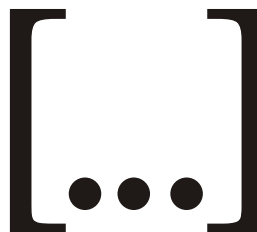


Insurance Law & Regulations in India



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The concept of insurance has been prevalent in India since ancient times amongst Hindus. Overseas traders practised a system of marine insurance. The joint family system, peculiar to India, was a method of social insurance of every member of the family on his life. The law relating to insurance has gradually developed, undergoing several phases from nationalisation of the insurance industry to the recent reforms permitting entry of private players and foreign investment in the insurance industry.

The Constitution of India is federal in nature in as much there is division of powers between the Centre and the States. Insurance is included in the Union List, wherein the subjects included in this list are of the exclusive legislative competence of the Centre. The Central Legislature is empowered to regulate the insurance industry in India and hence the law in this regard is uniform throughout the territories of India.

A. Development & Growth of the Insurance Industry in India

The development and growth of the insurance industry in India has gone through three distinct stages.

1. Formation of the Insurance Industry in India

Insurance law in India had its origins in the United Kingdom with the establishment of a British firm, the Oriental Life Insurance Company in 1818 in Calcutta, followed by the Bombay Life Assurance Company in 1823, the Madras Equitable Life Insurance Society in 1829 and the Oriental Life Assurance Company in 1874. However, till the establishment of the Bombay Mutual Life Assurance Society in 1871, Indians were charged an extra premium of up to 20% as compared to the British. The first statutory measure in India to regulate the life insurance business was in 1912 with the passing of the Indian Life Assurance Companies Act, 1912 ("Act of 1912") (which was based on the English Act of 1909). Other classes of insurance business were left out of the scope of the Act of 1912, as such kinds of insurance were still in rudimentary form and legislative controls were not considered necessary.

General insurance on the other hand also has its origins in the United Kingdom. The first general insurance company Triton Insurance Company Ltd. was promoted in 1850 by British nationals in Calcutta. The first general insurance company established by an Indian was Indian Mercantile Insurance Company Ltd. in Bombay in 1907. Eventually, with the growth of fire, accident and marine insurance, the need was felt to bring such kinds of insurance within the purview of the Act of 1912. While there were a number of attempts to introduce such legislation over the years, non-life insurance was finally regulated in 1938 through the passing of the Insurance Act, 1938 ("Act of 1938"). The Act of 1938 along with various amendments over the years continues till date to be the definitive piece of legislation on insurance and controls both life insurance¹ and general insurance. General insurance, in turn, has been defined to include "fire insurance business"², "marine insurance business"³ and "miscellaneous insurance business"⁴, whether singly or in combination with any of them.

1 Section 2(11), Insurance Act, 1938: "*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 (except death by accident only) and 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

- (a) the granting of disability and double or triple indemnity accident benefits, if so provided in the contract of insurance;
- (b) the granting of annuities upon human life; and
- (c) the granting of superannuation allowances and annuities payable out of any fund applicable solely to the relief and maintenance of persons engaged or who have been engaged in any particular profession, trade or employment or of the dependents of such persons."

2 Section 2(6-A), Insurance Act, 1938: "*Fire Insurance business*" means the business of effecting, otherwise than incidentally to some other class of insurance business, contracts of insurance against loss by or incidental to fire or other occurrence customarily included among the risks insured in fire insurance policies.

3 Section 2(13-A), Insurance Act, 1938: "*Marine Insurance Business*" means the business of effecting contracts of insurance upon vessels of any description, including cargoes, freights and other interests which may be legally insured, in or in relation to such vessels, cargoes and freights, goods, wares, merchandise and property of whatever description insured for any transit by land or water, or both, and whether or not including warehouse risks or similar risks in addition or as incidental to such transit, and includes any other risks customarily included among the risks insured against in marine insurance policies.

4 Section 2(13-B), Insurance Act, 1938: "*Miscellaneous insurance business*" means the business of effecting contracts of insurance which is not principally or wholly of any kind or kinds included in Section 2 (6-A), (11) and (13-A) of the Insurance Act, 1938."

2. Nationalization of the Insurance Business in India

On January 19, 1956, the management of life insurance business of two hundred and forty five Indian and foreign insurers and provident societies then operating in India was taken over by the Central Government. The Life Insurance Corporation ("LIC") was formed in September 1956 by the Life Insurance Corporation Act, 1956 ("LIC Act") which granted LIC the exclusive privilege to conduct life insurance business in India. However, an exception was made in the case of any company, firm or persons intending to carry on life insurance business in India in respect of the lives of "persons ordinarily resident outside India", provided the approval of the Central Government was obtained. The exception was however not absolute and a curious prohibition existed. Such company, firm or person would not be permitted to insure the life of any "person ordinarily resident outside India", during any period of their temporary residence in India. However, the LIC Act, 1956 left outside its purview the Post Office Life Insurance Fund, any Family Pension Scheme framed under the Coal Mines Provident Fund, Family Pension and Bonus Schemes Act, 1948 or the Employees' Provident Funds and the Family Pension Fund Act, 1952.

The general insurance business was also nationalised with effect from January 1, 1973, through the introduction of the General Insurance Business (Nationalisation) Act, 1972 ("GIC Act"). Under the provisions of the GIC Act, the shares of the existing Indian general insurance companies and undertakings of other existing insurers were transferred to the General Insurance Corporation ("GIC") to secure the development of the general insurance business in India and for the regulation and control of such business. The GIC was established by the Central Government in accordance with the provisions of the Companies Act, 1956 ("Companies Act") in November 1972 and it commenced business on January 1, 1973. Prior to 1973, there were a hundred and seven companies, including foreign companies, offering general insurance in India. These companies were amalgamated and grouped into four subsidiary companies of GIC viz. the National Insurance Company Ltd. ("National Co."), the New India Assurance Company Ltd. ("New India Co."), the Oriental Insurance Company Ltd. ("Oriental Co."), and the United India Assurance Company Ltd. ("United Co."). GIC undertakes mainly re-insurance business apart from aviation insurance. The bulk of the general insurance business of fire, marine, motor and miscellaneous insurance business is undertaken by the four subsidiaries.

3. Entry of Private Players

Since 1956, with the nationalization of insurance industry, the LIC held the monopoly in India's life insurance sector. GIC, with its four subsidiaries, enjoyed the monopoly for general insurance business. Both LIC and GIC have played a significant role in the development of the insurance market in India and in providing insurance coverage in India through an extensive network. For example, currently, the LIC has a network of 7 zones, 100 divisions and over 2,000 branches. LIC has over 550,000 agents and over 100 million lives are covered.

From 1991 onwards, the Indian Government introduced various reforms in the financial sector paving the way for the liberalization of the Indian economy. It was a matter of time before this liberalization affected the insurance sector. A huge gap in the funds required for infrastructure was felt particularly since much of these funds could be filled by life insurance funds, being long tenure funds.

Consequently, in 1993, the Government of India set up an eight-member committee chaired by Mr. R. N. Malhotra, a former Governor of India's apex bank, the Reserve Bank of India to review the prevailing structure of regulation and supervision of the insurance sector and to make

A. Development & Growth of the Insurance Industry in India

recommendations for strengthening and modernizing the regulatory system. The Committee submitted its report to the Indian Government in January 1994. Two of the key recommendations of the Committee included the privatization of the insurance sector by permitting the entry of private players to enter the business of life and general insurance and the establishment of an Insurance Regulatory Authority.

It took a number of years for the Indian Government to implement the recommendations of the Malhotra Committee. The Indian Parliament passed the Insurance Regulatory and Development Act, 1999 (“IRD Act”) on December 2, 1999 with the aim “to provide for the establishment of an Authority, to protect the interests of the policy holders, to regulate, promote and ensure orderly growth of the insurance industry and to amend the Insurance Act, 1938, the Life Insurance Corporation Act, 1956 and the General Insurance Business (Nationalization) Act, 1972”.

B. Regulatory Authorities

1. Insurance Regulatory and Development Authority

The IRD Act has established the Insurance Regulatory and Development Authority (“IRDA” or “Authority”) as a statutory regulator to regulate and promote the insurance industry in India and to protect the interests of holders of insurance policies. The IRD Act also carried out a series of amendments to the Act of 1938 and conferred the powers of the Controller of Insurance on the IRDA.

The members of the IRDA are appointed by the Central Government from amongst persons of ability, integrity and standing who have knowledge or experience in life insurance, general insurance, actuarial science, finance, economics, law, accountancy, administration etc. The Authority consists of a chairperson, not more than five whole-time members and not more than four part-time members.

Powers, Duties and Functions of the Authority

The Authority has been entrusted with the duty to regulate, promote and ensure the orderly growth of the insurance and re-insurance business in India. In furtherance of this responsibility, it has been conferred with numerous powers and functions which include prescribing regulations on the investments of funds by insurance companies, regulating maintenance of the margin of solvency, adjudication of disputes between insurers and intermediaries, supervising the functioning of the Tariff Advisory Committee, specifying the percentage of premium income of the insurer to finance schemes for promoting and regulating professional organizations and specifying the percentage of life insurance business and general insurance business to be undertaken by the insurer in the rural or social sector.

2. Tariff Advisory Committee

The Tariff Advisory Committee (“Advisory Committee”) is a body corporate, which controls and regulates the rates, advantages, terms and conditions offered by insurers in the general insurance business. The Advisory Committee has the authority to require any insurer to supply such information or statements necessary for discharge of its functions. Any insurer failing to comply with such provisions shall be deemed to have contravened the provisions of the Insurance Act. Every insurer is required to make an annual payment of fees to the Advisory Committee of an amount not exceeding in case of reinsurance business in India, one percent of the total premiums in respect of facultative insurance accepted by him in India; and in case of any other insurance business, one

percent of the total gross premium written direct by him in India.

3. Insurance Association of India, Councils and Committees

All insurers and provident societies incorporated or domiciled in India are members of the Insurance Association of India ("Insurance Association") and all insurers and provident societies incorporated or domiciled elsewhere than in India are associate members of the Insurance Association. There are two councils of the Insurance Association, namely the Life Insurance Council and the General Insurance Council. The Life Insurance Council, through its Executive Committee, conducts examinations for individuals wishing to qualify themselves as insurance agents. It also fixes the limits for actual expenses by which the insurer carrying on life insurance business or any group of insurers can exceed from the prescribed limits under the Insurance Act. Likewise, the General Insurance Council, through its Executive Committee, may fix the limits by which the actual expenses of management incurred by an insurer carrying on general insurance business may exceed the limits as prescribed in the Insurance Act.

4. Ombudsmen

The Ombudsmen are appointed in accordance with the Redressal of Public Grievances Rules, 1998, to resolve all complaints relating to settlement of claims on the part of insurance companies in a cost-effective, efficient and effective manner. Any person who has a grievance against an insurer may make a complaint to an Ombudsman within his jurisdiction, in the manner specified. However, prior to making a complaint, such person should have made a representation to the insurer and either the insurer has rejected the complaint or has not replied to it. Further, the complaint should be made not later than a year from the date of rejection of the complaint by the insurer and should not be any other proceedings pending in any other court, Consumer Forum or arbitrator pending on the same subject matter. The Ombudsmen are also empowered to receive and consider any partial or total repudiation of claims by an insurer, any dispute in regard to the premium paid in terms of the policy, any dispute on the legal construction of the policies in as much such a dispute relates to claims, delay in settlement of claims and the non-issue of any insurance document to customers after receipt of premium.

The Ombudsmen act as a counsellor and mediator and make recommendations to both parties in the event that the complaint is settled by agreement between both the parties. However, if the complaint is not settled by agreement, the Ombudsman may pass an award of compensation within three months of the complaint, which shall not be in excess of which is necessary to cover the loss suffered by the complainant as a direct consequence of the insured peril, or for an amount not exceeding rupees two million (including ex gratia and other expenses), whichever is lower. Ombudsman within his jurisdiction, in the manner specified. However, prior to making a complaint, such person should have made a representation to the insurer and either the insurer has rejected the complaint or has not replied to it. Further, the complaint should be made not later than a year from the date of rejection of the complaint by the insurer and should not be any other proceedings pending in any other court, Consumer Forum or arbitrator pending on the same subject matter. The Ombudsmen are also empowered to receive and consider any partial or total repudiation of claims by an insurer, any dispute in regard to the premium paid in terms of the policy, any dispute on the legal construction of the policies in as much such a dispute relates to claims, delay in settlement of claims and the non-issue of any insurance document to customers after receipt of premium.

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B. **Regulatory Authorities**

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C. **Registration of an Insurance Company**

Every insurer seeking to carry out the business of insurance in India is required to obtain a certificate of registration from the IRDA prior to commencement of business. The pre-conditions for applying for such registration have been set out under the Act of 1938, the IRD Act and the various regulations prescribed by the Authority.

1. General Registration Requirements

The following are some of the important general registration requirements that an applicant would need to fulfil:

- (a) The applicant would need to be a company registered under the provisions of the Indian Companies Act, 1956. Consequently, any person intending to carry on insurance business in India would need to set up a separate entity in India.
- (b) The aggregate equity participation of a foreign company (either by itself or through its subsidiary companies or its nominees) in the applicant company cannot not exceed twenty six per cent of the paid up capital of the insurance company. However, the Insurance Act and the regulations there under provide for the manner of computation of such twenty-six per cent.
- (c) The applicant can carry on any one of life insurance business, general insurance business or re-insurance business. Separate companies would be needed if the intent were to conduct more than one business.
- (d) The name of the applicant needs to contain the words “insurance company” or “assurance company”.

2. Capital Structure Requirements

The applicant would need to meet with the following capital structure requirements:

- (a) A minimum paid up equity capital of rupees one billion in case of an applicant which seeks to carry on the business of life insurance or general insurance.
- (b) A minimum paid-up equity capital of rupees two billion, in case of a person carrying on exclusively the business of reinsurance.

In determining the aforesaid capital requirement, the deposits to be made and any preliminary expenses incurred in the formation and registration of the company would be included.

A “promoter” of the company is not permitted to hold, at any time, more than twenty-six per cent of the paid-up capital in any Indian insurance company. However, an interim measure has been permitted percentages higher than twenty six percent are permitted if the promoters divest, in a phased manner, over a period of ten years from the date of commencement of business, the share capital held by them in excess of twenty six per cent.

3. Procedure for obtaining a certificate of registration

An applicant desiring to carry on insurance business in India is required to make a requisition for a registration application to the IRDA in a prescribed format along with all the relevant documents.

The applicant is required to make a separate requisition for registration for each class of business i.e. life insurance business consisting of linked business,⁵ non-linked business⁶ or both, or general insurance business including health insurance business.⁷

The IRDA may accept the requisition on being satisfied of the bonafides of the applicant, the completeness of the application and that the applicant will carry on all the functions in respect of the insurance business including management of investments etc. In the event that the aforesaid requirements are not met with, the Authority may after giving the applicant a reasonable opportunity of being heard, reject the requisition. Thereafter, the applicant may apply to the Authority within thirty days of such rejection for re-consideration of its decision. Additionally, an applicant whose requisition for registration has been rejected, may approach the Authority with a fresh request for registration application after a period of two years from the date of rejection, with a new set of promoters and for a class of insurance business different than the one originally applied for.

In the event that the Authority accepts the requisition for registration application, it shall direct supply of the application for registration to the applicant. An applicant, whose requisition has been accepted, may make an application along with the relevant documents evidencing deposit, capital and other requirements in the prescribed form for grant of a certificate of registration. If, when considering an application, it appears to the Authority that the assured rates, advantages, terms and conditions offered or to be offered in connection with life insurance business are in any respect not workable or sound, he may require that a statement thereof to be submitted to an actuary appointed by the insurer and the Authority shall order the insurer to make such modifications as reported by the actuary.

After consideration of the matters inter alia capital structure, record of performance of each promoters and directors and planned infrastructure of the company, the Authority may grant the certificate of registration. The Authority would, however, give preference in grant of certificate of registration to those applicants who propose to carry on the business of providing health covers to individuals or groups of individuals. An applicant granted a certificate of registration may commence the insurance business within twelve months from the date of registration.

In the event that the Authority rejects the application for registration, the applicant aggrieved by the decision of the Authority may within a period of thirty days from the date of communication of such rejection, appeal to the Central Government for reconsideration of the decision and the decision of the Central Government in this regard would be final.

4. Renewal of registration

An insurer who has been granted a certificate of registration should renew the registration before the 31st day of December each year, and such application should be accompanied by evidence of fees that should be the higher of-

- fifty thousand rupees for each class of insurance business, and
- one fifth of one per cent of total gross premium written direct by an insurer in India during the financial year preceding the year in which the application for renewal of certificate is required to be made, or the application for renewal of certificate is required to be made, or rupees fifty million

⁵ Section 2(i), Insurance Regulatory and Development Authority (Registration of Indian Insurance Companies) Regulations, 2000: “*linked business*” means life insurance contracts or health insurance contracts under which benefits are wholly or partly to be determined by reference to the value of underlying assets or any approved index.

⁶ Section 2(j), Insurance Regulatory and Development Authority (Registration of Indian Insurance Companies) Regulations, 2000: “*non-linked business*” means life insurance contracts or health insurance contracts which are not linked business.

⁷ Section 2(f), Insurance Regulatory and Development Authority (Registration of Indian Insurance Companies) Regulations, 2000: “*health insurance business*” or “*health cover*” means the effecting of contracts which provide sickness benefits or medical, surgical or hospital expense benefits, whether in-patient or out-patient, on an indemnity, reimbursement, service, pre-paid, hospital or other plans basis, including assured benefits and long-term care.

whichever is less; (and in case of an insurer carrying on solely re-insurance business, instead of the total gross premium written direct in India, the total premium in respect of facultative re-insurance accepted by him in India shall be taken into account).

This fee may vary according to the total gross premium written direct in India, during the year preceding the year in which the application is required to be made by the insurer in the class of insurance business to which the registration relates but shall not exceed one-fourth of one percent of such premium income or rupees fifty million, whichever is less, or be less, in any case than fifty thousand rupees for each class of insurance business. However, in the case of an insurer carrying on solely re-insurance business, the total premiums in respect of facultative re-insurance accepted by him in India shall be taken into account.

5. Suspension of registration

The registration of an Indian insurance company or insurer may be suspended for a class or classes of insurance business, in addition to any penalty that may be imposed or any action that may be taken, for such period as may be specified by the Authority, in the following cases:

- conducts its business in a manner prejudicial to the interests of the policy-holders;
- fails to furnish any information as required by the Authority relating to its insurance business;
- does not submit periodical returns as required under the Act or by the Authority;
- does not co-operate in any inquiry conducted by the Authority;
- indulges in manipulating the insurance business;
- fails to make investment in the infrastructure or social sector as specified under the Insurance Act.

6. Cancellation of certificate of registration

The Authority, in case of repeated defaults of the grounds for suspension of a certificate of registration, may impose a penalty in the form of cancellation of the certificate. The Authority is compulsorily required to 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

- if the insurer fails to comply with the provisions relating to deposits; or
- if the insurer fails, at any time, to comply with the provisions relating to the excess of the value of his assets over the amount of his liabilities; or
- if the insurer is in liquidation or is adjudged an insolvent; or
- if the business or a class of the business of the insurer has been transferred to any person or has been transferred to or amalgamated with the business of any other insurer; or
- if the whole of the deposit made in respect of the insurance business has been returned to the insurer;
- if, in the case of an insurer, the standing contract is cancelled or is suspended and continues to be suspended for a period of six months, or
- if the Central Government of India so directs.

In addition to the above, the Authority has the discretion to cancel the registration of an insurer

- if the insurer makes default in complying with, or acts in contravention of, any requirement of the Insurance Act or of any rule or any regulation or order made or, any direction issued thereunder, or

- if the Authority has reason to believe that any claim upon the insurer arising in India under any policy of insurance remains unpaid for three months after final judgment in regular course of law, or
- if the insurer carries on any business other than insurance business or any prescribed business, or
- if the insurer makes a default in complying with any direction issued or order made, as the case may be, by the Authority under the IRDA Act, 1999.
- If the insurer makes a default in complying with, or acts in contravention of, any requirement of the Companies Act, or the LIC Act, or the GIC Act or the Foreign Exchange Management Act, 2000.

The order of cancellation shall take effect on the date on which notice of the order of cancellation is served on the insurer. Thereafter, the insurer would be prohibited from entering into any new contracts of insurance, but all rights and liabilities in respect of contracts of insurance entered into by him before the cancellation takes effect shall continue as if the cancellation had not taken place. The Authority may, after the expiry of six months from the date on which the cancellation order takes effect, apply to the Court for an order to wind up the insurance company, or to wind up the affairs of the company in respect of a class of insurance business, unless the registration of the insurance company has been revived or an application for winding up has already been presented to the Court.

7. Revival of registration

The Authority has a discretion, where the registration of an insurer has been cancelled, to revive the registration, if the insurer within six months from the date on which the cancellation took effect:

- makes the deposits, or
- complies with the provisions as to the excess of the value of his assets over the amount of his liabilities, or
- has his standing contract restored, or
- has the application accepted, or
- satisfies the Authority that no claim upon him remains unpaid, or
- has complied with any requirements of the Insurance Act or the IRDA Act, or any rule or regulation, or any order made thereunder or any direction issued under these Acts, or
- that he has ceased to carry on any business other than insurance business or any prescribed business.

D.
Regulatory Framework

The main regulations that regulate the insurance business are the Insurance Act, 1938, the Life Insurance Corporation Act, 1956, the General Insurance Business (Nationalisation) Act, 1982, the Marine Insurance Act, 1963 and the Motor Vehicles Act, 1988. The Indian Contract Act, 1872, governs most of the aspects of the insurance contract. Additionally, the Foreign Exchange Management Act, 2000, Income Tax Act, 1961, Indian Stamp Act and the Hindu and Indian Succession Act govern some aspects involved in insurance.

1. Deposits

Every insurer should, in respect of the insurance business carried on by him in India, deposit with the Reserve Bank of India ("RBI") for and on behalf of the Central Government of India the following amounts, either in cash or in approved securities estimated at the market value of the securities on

the day of deposit, or partly in cash and partly in approved securities:

- in the case of life insurance business, a sum equivalent to one per cent of his total gross premium written in India in any financial year commencing after the 31st day of March, 2000, not exceeding rupees hundred million;
- in the case of general insurance business, a sum equivalent to three per cent of his total gross premium written in India, in any financial year commencing after the 31st day of March, 2000, not exceeding rupees hundred million;
- in the case of re-insurance business, a sum of rupees two hundred million.
- If business done or to be done is marine insurance only and relates exclusively to country craft or its cargo or both, only rupees one hundred thousand should be deposited with the RBI.

These deposits will be held by the RBI though for the credit of the insurer and are returnable to the insurer in the event the provisions of the Insurance Act mandate such return. Interest accruing, due and collected on deposited securities will be paid to the insurer, subject to any deductions of the normal commission chargeable for the realization of interest. In addition, it is important to note that the deposits will:

- not be susceptible to any assignment or charge; or
- not be available for the discharge of any liability of the insurer other than liabilities arising out of policies of insurance issued by the insurer so long as any such liabilities remain undischarged, or
- not be liable to attachment in execution of any decree except a decree obtained by a policy-holder of the insurer in respect of a debt due upon a policy which debt the policy-holder has failed to realize in any other way.

Where the insurer has ceased to carry on all classes of insurance business in India, the deposit made with the RBI shall, on an application being made to the Court, be returned to the insurer after satisfaction of all his liabilities in India in respect of all classes of insurance business.

2. Investments

Every insurer is required to invest and keep invested certain amount of assets as determined under the Insurance Act. The funds of the policyholders cannot be invested (directly or indirectly) outside India.

(a) Life insurance

An insurer involved in the business of life insurance is required to invest and keep invested at all times assets, the value of which is not less than the sum of the amount of its 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, reduced by 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.

Every insurer carrying on the business of life insurance is required to invest and at all times keep invested his controlled fund (other than funds relating to pensions and general annuity business and unit linked life insurance business) in the following manner, free of any encumbrance, charge,

hypothecation or lien:

Government Securities:	25 per cent
Government securities or other approved securities:	not less than 50 per cent
Approved investments:	
(a) Infrastructure and social sector:	Not less than 15%
(b) Other to be governed by Exposure/Prudential Norms:	Not exceeding 35%
Other than in Approved Investments to be governed by Exposure/Prudential Norms:	Not exceeding 15%

For the purposes of calculating the investments, the amount of deposits made with the RBI by the insurer in respect of his life insurance business shall be deemed to be assets invested in Government securities. In computing the assets to be invested by the insurer, any investment made with reference to the currency other than the Indian rupee which is in excess of the amount required to meet the liabilities of the insurer in India with reference to that currency to the extent of such excess and any investment made in purchase of any immovable property outside India or on account of any such property shall not be taken into account. Further, an insurer should not out of his controlled fund invest any sum in the shares or debentures of any private limited company.

Where an insurer has accepted reinsurance in respect of any policies of life insurance issued by another insurer and maturing for payment in India or has ceded reinsurance to another insurer in respect of any such policies issued by himself, the assets to be invested by the insurer shall be increased by the amount of the liability involved in such acceptance and decreased by the amount of the liability involved in such cession.

In case of an insurer incorporated or domiciled outside India or an insurer incorporated in India whose share capital to the extent of one-third is owned by, or the members of whose governing body to the extent of one-third consists of members domiciled elsewhere than in India, the assets required to be invested should, (except to the extent of any part which consists of foreign assets held outside India) be held in India by way of a trust for the discharge of the liabilities.

Every Insurer shall invest and at all times keep invested his segregated fund of unit linked life insurance business as per pattern of investment offered to and approved by the policy-holders. The insurer is permitted to offer unit linked policies only where the units are linked to categories of assets that are both marketable and easily realizable. However, the total investment in other approved category of investments should at no time exceed twenty five per cent of the fund.

(b) General Insurance

An insurer carrying on general insurance business is required to invest and keep invested at all times his total assets in approved securities in the following manner:

Central Government Securities:	Not less than 20%
State Government Securities and other guaranteed securities including the aforesaid:	Not less than 30%
Housing and Loans to State Government for Housing and Fire Fighting Equipment	Not less than 5%
Investments in Approved Investments	
(a) Infrastructure and Social Sector: Not less than 10%	Not less than 10%
(b) Others to be governed by Exposure/Prudential Norms:	Not exceeding 30%
Other than in Approved Investments to be governed by Exposure/Prudential Norms:	Not exceeding 25%

(c) Pension and General Annuity

Every insurer is required to invest and at all times keep invested assets of pension business, general

annuity business and group business in the following manner:

Government Securities:	Not less than 20%
Government securities and other approved securities, including the above:	Not less than 40%
Balance to be invested in Approved Investments and to be governed by Exposure/Prudential Norms:	Not less than 60%

(d) Re-insurance

Every re-insurer carrying on re-insurance business in India is required to invest and at all times keep invested his total assets in the same manner as specified for the general insurance business.

3. Valuation Of Assets-Liabilities And Solvency Margins

An insurer should maintain, at all times, an excess of the value of his assets over the amount of his liabilities of not less than the relevant amount arrived at in the following manner ("required solvency margin"):

- (a) in the case of an insurer carrying on life insurance business, the required solvency margin shall be the higher of rupees five hundred million (one billion in case of re-insurers) or the aggregate sum arrived at based on the calculations specified in the Insurance Act.
- (b) in the case of an insurer carrying on general insurance business, the required solvency margin, shall be the highest of the following amounts: -
 - (i) rupees five hundred million (rupees one billion in case of a re-insurer); or
 - (ii) a sum equivalent to twenty per cent of net premium income; or
 - (iii) a sum equivalent to thirty per cent of net incurred claims.⁸

This shall be subject to credit for re-insurance in computing net premiums and net incurred claims being actual but a percentage, determined by the regulations, not exceeding fifty per cent.

An insurer who fails to maintain the required solvency margin will be deemed to be insolvent and may be wound up by the court. An insurer is required under the IRDA (Assets, Liabilities and Solvency Margin of Insurers) Regulations, 2000, to prepare a statement of solvency margin in accordance with Schedule III-A, in respect of life insurance business, and in Form KG in accordance with Schedule III-B, in respect of general insurance business, as the case may be.

Every insurer is required to prepare a statement of the value of assets in accordance with the provisions of the aforesaid regulations. Every insurer should prepare a statement of the amount of liabilities in accordance with the provisions of Schedule II-A of the aforesaid regulations, in respect of the life insurance business, and in Form HG in accordance with Schedule II-B, in respect of the general insurance business. The aforesaid forms should be furnished separately for business within India and the total business transacted by the insurer.

In the event that an insurer transacts insurance business in a country outside India and submits the statements or returns or any such particulars to a public authority of that country, he is required to enclose such particulars along with the Forms specified in the aforesaid regulations and the IRDA (Actuarial Report and Abstract) Regulations, 2000.

4. Submission of Returns

Every insurer should submit to the Authority the following returns, showing that as of 31st day of December of the preceding year the assets held and invested, investments made out of the

⁸ Section 64VA, (1A), Explanation, Insurance Act: "net incurred claims" means the average of the net incurred claims during the specified period of not exceeding three preceding financial years.

controlled fund and all other particulars necessary to establish that the requirements of the Insurance Act have been complied with.

Form Number	Description	Period of Filing	Times limit for submission
Form 1	Statement of investment & income on investment	Yearly	Within 30 days from the date of Board Approval of audited accounts
Form 2	Statement of down graded investments	Quarterly	Within 21 days of the end of each quarter
Form 3A	Statement of investment of Controlled Fund (Life) - Compliance Report	Quarterly	Within 21 days of the end of each quarter
Form 3B	Statement of investment of Total Assets (General) - Compliance Report	Quarterly	Within 21 days of the end of each quarter
Form 4	Prudential Investment Norms-Compliance Report	Yearly	Within 30 days from the date of Board Approval of audited accounts

5. Actuary

An insurer carrying on the business of insurance or reinsurance in India is required, under the IRDA (Appointed Actuary) Regulations, 2000, to appoint a person fulfilling the eligibility requirements, to act as an appointed actuary, after seeking the approval of the Authority in this regard. It is mandatory for an insurer carrying on the business of life insurance in India to appoint any actuary.

Powers, Duties and Obligations of an Actuary

An appointed actuary has access to all such information and documents of an insurer for the performance of his duties and obligations. An appointed actuary may also attend the meetings of the insurer and discuss matters related to the actuarial advice and solvency of margin.

An appointed actuary, in addition to rendering actuarial advice to insurer (in particular in the areas of product design and pricing, insurance contract wording, investments and reinsurance), is also required inter alia to ensure the solvency of the insurer at all times, certify the assets and liabilities that have been valued and maintain the solvency margin.

In case the insurer is carrying on life insurance business, an appointed actuary should also inter alia -

- certify the actuarial report, abstract and other returns required under the Insurance Act,
- comply with the provisions with respect to the bases of premium,
- comply with the provisions with respect to recommendation of interim bonus or bonuses payable by the life insurer to policyholders whose policies mature for payment by reason of death or otherwise during the inter-valuation period, and
- ensure that the policyholders' reasonable expectations have been considered in the matter of valuation of liabilities and distribution of surplus to the participating policyholders who are entitled for a share of surplus.

In case of an insurer carrying on general insurance business in India, the appointed actuary is required to ensure that the rates are fair in respect of those contracts that are governed by the insurer's in-house tariff and that the actuarial principles, in the determination of liabilities, have been used in the calculation of reserves for incurred but not reported claims and other reserves where

actuarial advice is sought by the Authority.

Actuarial Report and Abstract

Every insurer carrying on life insurance business should every year cause an investigation to be carried out by an actuary with respect to financial condition of the life insurance business, including a valuation of his liabilities and should cause an abstract of the report to be made. This provision shall apply in the event that an investigation into the financial condition of the insurer is made with a view to the distribution of profits or an investigation is made of which the results are made public.

6. Insurance Advertisements

The IRDA (Insurance Advertisements) Regulations, 2000, seeks to regulate and control every insurance advertisement⁹ issued by the insurer, intermediary¹⁰ or insurance agent. For this purpose, every insurer, intermediary or insurance agent is required to establish and maintain a system of control over the content, form and method of dissemination of all advertisements concerning its policies and such advertisement should be filed with the Authority as soon as it is first issued. An advertisement issued by an insurer should not fall in the category of an unfair or misleading advertisement. An 'unfair or misleading advertisement' means and includes any advertisement

- that fails to clearly identify the product as insurance;
- makes claims beyond the ability of the policy to deliver or beyond the reasonable expectation of performance;
- describes benefits that do not match the policy provisions;
- uses words or phrases in a way which hides or minimizes the costs of the hazard insured against

⁹ Regulation 2(b), IRDA (Insurance Advertisements) Regulations, 2000: “*Insurance advertisements*” means and includes any communication directly or indirectly related to a policy and intended to result in the eventual sale or solicitation of a policy from the members of the public, and shall include all forms of printed and published materials or any material using the print and or electronic medium for public communication such as:

- (i) newspapers, magazines and sales talk;
- (ii) billboards, hoardings, panels;
- (iii) radio, television, website, e-mail, portals;
- (iv) representations by intermediaries;
- (v) leaflets;
- (vi) descriptive literature/circulars;
- (vii) sales aids flyers;
- (viii) illustrations from letters;
- (ix) telephone solicitations;
- (x) business cards;
- (xi) videos;
- (xii) faxes; or
- (xiii) any other communication with a prospect or a policyholder that urges him to purchase, renew, increase, retain, or modify a policy of insurance.

Explanation: The following materials shall not be considered to be an advertisement provided they are not used to induce the purchase, increase, modification, or retention of a policy of insurance: - (i) materials used by an insurance company within its own organization and not meant for distribution to the public; (ii) communications with policy holders other than materials urging them to purchase, increase, modify, surrender or retain a policy; (iii) materials used solely for the training, recruitment, and education of an insurer's personnel, intermediaries, counselors and solicitors, provided they are not used to induce the public to purchase, increase, modify or retain a policy of insurance; (iv) any general announcement sent by a group policy holder to members of the eligible group that a policy has been written or arranged.

¹⁰ Regulation 2(c), IRDA (Insurance Advertisements) Regulations, 2000: “*Intermediary or insurance intermediary*” includes insurance brokers, reinsurance brokers, insurance consultants, surveyors and loss assessors, or any other persons representing or assisting an insurer in one or more of the following:

- (i) soliciting, negotiating, procuring, or effectuating an insurance contract or renewal of an insurance contract;
- (ii) disseminating information relating to coverage or rates;
- (iii) forwarding an insurance application;
- (iv) servicing and delivering an insurance policy or contract;
- (v) inspecting a risk;
- (vi) setting a rate;
- (vii) investigating or assessing a claim or loss;
- (viii) transacting a matter after the effectuation of a contract;
- (ix) representing or assisting an insurer or other person in any other manner in the transaction of insurance with respect to a subject of insurance resident, located or to be performed in India; or
- (x) servicing a policy or contract.

or the risks inherent in the policy;

- omits to disclose or discloses insufficiently, important exclusions, limitations and conditions of the contract;
- gives information in a misleading way;
- illustrates future benefits on assumptions which are not realistic nor realizable in the light of the insurer's current performance;
- where the benefits are not guaranteed, does not explicitly say so as prominently as the benefits are stated or says so in manner or form that it could remain unnoticed;
- implies a group or other relationship like sponsorship, affiliation or approval, that does not exist;
- makes unfair or incomplete comparisons with products which are not comparable or disparages competitors.

Every advertisement should disclose the full particulars and identity of the insurer, and that insurance is the subject matter of solicitation. In the event that such advertisement describes any benefits, the form number of the policy and the type of coverage should be fully disclosed. In case of Internet advertisements, the website or portal of the insurer or intermediary should contain disclosure statements which outline the site's specific policies vis-à-vis the privacy of personal information for the protection of both their own businesses and the consumers they serve and should also display the registration or license numbers. In addition to these requirements, every insurer or intermediary is also required to follow recognized standards of professional conduct as prescribed by the Advertisement Standards Council of India.

Non-compliance with regulations for advertisement

If an advertisement is not in compliance with the aforesaid regulations, the Authority may take action in one or more of the following ways:

- issue a letter to the advertiser seeking information within a specific time, not being more than ten days from the date of issue of the letter;
- direct the advertiser to correct or modify the advertisement already issued in a manner suggested by the Authority with a stipulation that the corrected or modified advertisement shall receive the same type of publicity as the one sought to be corrected or modified;
- direct the advertiser to discontinue the advertisement;
- any other action deemed fit by the Authority, keeping in view the circumstances of the case, to ensure that the interests of the public are protected.

7. Obligations To The Rural And Social Sector

Every insurer who begins to carry on the business of insurance in India should ensure that he undertakes the following obligations to provide life insurance or general insurance policies, during the first five financial years, to the persons residing in the rural sector¹¹ or social sector,¹² workers in the unorganised¹³ or informal sector or for economically vulnerable or backward classes of the

¹¹ Regulation 2(c), IRDA (Obligations of insurers to Rural or Social Sectors) Regulations, 2000: “*Rural sector*” shall mean any place as per the latest census which has

- (i) a population of not more than five thousand;
- (ii) a density of population of not more than four hundred per square kilometer; and
- (iii) at least seventy-five per cent of the male working population is engaged in agriculture.

¹² Regulation 2(d), IRDA (Obligations of insurers to Rural or Social Sectors) Regulations, 2000: “*Social sector*” includes unorganized sector, informal sector, economically vulnerable or backward classes and other categories of persons, both in rural and urban areas.

¹³ Regulation 2(e), (Obligations of insurers to Rural or Social Sectors) Regulations, 2000: “*Unorganised sector*” includes self-employed workers such as agricultural laborers, bidi workers, brick kiln workers, carpenters, cobblers, construction workers, fishermen, hamals, handicraft artisans, handloom and khadi workers, lady tailors; leather and tannery workers, papad makers, powerloom workers, physically handicapped self-employed persons, primary milk producers, rickshaw pullers, sfai karmacharis, slat growers, seri-culture workers, sugarcane cutters, tendu leaf collectors, toddy tappers, vegetable vendors, washerwomen, working women in hills, or such other categories of persons.

society¹⁴ and other categories of persons¹⁵ and such insurance policies shall include insurance for crops.

Rural sector

- In respect of a life insurer -
 - (i) 5% in the first financial year;
 - (ii) 7% in the second financial year;
 - (iii) 10% in the third financial year;
 - (iv) 12% in the fourth financial year;
 - (v) 15% in the fifth year.
- In respect of a general insurer
 - (i) 2% in the first financial year;
 - (ii) 3% in the second financial year;
 - (iii) 5% thereafter.

Social Sector

- In respect of all insurers
 - (i) five thousand lives in the first financial year;
 - (ii) seven thousand five hundred lives in the second financial year;
 - (iii) ten thousand lives in the third financial year;
 - (iv) fifteen thousand lives in the fourth financial year;
 - (v) twenty thousand lives in the fifth year.

8. Assignment and Nomination

(a) Assignment

A policy of insurance is a contract of a personal nature and hence cannot be transferred by the insured without the consent of the insurer. In the case of life and personal accident insurances, the subject matter of the insurance is a life and is not amenable to transfer. An assignment of the policy in such cases is just an assignment of the right to receive the proceeds of the policy.

The Insurance Act lays down the mode of assignment and transfer of a life insurance policy. An assignment or transfer may be made only on satisfaction of the following conditions:

- (i) an endorsement upon the policy itself or by a separate instrument;
- (ii) the endorsement or instrument should be signed by the transferor or his agent and should be attested by at least one witness;
- (iii) it should specifically set forth the fact of transfer or assignment.

The aforesaid conditions need to be complied with irrespective whether the transfer or assignment is made without consideration or not. The insurer, on being given notice of the assignment or transfer, shall recognize the assignee or transferee as the only person entitled to the benefit of the policy and such a person shall also be subject to all the liabilities and equities to which the transferor or assignor was subject to.

Additionally, an assignment may be (a) absolute, or (b) conditional that it shall be inoperative or that the interest shall pass to some other person on the happening of a specific event during the lifetime of the person insured, or (c) in favour of the survivor or survivors of a number of persons. However, the term "policy holder" does not include an assignee whose interest in the policy is defeasible or is for the time being subject to any condition. Hence, an assignee of a policy subject to any condition shall not be entitled to the rights of a policy holder.

(b) Nomination

A policy holder of a life insurance policy on his own life has the right, either while effecting the policy or before it matures, to nominate a person to whom the money secured by the policy should be paid in the event of the death of the policy holder. An insurer is not bound by such nomination

unless it is brought to his notice, endorsed on the policy and registered in the records of the policy. It is pertinent to note that a transfer of assignment of a policy automatically leads to cancellation of a nomination. Additionally, these provisions relating to nomination under the Insurance Act do not apply to any policies under the Married Women's Property Act, 1874.¹⁶

9. Foreign Exchange laws

The Reserve Bank of India ("RBI") is the apex bank of India established in 1935 under the Reserve Bank of India Act, 1934. The Exchange Control Department within the RBI is responsible for the regulation and enforcement of exchange controls. Prior to 1999, India had stringent exchange control regulations under the Foreign Exchange Regulation Act, 1973 ("FERA"). The Foreign Direct Investment ("FDI") regime in India has been progressively liberalized in the nineties with the passage of the Foreign Exchange Management Act, 1999 ("FEMA"), which replaced FERA. Most restrictions on foreign investment have been removed and the procedures have been simplified. Non-residents can invest directly in India, either wholly or as a joint venture. Foreign investment is allowed in virtually all sectors including the services sector, subject to Government permission in certain cases.

Insurance companies that are registered with the IRDA, are permitted to issue general insurance policies denominated in foreign currency and are also permitted to receive premiums in foreign currency without the prior approval of the RBI. However, this is permitted only for certain kinds of cases such as marine insurance for vessels owned by foreign shipping companies and chartered by Indian companies, aviation insurance for aircrafts imported from outside India on lease/hire basis for the purpose of air taxi operations etc.

Authorised dealers are also permitted to settle claims in foreign currency on general insurance policies subject to certain conditions such as the claim has been made for the loss occurred during the policy period, the claim has been settled as per the surveyors report and other substantiating documents, claims on account of reinsurance are being lodged with the reinsurers and will be received as per the reinsurance agreement, the remittance is being made to the non-resident beneficiary under the policy etc. However, in the case of resident beneficiaries, the claim is required to be settled in rupee equivalent of the foreign currency due and under no circumstances can payment be made in foreign currency to a resident beneficiary.

As per the provisions of the Foreign Exchange Management (Insurance) Regulations, 2000, no person resident in India is permitted to take any general or life insurance policy issued by an insurer outside India. However, the RBI may permit, for sufficient reasons, a resident in India to take any life insurance policy issued by an insurer outside India. However, an exemption has recently been made only for units located in Special Economic Zones ("SEZs") for general insurance policies taken by such units. Therefore, remittances towards premium for general insurance policies taken out by units located in SEZs from insurers outside India are permitted provided that the premiums are paid out of the foreign exchange balances.

A person resident in India but not permanently resident¹⁷ therein is permitted to continue holding any insurance policy issued to him by an insurer outside India, if the premium on such policy is paid out of foreign currency resources outside India. A person resident in India may take a general insurance policy issued by an insurer outside India, provided that, before taking the policy he has obtained a no objection certificate from the Central Government of India. Further, a person resident in India is also permitted to continue to hold any insurance policy issued by an insurer outside India when such person was resident outside India, subject to fulfilment of certain conditions.

16 Section 6(1): "A policy of insurance effected by any married man on his own life and expressed on the face of it to be for the benefit of his wife or his wife and children or any of them shall ensure and be deemed to be a trust for the benefit of his wife or of his wife and children or any of them according to the interest so expressed and shall not so as long as any object of the trust remains be subject to the control of the husband or his creditors or form part of his estate."

17 "Not permanently resident" means a person resident in India for employment of a specified duration (irrespective of the length thereof) or for a specific job or assignment, the duration of which does not exceed three years.

A foreign company may enter the insurance business in India in either of the following ways:

- [Direct investment in an insurance company](#)

FDI is permitted in India primarily either under the 'automatic route', or with prior government approval. Where FDI does not fall under the 'automatic route', the foreign investor would require the approval from the Foreign Investment Promotion Board ("FIPB"). Indian companies are generally permitted to accept FDI without prior approval, provided certain sectoral policies and investment limits are met. In the insurance sector there is 26% sectoral cap on FDI, subject to obtaining license from the IRDA, which means that a foreign company can invest up to only 26% in an Indian insurance company (calculated in the manner specified in the Insurance Act and regulations thereunder), while 74% would have to be invested by an Indian company.

- [Branch or Liaison Office](#)

In the event that a foreign insurance company is not desirous of directly investing in an Indian insurance company, it may, in the beginning, set up a branch or liaison office, subject to the approval of the RBI and/or the Government of India in this regard. The branch office in India is permitted to undertake only a certain set of activities such as carrying out research work for the parent company, representing the parent company in India etc. A liaison office is also permitted to undertake only a certain set of activities such as acting as a communication channel between the parent company and Indian companies.

10. [Tax Implications](#)

Insurance companies and insurance agents, in India, are subject to tax for the premiums and the commissions received by them respectively, under the Indian Income Tax Act, 1963 ("Income Tax Act").

The Income Tax Act deals with the computation of the income of the following insurance companies:

- Companies carrying on life insurance business which are resident in India;
- Companies carrying on any other kind of insurance business, which are resident in India; and
- Non-resident persons carrying on the business of insurance in India through a branch.

There is no recognized business method of ascertaining the profits derived from life insurance business. This would depend on the actuarial calculations and valuations.¹⁸ The Income Tax Act lays down provisions with respect to the income received by an assessee from the business of insurance, whether the company which receives such business income is resident in India or not. These special provisions exclude the operation of other sections under the Income Tax Act dealing with computation of income. Therefore, the profits and gains from the insurance business are to be computed artificially in accordance with these rules.¹⁹ The First Schedule of the Income Tax Act overrides the other provisions relating to computation of income under separate and distinct heads of income. The income is therefore, not to be computed under the different heads and in accordance with the provisions of the Income Tax Act, but the income from all the sources should be computed as one figure on the basis laid down in this schedule.

The profits and loss of a person carrying on the business of insurance are to be computed separately from the profits and gains from any other business. Though the profits of life insurance business are to be computed separately from the profits of non-life insurance business or other business carried on by the assessee, any loss incurred in life insurance business can be set off against profits of non-life insurance business or other business. In computing the profits of life

¹⁸ CIT v. Great Eastern, 17 ITR 173.

¹⁹ Bombay Mutual v. CIT, 20 ITR 189.

insurance business, the profits and gains of the business is taken to be the annual average of the “surplus”. This surplus is arrived at by adjusting the surplus or deficit disclosed by the actuarial valuation made in respect of the last inter-valuation period ending before the commencement of the assessment year. The tax payable, computed in the manner stated above, will be reduced by tax withheld at source for income from interest on securities in respect of annual average of income tax. In computing the profits of any business other than life insurance, the profits and gains is taken to be the balance of the profits disclosed in the annual accounts.

In case of non-resident companies carrying on the business of insurance in India, in the absence of reliable data, the profits and gains is taken to be that proportion of the world income which corresponds to the proportion of the premium income derived from India.

A branch of a foreign insurance company is subject to income tax at the rate of 42% (including 5% surcharge on tax) while a subsidiary of a foreign insurance company is subject to tax at the rate of 38.75% (including 5% surcharge on tax).

The Finance Act, 2002 has brought insurance within the service tax net. The insured is thus liable to pay service tax at the rate of 5%.

Taxation of Life Insurance companies

The Income Tax Act provides that the income tax payable on the profits and gains arising from the life insurance business will be calculated at the rate of 12.5% of such profits and gains. An insurance company is required to deposit an amount equal to one-third of the tax, in a Social Security Fund as notified by the Central Government. Further, the insurance company is required to deposit an amount of not less than 2.5% of the profits and gains of the insurance business in such a Security Fund. Where the insurance company has deposited such an amount, the income tax payable by the insurance company will be reduced by that amount and the amount to be deposited in the Security Fund would also be calculated on the income tax so reduced.

Taxation of Commission to Insurance Agents

The Income Tax Act has laid down provisions for the taxation of insurance commissions. 'Insurance Commission' has been defined to mean any income (remuneration or reward) by way of commission or otherwise for soliciting or procuring insurance business. The effect of the provision is that any person responsible for paying any such income to a resident individual will be required to deduct income tax at the prescribed rates. The provision applies only in the event that the individual is a resident of India. This provision is not applicable for an individual who is not a resident of India. Tax for such payments made to a non-resident will have to be deducted under in accordance with the provisions of Section 195 of the Income Tax Act.

11. Stamp Duty

An insurance policy needs to be duly stamped in accordance with the stamp duty prescribed for each kind of policy under the Indian Stamp Act, 1899 (“Stamp Act”). The rates of stamp duty on insurance policies are the same throughout the territories of India. Generally, the stamp duty on a life insurance policy or group insurance²⁰ is borne by the person effecting the insurance. In the case of a fire insurance policy, the insurer is liable to bear the stamp duty. Non-payment of stamp duty, is a punishable offence with a fine which may extend up to rupees two hundred if an insurer receives the premium for an insurance policy and does not execute a policy or executes a policy which is not stamped.

20 Section 2(19-A), Indian Stamp Act, 1899: “policy of group insurance” means any instrument covering not less than fifty or such smaller number as the Central Government may approve, either in consideration or a premium paid by an employer or by an employer and his employees jointly, engages to cover, with or without medical examination and for the sole benefit of persons other than the employer, the lives of all the employees or any class of them, determined by conditions pertaining to the employment, for such amount of insurance based upon a plan which precludes individual selection.

1. Insurance Agents

All persons who desire to act as an insurance agent²¹ for any insurer would have to be registered as such under the provisions of the Insurance Act and the IRDA (Licensing of Agents) Regulations, 2000. A license issued under the provisions of the Insurance Act entitles the holder to act as an insurance agent for any insurer.

Eligibility criteria for an insurance agent

Any person²² ("applicant"), desirous of being an insurance agent or a composite insurance agent,²³ may make an application for a license to act as an insurance agent to the Authority. The applicant should possess the minimum qualifications of twelfth standard or equivalent examination conducted by any recognized Board or institution, in cases where the applicant resides in a place with a population of five thousand or more as per the last census; and passed the tenth standard or equivalent examination from a recognized Board or institution if the applicant resides in any other place.

Such an applicant should also not suffer from any of the following disqualifications:

- that the person is a minor;
- that he is found to be of unsound mind by a Court of competent jurisdiction;
- that he is found guilty of criminal misappropriation or criminal breach of trust or cheating or forgery or an abetment of or attempt to commit any such offence by a Court of competent jurisdiction.
- Provided that where at least five years have elapsed since the completion of the sentence imposed on any person in respect of such person that his conviction shall cease to operate as a disqualification;
- that in the course of any judicial proceeding relating to any policy of insurance or the winding up of an insurance company or in the course of an investigation of the affairs of an insurer it has been found that he has been guilty of or has knowingly participated in or connived at any fraud, dishonesty or misrepresentation against an insurer or an insured;
- that he does not possess the requisite qualifications and practical training for a period not exceeding twelve months;
- that he has not passed the examination;
- that he violates the code of conduct.

However, any license that had been issued prior to the commencement of the IRDA Act, 1999 shall be deemed to have been issued in accordance with the IRDA (Licensing of Agents) Regulations, 2000 and the provisions of the regulation in relation to the practical training, qualifications and examination shall not be applicable to such existing insurance agents.

Payment of commission

No insurance agent can be paid by way of commission or as remuneration, in any form, an amount exceeding, -

- in case of life insurance business, forty per cent²⁴ of the first year's premium payable on any policy or policies effected through him and five per cent of a renewal premium payable on such a policy. However, the insurer may, during the first ten years of their business, pay fifty-five per cent of the

21 Section 2(10), Insurance Act, 1938: "*insurance agent*" means an insurance agent licensed under section 42 who receives or agrees to receive payment by way of commission or other remuneration in consideration of his soliciting or procuring insurance business including business relating to the continuance, renewal or revival of policies of insurance.

22 Regulation 2(i), IRDA (Licensing of Agents) Regulations, 2000: "*person*" means (i) an individual; (ii) a firm; or (iii) a company formed under the Companies Act, 1956 and includes a banking company as defined in clause (4A) of section 2 of the Act.

23 Regulation 2(d), IRDA (Licensing of Agents) Regulations, 2000: "*composite insurance agent*" means an insurance agent who holds a license to act as an insurance agent for a life insurer and a general insurer.

first years' premium payable on any policy or policies effected through them and six per cent of the renewal premiums payable on such policies.

- in the case of business of any other class, fifteen per cent of the premium.

2. Insurance Surveyors And Loss Assessors

An insurance surveyor is a technical expert who inspects the damage or loss of an insurance company. The insurer, based on the estimation of damage of the surveyor, arrives at the amount of compensation payable to the assured.

Eligibility criteria

Every individual, who intends to act as a surveyor and loss assessor in respect of the general insurance business, may make an application to the Authority for a license. The Authority may grant a license (which shall be valid for a period of five years) after he is satisfied that the applicant:

- (i) satisfies all the applicable requirements of the Insurance Act and rules thereunder;
- (ii) has furnished evidence of payment of fees for grant of license, depending upon the categorization;
- (iii) has undergone a period of practical training, not exceeding twelve months; and
- (iv) any other information that may be required by the Authority.

Duties and Responsibilities

A surveyor and loss assessor is required to spend a major part of his time in investigating and managing losses arising from any contingency and prepare reports. He is required to carry out his duties in compliance with the code of conduct. A surveyor and loss assessor has inter alia the duty and responsibility to ensure that he discloses whether he has any interest in the subject matter in question or whether it pertains to any of his relatives, business partners or through material shareholding; or maintaining confidentiality and neutrality without jeopardizing the liability of the insurer and claim of the insured; or conducting inspection and re-inspection of the property in question suffering a loss; or recommending applicability of depreciation, or the percentage and quantum of depreciation etc.

3. Third Party Administrators

Under the provisions of the IRDA (Third Party Administrators Health services) Regulations, 2001, ("TPA Regulations") the Third Party Administrator ("TPA") means a third party administrator, who has obtained a license from the Authority, and is engaged for a fee or remuneration, as specified in the agreement with the insurance company, for the provision of health services.²⁴ An insurance company may engage more than one TPA and similarly, one TPA may serve more than one insurance company. The TPA is required to maintain professional confidentiality of records, books, evidence etc. of all transactions that it carries out. In addition, the TPA is required to furnish to the insurance company and the Authority, an annual report and any other return as may be required by the Authority. The TPA is prohibited from charging the policyholders with any separate fees.

Conditions for grant of License

Only a company, with a share capital and registered under the Companies Act, 1956, can function as a TPA. In addition, the company is also required to fulfil the following conditions to be eligible to act as a TPA:

- The main or primary object of the company should be to carry on business in India as a TPA in the

²⁴ Regulation 2(d), IRDA (Third Party Administrators -Health Services) Regulations, 2001: "Health Services" means all the services to be rendered by a TPA under an agreement with an insurance company in connection with "health insurance business" or 'health cover'.

health services, and on being licensed by the Authority.

- The minimum paid up capital of the company shall be in equity shares amounting to rupees ten million.
- The TPA should, at no point of time, have a working capital²⁵ of less than rupees ten million.
- At least one of the directors of the TPA should be qualified medical doctor registered with the Medical Council of India;
- The aggregate holdings of equity shares by a foreign company shall not at any time exceed twenty-six per cent of the paid-up capital of a third party administrator.
- Any transfer of shares exceeding five per cent of the paid up capital shall be intimated by the TPA to the Authority within 15 days of the transfer indicating the names and particulars of the transferor and transferee.

Every license granted by the Authority shall remain in force for three years.

Revocation or cancellation of a License

The Authority may revoke or cancel a license granted to a TPA for any of the following reasons:

- The TPA is functioning improperly and or against the interests of the policyholders or insurance company.
- The financial condition of the TPA has deteriorated and that the TPA cannot function effectively or that the TPA has breached any of the conditions of the TPA Regulation.
- The character and ownership of the TPA has changed significantly since the grant of license.
- The grant or renewal of license was on the basis of fraud or misrepresentation of facts and that there is a breach on the part of the TPA in following the procedure or acquiring the qualifications under the TPA Regulation.
- The TPA is subject to winding up proceedings under the Companies Act, 1956.
- There is a breach of code of conduct.
- There is violation of any directions issued by the Authority under the Insurance Act or the TPA Regulations.

F.
Re-Insurance

Every insurer re-insures himself to protect against the risks to which it subjects himself in the conduct of insurance business. The general insurance company has been designated as the sole re-insurer in India. Every insurer is required to re-insure with an Indian re-insurer²⁶ such percentage of the sum assured on each policy as specified by the Authority in this regard.

1. Life insurance

The insurer is free to choose any re-insurer subject to the condition that such a re-insurer should enjoy a credit rating of a minimum of BBB of Standard and Poor or equivalent rating of any international rating agency. However, the placement of business by the insurer with any other re-

²⁵ Explanation, Regulation 3, IRDA (Third Party Administrators -Health Services) Regulations, 2001: "For the purposes of this sub-regulation "working capital" means the difference between the aggregate of the current assets and current liabilities as on the date of reckoning."

²⁶ Section 101A(8)(ii), Insurance Act, 1938: "Indian re-insurer" means an insurer specified in sub-clause (b) of clause (9) of section 2 (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; or stands to any such body corporate in the relation of a subsidiary company within the meaning of the Indian Companies Act, 1913, as defined by sub-section (2) of section 2 of that Act), who carries on exclusively re-insurance business and is approved in this behalf by the Central Government.

-insurer can be made only after obtaining the prior approval of the Authority. Every insurer is mandatorily required to retain the maximum premium earned in India commensurate with his financial strength and volume of business.

Every insurer should draw up a re-insurance programme in respect of all the lives covered by him. However, a programme of reinsurance on an original premium basis can be drawn only after obtaining the approval of the Authority. Further, a life insurer is not permitted to make any treaty arrangements with its promoter company or its associate or group company, except on terms, which are commercially competitive in the market and the prior approval of the Authority. The profile of the programme, duly certified by the appointed actuary, should be filed with the Authority at least forty-five days before the commencement of each financial year. Additionally, the insurer should also submit the statistics relating to its reinsurance transactions with the annual accounts to the Authority.

Every insurer who wants to write inward reinsurance business should adopt an underwriting policy for the purpose of underwriting inward reinsurance business. A note on the underwriting policy indicating the classes of business, geographical scope, underwriting limits and profit objective should be filed with the Authority.

2. General insurance

Every insurer is required to maintain a retention,²⁷ which is commensurate with its financial strength and volume of business. The Authority may require an insurer to justify its retention policy and may give directions to ensure that the Indian insurer is not merely fronting for a foreign insurer. Every insurer should cede²⁸ such percentage of the sum assured on each policy for different classes of insurance written in India to the Indian re-insurer as may be specified by the Authority in accordance with the provisions the Insurance Act.

Every insurer is required to submit its reinsurance programme to the Authority for the forthcoming year within forth-five days before the commencement of the financial year. Additionally, the insurer should also file with the Authority a photocopy of every reinsurance treaty²⁹ slip and excess of loss cover note in respect of that year together with a list of re-insurers and their shares in the reinsurance arrangement.

Insurers are permitted to place their reinsurance business outside India with only those re-insurers who have over a period of the past five years counting from the year preceding for which the business has to be placed, enjoyed a rating of at least BBB (with Standard and Poor) or equivalent rating of any other international rating agency. It is obligatory for all insurers to offer an opportunity to other Indian insurers including the Indian re-insurer to participate in its facultative³⁰ and treaty surpluses before placement of such cessions outside India.

Any surplus over and above the domestic reinsurance arrangements class wise may be placed by the insurer independently with any of the re-insurers, subject to a limit of ten per cent of the total reinsurance premium ceded outside India being placed with any one re-insurer. In the even that the insurer would like to cede a share exceeding such limit to any particular re-insurer, in respect of specialized insurance, the insurer should seek the specific approval of the Authority in this regard.

27 Regulation 2(h), IRDA (General Insurance Reinsurance) Regulations, 2000: “*retention*” means the amount which an insurer assumes for his own account. In proportionate contracts, the retention may be a percentage of the policy limit. In excess of loss contracts, the retention is an amount of loss.

28 Regulation 2 (c), IRDA (General Insurance- Reinsurance) Regulations, 2000: “*cession*” means the unit of insurance passed to a re-insurer by the insurer which issued a policy to the original insured and, accordingly, a cession may be the whole or a portion of single risks, defined policies or defined divisions of business, as agreed in the reinsurance contract.

29 Regulation 2(i), IRDA (General Insurance Reinsurance) Regulations, 2000: “*treaty*” means a reinsurance arrangement between the insurer and the re-insurer, usually for one year or longer, which stipulates the technical particulars and financial terms applicable to the reinsurance of some class or classes of business.

30 Regulation 2(d), IRDA (General Insurance Reinsurance) Regulations, 2000: “*facultative*” means the reinsurance of a part or all of a single policy in which cession is negotiated separately and that the re-insurer and the insurer have the option of accepting or declining each individual submission.

Every insurer should also make an outstanding claims provision for every reinsurance arrangement accepted on the basis of loss information advices received from brokers/cedants and in cases where such advices are not received, on an actuarial estimation basis. In addition, every insurer should also make an appropriate provision for IBNR claims on its reinsurance accepted portfolio on actuarial estimation basis.

The Indian re-insurer is required to organize domestic pools³¹ for reinsurance surpluses in fire, marine hull and other classes in consultation with all insurers and should also assist in maintaining the retention of business within India. Such arrangements are required to be submitted to the Authority for approval. Further, the Indian re-insurer is required to retrocede³² at least fifty per cent of the obligatory cessions received by it to the ceding insurers after protecting the portfolio by suitable excess of loss covers.

Every insurer wanting to write inward reinsurance business should have an underwriting policy for underwriting reinsurance business, which should be filed with the Authority stating the classes of business, geographical scope, underwriting limits and profit objective.

G.
Principles of Insurance Law

Where there is a positive enactment of the Indian legislature, the language of the statute is applied to the facts of the case.

However, the common law of England is often relied upon in consideration of justice, equity and good conscience.

1. Good Faith

A contract of insurance is a contract uberrime fidei i.e. a contract of utmost good faith. This is a fundamental principle of insurance law. Both the parties to the contract are required to observe utmost good faith and should disclose every material fact known to them. There is no difference between a contract of insurance and any other contract except that in a contract of insurance there is a requirement of utmost good faith.³³ The burden of proof to show non-disclosure or misrepresentation is on the insurance company³⁴ and the onus is a heavy one.³⁵ The duty of good faith is of a continuing nature in as much no material alteration can be made to the terms of the contract without the mutual consent of the parties.³⁶ Just as the assured has a duty to disclose all the material facts, the insurer is also under an obligation to do the same.³⁷ The insurer cannot subsequently demand additional premium³⁸ nor can he escape liability by contending that the situation does not warrant the insurance cover.³⁹

The Insurance Act lays down that an insurance policy cannot be called in question two years after it has been in force for two years. This was done to obviate the hardships of the insured when the insurance company tried to avoid a policy, which has been in force for a long time, on the ground of misrepresentation. However, this provision is not applicable when the statement was made fraudulently. The Marine Insurance Act, 1963 ("Marine Insurance Act") lays down that the insured must disclose all the material facts before the contract is concluded. The disclosures by the assured or by his agent should be true. The insured is deemed to know every circumstance, which in the

31 Regulation 2(f), IRDA (General Insurance Reinsurance) Regulations, 2000: "pool" means any joint underwriting operation of insurance or reinsurance in which the participants assume a predetermined and fixed interest in all business written.

32 Regulation 2(h), IRDA (General Insurance Reinsurance) Regulations, 2000: "retrocession" means the transaction whereby a re-insurer cedes to another insurer or re-insurer all or part of the reinsurance it has previously assumed.

33 General Assurance Society Ltd. v. Chandumull Jain AIR 1966 SC 1644.

34 Life Insurance Corporation of India v. Smt. G.M.Channabasamma (1991) 1 SCC 357.

35 Life Insurance Corporation of India v. Parvathavardhini Ammal AIR 1965 Mad 357.

36 United India Insurance Co. Ltd v. M.K.J Corpn. (1996) 6 SCC 428.

37 Section 21(a) of the Indian Marine Insurance Act, 1906.

38 Hanil Era Textiles Ltd. v. Oriental Insurance Co. Ltd. (2001) 1 SCC 269.

39 United India Insurance Co Ltd. v. M.K.J. Corporation (1996) 6 SCC 428.

ordinary course of business, ought to be known by him. The insurer may avoid the contract if the assured fails to make such disclosure or if the representation made is untrue. However, circumstances which diminish the risk, or which are presumed to be known by the insurer or information which is waived by the insurer or any circumstance which is superfluous to disclose by reason of any express or implied warranty need not be disclosed, in absence of any enquiry.

In India the post contractual duty of good faith is very strict. The situation, though, has changed in England through a recent decision of the House of Lords. The decision in the *Star Sea Case*⁴⁰ lays down that the duty of good faith in insurance contracts continues after the inception of the policy, but the duty is far less strict than it was prior to the commencement of the contract. This is because it would enable the insurers to avoid the whole policy ab initio for a post-contractual breach, which had no effect when the policy was drawn initially. However, this position has yet to be accepted by the Indian courts.

2. Misrepresentation

Representations are statements, made by one party to the other, either prior to or while entering into an insurance contract, of some matter or circumstances relating to it and which is not an integral part of the contract.⁴¹ These statements are said to have fulfilled their obligations when the final acceptance on the policy is conveyed.⁴²

A mere recital of representations made at the time of entering into the contract will not make them warranties.⁴³ However, if representations are made an integral part of the contract they become warranties, and, in case of their being untrue, the policy can be avoided, even if the loss does not arise from the fact concealed or misrepresented. A policy of life insurance cannot be called in question on the ground of misrepresentation after a period of two years from the commencement of the policy.

In dealing with representations as circumstances invalidating a contract, consideration should be paid as to whether such representations are wilful or innocent and whether they are preliminary or for part of the contract. The Insurance Act lays down three conditions to establish that the misrepresentation was wilful; (a) the statement must be on a material matter or must suppress facts which it was material to disclose; (b) the suppression must be fraudulently made by the policy holder; and (c) the policy-holder must have known at the time of making the statement that it was false or that it suppressed facts which it was material to disclose. The burden of proof of establishing that the insured had in fact suppressed material facts in obtaining insurance is on the insurer⁴⁴ and all the aforesaid conditions are required to be proved cumulatively.⁴⁵

In determining whether there has been suppression of a material fact it is necessary to examine whether the suppression relates to a fact which is in the exclusive knowledge of the person intending to take the policy and also that it could not be ascertained by reasonable enquiry by a prudent person.⁴⁶

3. Warranties

A warranty may be distinguished from a representation in as much a representation may be equitably and substantially answered but a warranty must be strictly complied with. A breach of warranty will avoid the policy, although it may not relate to a matter material to the risk insured.

Warranties may be express or implied, if it is condition implied by law. However, implied warranties are mostly confined to marine insurance. The Marine Insurance Act defines a warranty as a promise whereby the assured undertakes that some particular thing shall or shall not be done, or that some

40 [2001] 4 Lloyd's Rep IR 247.

41 Behn v. Burness, (1863) 3 B&S 751.

42 Pawson v. Watson, (1778) 98 ER 1361.

43 Wheelton v. Haristy, (1857) 8 E and B 232.

44 Life Insurance Corporation v. Smt. G.M. Channabasemma, AIR 1991 SC 392.

45 Life Insurance Corporation v Smt. B. Kusuma T. Rao; (1991) 70 Comp Cas 86.

46 Life Insurance Corporation v. Smt. G.M. Channabasemma, AIR 1991 SC 392.

condition shall be fulfilled, or affirms or negatives the existence of a particular state of facts.

The statements must be true in fact without any qualification of judgement, opinion or belief.⁴⁷ The warranty should be in the policy or must be incorporated by reference. If any of the statements or representations made by the assured in the proposal have been made the “basis” of the contract and they are found to be untrue, the contract of insurance would be void and unenforceable in law, irrespective of the question whether the statement, concerned is of a material nature or not.⁴⁸

However, non-compliance of a warranty is excused when, by reason of a change of circumstances, the warranty ceases to be applicable to the circumstances of the contract, or when compliance with the warranty is rendered unlawful by any subsequent law⁴⁹ or when such a warranty has not been mentioned in the policy.⁵⁰

4. Conditions

Conditions are terms which prescribe the limitations under which an insurance policy is granted and which specify the duties of the assured. They can be either conditions precedent or subsequent. Conditions precedent are those, which are essential for the creation of a valid contract,⁵¹ the non-satisfaction of which makes the contract void ab initio.⁵² Conditions subsequent relate to the continuance of a valid contract, the non-fulfilment of which leads to the avoidance of the contract from the date of the breach.⁵³

They can be further classified into express conditions and implied conditions. Implied conditions are those, which are implied by law to apply to every contract of insurance irrespective of any specific inclusion or reference to them such as insurable interest, good faith etc. A condition, which seeks to reduce or curtail the period of limitation and prescribes a shorter period than that prescribed by law is void.⁵⁴ However, the insured is absolved once it is shown that he has done everything in his power to keep, honour and fulfil the promise and he himself is not guilty of a deliberate breach.⁵⁵ An insurer cannot take recourse to a condition, which has not been mentioned in the policy to reduce his liability.⁵⁶ However, an insurance policy may not curtail the right but may merely provide for forfeiture or waiver of any such right and such a right would be enforceable against either party.⁵⁷

5. Indemnity and Subrogation

Most kinds of insurance policies other than life and personal accident insurance are contracts of indemnity whereby the insurer undertakes to indemnify the insured for the actual loss suffered by him as a result of the occurring of the event insured against. Even within the maximum limit, the insured cannot recover more than what he establishes to be his actual loss.⁵⁸ A contract of marine insurance is an agreement whereby the insurer undertakes to indemnify the insured to the extent agreed upon.

Although the insured is to be placed in the same position as if the loss has not occurred, the amount of indemnity may be limited by certain conditions:

- Injury or loss sustained by the insured has to be proved.
- The indemnity is limited to the amount specified in the policy
- The insured is indemnified only for the proximate causes.

47 *New Castle Fire Insurance Company v. Mac Morram and Co.*, (1815) 3 ER 1057.

48 *Balkrishna v. New Indian Assurance Company*, AIR 1959 Pat 102.

49 Section 36 of The Marine Insurance Act, 1963.

50 *United India Insurance Company Ltd. v. M.K.J. Corporation*, (1996) 6 SCC 428.

51 *Barnard v. Faber*, (1983) 1 Q.B. 340.

52 *Svenska Handelsbanken vs. M/s. Indian Charge Chrome and others*, 1993 SC.

53 *Glen v. Lewis* (1853) 8 Exch. 607.

54 Section 28 of the Indian Contract Act, 1872.

55 *Skandia Insurance Company Ltd. v. Kokilaben Chandravadan*, (1987) 2 SCC 654.

56 *Modern Insulators Ltd. v. Oriental Insurance Company Ltd.* (2000) 2 SCC 1014.

57 *National Insurance Company Ltd. v. Sujir Ganesh Nayak and Company*, AIR 1997 SC 2049.

58 *Vania Silk Mills (P) Ltd. v. CIT* (1991) 4 SCC 22.

- The market value of the property determines the amount of indemnity.

Indemnity is a fundamental principle of insurance law, and the principle of Subrogation is a corollary of this principle in as much the insured is precluded from obtaining more than the loss he has sustained. The most common form of subrogation is when an insurance company pays a claim caused by the negligence of another. The doctrine of subrogation confers two specific rights on the insurer. Firstly, the insurer is entitled to all the remedies which the insured has against the third party incidental to the subject matter of the loss, such that the insurer can take advantage of any means available to extinguish or diminish, the loss for which the insurer has indemnified the insured. Secondly, the insurer is entitled to the benefits received by the assured from the third party with a view to compensate himself for the loss.⁵⁹

The fact that an insurer is subrogated to the rights and remedies of the insured does not ipso jure enable him to sue third parties in his own name.⁶⁰ It will only entitle the insurer to sue in the name of insured, it being an obligation of the insured to lend his name and assistance to such an action.⁶¹

An insurance policy may contain a special clause whereby the insured assigns all his rights, against third parties, in favour of the insurer. In case of subrogation, which vest by operation of law rather than as the product of express agreement, the insured would be entitled to only to the extent of his loss. The excess amount, if any, would be returned to the insured.⁶²

6. Proximate Cause

The doctrine of proximate cause is expressed in the maxim 'Causa Proxima non remota spectator', which means that the proximate and not the remote cause, shall be taken as the cause of loss. The insurer is thus has to make good the loss of the insured that clearly and proximately results, whether directly or indirectly, from the event insured against in the policy.⁶³ The burden of proof that the loss occurred on account of the proximate cause, lies on the insured.

As per the Marine Insurance Act, unless the insurance policy states otherwise, the insurer is liable for any loss proximately caused by a peril insured against, but he is not liable for any loss which is not proximately caused by a peril insured against. An insurer would therefore be exempted from liability when the cause of loss falls within the exceptions of the policy. The Marine Insurance Act further states that the insurer is not liable for any wilful misconduct of the insured i.e. the assured cannot recover for a loss where his own deliberate act is the proximate cause of it. Further, in the event of loss caused by the delay of the ship, the insurer cannot be held liable, irrespective of the proximity of the cause.⁶⁴

7. Insurance and Consumer Protection

The Consumer Protection Act, 1986 ("Consumer Protection Act") is one of the most important socio-economic legislation for the protection of consumers in India. The provisions of this Act are compensatory in nature, unlike other laws, which are either punitive or preventive. Insurance services fall within the purview of the Consumer Protection Act, in as much, any deficiency in service of the insurance company would enable the aggrieved to make a complaint. Disputes between policyholders and insurers generally pertain to repudiation of the insurance claim or the matters connected with admission of the claim or computation of the amount of claim. In the case of assignment of all rights by the insured to the insurer, the consumer forum and the courts generally refuse to accept the locus standi of the insured.

The courts have held that insurance companies do not fall under the definition of "consumer" under the Consumer Protection Act, as no service is rendered to them directly. Neither the subrogation

⁵⁹ Castellan v. Preston (1881) All ER 494.

⁶⁰ Union of India v Sri Sarada Mills Ltd., 1972 (2) SCC 877.

⁶¹ Vasudeva Mudaliar v Caledonian Insurance Co. & Anr. AIR 1965 Madras 159.

⁶² Oberai Forwarding Agency v New India Assurance Co. Ltd. & Anr. 2002 (2) SCC 407.

⁶³ Stanley V. Western Insurance company (1868) L.R. 371.

⁶⁴ Section 55 (2)(b) of the Marine Insurance Act, 1963.

nor the transfer of the right of action would confer the legal status of a 'consumer' on the insurer, nor can the insurer be regarded as any beneficiary of any service.⁶⁵ Therefore, the remedy available to the insurer is to file a suit in a civil court for recovery of the loss.

8. Insurable Interest

To constitute insurable interest, it must be an interest such that the risk would by its proximate effect cause damage to the assured, that is to say, cause him to lose a benefit or incur a liability.⁶⁶ The validity of an insurance contract, in India, is dependent on the existence of an insurable interest in the subject matter. The person seeking an insurance policy must establish some kind of interest in the life or property to be insured, in the absence of which, the insurance policy would amount to a wager and consequently void in nature.⁶⁷

The test for determining if there is an insurable interest is whether the insured will in case of damage to the life or property being insured, suffer pecuniary loss.⁶⁸ A person having a limited interest can also insure such interest.⁶⁹

Insurable interest varies depending on the nature of the insurance. The controversy as to the existence of an insurable interest between spouses was settled by the court, which held that such an interest could exist as neither was likely to indulge in any 'mischievous game'.⁷⁰ The same analogy may be extended to parents and children. Further, the courts have also held that such an insurable interest would exist for a creditor (in a debtor) and for an employee (in an employer) to the extent of the debt incurred and the remuneration due, respectively.

The existence of insurable interest at the time of happening of the event is another important consideration. In case of life and personal accident insurance it is sufficient if the insurable interest is present at the time of taking the policy. However, in the case of fire and motor accident insurance the insurable interest has to be present both at the time of taking the policy and at the time of the accident. The case is completely different with marine insurance wherein there need not be any insurable interest at the time of taking the policy.

9. Commencement of policy

The general rule on the formation of a contract, as per the Indian Contract Act, is that the party to whom the offer has been made should accept it unconditionally and communicate his acceptance to the person making the offer. Whether the final acceptance is to be made by the insured or insurer really depends on the negotiations of the policy.

Acceptance should be signified by some act as agreed upon by the parties or from which the law raises a presumption of acceptance. The mere receipt or retention of premium until after the death of the applicant or the mere preparation of the policy document is not acceptance.⁷¹ Nonetheless, acceptance may be presumed upon the retention of the premium.⁷² However, mere delay in giving an answer cannot be construed as acceptance. Also, silence does not denote consent and no binding contract arises until the person to whom an offer is made says or does something to signify his acceptance.⁷³

When the policy is of a particular date, it would cover the liability of the insurer from the previous midnight preceding the same date.⁷⁴ However, where there is a special contract to the contrary in the policy, the terms of the contract would prevail.⁷⁵ Hence where the time of the issue of the insurance policy is mentioned, then the liability would be covered only from the time when it was issued.⁷⁶

65 New India Assurance Company Ltd. v. B. N. Sainani (1997) 6 SCC 383.

66 Seagrave v Union Insurance Co. Ltd., (1886) LR 1 CP 305.

67 Anttil v. Manufacturer's Life Insurance Company, (1899) AC 604 (PC).

68 New India Assurance Company Ltd. v. G.N. Sainani, (1997) 6 SCC 383.

69 Tomlison (Haulers) Ltd. V Hophrane, 1966 (1) AC. 418.

70 Griffith v. Fleming, (1909) 1 K.B. 805.

71 Life Insurance Corporation of India v. Raja Vasireddi Komalavalli Kamba and Others, 1984, SC.

72 Corpus Juris Secundum, Vol. XLIV, page 986.

73 Life Insurance Corporation of India v. Raja Vasireddi Komalavalli Kamba and Others, 1984, SC.

74 New India Assurance Company. Limited. v. Ram Dayal & Others, (1990) 2 SCC 680.

75 National Insurance Company. Limited. v. Jikubhai Nathuji Dabhi (Smt) and Others., 1997(1) SCC 66.

76 National Insurance Company Limited. v. Mrs. Chinto Devi & Others, 2000, SC.A.