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Part I]
LAW COMMISSION OF INDIA

CONSULTATION PAPER ON
REVISION OF THE INSURANCE ACT 1938 & THE
INSURANCE REGULATORY & DEVELOPMENT
ACT 1999

June 2003

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**CONSULTATION PAPER OF THE LAW COMMISSION OF INDIA ON
REVISION OF THE INSURANCE ACT 1938 & THE INSURANCE
REGULATORY AND DEVELOPMENT ACT 1999**

1. Introduction

- 1.1 A reference has been made to the Law Commission of India by the Insurance Regulatory and Development Authority (IRDA) to make recommendations for revision of the Insurance Act, 1938 and for consequential amendments thereto.
- 1.2 The insurance sector has been growing steadily and is a major source of long-term contractual funds needed for infrastructure development. The second annual report of the IRDA highlights this phenomenon. According to it, the size of insurance market in the country, both life and non-life, is to the extent of \$ 9.94 billion. The rate of annual growth in the year 2001-2002 was 43% in life insurance and 13.6% in non-life.
- 1.3 The total premium underwritten by the Life Insurance Corporation of India (LIC) was Rs.49,821.91 crore in the year 2001-2002 as against Rs.34,892.02 crore in the previous year, thus registering an overall increase of 42.79%. Correspondingly, the income of LIC increased to Rs.73,780.07 crores as against Rs.54,766.60 crores in the previous years, i.e, an increase of 34.71%. At the end of the financial years 2001-2002, while LIC continue to be the sole public sector enterprise in the life insurance business, there were as many as twelve companies in the private sector in each of whom there was a foreign company participation upto the permissible limit of 26% of equity share capital.
- 1.4 During the same period, 2001-2002, the gross direct premium income of the four public sector companies, viz., Oriental Insurance Corporation of India, United India Insurance Company Ltd., New India Assurance Company Ltd., National Insurance Company Ltd. (all these four being the subsidiaries of the General Insurance Corporation of India [GIC] was Rs.11,917.58 crores recording an increase of 21.61% over the previous year. The general insurance business includes motor vehicle insurance, marine insurance, fire insurance, personal accident insurance, health insurance, aviation insurance, rural insurance and others. At present, GIC is the only reinsurer and has been placed in an obligatory position to act for the reinsurance market in the country as a whole. According to the Second Annual Report of the IRDA for the year 2001-2002, the profitability of the general insurance companies continue to be under strain. In the private sector, there were at least 9 companies with participation of foreign equity to the extent of 26%.
- 1.5 The Second Annual Report of the IRDA further points out that foreign capital of Rs.624.56 crores has been so far invested in the new life and non-life insurance companies and that this “strengthens the beliefs that the commitment of the new

joint ventures to the development of the insurance business in India as a long term strategy which will result in the growth of the economy.” Insurance companies/corporations being long-term contractual savings institutions can also play a major role in vitalizing the secondary debt market and securities as well. Expansion of insurance business, particularly in the rural areas, would lead to the growth in savings, which would significantly add to the GDP. With a view to advance a balanced growth of the economy, it is essential to have strong legal regime to regulate the business enterprises in this field.

2. Legislative Regime

- 2.1 The principal legislation regulating the insurance business in India is the Insurance Act of 1938 (hereinafter referred to as the principal Act). Some other existing legislations in the field are – the Life Insurance Corporation (LIC) Act, 1956, the Marine Insurance Act, 1963, the General Insurance Business (GIB) (Nationalization) Act, 1972 and the Insurance Regulatory and Development Authority (IRDA) Act, 1999. The provisions of the Indian Contract Act, 1872 are applicable to the contracts of insurance, whether for life or non-life. Similarly, the provisions of the Companies Act, 1956 are applicable to the companies carrying on insurance business.
- 2.2 The subordinate legislation includes Insurance Rules, 1939, and the Ombudsman Rules, 1998 framed by the Central Government under s.114 of the principal Act as also 27 regulations made by the IRDA under s.114 A of the principal Act and s.26 of the IRDA Act 1999.

3. Background to recent legislative changes

- 3.1 The announcement of the new industrial policy in 1991, envisaged the transition of the economy from a regulated to a liberalised and deregulated regime leading to the privatization of insurance sector to provide a better coverage to citizens and to augment the flow of long-term financial resources. This transition also meant that competition was bound to intensify in future with the entry of several private players in the field, particularly the foreign companies in joint venture with Indian partners. In order to prevent misuse by insurers of policyholders’ and shareholders’ funds and to ensure accountability, it was imperative to have in place an effective regulatory regime. Insurers being repositories of public trust, efficient regulation of their business became necessary to ensure that they remained worthy custodians of this trust. Further, insurance cash flows generated funds needed for investment in the social sector and for the development of infrastructure. Therefore, the regulation of insurance required a paradigm shift from just supervisory and monitoring role to development role so that the insurance business promoted economic growth.

Malhotra Committee Report

3.2 In the backdrop of new industrial policy, the Government of India set up in 1993 a high-powered committee headed by Mr. R. N. Malhotra to examine the structure of the insurance industry, to assess its strength and weaknesses in terms of the objective of providing high quality services to the public and serving as an effective instrument for mobilization of financial resources for development, to review the then existing structure of regulation and supervision of insurance sector and to suggest reforms for strengthening and modernizing regulatory system in tune with the changing economic environment.

3.3 The Malhotra Committee submitted its report in 1994. Some of the major recommendations made by it were as under:-

- (a) the establishment of an independent regulatory authority (akin to Securities and Exchange Board of India);
- (b) allowing private sector to enter the insurance field;
- (c) improvement of the commission structure for agents to make it effective instrument for procuring business specially rural, personal and non-obligatory lines of business;
- (d) insurance plans for economically backward sections, appointment of institutional agents;
- (e) setting up of an institution of professional surveyors/loss assessors;
- (f) functioning of Tariff Advisory Committee (TAC) as a separate statutory body;
- (g) investment on the pattern laid down in s.27;
- (h) marketing of life insurance to relatively weaker sections of the society and specified proportion of business in rural areas;
- (i) provisions for co-operative societies for transacting life insurance business in states;
- (j) the requirement of specified proportion of the general business as rural non-traditional business to be undertaken by the new entrants;
- (k) welfare oriented schemes of general insurance;
- (l) technology driven operation of General Insurance Corporation of India (GICI); GIC to exclusively function as a reinsurer and to cease to be the holding company;
- (m) introduction of unlinked pension plans by the insurance companies; and
- (n) restructuring of insurance industry.

4. Regulatory Legal Regime - Insurance Regulatory and Development Authority Act, (IRDA) 1999

4.1 On the recommendations of the Malhotra Committee, the Government of India constituted an interim Insurance Regulatory Authority and later enacted the Insurance Regulatory and Development Authority Act, 1999 to establish a statutory body to regulate, promote and ensure orderly growth of insurance and

reinsurance business as also to protect the interest of policy holders. The constitution of the Insurance Regulatory and Development Authority (hereinafter referred to as the Authority/IRDA) is being considered as one of the most redeeming features of insurance reforms in 'India.

4.2 The IRDA Act provides for the composition of the Authority, terms and conditions of the Chairperson and members including their tenure and removal; duties, powers and functions of the Authority including regulation making power and delegation of powers; establishment of Insurance Advisory Committee; Insurance Regulatory and Development Authority fund and powers of the Central Government to make rules, to issue directions to the Authority and to supersede the same, if it is necessary; and other miscellaneous provisions. The First Schedule appended to the IRDA Act listed out several amendments to the Insurance Act, 1938. The Second Schedule to the IRDA Act inserted s.30A in the Life Insurance Corporation Act, 1956 whereby the exclusive privilege of LIC to carry on life insurance business in India was to cease. The Third Schedule to the IRDA Act inserted a similar provision, s.24A, in the General Insurance Business (Nationalization) Act, 1972 whereby the exclusive privilege of the GIC and its subsidiaries in relation to general insurance business ceased.

4.3 The amendments made in the Insurance Act, 1938 prohibited insurers other than Indian insurance companies to carry on insurance business in India and investment of funds of the policyholders outside India. The amendments provided for-

- (a) requirements as to paid-up equity capital for both insurers and reinsurers,
- (b) manner of divesting of excess shareholding by promoters
- (c) manner and conditions of investment,
- (d) maintenance of required solvency margin at all times by the insurers;
- (e) issue of licence to insurance agents, intermediary or insurance intermediary and surveyors by the Authority as also suspension and cancellation thereof;
- (f) obligations of insurers to compulsorily undertake specified percentage of insurance business in rural and social sector;
- (g) enhanced penalties for contravention of and failure to comply with, the provisions of the Act and offences by companies; and
- (h) powers of Authority make regulations as required by the Act.

Powers and functions of IRDA

4.4 The IRDA has the duty to regulate, promote and ensure orderly growth of the insurance and reinsurance business. The powers and functions of the IRDA include:

- (a) registration/modification/cancellation of registration of insurers;
- (b) to cause compliance of the requirement of capital structure of the companies as also solvency margin, insurance business in rural and social sector, submission of their returns/reports, approval and preparation of the scheme of amalgamation and transfer of insurance business;

- (c) to issue of license to insurance intermediaries or agents;
- (d) control over management of insurers;
- (e) search and seizure,
- (f) protection of interest of policy holders,
- (g) promotion and regulation of professional organizations conducting insurance business,
- (h) regulation of investment of funds by insurance companies,
- (i) investigation and inspection of the affairs of the insurers,
- (j) adjudication of disputes between insurers and insurance intermediaries,
- (k) supervising functions of Tariff Advisory Committee,
- (l) and to frame regulations to carry out purposes of the Insurance Act,1938.

4.5 Pursuant to its power under the IRDA Act, the IRDA has framed 27 sets of Regulations on various topics like preparation and submission of actuarial reports, obligations of insurers to rural and social sectors, registration of Indian insurance companies, preparation of financial statements and auditors report of insurance companies, form of annual statements of account and record, insurance brokers, etc. These regulations are important constituents of the Regulatory regime.

5. Legislative developments after 1999

The Insurance Amendment Act, 2002 permitted, by way of insertion of s.2 (8A) in the Insurance Act, 1938 insurance co-operative societies, registered under the Co-Operative Societies Act, 1912 or Multi-State Co-Operative Societies Act, 1984 or under any state law relating to co-operative society to carry on any class of insurance business. However, the IRDA has been empowered to exempt an insurance co-operative society from the application of any of the provisions of the principal Act or application of its provisions with exceptions, modifications or adaptations [see proviso to section 94A(2)]. The Amendment Act provided for insurance intermediaries, including insurance brokers and consultants, and provisions for the payment of commission, brokerage or fee to them, thereby introducing in this country the business practiced the world over in this area. Further, s.49 of the Act has been modified provide shareholders an entitlement of actuarial surplus. By virtue of amendment to s.64 VB, the IRDA has been authorized to prescribe the mode of payment of premium, i.e., through credit cards or through the internet which in turn might result in an increase in insurance business. Moreover, the General Insurance Business (Nationalisation) Amendment Act, 2002 made the General Insurance Corporation the only reinsurer to carry on exclusively reinsurance business in India. It ceased to carry on general insurance business as also to control four subsidiaries. The Central Government was authorised to discharge its functions in respect of these subsidiaries in future.

6. Need for and grounds of revision of the Insurance Act, 1938

6.1 In this context, and in the changing economic scenario, it is felt that the IRDA would have to play a vital role for the regulation and development of insurance business. Accordingly, it is felt that the Insurance Act, 1938 would require review and revision. This has prompted the present reference to the Law Commission of India.

6.2 .1 The revision of the Act has to be carried out in such a manner that it not only promotes insurance business but also protects policyholders and strengthens the Authority to ensure financial stability. While revising the Act, the other related laws are also be reviewed and the relevant provisions of the IRDA, Act, 1999 are required to be merged into the principal Act after necessary modifications. In fact, an integrated approach to revise the insurance laws is the need of the hour.

6.2.2 The necessity for merging the provisions of the IRDA Act with the Insurance Act, 1938 is to bring about an integrated approach to the task of formulating a legislative regime that can encompass the key facets of the functioning of the Regulatory Authority even while strengthening the regulatory regime. With the IRDA exercising many of the key functions assigned to it under the Insurance Act, 1938, there is no justification for continuing to have a separate legislation concerning the constitution and functions of the IRDA. Moreover, at the time that the IRDA Act was being prepared, the task of a comprehensive revision of the Insurance Act, 1938 was felt necessary but was not undertaken due to paucity of time. Now, with the experience of the functioning o the IRDA and several rounds of discussion with key insurance personnel, a comprehensive revision of the Insurance Act, 1938 appears possible.

6.2.3 The present exercise of revision of the Insurance Act, 1938 does not touch upon the following areas:

- I. The Marine Insurance Act, 1963
- II. Motor Vehicle Insurance
- III. Fire Insurance
- IV. Principles governing third party risks in general insurance business

In other words, the present exercise of revision is confined to restructuring of Insurance Act, 1938 in view of the developments in the insurance sector referred to herein above and the merging of the provisions of the IRDA with the Insurance Act, 1938. Each of the areas mentioned at (I) to (IV) above would require an elaborate and separate study which, as presently advised, is not felt necessary.

Some tentative grounds of revision

6.3 Some of the grounds on the basis of which the Law Commission has undertaken present exercising in revising the Insurance Act, 1938 may be set out as under:

- I. The Insurance Act, 1938 being a legislation of colonial era, contains **provisions that are redundant and accordingly require deletion**. For example, provisions regarding provident societies and mutual insurance

companies as also principal agents, chief agents and special agents, or references thereof, are no longer required and such provisions need to be deleted.

- II. Some of the provisions of the Act, are of **transitional** nature and should, therefore, be **deleted**. Further, matters covered in the Regulations framed by the IRDA should be deleted from the Act, in order to avoid duplication. Further, The IRDA Act, 1999 has inserted some provisions in the Insurance Act, 1938, the effect of which was to nullify some existing provisions. They have not been deleted, thus giving rise to anomalies, for example, definitions of the term 'insurance company' [s.2 (8)]. Such provisions require to be deleted.
- III. References in the Insurance Act, 1938 to older enactments have to be replaced by references to the corresponding new legislations that have replaced such enactments. For e.g., references to the Indian Companies Act, 1913 have to be replaced by the Companies Act, 1956.
- IV. The insurance sector, which earlier covered only a few areas like life and marine insurance, has now expanded to cover various kinds of risk activities. Hence **reclassification of insurance businesses** is necessary. For instance, insurance business may broadly be classified as 'life' and 'non-life' or 'short term' and 'long term' insurance business. For this purpose, the definition of the term 'insurance' and 'insurer' would have to be amended.
- V. The IRDA exercises its powers by and large under the provisions of the principal Act. Therefore, it is appropriate as well as necessary that the **relevant provisions of IRDA Act be merged in the Insurance Act, 1938**.
- VI. The IRDA while regulating the business activities of the insurers exercises quasi-judicial powers, in addition to the administrative powers, e.g., issue, renewal and cancellation of registration certificate to insurers, order in regard to investigation of the affairs of the insurers, making application to the court for the winding up of the insurance companies, grant of licenses to the insurance agents etc. It is felt necessary that there must be a **provision of appeal against the decisions of the IRDA to an independent body constituted under the Act itself**.
- VII. The insurance business has increased several fold even while policy holders have not been entirely satisfied with the manner of functioning of insurance companies, particularly in the area of settlement of claims. Although at present, there is in place of the office of an Ombudsman under the Redressal of Public Grievances Rules, 1998, complaints nevertheless continue to be filed in the consumer fora constituted under the Consumer Protection Act, 1986. In order to provide a more effective grievance redressal missionary, while at the

same time, lessening the burden of the consumer fora, it is proposed that there should be a **full-fledged grievance redressal mechanism**.

- VIII. The principle of *uberrimae fidei*, i.e., of absolute good faith, governs both the parties to a contract of insurance. Though standardized insurance policies prohibit certain misleading contract provisions, problems have arisen with misrepresentation or non-disclosure whenever personal characteristics are collected by insurance agents for risk classification. In this context, the issue is whether a failure to make a disclosure of the material information would render the contract void or voidable. For this purpose, some **specific statutory enumerations are required for protecting the interest of policyholders so that unintended minor mistakes in disclosure do not lead to a loss of coverage**.
- IX. Provisions regarding investments, loans and management need review and revision. The IRDA has made detailed investment regulations, hence provisions are to be revised so as to eliminate inconsistencies and duplication. The term **“approved securities” is required to be revised in the context of new economic policy and business practices**.
- X. At present, there is no provision in the principal Act for motivation or encouragement for insurers to invest in “Research & development” or “Technology up gradation” as regards valuation of assets for the purpose of solvency margin calculations. There is a suggestion that it is appropriate if such **provisions for taking a portion of the investment/ expenditure in areas as directed by the IRDA are incorporated in the Act for the purpose of “Solvency Margin” so as to encourage insurers to take up such investments**.
- XI. The provisions regarding solvency margin of the principal Act have been amended by the IRDA Act, 1999. But these provisions still require revision because they stipulate minimum level of solvency margin without a control level, i.e., a position below which the Authority can get warning signals in respect of a particular insurer. The **Principal Act is required to be amended so as to empower the Authority to intervene whenever the solvency margin falls below the control level**. IRDA has framed regulations for the determination of the amount of liabilities, solvency margin and valuation of assets. But the provisions regarding solvency margin are still to address the extent of appropriate matching of assets and liabilities.
- XII. The Principal Act and IRDA Act empower the Central Government and the Authority to frame rules and regulations. These are to be revised and harmonized with the Act in the context of new regulatory regime.

XIII. The Act provides for **penalties** in the miscellaneous part of the Act, for contravention or non-compliance of the provisions of the Act or Regulation or rules under ss.102 to 105C. **These provisions of the Act are to be reviewed and revised as the amount of fine or penalty provided therein is not adequate enough to be considered now as a fine or penalty.** In addition to these provisions, there are other provisions which provide for the punishment along with the other provisions requiring mandatory compliance. It is appropriate that all such specific clauses on penalty may be shifted to the chapter dealing with the penalties.

7. Plan of revision of the provisions of the Insurance Act, 1938

7.1 An attempt is made here to propose amendments in the principal Act as a result of preliminary study of existing legal framework for the purpose of revision of the Insurance Act. The Law Commission of India initially prepared an approach paper and held discussions with officials of the IRDA as well as certain other key personnel in the Insurance sector. As a result of these discussions, it is decided that the work of revision of the Insurance Act, 1938 should be undertaken under the following topics:

- (i) Merger of the provisions of IRDA Act into the Insurance Act;
- (ii) Changes in definitions, deletions and other amendments;
- (iii) Powers of the IRDA;
- (iv) Obligations of the insurers under the Act;
- (v) Interests of the policyholders;
- (vi) Tariff Advisory Committee-composition and powers;
- (vii) Redressal of grievances/ claims and the machinery for the same;
- (viii) Penal provisions; and
- (ix) Miscellaneous provisions.

8. Proposals for Revision

8.1 Merger of the provisions of IRDA Act into the Insurance Act

8.1.2 The Authority by and large exercises all those powers which hitherto used to be exercised by the Controller under the principal Act, e. g., grant, suspension and cancellation of certificate of registration. It is to be noted that the principal Act does not provide for establishment of Authority but provides under s.2 B only for supersession of the Authority referring to the provisions of IRDA in this respect. To avoid duplication in this regard, the provision of s.2 B (1) of the principal Act may be omitted though retaining provisions of sub s. (2). In this backdrop, the best course would be to merge the provisions relating to IRDA as provided in IRDA Act, into the principal Act.

8.1.3 For this purpose, the definitions enumerated in s.2 may be merged in the definition part of the Principal Act. Chapter II of the Act of 1999 dealing with the establishment and other incidental matters regarding Authority (sections 3-12); Chapter IV dealing with the duties, powers and functions of the Authority (section 14); Chapter V

dealing with the grants by Central Government, IRDA fund and Accounts and Audit (Ss. 15-17); Chapter VI dealing with powers of the Central Government (Ss. 18-23 and 25) may be placed together and merged in the Principal Act before part II of the Principal Act under the proposed part “Part IA” to be entitled as ‘Insurance Regulatory and Development Authority’. Section 24 providing the Central government the power to make rules, s.26 providing the Authority power to make regulations and section 27 providing for laying of rules and regulations before the Houses of Parliament may be merged respectively in ss.114 and 114 A of the principal Act providing for the same. Again section 28 may be shifted to the principal Act after s.114A.

8.1.4 The proposed merger would not only help facilitate the insurers and the insured, agents and surveyors, actuaries and auditors, lawyers and litigants in understanding the role of IRDA but locating all the provisions at one place.

8.1.5 For ready reference, a table showing the scheme for merger of the provisions of the IRDA Act with the Insurance Act is set out hereunder:

Merger of provisions of IRDA Act 1999 with the Insurance Act 1938

| Provision of the IRDA Act, 1999 | Provision of Insurance Act 1938 to be merged with |
|--|--|
| section 2 (Definitions) | Definition clause of Insurance Act |
| Chapter II dealing with establishment and incidental matters of authority (Ss.3 – 12) Chapter IV dealing with duties, powers and functions of the authority (section 14) Chapter V dealing with grants by central government, IRDA fund, accounts and audit (Ss.15 – 17) Chapter VI dealing with powers of central government (Ss.18 – 23 & 25) | These provisions may be bunch together and placed in the Insurance Act as Part I-A to be entitled as ‘Insurance Regulatory and Development Authority’. |
| section 24 providing the central government with power to make Rules. section 26 empowering Authority to make Regulations. section 27 requiring laying of Rules and Regulations before Parliament. | These provisions may be merged in Ss.114 and 114-A of the Insurance Act. |
| section 28 – not barring application of other laws | To be shifted to Insurance Act, 1938 after section 114-A. |

8.2 Changes in definitions, deletions and other amendments

8.2.1 The definitions of various terms are required to be amended because of the legislative changes, establishment of IRDA replacing the Controller and ‘controller’, ‘general insurance’, ‘life insurance business’ and ‘insurer’. The term insurer is required to be defined comprehensively so as to eliminate any ambiguity as regards application of the provisions of the Act. This term should indicate Indian insurance companies and insurance cooperative society. The inclusion of government organizations within this term may also be considered under exceptions/exemptions.

8.2.2 Some of the terms are required to be deleted from the definition part, e.g., manager, officer and managing agent in clauses (12) (13) of s.2 as also private and public company and special agent under clauses (16) and (17). The relevant definitions of the IRDA Act may be merged in s.2 of the Principal Act with necessary modifications.

8.2.3 For ready reference, a table showing the changes required in the definitions and amendments to certain provisions (other than those relating to the powers of the IRDA) is annexed to this paper as **Appendix-I**. Provisions that are required to be deleted as having become irrelevant/ redundant are indicated in a separate table as **Appendix II**.

8.2.4 There are large chunks of provisions in the Insurance Act, 1938 that are no longer required. Those pertaining to acquisition of undertaking of insurers as contained in s.52 H to s.52 N are no longer required. Likewise, the special provisions relating to External Companies as contained in s.62 to 64 are also no longer relevant since the present scheme is not to permit such External Companies. The whole of Part III pertaining to Provident Societies and Part IV relating to Mutual Insurance Companies and Co-operative Life Insurance Societies are also no longer relevant. The provisions contained in these Parts need to be deleted. These deletions are also indicated in Appendix-II.

8.3 Powers of the IRDA

8.3.1 The powers of the IRDA include the power to grant registration, to refuse the registration, to cancel or suspend or renew registration. In all these areas, it is proposed to make certain changes which are set out in the form of a table as under:

Powers and functions of the IRDA

| Provision of the Insurance Act, 1938 | Change proposed |
|--------------------------------------|---|
| section 3 (2) (f) | Under s.3 (2) (f) every applicant seeking registration as |

| | |
|---|--|
| | <p>insurer of life insurance business is required to furnish the certificate of an actuary. The Subhedar Committee has recommended that this requirement may be extended for applicants for general insurance business as well. If this is accepted, s.3 (2) (f) has to be accordingly amended and then shifted to the Regulations.</p> |
| <p>section 3 (2A)</p> | <p>Grant of Certificate of Registration:-</p> <p>Sub-section (2A) of s.3 sets out the conditions that have to be fulfilled before Registration can be granted by IRDA. It is suggested that this should also include compliance with the requirements of S.6 and 6A. However, the requirements of S.31A and 32, which deal with Managers and managing agents are irrelevant and require to be omitted. The recast section 3 (2A) (d) would read as under:</p> <p>“(d) The applicant has complied with the provisions of ss.2C, 5, 6 and 6A and has fulfilled all the requirements of this section applicable to him.” (remaining portion to be retained)</p> <p>It is also proposed that there should be a time limit within which, if all other requirements/ formalities have been complied with by the applicant, the IRDA should take a decision in regard to the grant/ refusal of the certificate of registration. It is proposed that this time limit should be a period of 60 days from the date of completion of all formalities, upon the expiry of which, the insurer would be deemed to have been granted the certificate of registration if no decision is taken by the IRDA within that time.</p> |
| <p>Power of exemption under section 94A (2) second proviso</p> <p>Under this proviso the IRDA is empowered to exempt any insurance co-operative society to direct that “any of the provisions of this Act –</p> <p>(a) Shall not apply to any insurance cooperative society; or</p> <p>(b) Shall apply to any insurance cooperative</p> | <p>It is proposed that with a view to providing a level playing field with other corporate insurers, the proviso enabling exemption from certain provisions in their applicability to cooperative societies carrying on insurance business should be deleted.</p> <p>Alternatively, if the power has to be retained, it should be ensured that it cannot be for all provisions of the Act. The exemption will have to be only in relation to select provisions of the Act and that too for reasons and writing.</p> <p>Further, it is proposed that this power should be with the Central Government and not the Authority.</p> |

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| <p>society only with such modifications and adaptations as may be specified in the notification</p> | |
| | <p>In regard to departments, organisations and associations carrying on insurance business without obtaining certificate of registration from the IRDA (i.e., Army welfare associations, Postal insurance etc.), it is suggested that such departments or associations be brought within the purview of the regulatory regime but requirements of capital and deposits may be either relaxed or suspended in such cases.</p> |
| <p>section 3 (2C)</p> | <p>Appeal against refusal of registration:- At present the appeal lies to the Central Government. It is proposed that in the first instance, a challenge to the order of refusal could be made by an applicant before the Grievance Redressal Authority, as is proposed later in this paper. Thereafter an appeal could lie to an appellate tribunal to be constituted under the Act itself.</p> |
| <p>section 3 (3)</p> | <p>Cancellation/ withholding of Registration of insurer having place of business outside India on the ground of absence of reciprocity by the other country:- This provision may not be relevant in the present context where joint ventures are being permitted. Accordingly, it is suggested that sub-section (3) of s.3 may be modified and substituted as follows: “In the case of any insurer having joint venture with a partner 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 the foreign partner has principal place of business has been debarred by law or practice of that country to carry on insurance business.” Accordingly, the reference to section 3 (3) in section 3 (5) is no longer relevant.</p> |
| <p>section 3 (4)</p> | <p>Cancellation of Registration:- One ground of cancellation should include the insurer being found guilty of an offence under any law in force in India.</p> |

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| | <p>The contravention of the LIC Act and other Acts as a ground for cancellation is no longer relevant. On the other hand, a contravention of the Societies Registration Act/ Multi-State Co-operative Societies Act should be a ground for cancellation. An amendment to section 3 (4) has to be made accordingly.</p> <p>The provision that empowers IRDA to cancel registration “either wholly or in so far as it relates to a particular insurance business” may not be relevant since as a matter of policy composite business is not permitted. This sub-section will have to be accordingly re-worded.</p> |
| | <p>Suspension of Registration:-</p> <p>The Act does not provide for suspension of registration. However, regulations regarding registration provide in clause 23 the grounds of suspension of an insurance company. It is appropriate if this very clause and clause 24 of the regulations are made a part of the statute and placed appropriately in s.3. The grounds of suspension may also include grounds referred to in sub-section (4) under its clauses (a), (aa), (e), (f), (g), (h), (i) and (j).</p> <p>It is to be noted that the provisions of sub-section (5C) of section 3 empowers the Authority to revive the registration cancelled on these very grounds referred in the clauses of sub-section (4). It is suggested that on these grounds, the Authority may suspend registration of the insurer. If the insurer fails to comply with conditions stipulated in these sections or directions of the Authority within six months, then Authority may proceed to cancel registration.</p> <p>Regulation 24 of the IRDA (Registration of Companies) Regulations, 2000 stipulates that no order of suspension or cancellation of certificate of registration shall be made without holding an enquiry as specified in the Regulations. This clause (clause 24) requires to be shifted into the Act itself.</p> |
| section 3A | <p>Renewal of Registration:-</p> <p>This is required to be done every year by an insurer. It is proposed that this period may be increased and that the registration may be kept valid for a period of three</p> |

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| | <p>years especially in the case of life insurance business, after which it could be renewed.</p> <p>The word ‘December’ may be replaced by the word ‘March’ as a similar change for this effect has been made by the 1999 Amendment.</p> |
| section 3A (2) | <p>The determination of the renewal fee for registration provided under s.3A (2) referring to the percentage of premium income as also the amount specified in s.3A (2)(i) requires reconsideration. The suggestion is that the same should be reduced.</p> |
| section 3A (3) | <p>The provisions for making deposits in respect of the renewal fee in the Reserve Bank of India has both been made in s.3A (3) of the Act and regulation 21 of Chapter IV of the Regulations. It is suggested that the statutory provision may be amended so as to provide – “in the manner as provided in the regulations” and the words “the Reserve Bank of India” in the regulation may be replaced by the words “any Scheduled Bank.”</p> |
| section 3A (4) | <p>The provisions of sub-section (4) of s.3A provide for an appeal to be made to the Central Government against the order of the Authority imposing a penalty on the insurer. Here, the penalty is in the nature of the late fee and the ceiling limit has been spelt out in this very provision. Hence, the provision of appeal seems to be irrelevant. It is suggested that amendments may be made in this regard.</p> |
| section 3A (5) | <p>For every renewal the compliance of all requirements for fresh registration must be insisted upon apart from compliance of section 32B and 32C regarding insurance in rural and social sector. Accordingly, section 3A (5) may be amended.</p> |

8.3.2 In regard to the other powers of the IRDA in relation to revaluation of the affairs of the insurer, investigation, search and seizure, appointment and removal of managerial persons, the changes proposed are set out in a tabular form as under:

Table of other powers of IRDA

| Provision of the Insurance | Change proposed |
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| Act, 1938 | |
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| section 33 (1) – Investigation by IRDA into affairs of insurer | <p>The provisions of s.33 does not lay down standards or criteria (grounds) to guide the Authority to cause investigation judiciously. In absence of such criteria, the power may be misused for ulterior motive. Hence the provisions of sub-section (1) may be amended by adding the words “if it considers expedient to do so” in sub-section (1).</p> <p>It is to be noted that the section uses the term “Authority” for both the Regulating Authority and investigating authority though the latter is mentioned as investigating authority in the section. Yet such a usage may give rise to some confusion. It is, therefore, appropriate to change the terminology from investigating authority to investigating officer.</p> |
| section 33 (4) – Examination by Investigating Authority of insurer’s officer on oath | <p>The section does not provide for the qualification/ experience/ rank of the person to be appointed as the investigating authority who is obligated to examine on oath the officers of the insurer under sub-section (4). This may be rectified by suitable amendments. A provision may also be incorporated so as to prevent appointment of incompetent person.</p> |
| section 33 (8) – Information to be maintained by insurers | <p>The provisions of sub-section (8) speaks of the minimum information as specified in the regulations to be maintained by the insurers so as to facilitate the investigating authority to discharge its functions. The kind of information which this section indicates is of general nature and should be maintained by every insurer whether its affairs are investigated or not. Hence, the contents of this sub-section should be made a part the obligations of insurers to be especially framed for this purpose.</p> |
| section 34B (4) – Penalty for contravention of provisions regarding removal by IRDA of managerial persons | <p>The provisions of sub-section (4) of this section prescribes punishment for contravention of s.34B or of proviso under s.34B (2) in the nature of fine extendable to Rs. 250 per day. The amount of fine is not adequate enough to deter an officer from contravening the orders of IRDA. Therefore, the same may be enhanced appropriately.</p> |
| section 34C – Power of IRDA to appoint additional directors | <p>This power should be exercise by IRDA in consultation with the central government and particularly in case of</p> |

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| | insurance cooperative societies. |
| section 34E – Power to caution or advise insurers | In s.34 (E), the word “Controller” should be substituted by the word ‘Authority’ as the powers described in this section are now exercised by the Authority by virtue of the IRDA Act. |
| section 34G – Power of authority to order closure of foreign branches | This provision is no longer relevant since private players, now permitted, can themselves decide on closure of their branches without being directed by the IRDA. This provision may be deleted. |
| section 34H – Search and seizure | The rank of the officer conducting search and seizure should be clarified. The words ‘Code of Criminal Procedure, 1898’ should be substituted by ‘Code of Criminal Procedure, 1973’. |
| section 35 (1) – Amalgamation and transfer of insurance business | At present, the provision applies only to life insurance business. It is suggested that this be made applicable to general insurance business as well. Further, a time limit may be specified within which IRDA has to approve the scheme of transfer or amalgamation. The title of the marginal note requires minor change in the context of the provisions of this section. The word “and” be replaced by the word “or”. |
| section 35 (3) – Requirement of preparation of actuarial reports | The provisions of sub-clause (c) of s.35 (3) states that actuarial reports are to be prepared as per the requirements of Part II of Fourth and Fifth Schedules. As the Fourth Schedule has been repealed by the Insurance (Amendment) Act 2002, clause (c) of s.35 (3) may be amended by deleting the reference of Schedule IV and to provide that actuarial reports be prepared in conformity with the regulations made by the Authority. |
| section 36 – Approval of amalgamation by IRDA | The Authority is empowered under s.36 of the Act to approve the arrangement of amalgamation after giving adequate opportunity of hearing to the directors and policy holders who desire so and to pass consequential orders to give effect to the amalgamation including the disposal of deposits made under sections 7 or 98. Section 98, which provides for mutual insurance companies and co-operative life insurance societies, has |

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| | <p>become redundant. Therefore, the words “or section 98” may be omitted. Similar omission is required in clause (c) of the proviso to this section.</p> <p>The provisions of amalgamation may be made applicable to general insurance business, as well. If this is done, then the words “life policy” in s.36 (1) would have to be replaced by the words ‘of any kind of policy’.</p> <p>The word ‘and’ in the marginal note be replaced by the word ‘or’.</p> |
| <p>section 37A (2) – Power of IRDA to prepare scheme of amalgamation</p> | <p>The contents of sub-section (2) which enumerates the clauses which the scheme should contain can be made part of the Regulations.</p> |
| <p>section 37A (4) – Central government is specify scheme of amalgamation sanctioned by it</p> | <p>The following may be added in s.37 (A) (4) after the words “in this behalf”.</p> <p>“in the Official Gazette with such constitution, with such property, powers, rights, interests, authorities and privileges and with such liabilities, duties and obligations as may be specified in the order.”</p> <p>The following provisions may also be incorporated to protect the interest of policy holders or shareholders etc. as provided in the Companies Act:</p> <p>“(4A) Every policyholder 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 policyholder or shareholder or member:</p> <p>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 as may be prescribed.</p> <p>(4B) The compensation so assessed shall be paid to the shareholder or member by the insurance company resulting from such amalgamation.</p> <p>(4C) Any member or shareholder aggrieved by the assessment of compensation made by the Authority under sub-section (4A) (proposed) may within thirty days from the publication of such assessment prefer an appeal to the Central Government.”</p> |

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| <p>section 42 (1) – Licensing of insurance agents</p> | <p>Consistent with the Regulations the Authority should itself authorise officers of the insurers who can issue or renew licences.</p> <p>Subject to changes made in the Regulations in this behalf from time to time by the IRDA, the fee limit for issuing of licence should be increased beyond the present limit of Rs.250/-.</p> |
| <p>section 42 (2) – Number of insurers for whom a person can act as agent</p> | <p>Consistent with the Regulations, sub-section (2) of section 42 should be amended to provide that an agent can act for “only one life insurer and/ or one non-life insurer”.</p> |
| <p>section 42 (3) – Licence renewal fee and penalty</p> | <p>Licence renewal fee and penalty may be increased from the present limits of Rs.250/- and Rs.100/- respectively and be made subject to further changes to be specified in the Regulations.</p> |
| <p>section 42 (4) – Disqualifications for acting as insurance agent</p> | <p>The disqualification enumerated under Regulation (8) (j) should be incorporated in section 42 (4).</p> <p>Further, used to be considered by the nationality of an insurance agent should be expressly mentioned as a requisite qualification.</p> <p>It must be provided in Regulation 3 (2) in addition to satisfy the requisite qualification, licence will be issued only if the person does not attract any of the disqualifications under section 42 (4).</p> <p>The provision in Regulation 8 (j) (ii) that an insurance agents cannot apply for a fresh licence for a period of 5 years after cancellation, should be incorporated in the Act, preferably in section 42 (4) itself.</p> |
| <p>section 42 (5) – Power to cancel licence</p> | <p>Consistent with the Regulations in this behalf, it is appropriate that s.42 (5) be amended to provide that a designated person authorised by the IRDA can exercise the power to cancel a licence. Any person so aggrieved may file an appeal against such cancellation to the appropriate authority.</p> <p>Regulation 9 requires to be amended to empower the designated officer to cancel the licence of agent who deliberately contravenes the provisions of the Act.</p> |
| <p>section 42 (6) – Issue of</p> | <p>The designated officer instead of the Authority may be</p> |

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| duplicate licence | authorised to issue duplicate licence. |
| section 42 (7) – Punishment for acting as agent without licence | The present fine of Rs.500/- on a person acting as agent without licence and Rs.1000/- on an insurer appointing a person to act as such are inadequate and require to be enhanced and instead of the fine, penalty should be levied by the Adjudicating Officer |
| section 42D – Licence to intermediary or insurance intermediary | The power to issue licence should be exercised by an officer authorised by the IRDA and not the IRDA itself. |
| section 42D (1) proviso (a) | In view of the inconsistency with 42D (5), it is proposed that clause (a) of the proviso to section 42D (1) may be amended so as to substitute words in figures ‘(5) of this section’ in place of words and figures ‘(4) of s.42’. |
| section 42D (8) & (9) – Fine to be imposed for contravention | These required to be specified. |
| section 64 UM – Issue of licence to surveyors/ loss assessors | <p>The provision requires to be amended to expressly empower the Authority to issue licence on the same grounds of qualifications and disqualifications as specified in section 42 (1) & (2) for insurance agents.</p> <p>The ground found in Regulation 8 (4) for cancellation of licence of a surveyor who fails discharge duties and responsibilities in a satisfactory and professional manner or violate the code of conduct prescribed by the Regulations requires to be incorporated in section 64 UM (1) (G).</p> <p>A provision for suspension of licence, as provided in Regulation 8 (4) should be incorporated in the Act.</p> |
| section 64 UM (1A) | <p>At present there is no transparency on appointment of surveyor/ loss assessor by general insurers. Public sector general insurers, by and large, appoint some privileged surveyors with some understanding with respective department/ staff/ officer/ manager. By an appropriate amendment, this should be done away with. General insurers should publish a list of appointed surveyors in notice board/Web Sites regularly indicating fees paid to be to the surveyor/loss assessor.</p> <p>The principal Act does not provide about the functions to be performed by a surveyors or loss assessor, but</p> |

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| | <p>mandates them to comply with the code of conduct in respect of their duties and responsibilities as provided in Regulation 13 (2). Hence a provision in regard to the functions to be performed by a surveyors or loss assessor may be incorporated after sub-section (1A) as follows:</p> <p>“A surveyor and loss assessor shall investigate, survey, manage, quantify, value and deal with losses on behalf of the insurer or insured arising from any contingency, carry out the work with objectivity and professional integrity by strictly adhering to the code of conduct expected of such surveyor and loss assessor and report thereon within the time specified in the regulations.”</p> <p>It is suggested that the Authority should exercise the power under sub-section (3) to call for independent report from an approved surveyor upon receiving a complaint. There is also a suggestion for appointment of a second surveyor or loss assessor, if any complaint is received by the Authority. It would be appropriate if the power to settle the claims under this section are exercised by an adjudicating officer to be appointed by the Authority.</p> <p>It has been suggested that appointment and payment to surveyors/loss assessors should be on rotation and controlled by IRDA with the help of respective State Chapter of Institute of Surveyor/ Loss Assessor so that surveyors/loss assessors are independent of general insurers and need not to appease the respective department/ staff/ officer/ manager for getting appointment and payment.</p> <p>There is a suggestion that to set aside the written test for issuing licence to any person to act as a surveyor because the new trainees are well qualified technical graduates. Moreover, the candidates have to go through one year training under a senior surveyor.</p> |
| <p>section 44 – Power to call for information</p> | <p>The provisions of this section is to be recast because the system of principal agent, chief agent or special agent is no more in existence and in consequence of which, the repeal of ss.42B and 42C has already been proposed. Hence, in this section, wherever there is a reference to the principal agent or special agent or chief agent, or references to ss.42B and 42C, such references require</p> |

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| | omission. There is a suggestion for the deletion for the section itself. |
| section 47A – Power of IRDA to decide claims on small insurance policy | The limit of the claim may be enhanced to Rs.5,000/-. Further, the IRDA may be given powers of the civil court for execution of the order in this regard. |
| section 53 – Winding up | The power of IRDA to apply to the court for winding up of an insurance company should be extended to cover a situation where the insurer is a cooperative society. |

8.4 Obligations of the Insurers under the Act

8.4.1 These obligations can be broadly categorised as under:

- (i) Restriction on the name of the user (s.5);
- (ii) Maintaining of deposits (s.7)
- (iii) Maintaining separation of accounts and funds (s.10)
- (iv) Preparing accounts and balance sheet (s.11)
- (v) Requirements as to audit (s.12)
- (vi) Submission of actuarial report and abstract (s.13)
- (vii) Maintaining register of policies (s.14)
- (viii) Submission of returns (s.15)
- (ix) Returns by insurers outside of India (s.16)
- (x) Making of investments (s.27)
- (xi) Investment of controlled fund (s.27A)
- (xii) Investment by insurers carrying on general insurance business (s.27B)
- (xiii) Investments not to be made outside India (s.27C)
- (xiv) Submission of statement of investments of assets (s.28)
- (xv) Submission of return of investments (s.28A & B)
- (xvi) Prohibition on giving of loans (s.29)
- (xvii) Maintaining of assets (s.31)
- (xviii) Restriction on payment of excessive remuneration (s.31B)
- (xix) Limitation on employment of managing agents (s.32)
- (xx) Prohibition of common officers (s.32A)
- (xxi) Obligations in rural and social sector (s.32B & C)
- (xxii) Statements after amalgamation (s.37A)
- (xxiii) Prohibition of payment of commission (s.40)
- (xxiv) Payment of renewal commission [s.40 (2A)]
- (xxv) Heritable commission (s.44)
- (xxvi) Limitation on expenses of management (s.40B & C)
- (xxvii) Prohibition on rebates (s.41)
- (xxviii) Register of insurance agents (s.43)
- (xxix) Restriction on dividends and bonus (s.49)
- (xxx) Prohibition of business on dividing principle (s.52)
- (xxxi) Maintenance of solvency margin (s.64V & VA)

(xxxii) Restriction on opening of new place of business (s.64VC)

In relation to the above, several amendments are proposed and these are indicated in the table at **Appendix I**. In addition, there are provisions that are required to be deleted and these are indicated in **Appendix II**.