable solely to the relief and maintenance of persons engaged in any particular profession, trade or employment or the dependents of such person.
- **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.

Appointment of Controller of Insurance (Sec. 2B)

- The CG may, by notification in the official gazette, appoint a person to be the COI till such time the authority is reconstituted.
- In making any appointment of COI, the CG shall have due regard to the following considerations;
 - ✓ Whether the person, to be appointed has had experience in industrial, commercial or insurance matters and whether such person has actuarial qualification.

Prohibition of transaction of insurance business by certain persons [Sec. 2B(2)]

- No person shall begin to carry on any class of insurance business unless he is-
 - ✓ A public company, or
 - ✓ A society registered under the co-operative societies act, 1912 or under any other law being in force in any state
 - ✓ A body corporate incorporated under any law of any country outside India not being the nature of a private company.

Registration of Insurers (Sec. 3)

- **Registration:** No person shall begin to carry any class of insurance business in India, unless he has obtained from the authority a certificate of registration for the particular class of insurance business 3(1)
- **Documents [3(2)]**
 - ✓ Company - A certified copy of memorandum and AOA
 - ✓ Partnership – partnership deed
 - ✓ Name, address and the occupation of the directors where the insurer is accompany
 - ✓ A statement of class or classes of insurance busied done or to be done
 - ✓ Statement that amount required to be deposited by section 7 or 98 before application for registration has been deposited together certificate from RBI.
 - ✓ A declaration as per section 6 and 97 which state the paid up capital or working capital.
 - ✓ A certified copy of published prospectus
 - ✓ Standard policy forms and other relevant document related to rates, conditions and other
 - ✓ Receipt of fees as may be determined by regulation which shall not exceed Rs. 50,000 for each class of business as may be specified by regulations
 - ✓ Such other document as may be specified by the authority.
- Grant of certificate or registration [sec. 3(2A)]

If, on receipt of an application for registration and after making such inquiry as he deems fit, the authority is satisfied that –

 - ✓ The financial position and general character if management of applicant are sound;
 - ✓ The volume of business likely to be available to, and the capital structure and earning prospectus of the applicant will be adequate;
 - ✓ The interest of the general public will be served if the registration granted;
 - ✓ The applicant has compiled with the requirements relating to registration.
- If any authority refuses the application, he shall record the reasons for such decision and shall furnish a copy thereof to the applicant. 3(2B)

- Any person aggrieved by the decision of the authority refusing registration may, within 30 days from the date in which a copy of decision is received by him, appeal to the CG. 3(2C)
- The decision of the CG on such appeal shall be final and shall not be questioned before court. 3(2D).
- 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
- When a registration is cancelled the insurers shall not, after the cancellation has taken effect, enter into any new contracts of insurance, but rights and liabilities in respect of contracts of insurance entered into by him before such cancellation takes effect shall continue as if the cancellation had not taken place. 3(5B)
- The authority may, on payment of such fee, not exceeding Rs. 5000 for issued of duplicate certificate of registration. 3(7).

Renewal of registration [section 3A)

- Renewed for each year after ending on the 31st day of march
- Application for renewal shall be made to authority before 31st day of December of the preceding year.
- If no application filed within time or fail to file than authority may charge penalty and order to comply with renewal process.
- After satisfaction , authority grant registration certificate

Restriction on name of insurer (section 5)

- Identical and similarly deceptive names prohibited
- Change of name if insurance is registered with identical name within time fixed by the authority.

Requirement as to capital (section 6)

- For life insurance and general insurance business - A paid-up capital as equal to Rs. 100 crore
- For re-insurance business - A paid-up capital as equal to Rs. 200 Crore.

Requirements as to capital structure and voting rights and maintenance of registration of beneficial owners of shares (section 6A)

- Capital structure 6A(1)
 - ✓ Capital consists only of ordinary shares, each of has single FV.
 - ✓ That, except during any period not exceeding 1 year allowed by the company for payment of calls on shares.
- Voting rights 6A(2)
 - ✓ Proportionate to the paid-up amount of the shares held by him.
- No public company as aforesaid which carries on life insurance business, shall issue any share other than ordinary shares of the nature specified in sub-section (1).
- No promoter shall at any time hold more than 26% or such other percentage as may be prescribed, of the paid-up capital in an Indian insurance company. (Sec. 6AA)

Deposits

- Amount and form 7(1)
 - ✓ Life insurance business – sum equivalent to 1% of his total gross premium written in any FY, not exceeding Rs. 10 Crore
 - ✓ General insurance business – sum equivalent to 3% of his total gross premium written in India, in a FY, not exceeding Rs. 10 Crores
 - ✓ Re-insurance business - 20 Crores
- Investment of cash in approved securities or vice-versa by RBI on behalf of insurer [7(9A)]
- Reservation of Deposits (Section 8)
 - ✓ No assignment, charge liability or attachments [8(1)]
 - ✓ Deposit to be utilised only for discharge of liabilities arising out of policies of insurance [8(2)]
- Refund of Deposit (Section 9)
 - ✓ Where an insurance cease to carry business in India, or any other liability satisfied or otherwise provided for, the court may, on the application of insurer, order the return to the insurer of the deposited made by him under the act.

Powers of authority to remove managerial person from office (Sec. 34B)

- Removal to be in public interest of policy holder [34B(1)]
- Issue of show cause notice before removal [34B(2)]

Power of authority to appoint additional directors (Section 34C)

- Appointment at the discretion of the authority
- Maximum number
 - ✓ Not exceed at any time, 5 or 1/3 rd of the maximum strength fixed for board.
- Provisions applicable to AD
 - ✓ Hold office at the pleasure of authority but not exceed 3 years
 - ✓ Shall not incur any obligation or liability by reason only if he is being a director
 - ✓ Shall not required to hold qualification shares
- For the purpose or reckoning any matter Ads shall not include in calculation

Nomination by policy holder (Sec. 39)

1. Time limit
 - ✓ When effecting the policy
 - ✓ Before the policy mature for payment
- Minor nominee is eligible to appoint and also eligible for collect money on death of original policy holder
2. Manner of making nomination
 - ✓ Any such nomination in order to be effectual shall, unless it is incorporated in the text of the policy
 - ✓ Nominee may change before the maturity of policy
 - ✓ And 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 record of the insurer.
3. Furnishing of acknowledgement of nomination by insurer

4. Effect of assignment on nomination
 - ✓ A transfer or assignment of a policy made in accordance with section 38 shall automatically cancel a nomination.

When administration for management of insurance business may be appointed (Section 52A)

1. Report by authority to CG if insurer is acting prejudicially
2. Appointment of administrator by CG
3. Remuneration and cancelation of appointment is as per direction of the CG
4. The management of the business of the insurer shall as on date and after date of appointment if the administrator vests in such administrator, but except with the leave if the authority the administrator shall not issue further policies
5. As on and after the date of appointment of the administrator any person vested with any such management immediately prior to that date shall be divested of that management
6. Issue of directions by the authority to the administrator

Powers and duties of the administrator (Sec. 52B)

1. **Conduct of business of the insurer**
 - a. The transfer of the business of the insurer to some other insurer;
 - b. The carrying on of its business by the insurer;
 - c. The winding-up of the insurer; and
 - d. Such other course as he deems advisable
2. On filing of report about business authority may take action as they think fit
3. Any order passed by authority shall be binding upon all persons concerned, and shall have effect notwithstanding anything in the Memorandum and AOA.
- Where any order or decision of the CG made in pursuance to appointment and termination of administrator shall be final and shall not be called in question in any court.

Power of CG to acquire undertaking of insurers in certain cases (Sec. 52H)

1. **Order**
 - ✓ If CG is satisfied that the business is managed in detriment to the public interest, the CG may, by notified order, acquire the undertaking of such insurer with such date as may be prescribed in order
2. **Opportunity to show cause**
 - ✓ Given reasonable opportunity
3. All the assets and liabilities of the undertaking of the acquired insurer shall stand transferred to, and vest in the CG.
4. If, on appointed date any suit, appeal or other proceeding, is pending by or against the insurer shall not be abated, be discontinued or be, in any way prejudicially affected by reason of the transfer of the undertaking of the acquired insurer, but the suit, appeal or other proceedings may be continued, prosecuted and enforced by or against the CG.

Compensation to be given to the acquired insurer (section 52J)

1. According to principles contained in eighth schedule
2. Offered to acquired insurer in full satisfaction
3. If amount is not acceptable then he may write to the CG have the matter referred in tribunal
4. If before the date notified if any objection not received then such amount is binding on acquired insurer and such person as the case may be.

Incorporation of the Insurance Association of India (IAI) (Section 64A)

1. IAI to be a body corporate
2. All insurers shall be known as the members of IAI
3. The IAI 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 be said name sue and be sued.

Establishment of tariff advisory committee (Section 64U)

1. **Object**
 - ✓ To control and regulate the rates, advantage, terms and conditions that may be offered by insurers in respect of general insurance business.
2. **Characteristic**
 - ✓ Shall be a body corporate
 - ✓ Having perpetual succession and common seal
 - ✓ With power, subject to the provisions of the act, to acquire, hold and disposal of property both movable and immovable.

Powers of advisory committee (AC) to regulate rates, advantages etc. (section 64U)

1. The rates, advantages, T & C as opined by the AC shall be binding on all insurers.
2. Grant of permission to an offer different terms and conditions
 - ✓ During such period which not more than 2 years, but which may be extended by periods of not more than 2 years.
3. For fixing, any amending or modifying any rate, advantages or terms and conditions relating to any risk, the AC shall try to ensure, as far as possible, that there is no unfair discrimination.
4. Every decisions of the AC shall be valid only after and to the extent it is ratified by the authority.
5. The decisions of the AC in pursuance of the provisions of this section shall be final.
6. Where an insurer is guilty of breach of any condition fixed by the AC, he shall be deemed to have contravened the provisions of the Act.

Licensing of surveyors and loss assessors (Section 64UM)

- Not to act as surveyor or loss assessor without license
- Every license issued under this section shall remain in force, unless cancelled earlier, for a period of 5 years from the date of issue thereof, and may be renewed for a period of 5 years at a time, in payment of such fee.
- Every application for renewal is made before 30 days of expiry of such license.
- Duplicate license is issued after charging fee of Rs. 5.

No risk is assumed unless premium is received in advance (Sec 64VB)

- No risk is assumed unless and until the premium payable is received by him or is guaranteed by such person in such manner and within such time as may be prescribed or unless and until deposit of such amount as may be prescribed, is made in advance.
- The risk may not be assumed not earlier than the date on which the premium has been paid in cash or by cheque to the insurer.
- Where the premium is order by postal money or cheque than, the risk may be assumed on the date on which the money order is booked or the cheque is posted.
- Refund on cancellation of policy, to be made directly to the insured and not to the agent
- Where an agent collect premium on behalf of insurer he has liability to deposit it within 24 hours.

Restriction on opening of a new place of business (Sec. 64VC)

- Permission of authority required for opening of a new place of business and change of place of business.
- After receiving application, authority may grant permission after condition satisfied.
- For the purpose of 'place of business' includes a branch, sub-branch, and any other office, by whatever name called.

Policy not to be called in question on ground of mis-statement after two years (section 45)

- No policy of life insurance shall, after the expiry of 2 years from the date in which it was affected on any reason questioned.
- However, nothing in this section shall prevent the insurer from calling for proof of age at any time if he 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 age of the life insured was incorrectly stated in the proposal.

Re-insurance with Indian re-insurers (Sec. 101A)

1. Mandatory for every insurer to re-insure with Indian re-insurers certain specified percentage of sum assured after approval of CG.
2. Percentage of sum insured to be re-insured is specified by the authority.
 - ✓ However, no percentage so specified shall exceed 30% of the sum insured of such policy
3. For notification about percentage of re-insurance is made after consultation with AC.
4. Insurer can re-insure at higher rate at his own option no any restriction is provided for doing so.