

Laws and Regulations Related to Insurance Sector

8

This Module Includes:

- 8.1 The Insurance Act, 1938**
- 8.2 The Insurance Regulatory and Development Authority Act, 1999**

Laws and Regulations Related to Insurance Sector

SLOB Mapped against the Module

To obtain an overview of multiple specialised laws and regulations governing insurance sectors in India.

Module Learning Objectives:

After studying this module, the students will be able to -

- ✦ Understanding the concept and principles of insurance;
- ✦ Being in Finance, insurance will be very important area of work; the module will make the student understand the importance of insurance.

The Insurance Act, 1938

8.1

8.1.1. The Concept of Insurance Law

Prior to 1912, there was no insurance law in India. The Insurance companies were governed by the provisions of the Indian Companies Act 1882. In the beginning of the twentieth century, many companies sprang up but many of them were unsound. The situation demanded a legislation to control the insurance companies. In 1912, the Indian Life Insurance Companies Act and the Provident Insurance Societies Act were passed to control life insurance only. The Indian Life Insurance Companies Act 1912, was based on the model of the English Insurance Companies Act of 1909. The Indian legislation dealt with only life insurance while the English Act governed life insurance as well as non-life insurance. The Indian Life Insurance Companies Act, 1912 had some defects. The unhealthy concerns were not checked from the irregularities. There was no restriction imposed on the investment of their funds. The unsound concerns could not be investigated. The foreign companies were exempted from submitting particulars regarding their Indian business.

Government of India introduced the Bill in the Legislative Assembly in 1937 which emerged as the Insurance Act of 1938. It was enforced since July 1, 1939. A comprehensive amendment was made in 1950. The life insurance business was nationalized in 1956 and therefore the Life Insurance Corporation of India Act, 1956 was passed. The Life Insurance Corporation of India came into existence from September 1, 1956. This Act is effective and comprehensive to govern the life insurance business in India. The marine Insurance Act of 1963 was enacted to govern and regulate marine insurance in India. The general insurance business has been nationalized in 1972 and an Act to that effect has been passed in 1972 known as The General Insurance Business (Nationalisation) Act, 1972.

8.1.2. FDI in Insurance Sector in India

Based on the report of Malhotra Committee, insurance market in India was opened up for private sector in 2000 with the enactment of Insurance Regulatory and Development Authority of India (IRDAI) Act, 1999. Before opening up of the sector for the private players, the industry consisted of only two state insurers: Life Insurers (Life Insurance Corporation of India, LIC) and General Insurers (General Insurance Corporation of India, GIC). GIC had four subsidiary companies. Industry has seen a gradual growth over the last 15 years in terms of product innovation, vibrant distribution channels, penetration and density.

India is poised to emerge as one of the fastest growing insurance markets in the world. While presently the Indian insurance market is the 10th (tenth) largest in the world, it is poised to become the 6th (sixth) largest by 2032. Up to 26% FDI is permitted through the automatic approval route. For FDI up to 49%, the approval of the Central Government is required. 100% FDI is permitted in insurance intermediaries, including insurance brokers, reinsurance brokers, insurance consultants, etc.

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.

8.1.3. Basic Principles on which laws of insurance are based are as follows:

Principle of 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 [General Assurance Society Ltd. v. Chandumull Jain AIR 1966 SC 1644].

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 [Behn v. Burness, (1863) 3 B&S 751]. These statements are said to have fulfilled their obligations when the final acceptance on the policy is conveyed [Pawson v. Watson, (1778) 98 ER 1361].

A mere recital of representations made at the time of entering into the contract will not make them warranties. [Wheelton v. Haristy, (1857) 8 E and B 232]. 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 willful 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 willful; (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.

Warranties

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.

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, the non- satisfaction of which makes the contract void ab initio. 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.

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. An insurer cannot take recourse to a condition, which has not been mentioned in the policy to reduce his liability [Modern Insulators Ltd. v. Oriental Insurance Company Ltd. (2000) 2 SCC 1014]. 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 [National Insurance Company Ltd. v. Sujir Ganesh Nayak and Company, AIR 1997 SC 2049].

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. The happening of the event is neither in the control of the event the insurance company or the indemnified. Even within the maximum limit, the insured cannot recover more than what he establishes to be his actual loss [*Vania Silk Mills (P) Ltd. v. CIT* (1991) 4 SCC 22]. 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:

- (a) Injury or loss sustained by the insured has to be proved.
- (b) The indemnity is limited to the amount specified in the policy.
- (c) The insured is indemnified only for the proximate causes.
- (d) The market value of the property determines the amount of indemnity.

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 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 [*Stanley V. Western Insurance company* (1868) L.R. 371]. The burden of proof that the loss occurred on account of the proximate cause, lies on the insured.

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 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 [*New India Assurance Company Ltd. v. B. N. Sainani* (1997) 6 SCC 383]. Therefore, the remedy available to the insurer is to file a suit in a civil court for recovery of the loss.

However, if a company/individual taken insurance to hedge his risk, he will be considered to be a consumer under the Consumer Protection Act, even when he is a doing business (commercial purpose).

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. 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.

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 [New India Insurance Company Ltd. v. G.N. Sainani, (1997) 6 SCC 383]. A person having a limited interest can also insure such interest.

Insurable interest varies depending on the nature of the insurance. 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. When the policy is of a particular date, it would cover the liability of the insurer from the previous midnight preceding the same date [New India Assurance Company. Limited. vs. Ram Dayal & Others, (1990) 2 SCC 680.]. However, where there is a special contract to the contrary in the policy, the terms of the contract would prevail [National Insurance Company Limited. vs. Jikubhai Nathuji Dabhi (Smt) and Others, 1997(1) SCC 66]. Hence where the time of the issue of the insurance policy is one, then the liability would be covered only from the time when it was issued.

8.1.4. Few important definitions

- (a) **Authority:** Authority means the Insurance Regulatory and Development Authority of India established under sub-section (1) of section 3 of the Insurance Regulatory and Development Authority Act, 1999.
- (b) **Policy Holder:** “Policy holder” includes a person to whom the whole of the interest of policy holder in the policy is assigned once and for all, but does not include an assignee thereof whose interest in the policy is defeasible or is for the time being subject to any condition.
- (c) **Banking Company:** “Banking Company” and “Company” shall have the meanings respectively assigned to them in clauses (c) and (d) of subsection (1) of section of the Banking Companies Act, 1949 (10 of 1949).
- (d) **Controller of Insurance:** “Controller of Insurance”, means the officer appointed by the Central Government under section 2B to exercise all the powers, discharge the functions and perform the duties of the Authority under this Act or the Life Insurance Corporation Act, 1956 (31 of 1956) or the General Insurance Business (Nationalisation) Act 1972 (57 of 1972) or the Insurance Regulatory and Development Authority Act 1999.
- (e) **Court:** “Court” means the Principal Civil court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction.
- (f) **General Insurance Business:** “General insurance business” means fire, marine or miscellaneous insurance business, whether carried on singly or in combination with one or more of them.
- (g) **Health Insurance Business:** “Health Insurance Business” means the effecting of contracts which provide for sickness benefits or medical, surgical or hospital expense benefits, whether in-patient or out-patient travel cover and personal accident cover.
- (h) **Government Security:** “Government Security” means a Government Security as defined in the Public Debt Act 1944 (18 of 1944).
- (i) **Indian Insurance Company:** Section 2(7A): “Indian insurance company” means any insurer, being a company which is limited by shares, and;
 - (1) which is formed and registered under the Companies Act, 2013 as a public company or is converted into such a company within one year of the commencement of the Insurance Laws (Amendment) Act, 2015.
 - (2) in which the aggregate holdings of equity shares by foreign investors, including portfolio investors, do not

exceed forty-nine per cent of the paid up equity capital of such Indian insurance company, which is Indian owned and controlled, in such manner as may be prescribed or a majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreements or voting agreements.

- (j) whose sole purpose is to carry on life insurance business or general insurance business or re-insurance business or health insurance business.
- (k) **Insurer:** Section 2(9): “Insurer” means:
 - a) an Indian Insurance Company, or
 - b) a statutory body established by an Act of Parliament to carry on insurance business, or
 - c) an insurance co-operative society, or
 - d) a foreign company engaged in re-insurance business through a branch established in India. The expression “foreign company” shall mean a company or body established or incorporated under a law of any country outside India and includes Lloyd’s established under the Lloyd’s Act, 1871 (United Kingdom) or any of its Members.
- (l) **Insurance Agent:** Section 2(10): “insurance agent” means an insurance agent who receives 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.
- (m) **Investment Company:** Section 2 (10A): “Investment Company” means a company whose principal business is the acquisition of shares, stocks, debentures or other securities.
- (n) **Life Insurance Business:** Section 2(11): “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) or the happening of any contingency dependent on human life, and any contract which is subject to payment of premiums for a term dependent on human life and shall be deemed to include:
 - 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 benefits 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.
- (o) **Re-insurance:** Section 2(16B) “Re-insurance” means the insurance of part of one insurer’s risk by another insurer who accepts the risk for a mutually acceptable premium.
- (p) **“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 against in fire insurance policies;
- (q) **“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) or the happening of any contingency dependent on human life, and any contract which is subject to payment of premiums for a term dependent on human life and shall be deemed to include—
 - (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
- (r) **“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;

8.1.5. Salient features of the Insurance Act

- (a) Indian properties not to be insured with foreign insurers (section 2CB) without the permission of the IRDAI, no person shall take out or renew any policy of insurance in respect of any property in India or any ship or other vessel or aircraft registered in India with an insurer whose principal place of business is outside India.
- (b) Requirements as to Capital (Section 6)

No insurer [not being an insurer as defined in sub-clause (d) of clause (9) of section 2] carrying on the business of life insurance, general insurance, health insurance or re-insurance in India or after the commencement of the Insurance Regulatory and Development Authority Act, 1999, shall be registered unless he has minimum paid up capital as prescribed below:

Type of Insurance business	Minimum paid up capital requirement
Life or general	₹ 100 Crores
Health	₹ 100 Crores
Reinsurance	₹ 200 Crores

The insurer, may enhance the paid-up equity capital, as provided in this section in accordance with the provisions of the Companies Act, 2013, the Securities and Exchange Board of India Act, 1992 and the rules, regulations or directions issued there under or any other law for the time being in force:

No insurer shall be registered unless he has net owned funds of not less than rupees five thousand Crore.

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

- (a) that the capital of the company shall consist of equity shares each having a single face value and such other form of capital, as may be specified by the regulations.
- (b) that the voting rights of shareholders are restricted to equity shares.
- (c) that, except during any period not exceeding one year allowed by the company for payment of calls on shares, the paid-up amount is the same for all shares, whether existing or new.
- (d) The aforesaid conditions shall not apply to a public company which before the commencement of the Insurance (Amendment) Act, 1950, has issued any shares other than ordinary shares each of which has a single face value or shares, the paid-up amount whereof is not the same for all them for a period of three years from such commencement.

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

The final accounts shall be made out in prescribed format. The audited accounts and statements and the abstract and statement referred to in section 13 shall be printed, and four copies thereof shall be furnished as returns to

the Authority within six months from the end of the period to which they refer. Of the four copies so furnished, one shall be signed in the case of a company by the chairman and two directors and by the principal officer of the company and, if the company has a managing director by that managing director and one shall be signed by the auditor who made the audit or the actuary who made the valuation, as the case may be. If the authorities find that nay return is defective or inaccurate, it may call for further information or revised return.

8.1.7. Actuarial Valuation/Report (Section 13)

At least once a year, every insurer carrying on life insurance business shall cause an investigation of the life insurance business carried on by him including a valuation of his liabilities and shall cause an abstract of the report of such actuary to made in accordance with the regulations. The Authority may, extent such date. Where it appears that valuation made do not properly indicate the affairs of the company, may require further investigation and valuation.

8.1.8. Record of Policies and claims (Section 14)

- 1) Every insurer, in respect of all business transacted by him, shall maintain:
 - (a) a record of policies, in which shall be entered, in respect of every policy issued by the insurer, the name and address of the policyholder, the date when the policy was effected and a record of any transfer, assignment or nomination of which the insurer has notice.
 - (b) a record of claims, every claim made together with the date of the claim, the name and address of the claimant and the date on which the claim was discharged, or, in the case of a claim which is rejected, the date of rejection and the grounds thereof.
 - (c) a record of policies and claims may be maintained in any such form, including electronic mode, as may be specified by the regulations made under this Act.
- (2) Every insurer shall, in respect of all business transacted by him, endeavor to issue policies above a specified threshold in terms of sum assured and premium in electronic form, in the manner and form to be specified by the regulations made under this Act.

8.1.9. Investment of Assets (Section 27)

Every insurer shall invest and at all times keep invested assets equivalent to not less than the sum of the amount of his liabilities to holders of life insurance policies in India on account of matured claims, and the amount required to meet the liability on policies of life insurance maturing for payment in India, less the amount of premiums which have fallen due to the insurer on such policies but have not been paid and the days of grace for payment of which have not expired, and any amount due to the insurer for loans granted on and within the surrender values of policies of life insurance maturing for payment in India issued by him or by an insurer whose business he has acquired and in respect of which he has assumed liability in the following manner namely:

- (a) 25% of the said sum in Government securities, a further sum equal to not less than twenty-five per cent of the said sum in Government securities or other approved securities, and
- (b) the balance in any of the approved investments as may be specified by the regulations subject to the limitations, conditions and restrictions specified therein.

In the case of an insurer carrying on general insurance business, 25% of the assets in Government Securities, a further sum equal to not less than ten per cent of the assets in Government Securities or other approved securities and the balance in any other investment in accordance with the regulations of the Authority and subject to such limitations, conditions and restrictions as may be specified by the Authority in this regard.

No insurer carrying on life insurance business shall invest or keep invested any part of his controlled fund and no insurer carrying on general business shall invest or keep invested any part of his assets otherwise than in any

of the approved investments as may be specified by the regulations subject to such limitations, conditions and restrictions therein. (Section 27A).

An insurer may invest not more than five per cent in aggregate of his controlled fund or assets in the companies belonging to the promoters, subject to such conditions as may be specified by the regulations. (Section 27C) (f) Prohibition of loans (Section 29).

No insurer shall grant loans or temporary advances either on hypothecation of property or on personal security or otherwise, except loans on life insurance policies issued by him within their surrender value, to any director, manager, actuary, auditor or officer of the insurer, if a company or to any other company or firm in which any such director, manager, actuary or officer holds the position of a director, manager, actuary, officer or partner. This shall not apply to such loans made by an insurer to a banking company, as may be specified by the Authority.

8.1.10. Liability of directors for contravention (Section 30)

If by reason of a contravention of any of the provisions of section 27, 27A, 27B, 27C, 27D or section 29, any loss is sustained by the insurer or by the policyholders, every director, manager or officer who is knowingly a party to such contravention shall, without prejudice to any other penalty to which he may be liable under this Act, be jointly and severally liable to make good the amount of such loss.

8.1.11. Obligations of Insurer in respect of insurance business in third party risks of motor vehicles. — (Section 32D)

Every insurer carrying on general insurance business shall, after the commencement of the Insurance Laws (Amendment) Act, 2015, underwrite such minimum percentage of insurance business in third party risks of motor vehicles as may be specified by the regulations: The Authority may, by regulations, exempt any insurer who is primarily engaged in the business of health, re-insurance, agriculture, export credit guarantee, from the application of this section. 105B. If an insurer fails to comply with the provisions of section 32B, section 32C and section 32D, he shall be liable to a penalty not exceeding ₹25 crores. (Section 105B).

8.1.12. Power of investigation and inspection by authority (Section 33)

The Authority may, at any time, investigate the affairs of any insurer or intermediary or insurance intermediary, as the case may be, and to report to the Authority on any investigation made by such Investigating Officer: The Investigating Officer may, wherever necessary, employ any auditor or actuary or both for the purpose of assisting him in any investigation under this section. Notwithstanding anything to the contrary contained in section 210 of the Companies Act, 2013, the Investigating Officer may, cause an inspection to be made by one or more of his officers of the books of account of any insurer or intermediary or insurance intermediary and the Investigating Officer shall supply to the insurer or intermediary or insurance intermediary. A copy of the report on such inspection. The officers of the insurer shall cooperate with the investigating authorities.

All concerned shall cooperate with the Investigating agency. The Investigating officer shall make a report to the Authority on such inspection and the Authority may after giving such opportunity to the insurer or intermediary to make a representation. All expenses incidental to any investigation shall be defrayed by the insurer or intermediary or insurance intermediary and shall have priority over the debts due from the insurer and shall be recoverable as an arrear of land revenue.

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

No person shall, pay or contract to pay any remuneration or reward whether by way of commission or otherwise for soliciting or procuring insurance business in India to any person except an insurance agent or an intermediary or insurance intermediary in such manner as may be specified by the regulations. No insurance agent or intermediary or insurance intermediary shall receive or contract to receive commission or remuneration in any form in respect

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

8.1.14. Insurance agents (Section 42)

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

No insurer shall appoint any principal agent, chief agent, and special agent and transact any insurance business in India through them. No person shall allow or offer to allow, either directly or indirectly, as an inducement to any person to take out or renew or continue an insurance policy through multilevel marketing scheme which means any scheme or programme or arrangement or plan for the purpose of soliciting and procuring insurance business through persons not authorised for the said purpose with or without consideration of whole or part of commission or remuneration earned through such solicitation and procurement and includes enrolment of persons into a multilevel chain for the said purpose either directly or indirectly.

No insurance agent or intermediary or insurance intermediary shall be eligible to be or remain a director in insurance company without permission of the Authority.

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

No policy of life insurance shall be called in question on any ground whatsoever after the expiry of 3 years from the date of the policy on the ground of fraud. The insurer shall have to communicate in writing to the insured or the legal representatives or nominees or assignees of the insured the grounds and materials on which such decision are based or on the ground that any statement of or suppression of a fact material to the expectancy of the life of the insured was incorrectly made in the proposal or other document on the basis of which the policy was issued or revived or rider issued.

8.1.16. Surveyors or loss assessors (Section 64UM)

No person shall act as a surveyor or loss assessor in respect of general insurance business after the expiry of a period of one year from the commencement of the Insurance Laws (Amendment) Act, 2015, unless he possesses such academic qualifications as may be specified by the regulations made under this Act; and is a member of a professional body of surveyors and loss assessors, namely, the Indian Institute of Insurance Surveyors and Loss Assessors. In the case of a firm or company, all the partners or directors or other persons, who may be called upon to make a survey or assess a loss reported, as the case may be, shall fulfill the same requirements. Every surveyor and loss assessor shall comply with the code of conduct in respect of his duties, responsibilities and other professional requirements, as may be specified by the regulations made under the Act.

8.1.17. Valuation of assets and liabilities (Section 64V)

Assets shall be valued at value not exceeding their market or realisable value and certain assets may be excluded by the Authority in the manner as may be specified by the regulations made in this behalf. A proper value shall be placed on every item of liability of the insurer in the manner as may be specified by the regulations made in this behalf. Every insurer shall furnish to the Authority along with the returns required to be filed under this Act, a statement, certified by an Auditor, approved by the Authority in respect of general insurance business or an actuary approved by the Authority in respect of life insurance business, as the case may be, of his assets and liabilities assessed in the manner required by this section as on the 31st day of March of each year within such time as may be specified by the regulations.

8.1.18. Sufficiency of assets (Section 64V)

Every insurer and re-insurer shall at all times maintain an excess of value of assets over the amount of liabilities of, not less than fifty per cent of the amount of minimum capital as stated under section 6 and arrived at in the manner specified by the regulations. An insurer or re-insurer, as the case may be, who does not comply with shall be deemed to be insolvent and may be wound-up by the court on an application made by the Authority. The Authority shall by way of regulation made for the purpose, specify a level of solvency margin known as control level of solvency on the breach of which the Authority shall act in accordance with without prejudice to taking of any other remedial measures as deemed fit.

The Insurance Regulatory and Development Authority Act, 1999

8.2

8.2.1. Establishment of IRDA

The Insurance Regulatory and Development Authority (IRDA) was established in the year 1999 by the Indian Government with the following objectives.

- (i) to protect the interests of holders of insurance policies.
- (ii) to regulate, promote and ensure orderly growth of the industry
- (iii) matters connected therewith or incidental thereto.

The mission statement of IRDA is as follows:

- (i) To protect the interest and secure fair treatment to policyholders;
- (ii) To bring about speedy and orderly growth of the insurance sector for the benefit of the common man and provide long term funds;
- (iii) To promote. Monitor and enforce high standards of integrity, financial soundness and fair dealing by the insurers;
- (iv) Take actions where such standards are inadequate or ineffectively enforced;
- (v) To ensure speedy settlement of genuine claims, to prevent fraud, malpractice and to put in place grievance redressal machinery;
- (vi) Bring about optimum amount of self regulation in day to day working consistent with the regulation,

8.2.2. The Functions of Insurance Regulatory and Development Authority

The Functions of Insurance Regulatory and Development Authority are to make policies, regulations, address grievances and relationship to the following:

- (a) Nomination by Policyholders.
- (b) Settlement of insurance claim.
- (c) Practical training for Insurance agents and other intermediaries.
- (d) Insurable Interest.
- (e) Surrender value of Policyholders.
- (f) Code of conduct of Insurance intermediaries surveyors.
- (g) Assistance in gaining correct information about policies.
- (h) Creation of management information system.
- (i) Promotion of Self regulation within the insurance sector.
- (j) Issue of certificate of insurance company registration.
- (k) regulation of investment by insurance companies.

- (l) Supervising and monitoring insurance companies

8.2.3. Constitution of IRDA

The Central Government by notification appoint such Authority in the nature of body corporate enjoying all the characteristics of such entity along with contractual powers.

The Head Office of such Authority is to be decided by the Central Government.

The members of such Authority appointed by the Central Government depending upon their expertise and experience in the field of Insurance, Law, Economic Accountancy, etc. The member consists of:

- (a) Chairman.
- (b) Five Whole Time members (maximum)
- (c) Four Part – Time members (maximum)

One of these members should have knowledge in Life Insurance, General Insurance and Actuarial Science.

The Chairperson shall hold office for a term of five years until he reaches sixty five years. And he is eligible for re-appointment. A whole time member however can hold office for up to sixty - two years.

Moreover a member can relinquish his membership by giving three month prior notice to the Central Government or he can be removed from office under provision of Sec.6. A member may be removed from office if he became insolvent or insane or convicted for offence involving moral turpitude or illegally established financial interest in the Authority or acting contrary to public interest. The remuneration for each member shall be as per prescribed Law. The chairperson and the Whole-time member shall within two years from the date of appointment, cannot hold office under Central Government or State Government or any Insurance Sector.

The procedural aspect of the meetings of the Authority may be determined by regulations, Resolutions are passed by simple majority and chairperson may use casting vote in case of a tie. In case, chairperson unable to attend any meeting then members attending may appoint chairperson among themselves. Any act of the Authority cannot be invalidated simply because of any defect in appointing a member or procedural irregularity. From time to time, authority may appoint employees and officers for efficiency in their work.

8.2.4. Important Definitions

- (a) **Appointed Day:** Sec. 2 (a): Appointed day means the date on which the Authority is established under sub-section (1) of Sec – 3.
- (b) **Authority:** Sec. 2 (b): “Authority” means the Insurance Regulatory and Development Authority of India established under Sub-Section (1) of Sec. 3.
- (c) **Chairperson:** Sec. 2 (c): “Chairperson” means the Chairperson of the Authority.
- (d) **Fund:** Sec. 2 (d): “Fund” means the Insurance Regulatory and Development Authority Fund constituted under Sub-Section (1) of Section 16.
- (e) **Interim Insurance Regulatory Authority:** Sec. 2 (e): “Interim Insurance Regulatory Authority” means that Insurance Regulatory Authority set up by the Central Government through Resolution No. 17 (2) /94 Ins – V, dated , the 23rd January, 1996.
- (f) **Intermediary or Insurance Intermediary:** Sec. 2 (f): “Intermediary or Insurance Intermediary” includes insurance brokers, reinsurance brokers, Insurance Consultants, corporate agents, third party administrator, surveyors and loss assessors and such other entities, as may be notified by the Authority from time to time.
- (g) **Members:** Sec. 2 (g) “Member” means a whole time or part-time member of the “Authority” and includes the Chairperson.

8.2.5. Duties and powers of IRDA

The Authority shall have the duty to regulate, control, promote and ensure healthy development of insurance and re-insurance business. The powers and functions of the Authority includes inter-alia:

- (a) Issue, modify, cancel, etc, of Registration certificate to the applicant.
- (b) Safeguarding the interests of the policyholders like insurable interests, settlement of claim, surrender value of the policy, etc.
- (c) Specifying code of conduct of the Surveyors.
- (d) Determining qualifications and training aspect of agents and intermediary.
- (e) Levying fees and charges for their work.
- (f) Conducting investigations and enquiries relating to issues concerning insurance business.
- (g) Regulating and controlling business not controlled by Tariff Advisory committee under section 64 of Insurance Act 1938.
- (h) Regulatory investment funds by the Insurance Companies.
- (i) Regulating maintenance of margin of solvency.
- (j) Adjudicating and settling disputes between intermediaries and insurers.
- (k) Supervising the functioning of Tariff Advisory Committee.

8.2.6. Finance Accounts and Audit

- (a) The Central Government grants funds necessary for such Authority. The fund shall be called as “IRDA of India Fund”. And it includes:
 - (1) Governmental Grants, fees and charges.
 - (2) Money received by the Authority from other sources specified by the Central Government.
- (b) The above funds shall be applied for
 - (1) meeting salaries and allowances of members, officers and employees of the authority.
 - (2) meeting other legitimate expenses of the authority.

The ‘Authority’ has to maintain Books of Accounts and prepare Annual Financial Statements as per norms prescribed by Central Government in consultation with CAG.

The accounts of the ‘Authority’ shall be audited by the CAG according to their schedule and the expenditure required for such audit has to be borne by the ‘Authority’.

Any other person appointed by CAG may enjoy same privileges and have access to books, documents and other relevant papers.

The certified accounts of the ‘Authority’ whether audited by CAG or person appointed by CAG, to be put forward to the Central Government and the same be laid before the Parliament by such Union Government.

8.2.7. Amalgamation and transfer of insurance business.

No insurance business of an insurer shall be transferred to or amalgamated with the insurance business of any other insurer except in accordance with a scheme prepared under this section and approved by the Authority.

Any scheme prepared under this section shall set out the agreement under which the transfer or amalgamation is proposed to be effected, and shall contain such further provisions as may be necessary for giving effect to the scheme. for “and certified copies of the following documents shall be furnished to the Central Government and shall”

8.2.8. Other matters

The 'Authority' is bound by the action of the Central Government regarding policy matters. However, the Authority has the leverage of operating independently relating to technical and administrative matters.

The Central Government may if situation warrants like, the Authority persistently defaulting directions of them or in public interest, may supercede the Authority for not more than six month duration, through notification and appointing a person as controller of Insurance

The Central Government shall constitute the authority, appoint chairperson and other members

From time to time the Authority has to furnish returns, statements and other particulars regarding to any existing or proposed programme, to the Central Government.

The Authority may by prior notification, establish Insurance Advisory Committee. This Committee consists of twenty- five members (maximum) excluding existing members.

The 'Authority' may by general or special order delegate powers and functions to any of its members or officers or employee.

The Central Government may by notification make rules relating to various administrative matters. The authority shall have power to make regulations.

The 'Authority' may after consulting the committee by notification, make regulations particularly addressing the procedural aspect in conducting meetings, determining terms and conditions of the services of the officers and employees, delegating powers to the committee and other miscellaneous matters.

The Central Government has right to remove any difficulties or impediments by making notification in the Official Gazette within two years from the appointed day.

EXERCISE**Multiple Choice Questions (MCQs)**

1. Minimum paid up capital for a life insurance business is ₹..... Crore
 - a) 50
 - b) 75
 - c) 100
 - d) 125
2. Banking Regulation Act was enacted in the year:
 - a) 1940
 - b) 1942
 - c) 1947
 - d) 1949
3. Officer appointed by Central Govt. is called:
 - a) IRDA
 - b) Controller of Insurance
 - c) Insurance Commissioner
 - d) None of the above.
4. In case of insurance company, ... % of assets have to be remained invested in Govt. securities.
 - a) 10
 - b) 15
 - c) 20
 - d) 25
5. Actuarial valuation on life insurance business has to be done once in
 - a) 1 year
 - b) 2 years
 - c) 3 years
 - d) 4 years
6. Insurance policy made by an insurer shall not be questioned after years.
 - a) 1 year
 - b) 2 years

- c) 3 years
 - d) 4 years
7. Insurance business is regulated by:
- a) SEBI
 - b) RBI
 - c) MCA
 - d) none of the above
8. IRDA was established in the year:
- a) 1999
 - b) 2000
 - c) 2001
 - d) 2002
9. No insurer carrying on the business of life insurance and general insurance, shall be registered unless he has minimum paid up capital of _____.
- a) 50 crores
 - b) 200 crores
 - c) 150 crores
 - d) 100 crores
10. The Chairman of the Insurance Regulatory and Development Authority shall hold office for a term of from the date on which he enters upon his office and should be eligible for reappointment.
- a) 3 years
 - b) 4 years
 - c) 5 years
 - d) 6 years
11. The amount credited to The Insurance Regulatory and Development Authority Fund shall consist of:
- a) all Government grants, fees and charges received by the Authority;
 - b) all sums received by the Authority from such other source as may be decided upon by the Central Government;
 - c) the percentage of prescribed premium income received from the insurer;
 - d) all of the above
12. IRDA shall, within _____ after the close of each financial year, submit to the Central Government a report giving a true and full account of its activities including the activities for promotion and development

- of the insurance business during the previous financial year.
- a) nine months
 - b) three months
 - c) one month
 - d) six months
13. The principle of _____ ensures that an insured does not profit by insuring with multiple insurers.
- a) Subrogation
 - b) Contribution
 - c) Co-insurance
 - d) Indemnity
14. An actuary is expected to:
- a) Make an exact forecast of the future liabilities of policies
 - b) Make a reasonable forecast of the future liabilities of policies
 - c) Calculate the premium required to cover a risk on a long-term basis
 - d) Find the probability of an insured event to happen in non-life policies
15. The Insurance Laws (Amendment) Act, was passed in the year
- a) 2015
 - b) 2016
 - c) 2017
 - d) 2018
16. “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) or the happening of any contingency dependent on human life, and any contract which is subject to payment of premiums for a term dependent on human life and shall be deemed to include:
- 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 benefits 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.
 - d) all the above

17. The amount of indemnity may be limited by certain conditions which may be:
 - a) Injury or loss sustained by the insured has to be proved.
 - b) The indemnity is limited to the amount specified in the policy.
 - c) The insured is indemnified only for the proximate causes.
 - d) Any or all of the above.
18. In the case of fire and motor accident insurance the insurable interest has to be present
 - a) both at the time of taking the policy and at the time of the accident
 - b) At the time of taking the policy
 - c) At the time of happening of the event
 - d) None of the above

State True or False

1. One of the principle of insurance is “indemnity and subrogation”.
2. Consumer protection Act do not apply to insurance.
3. An insurance agent can sign all documents relating to the policy.
4. Minimum paid up to capital for health insurance company is ₹300 cr.
5. The insurance sector is monitored by IRDA

Fill in the blanks

1. Insurance business is regulated by.....
2. Insurance of a part of one insurer risk by another insurer is called.....
3. Minimum paid up capital in for life insurance is ₹..... crores.
4. Policy shall not be questioned on any ground after lapse of.....years from the commencement date.
5. Insurance company is the indemnifier where the policy holder is.....
6. The Life Insurance Corporation of India came into existence in the year
7. A contract of insurance is a contract ‘uberrimea fidei’ i.e., a contract of.....
8. The system of insurance of part of one insurer’s risk by another Insurer who accepts the risk for a mutually acceptable premium. Is called
9. “Controller of Insurance” is appointed by.....
10. No insurer shall be registered unless he has net owned funds of not less than rupees

Short Essay Type Questions:

1. List out 5 principles of insurance.
2. Write a short note on IRDA
3. Discuss the concept of insurable interest.

Essay Type Questions:

1. Discuss few principles of insurance.
2. What are the restrictions on agency of insurance under the Insurance Act?
3. List out the objects and functions of IRDA.
4. Discuss provisions relating to valuation of assets and liabilities of insurance companies.

Case study (solved)

Ajit Kumar works as an accountant in a private company. He wants to make an argument with 3 or 4 insurance companies, both life and non life to get business for them at fixed monthly retaining fees. He has a room in his house where he can have an office. He wants to know where this is possible and if so, where and how to get such agency contracts. Advise Ajit Kumar.

Solution

The Act provides that no person shall, pay or contract to pay any remuneration or reward whether by way of commission or otherwise for soliciting or procuring insurance business in India to any person except an insurance agent or an intermediary or insurance intermediary in such manner as may be specified by the regulations. No insurance agent or intermediary or insurance intermediary shall receive or contract to receive commission or remuneration in any form in respect of policies issued in India, by an insurer in any form in respect of policies issued in India, by an insurer except in accordance with the regulations specified in this regard. Therefore, Ajit Kumar has to first become an insurance agent, If he is employed full time, he cannot be an agent.

No person shall act as an insurance agent for more than one life insurer, one general insurer, one health insurer and one of each of the other mono-line insurers: ensure that no conflict of interest is allowed to arise for any agent in representing two or more insurers for whom he may be an agent. Ajit Kumar has to choose from these options.

Ajit Kumar has to comply with various other restrictions of an agent as per regulation of IRDA and the Act.

Answer**Multiple Choice Questions (MCQs)**

1	2	3	4	5	6	7	8
c	d	b	d	a	c	d	a

State True or False

1	2	3	4	5
T	F	F	F	T

Fill in the blanks

1	IRDA	2	Reinsurance
3	100	4	3
5	Indemnified	6	1956
7	utmost good faith	8	Re-insurance
9	Central Government	10	five thousand Crore