

LAW COMMISSION OF INDIA

190TH REPORT

ON

THE REVISION OF THE INSURANCE ACT, 1938

AND

**THE INSURANCE REGULATORY AND
DEVELOPMENT AUTHORITY ACT, 1999**

JUNE, 2004

JUSTICE
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June 1, 2004

Dear Shri Bharadwaj ji,

I have a great pleasure in forwarding the 190th Report of Law Commission of India on 'Revision of the Insurance Act, 1938 and the Insurance Regulatory and Development Authority Act, 1999'. The Commission took up the subject at the instance of Insurance Regulatory and Development Authority (IRDA) which vide its letter dated 9th April 2002 had requested the Commission to make recommendations for the revision of the Insurance Act, 1938.

2. The insurance sector has been growing steadily and is a major source of long term contractual funds needed for infrastructure development. With the liberalisation of economic policy, the insurance sector is now open for private sector also along with up to 26% of foreign equity participation. In this changing economic scenario, the IRDA has to play a vital role for the regulation and development of insurance business. Therefore, the Commission is of the view that the Insurance Act, 1938 requires review and revision. But the revision of the Act has to be carried out in such a manner that it should not only promote insurance business but also protect the interests of policyholders and strengthen the IRDA to ensure financial stability in this sector.

3. After a series of discussion held with the IRDA, the Law Commission prepared an exhaustive Consultation Paper in the month of June, 2003 which was also placed on the Commission's website in the same month. Copies thereof were also sent to the appropriate Ministry in the Central Government, the IRDA, the public and private sector insurance companies, consumer organizations and a wide range of other experts in the field of law and insurance. A copy of this Consultation Paper is also appended to this Report as Appendix I. A large number of written responses were received to the Consultation Paper. Discussions were also held with insurance companies, actuaries etc. under the aegis of the FICCI. After going through oral and written responses to the Consultation Paper, the Commission has prepared this Report.

4. Although the Consultation Paper was an exhaustive one covering manifold issues on the subject as is evident from the index to Consultation Paper, the Commission decided to confine its recommendations only with regard to the germane legal issues arising in the Insurance Act, 1938 leaving matters relating to insurance and economic policies. The legal issues include the setting up of a grievance redressal mechanism, repudiation of life insurance policies under section 45 of the Insurance Act and provisions relating to nomination and assignment and transfer of policies under sections 39 and 38 respectively.

5. To deal with the complaints of the policyholders, the existing system of Ombudsman under the Redressal of Public Grievances Rules, 1998, is found not satisfactory from the point of view of policyholder. The remedy under the Consumer Protection Act, 1986 has also not proven to be effective in the large number of cases pending decision. Therefore, the Commission has recommended that Grievance Redressal Authorities (GRA) should be constituted to deal with (a) disputes between the Insured and the Insurer; (b) disputes between Insurer and the Intermediaries and (c) disputes between Insurer and Insurer. However, the GRA shall have no jurisdiction in cases relating to third party motor vehicle insurance and marine insurance. The GRA shall consist of one judicial member who will be the Chairman and the other two technical members. Apart from the GRA, it has been recommended that an Insurance Appellate Tribunal (IAT) should also be constituted to hear the appeals from the order of GRA. The IAT shall also hear the appeal against the orders passed by the IRDA and all orders passed after the adjudication by investigating officers appointed by the IRDA. There will have to be a further statutory appeal to the Supreme Court from the decision of the IAT.

6. In respect of the repudiation of life insurance policy, the existing section 45 of the Insurance Act, 1938 provides that within two years from the date of policy, an insurer can repudiate the policy on the ground that any material fact in the proposal or document is inaccurate or false. After the expiry of two years an insurer can repudiate the policy on fulfilling all three conditions mentioned in second part of section 45. The Life Insurance Corporation of India made an important suggestion that if a life policy had been accepted for about six years, its validity should not be allowed to be questioned thereafter, though under the present provision in section 45, the LIC could question the validity after two years, without any time limit.

7. While balancing the interests of policyholders and the insurers and keeping in view the earlier recommendations of the Law Commission made in its 112th Report, the Commission has now recommended taking into account the suggestion of the Life Insurance Corporation of India, that after the expiry of five years, no policy of life insurance can be repudiated on any ground whatsoever. However, an insurer can repudiate a policy before the expiry of five years on the ground that the insured has made a mis-statement of or suppressed a material fact. Accordingly, the Commission has recommended that section 45 should be substituted.

8. Section 38 of the Insurance Act provides for assignment and transfer of life insurance policies. There are certain anomalies observed in the working of sub-sections (5) and (7) of section 38. The Commission has recommended that a clear distinction be made between absolute assignment and conditional assignment. Certain safeguards are also recommended to curb the misuse of the facility of assignment. Section 38 is also recommended for substitution.

9. Section 39 of the Insurance Act, 1938 provides that the policyholder may nominate one or more persons to whom the money secured by the policy shall be paid in the event of death of the policyholder. In view of the decision of the Supreme Court in Sarbati Devi's case (AIR 1984 SC 346) and the Law Commission's earlier recommendation made in its 137th Report (1991), the Commission has now recommended that section 39 be amended to make a distinction between a "beneficial" nominee and a "collector" nominee. The details of such categories of nominees are elaborated in the Report.

10. The Commission has also recommended that certain definitions in the Insurance Act, 1938 be amended as mentioned in Appendix II of this Report.

11. Further there are certain provisions in the Insurance Act, 1938 which are required to be deleted as they have become redundant. It has also recommended that provisions to this effect mentioned in Appendix III to this Report, be deleted.

12. As of now, there are two separate legislations which deal with insurance, one is the Insurance Act, 1938 and the other is the IRDA Act, 1999. The Commission has suggested in the Consultation Paper that these two Acts have to be brought into a single statute. This proposal was almost universally accepted in the responses. The Commission recommends in the Report that there is no justification to have two separate legislations with regard to the subject. Therefore, it is recommended that the provisions of the IRDA Act, 1999 should be merged in the Insurance Act, 1938 on the lines set out in the Appendix IV of the Report. Other issues referred to in the Consultation Paper require policy decisions at the level of Government and in view of the Commission, it would be premature to make recommendations to amend the law even before such policy decisions are taken.

I acknowledge the extensive contribution made by Dr. S. Muralidhar, Part-time Member of Law Commission, in preparation of the Consultation Paper as well as the final Report.

With regards,

Yours sincerely,

Sd./-
(M. Jagannadha Rao)

Shri H.R. Bharadwaj
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CHAPTER I

INTRODUCTION AND BACKGROUND

1.1 Introduction

- 1.1.1 The Law Commission of India ('Commission') undertook the exercise of examining the Insurance Act, 1938 (Act) at the instance of the Insurance Regulatory Development Authority (IRDA) which vide its letter dated 9th April, 2002 had requested the Commission to make recommendations for revision of the Act and for consequential amendments thereto.
- 1.1.2 The insurance sector has been growing steadily and is a major source of long-term contractual funds needed for infrastructure development. The Second Annual Report of the IRDA (2001-02) highlights this phenomenon. According to it, the size of insurance market in the country, both life and non-life, is to the extent of \$ 9.94 billion. The rate of annual growth in the year 2001-2002 was 43% in life insurance and 13.6% in non-life insurance.
- 1.1.3 The total premium underwritten by the Life Insurance Corporation of India (LIC) was Rs.498.21 billion (Rs.49,821.91 crore) in the year 2001-2002 as against Rs.348.92 billion (Rs.34,892.02 crore) in the previous year, thus registering an overall increase of 42.79%. Correspondingly, the income of LIC increased to Rs.737.80 billion (Rs.73,780.07 crores) as against Rs.547.66 billion (Rs.54,766.60 crores) in the previous years, i.e., an increase of 34.71%. At the end of the financial year 2001-2002, while LIC continues to be the sole public sector enterprise in the life insurance business, there were as many as twelve companies in the private sector in each of whom there was a foreign company participation upto the permissible limit of 26% of equity share capital.
- 1.1.4 During the same period, 2001-2002, the gross direct premium income of the four public sector general insurance companies, viz., Oriental Insurance Corporation of

India, United India Insurance Company Ltd., New India Assurance Company Ltd., National Insurance Company Ltd. [all these four being the subsidiaries of the General Insurance Corporation of India (GIC)] was Rs.119.17 billion (Rs.11,917.58 crores) recording an increase of 21.61% over the previous year. The general insurance business includes motor vehicle insurance, marine insurance, fire insurance, personal accident insurance, health insurance, aviation insurance, rural property insurance and others. At present, GIC is the only reinsurer and has been placed in an obligatory position to act for the reinsurance market in the country as a whole. According to the Second Annual Report of the IRDA for the year 2001-2002, the profitability of the general insurance companies continues to be under strain. In the private sector, there were at least 8 companies with participation of foreign equity to the extent of 26%.

- 1.1.5 The Second Annual Report of the IRDA further points out that foreign capital of Rs.6.24 billion (Rs.624.56 crores) has been so far invested in the new life and non-life insurance companies and that this “strengthens the belief that the commitment of the new joint ventures to the development of the insurance business in India as a long term strategy which will result in the growth of the economy.” Insurance companies/ corporations being long-term contractual savings institutions can also play a major role in vitalizing the secondary debt market and securities as well. Expansion of insurance business, particularly in the rural areas, would lead to the growth in savings, which would significantly add to the GDP. With a view to advance a balanced growth of the economy, it is essential to have a strong legal regime to regulate the business enterprises in this field.

1.2 Legislative Regime

- 1.2.1 The principal legislation regulating the insurance business in India is the Insurance Act, 1938 (hereinafter referred to as the ‘Act’). Some other existing

legislation in the field are – the Life Insurance Corporation (LIC) Act, 1956, the Marine Insurance Act, 1963, the General Insurance Business (GIB) (Nationalization) Act, 1972 and the Insurance Regulatory and Development Authority (IRDA) Act, 1999. The provisions of the Indian Contract Act, 1872 are applicable to the contracts of insurance, whether for life or non-life. Similarly, the provisions of the Companies Act, 1956 are applicable to the companies carrying on insurance business.

- 1.2.2 The subordinate legislation includes Insurance Rules, 1939, and the Ombudsman Rules, 1998 framed by the Central Government under s.114 of the Insurance Act, 1938 as also at least 27 sets of Regulations made by the IRDA under s.114 A of the Insurance Act, 1938 and s.26 of the IRDA Act 1999.

1.3 Background to recent legislative changes

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

Malhotra Committee Report

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

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

- (a) the establishment of an independent regulatory authority (akin to Securities and Exchange Board of India);
- (b) allowing private sector to enter the insurance field;
- (c) improvement of the commission structure for agents to make it an effective instrument for procuring business specially rural, personal and non-obligatory lines of business;
- (d) insurance plans for economically backward sections and appointment of institutional agents;
- (e) setting up of an institution of professional surveyors/loss assessors;
- (f) functioning of Tariff Advisory Committee (TAC) as a separate statutory body;
- (g) investment on the pattern laid down in s.27 of the Act;
- (h) marketing of life insurance to relatively weaker sections of the society and specified proportion of business in rural areas;
- (i) provisions for co-operative societies for transacting life insurance business in States;

- (j) the requirement of specified proportion of the general business as rural non-traditional business to be undertaken by the new entrants;
- (k) welfare oriented schemes of general insurance;
- (l) technology driven operation of General Insurance Corporation of India (GIC); GIC to exclusively function as a reinsurer and to cease to be the holding company;
- (m) introduction of unit-linked pension plans by the insurance companies; and
- (n) restructuring of insurance industry.

1.4 Regulatory Legal Regime

Insurance Regulatory and Development Authority Act, 1999 (IRDA Act)

- 1.4.1 On the recommendations of the Malhotra Committee, the Government of India constituted an interim Insurance Regulatory Authority and later enacted the Insurance Regulatory and Development Authority Act, 1999 to establish a statutory body to regulate, promote and ensure orderly growth of insurance and reinsurance business as also to protect the interest of policy holders. The constitution of the Insurance Regulatory and Development Authority (hereinafter referred to as the Authority/ IRDA) is considered as one of the redeeming features of insurance reforms in India.
- 1.4.2 The IRDA Act provides for the composition of the Authority, terms and conditions of the Chairperson and members including their tenure and removal; duties, powers and functions of the Authority including regulation making power and delegation of powers; establishment of Insurance Advisory Committee; Insurance Regulatory and Development Authority Fund and powers of the Central Government to make rules, to issue directions to the Authority and to supersede the same, if it is necessary; and other miscellaneous provisions. The First Schedule appended to the IRDA Act listed out several amendments to the Insurance Act, 1938. The Second Schedule to the IRDA Act inserted s.30A in the

Life Insurance Corporation Act, 1956 whereby the exclusive privilege of LIC to carry on life insurance business in India was to cease. The Third Schedule to the IRDA Act inserted a similar provision, s.24A, in the General Insurance Business (Nationalization) Act, 1972 whereby the exclusive privilege of the GIC and its subsidiaries in relation to general insurance business ceased.

1.4.3 The amendments made by the IRDA Act, 1999 to the Insurance Act, 1938 prohibited insurers other than companies registered under the Companies Act, 1956 to carry on insurance business in India and investment of funds of the policyholders outside India. Foreign participation has been restricted to 26% of the paid up equity capital of an insurance company. The amendments provided for-

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

Powers and functions of the IRDA

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

- (a) registration/ modification/ cancellation of registration of insurers;
- (b) to cause compliance of the requirement of capital structure of the companies as also solvency margin, insurance business in rural and social sector, submission of their returns/reports, approval and preparation of the scheme of amalgamation and transfer of insurance business;
- (c) to issue licence to insurance intermediaries or agents;
- (d) control over management of insurers;
- (e) search and seizure;
- (f) protection of interest of policy holders;
- (g) promotion and regulation of professional organizations conducting insurance business;
- (h) regulation of investment of funds by insurance companies;
- (i) investigation and inspection of the affairs of the insurers;
- (j) adjudication of disputes between insurers and insurance intermediaries;
- (k) supervising functions of Tariff Advisory Committee; and
- (l) framing of regulations to carry out the purposes of the Insurance Act,1938.

1.4.5 Pursuant to its powers under the IRDA Act, the IRDA has framed at least 27 sets of Regulations on various topics like preparation and submission of actuarial reports, obligations of insurers to rural and social sectors, registration of Indian insurance companies, preparation of financial statements and auditors report of

insurance companies, form of annual statements of account and record, insurance brokers, etc. These regulations are important constituents of the Regulatory regime.

1.5 Legislative developments after 1999

The Insurance (Amendment) Act, 2002 which came to force on August 9, 2002 permitted, by way of insertion of s.2 (8A) in the Insurance Act, 1938 insurance co-operative societies, registered under the Co-operative Societies Act, 1912 or Multi-State Co-operative Societies Act, 1984 or under any state law relating to co-operative society, to carry on any class of insurance business. However, the IRDA has been empowered to exempt an insurance co-operative society from the application of any of the provisions of the Insurance Act or application of its provisions with exceptions, modifications or adaptations [see proviso to S.94A(2)]. The Insurance (Amendment) Act, 2002 provided for insurance intermediaries, including insurance brokers and consultants, and provisions for the payment of commission, brokerage or fee to them, thereby introducing in this country the business practice adopted the world over in this area. Further, s.49 of the Act has been modified to provide shareholders an entitlement of actuarial surplus. By virtue of amendment to s.64 VB of the Act, the IRDA has been authorized to prescribe the mode of payment of premium, i.e., through credit cards or through the internet which in turn might result in an increase in the insurance business. Moreover, the General Insurance Business (Nationalisation) Amendment Act, 2002 which came into force on August 7, 2002 made the General Insurance Corporation the only reinsurer to carry on exclusively reinsurance business in India. It ceased to carry on general insurance business as also to control the four subsidiaries. The Central Government was authorised to discharge its functions in respect of these subsidiaries in future.

1.6. Law Commission's Consultation Paper

1.6.1 The Law Commission prepared an exhaustive Consultation Paper which was placed on the Law Commission's website in June 2003. Copies were also sent to the Government at the Centre, the IRDA, the public and private sector insurance companies and a wide range of other experts in the field of law and insurance. Responses were invited to the recommendations made in the Consultation Paper. A copy of the Consultation Paper (omitting paras 1 to 5 and the appendices) is annexed to this Report as **Appendix-I**.

1.6.2 The Consultation Paper aimed at an integrated approach to the exercise of revision of the insurance laws in a manner that not only promotes insurance business but also protects policyholders and strengthens the Authority to ensure systemic financial stability. It was pointed out that when the IRDA Act was prepared, the comprehensive revision of the Act was not possible due to paucity of time. It was also specifically mentioned that the present exercise of revision did not cover:

- (i) The Marine Insurance Act, 1963;
- (ii) Motor Vehicle Insurance;
- (iii) Fire Insurance; and
- (iv) Principles governing third party risks in general insurance business.

Grounds of revision of the Insurance Act, 1938 and the IRDA Act, 1999

1.6.3 The Consultation Paper identified thirteen tentative grounds of revision. Since the Consultation Paper itself is appended to this Report, these grounds of revision are not repeated here. Nevertheless, they could be summarised as under:

- i. Deletion of provisions of the Insurance Act, 1938 that are redundant;
- ii. Deletion of transitional provisions of the Act;

- iii. Replacement of references in the Insurance Act, 1938 to older enactments by corresponding new legislations;
- iv. Reclassification of insurance businesses including changed definitions of the terms 'insurance' and 'insurer';
- v. Merger of relevant provisions of IRDA Act with the Insurance Act, 1938;
- vi. Providing for appeal against decisions of the IRDA to an independent body;
- vii. Setting up of an independent grievance redressal mechanism with an appeal to an Insurance Appellate Tribunal and further appeal to the Supreme Court of India;
- viii. Repudiation of policies by insurers on account of misstatement of facts or failure to make disclosure of the material information which would render the contract void or voidable;
- ix. Provisions regarding investments, loans and management;
- x. Provisions relating to 'solvency margin';
- xi. Empowering IRDA to intervene when 'solvency margin' falls below 'control level';
- xii. Harmonising of the Act with rules and regulations; and
- xiii. Provisions relating to penalties.

The process of consultation

1.6.4 A series of discussions were held with the IRDA in regard to the proposals made by the Commission in the Consultation Paper. Simultaneously, discussions were held with the insurance companies under the aegis of the Federation of Indian Chambers of Commerce and Industry (FICCI). Written responses were also received to the Consultation Paper from a wide range of respondents.

No detailed response from Government or IRDA.

1.6.5 The Law Commission of India awaited the response of the Government of India as well as the IRDA till March 2004. A brief letter dated January 19, 2004 was received from the Joint Secretary (B&I), Government of India in the Ministry of Finance, Department of Economic Affairs, Insurance Division, indicating that they are in total agreement with the proposals in the Consultation Paper concerning merger of the provisions of the IRDA Act with the Insurance Act, changes in definitions, deletion of redundant provisions, constitution of an appellate authority to examine decisions of the IRDA, enhancement of penalties, rationalizing of the powers of the IRDA and strengthening obligations of the insurers, provision for protection of the rights of the policyholders etc. It was stated that specific comments on the amendments suggested in numerous sections of the Act proposed in the Consultation Paper would be given only after “a new Insurance Act is drafted by the Law Commission and sent to us.” There has thus been no specific response from the Insurance Department to the various other proposals in the Consultation Paper. Since the exercise of revision of the Acts was started more than a year ago, it was felt that the Report itself might get delayed if the Commission had to wait any further to receive their responses. Accordingly, the Commission proceeded to finalise its recommendations based on both oral and written responses received to the Consultation Paper.

1.7. Limiting the scope of the reference

1.7.1 In the exercise of holding discussions with specific interest groups in relation to the proposals suggested in its Consultation Paper, the Commission became aware that some of the issues that had been taken up for consideration in the Consultation Paper entailed policy decision-making at the level of the Government and that it would be premature to make suggestions to amend the law even before such policy decision was taken. Accordingly, at the stage of preparation of the final Report by the Commission, it was decided that the Report

should focus only on certain “legal issues” about which there was not too much of a controversy.

1.7.2 Accordingly, the present Report deals with only the following issues from amongst those mentioned in the Consultation Paper:

- i. Changes in definitions including replacement of references in the Insurance Act, 1938 to older enactments by corresponding new legislations and reclassification of insurance businesses including changed definitions of the terms ‘insurance’ and ‘insurer’; (see Chapter II, *infra*)
- ii. Deletion of provisions of the Insurance Act, 1938 that are redundant and deletion of transitional provisions of the Act; (see Chapter II, *infra*)
- iii. Merger of relevant provisions of IRDA Act with the Insurance Act, 1938; (see Chapter III, *infra*)
- iv. Setting up of an independent grievance redressal mechanism with an appeal to an Insurance Appellate Tribunal and further appeal to the Supreme Court of India; (see Chapter IV, *infra*)
- v. Repudiation of policies by insurers on account of misstatement of facts or failure to make disclosure of the material information would render the contract void or voidable; (see Chapter V, *infra*)
- vi. Assignment and transfer and nomination of beneficiaries under insurance policies; (see Chapters VI and VII, *infra*) and
- vii. Provisions relating to penalties and other changes (see Chapter VIII, *infra*).

CHAPTER II

CHANGES IN DEFINITIONS AND DELETION OF REDUNDANT PROVISIONS

2.1.1 Towards the conclusion of Chapter I, para 1.7.2, we have referred to seven items which fall for discussion finally. In this Chapter, we propose to deal with the first two topics among the seven, viz.,:

(i) Changes in definitions including replacement of references in the Insurance Act, 1938 to older enactments by corresponding new legislations and reclassification of insurance businesses including changed definitions of the terms ‘insurance’ and ‘insurer’; and

(ii) Deletion of provisions of the Insurance Act, 1938 that are redundant and deletion of transitional provisions of the Act.

Changes in definitions as proposed in the Consultation Paper

2.1.2 Appendix I to the Consultation Paper had set out all the proposed changes to the various provisions in the Insurance Act, 1938 to reflect:

(a) the changed definition of various terms including ‘insurance’, ‘insurer’, ‘insurance companies’ etc.;

(b) the replacement of references to the older Companies Act with the present Companies Act, 1956; and

(c) the reclassification of insurance businesses.

Final recommendation of the Law Commission in relation to deletions

2.1.3 The responses received to the changes proposed by the Law Commission of India as set out in Appendix-I to the Consultation Paper have been more or less in

acceptance of those suggestions. Law Commission has carefully examined the responses and suggestions received and is recommending several modifications to those definitions. The complete final list of changed definitions as recommended by the Law Commission of India is set out in a separate table and appended to this Report as **Appendix-II**. The said recommendations cover amendments to the following sections of the Act:

- (i) S.2(9) – Definition of Insurer, to include Insurance Co-operative Society and Indian Insurance Company;
- (ii) S.2C – Prohibition of transaction of insurance business by certain persons, the amendment to make clear that no insurer can begin to carry on any class of insurance business unless it is an Indian Insurance Company or an insurance co-operative society;
- (iii) S.4 – Minimum limits for annuities and other benefits, to be specified by Regulations from time to time;
- (iv) S.6A(1) – Issuance of preference shares by insurers, to require prior permission of IRDA in accordance with IRDA’s Regulations;
- (v) S.6A(10) – Power of Central Government to issue directions in regard to capital structure and voting rights, to be now exercised by IRDA;
- (vi) S.6B - Securing compliance with requirements relating to capital structure, power to issue directions to be entrusted to IRDA; sub-section (4) to be omitted;
- (vii) S.6C – Conversion of company limited by shares into company limited by guarantee, approval to conversion to be given by IRDA; in sub-section (5) the words ‘Indian Companies Act’ to be replaced by ‘Companies Act’;
- (viii) S.7(1) – Deposits, amendment to reflect the requirement of first time insurers depositing Rs.10 lakhs along with their application and powers of Central Government to be exercised by IRDA in consultation with Central Government; sub-section (9A) and (9B) to be amended to require power in the matter of sale of securities/ investment of deposits held by insurer to be exercised by RBI in consultation with IRDA;

- (ix) S.9 – Refund of deposits, IRDA to be empowered to pass orders for refund where insurer ceases to carry on business;
- (x) S.10 – Separation of accounts and funds; proviso to sub-section (1) requires modification; sub-section (2) to be modified to reflect the position that life insurers cannot carry on non-life business;
- (xi) S.11 – Accounts and balance sheet; sub-section (2) to be amended to reflect bar on partnership firms and permitting cooperative societies to carry on insurance business;
- (xii) S.12 – Audit; replacement of reference to Companies Act, 1913 by the Companies Act, 1956;
- (xiii) S.13 – Actuarial Report; sub-section (4) to be amended in view of Regulations framed by IRDA;
- (xiv) S.15 – Submission of Returns; simplified version recommended;
- (xv) S.16 – Returns by insurers outside India; in sub-section (2)(b) deletion of reference to third schedule and replacement by ‘Regulations’;
- (xvi) S.28 – Statement of investment of assets; details to be left to Regulations framed by IRDA;
- (xvii) S.28A – Return of investments; details to be left to Regulations framed by IRDA;
- (xviii) S.29 – Prohibition of Loans; sub-section (3) to be applicable to general insurance business;
- (xix) S.31 – Assets of insurer; reference to partners to be deleted and replaced by insurance cooperative society;
- (xx) S.31B – Payment of excessive remuneration; limit of Rs.5,000 to be analysed;
- (xxi) S.32A – Prohibition of common officers; employment of full time managing director to be unconditional and details to be left to the Regulations;

- (xxii) 32B & 32C – Social and rural sector; amendments to require insurers to contribute to develop both sectors and IRDA to be empowered to revise the obligation through Regulations;
- (xxiii) S.35 – Amalgamation; amendment to indicate that no option to amalgamate under the Companies Act should be given without compliance with the requirements of the Insurance Act, 1938;
- (xxiv) S.37A – Power of authority to prepare scheme of amalgamation; details to be specified in the Regulations;
- (xxv) S.40 – Payment of Commission; sub-section (2) to indicate that amounts payable be specified in Regulations; sub-section (2A) to indicate that commission on renewal premium to be paid to only one agent who assisted in effecting a revival of the policy which stood lapsed due to non payment of the premium; Authority to frame Regulations;
- (xxvi) S.40A – Limitation of the expenditure on Commission; to be specified in Regulations of IRDA;
- (xxvii) S.40B & C – Limitation on expenses on management; terms to be amended to reflect present trends of business;
- (xxviii) S.41 – Prohibition of rebates; penalty for contravention to be analysed;
- (xxix) S.43 – Register of insurance agents; to include electronic form as well;
- (xxx) S.44 – Heritable Commission; clause (c) of sub-section (1) be amended to the effect that after lapse of five years from the date he ceases to be an agent, a person can solicit or procure business for another insurer;
- (xxxi) S.48A – Agents not to be directors; to extent to general insurance business;
- (xxxii) S.50 – Notice of options; the words ‘unless these are set forth in the policy’ to be omitted;
- (xxxiii) S.51 – Supply of copies of proposals; fee to be specified in Regulations;

- (xxxiv) S.52BB – Powers of Administration; appeal to IRDA instead of ‘Central Government’;
- (xxxv) S.52D – Termination of appointment of administrator; powers to vest with IRDA;
- (xxxvi) S.52E – Finality of decision appointing administrator; powers to vest with IRDA;
- (xxxvii) S.53 – Winding up by court; reference to Companies Act, 1913 to be replaced by ‘Companies Act, 1956’;
- (xxxviii) S.58 – Partial winding up by court; reference to Companies Act, 1913 to be replaced by ‘Companies Act, 1956’;
- (xxxix) S.64UL – Power to remove difficulties; power to vest with IRDA.

2.1.4 It may be mentioned here that a larger number of amendments had been proposed in the Consultation Paper. For the reasons explained in Chapter X *infra*, the proposals in relation to Investments (ss.27, 27A, 27B and 27C), restriction on dividends and bonuses (s.49), the Tariff Advisory Committee (ss.64UA, 64UB, 64UE, 64UJ, 64UK and 64UL), valuation of assets (s.64V), solvency margin (s.64VA) and restriction on opening new place of business (s.64VC) have not been finalised and no recommendations are being made in regard to these provisions. As regards, the provisions relating to assignment and transfer of policies (s.38), nomination (s.39) and repudiation (s.45), these are separately dealt with later in this Report.

Deletion of provisions of the Insurance Act, 1938 that are redundant

2.1.5 Appendix II to the Consultation Paper had set out the provisions which required to be deleted on account of their being redundant. There has been no contrary opinion expressed in regard to this proposal in the responses received to the Consultation Paper. Accordingly, the Law Commission recommends that the provisions that are set out in a separate table at **Appendix-III** to this Report be deleted from the Act. The said recommendations cover deletions in s.2(12),

s.2(13), s.2(16), s.2(17), s.2B(1), s.2C, s.3(5), s.3(4)(a), s.3(4)(ee), s.3(5), s.4, s.5(2) & (3) first and second proviso, s.6A(1) proviso, s.7(7), s.7(9B), s.10(1), s.10(2), s.10(2A), s.11(1A), s.12, s.13(1), s.13(3), s.13(4), s.13(6), s.14, s.15, s.15(2), s.15(3), s.16, s.22, s.27(2)(a), (b) and (6), s.27A, s.27B, s.28(4), s.29, s.31B, s.32, s.33(7), s.35(1), s.35(3), s.40, s.40A, s.44(1)-Explanation, s.48, s.49, s.48A, s.52, s.52H to 52N, s.53, s.59, s.62 to 64, s.64UB (3) and (4), s.64UD, s.64UF to UI, s.64UJ (2) to (6), s.64UM, s.64VA, s.65 to 94, s.95 to 101 and s.114 (f).

CHAPTER III

MERGER OF PROVISIONS OF IRDA ACT, 1999 WITH THE INSURANCE ACT, 1938

3.1.1 This topic, it will be seen, is the third item of the seven topics set out in para 1.7.2, *infra*.

3.1.2 In the Consultation Paper, the Law Commission had suggested that there was no justification for continuing to have a separate legislation concerning the IRDA and that there was a need to merge the provisions of the IRDA Act, 1999 with the Insurance Act, 1938 in order to “to bring about an integrated approach to the task of formulating a legislative regime that can encompass the key facets of the functioning of the Regulatory Authority even while strengthening the regulatory regime”. The rationale behind the above suggestion was explained thus:

“With the IRDA exercising many of the key functions assigned to it under the Insurance Act, 1938, there is no justification for continuing to have a separate legislation concerning the constitution and functions of the IRDA. Moreover, at the time the IRDA Act was being prepared, the task of a comprehensive revision of the Insurance Act, 1938 was felt necessary but was not undertaken due to paucity of time. Now, with the experience of the functioning of the IRDA and several rounds of discussion with key insurance personnel, a comprehensive revision of the Insurance Act, 1938 appears possible.”

Accordingly, the Consultation Paper made detailed proposals for merger of the provisions of the IRDA Act, 1999 with the Insurance Act, 1938.

3.1.3 In view of the responses received endorsing the recommendations made by the Law Commission in this regard, the proposals for merger of the provisions of the IRDA Act, 1999 with the Insurance Act, 1938 are hereby finalised and set out in a

tabular form in **Appendix-IV** to this Report. Accordingly, it is recommended that the following provisions of the IRDA Act, 1999, viz., s.2 (Definitions), Chapter II dealing with establishment and incidental matters of authority (ss.3-12); Chapter IV dealing with duties, powers and functions of the authority (s.14); Chapter V dealing with grants by Central Government, IRDA fund, accounts and audit (ss.15– 17); Chapter VI dealing with powers of Central Government (ss.18 – 23 & 25); s.24 providing the central government with power to make Rules; s..26 empowering Authority to make Regulations; s..27 requiring laying of Rules and Regulations before Parliament and s.28 (not barring application of other laws) be merged with the provisions of the Insurance Act, 1938 as indicated in **Appendix-IV** to this Report.

Powers and functions of IRDA

- 3.1.4 As regards the powers and functions of the IRDA, the Consultation Paper dealt with the proposal for change in the law in two parts. The first related to the powers of the IRDA to grant, refuse, cancel, suspend or renew registration. There have been several responses received in regard to the suggestion concerning registration and renewal. According to FICCI, when there are sufficient powers with the IRDA to cancel registration “it makes little sense to require insurers to apply for renewal of registration”. The Punjab State Law Commission suggests that there should be no change in these provisions or even reduction of the renewal fee. Cholamandalam General Insurance has suggested that the registration for life and general insurance business may be kept valid for a period of three years. Birla Sunlife Insurance welcomes the suggestions but is opposed to insisting upon all requirements of a fresh registration being met at the stage of renewal of registration. The LIC of India also has made a suggestion on the same lines. They suggest that s.3A (5) may continue in its present form. The National Insurance Academy, Pune agrees with the suggestion that the registration may be kept valid for three years but that the fees be paid annually.

Final recommendations in relation to IRDA's powers of grant, refusal etc. of registration

- 3.1.5 After considering these responses, the Law Commission is of the view that the specific changes proposed in the Consultation Paper in regard to the IRDA's powers in relation to grant, refuse, cancel, suspend or renew registration be finalised and the final recommendations in this regard are set out in **Appendix-V** to this Report. The sections of the Insurance Act, 1938 which are required to be accordingly amended are s.3, s.3(2)(f), s.3(2A), s.94A(2) (second proviso), s.3(2C), s.3(3), s.3(4), s.3A, s.3A(2), s.3A(3), s.3A(4) and s.3A(5).

Final recommendation on IRDA's powers of revaluation, investigation etc.

- 3.1.6 The second part of these proposals concerned the powers of the IRDA in relation to revaluation of the affairs of the insurer, investigation, search and seizure, appointment and removal of managerial persons. The Commission has considered the responses received to the proposals and the final recommendations are set out in **Appendix-VI** to this Report. These recommendations to cover amendments to the following sections of the Insurance Act, 1938: s.33(1), s.33 (4), s.33(8), s.34B (4), s.34C, s.34E, s.34G, s.34H, s.35(1), s.35(3), s.36, s.37A(2), s.37A(4), s.42 (1), s.42(2), s.42(3), s.42(4), s.42(5), s.42(6), s.42(7), s.42D, s.42D (1) proviso (a), s.42D(8) & (9), s.64UM, s.64UM (1A) s.44, s.47A and s.53.

CHAPTER IV

GRIEVANCE REDRESSAL MECHANISM

Consultation Paper

- 4.1.1 In the Consultation Paper, one of the grounds for revision was identified as the need to set up an effective grievance redressal machinery to deal with the numerous complaints of policyholders, which had hitherto not been satisfactorily dealt with. It was pointed out that notwithstanding the appointment of an Ombudsman under the Redressal of Public Grievances Rules, 1998 in exercise of powers under s.114 (1) of the Insurance Act, 1938 the existing machinery for addressing the grievances of policyholders had not been found to be satisfactory. The remedy under the Consumer Protection Act, 1986 did also not prove to be effective given the large number of cases pending decision. It was therefore suggested that there should be a composite, effective and independent grievance redressal mechanism modeled on the one set up under the Securities and Exchange Board of India Act, 1992 (SEBI Act).
- 4.1.2 The proposal of the Law Commission in the Consultation Paper was that:
- (a) The present system of having Ombudsman under the 1998 Rules at the major metropolises be replaced by Grievance Redressal Authorities (GRA) constituted by appropriate amendments to the Insurance Act, 1938 itself. These would thus be statutory authorities exercising statutory functions.
 - (b) The GRA could be multi-member bodies comprising one judicial member and two technical members. A certain degree of transparency should be induced in the process of selection of such members.
 - (c) The GRAs should be dispersed as geographically widely as possible. For instance, there could be GRAs in each of the major cities in the country. This

is necessary given the large number of policyholders at present and the prospect of this growing in the future.

- (d) The powers and jurisdiction of the GRAs would include all the powers and functions presently performed by Ombudsman under the 1998 Rules.
- (e) In addition to the above, it could be provided that all pending disputes arising under the Insurance Act, 1938 before the consumer fora would be transferred to the GRAs for disposal in accordance with the provisions of the Insurance Act, 1938. To this extent an amendment may have to be made in the Consumer Protection Act, 1986 to provide that disputes arising under the Insurance Act, 1938 will not be entertained under the Consumer Protection Act, 1986.
- (f) IRDA will appoint Adjudicating Officers to inquire/adjudicate violations of the Act, Rules and Regulations by insurers, insurance intermediaries and insurance agents and levy penalties as provided for in the Insurance Act, 1938.
- (g) An Insurance Appellate Tribunal (IAT) on the lines of the one under the SEBI Act should be constituted having its sitting at a principal Bench in New Delhi and by circuit in the four major metropolises. The IAT will hear appeals against decisions of the GRAs and the Adjudicating Officers. The decision of the IAT will be final. The IAT will also entertain appeals against the decisions/orders of the IRDA concerning insurers, insurance intermediaries and insurance agents including those pertaining to registration and licensing.
- (h) There will lie a further statutory appeal to the Supreme Court from the decision of the IAT on the lines of s.15 Z of the SEBI Act. The appeal will have to be filed within 60 days of the decision of the IAT.
- (i) There will be a clause expressly excluding the jurisdiction of civil courts in disputes arising under the Insurance Act, 1938. However, this will not include claims/ disputes arising under the Motor Vehicles Act, 1988 and the Marine Insurance Act 1963.

- (j) On the lines of sections 41 and 42 of the LIC Act, 1956, the decision of the GRA may be made enforceable in any civil court within the local limits of whose jurisdiction the decree holder actually and voluntarily resides.
- (k) With a view to encouraging alternative dispute resolution (ADR) mechanisms, it may be provided that a claimant may be first referred to an ADR mechanism, which would include mediation and/ or conciliation, and only if that fails, should the matter be placed before GRA. Further, the GRA may itself refer the pending dispute before it to an ADR process at any stage of the proceedings, with the consent of the parties.

Response to the Consultation Paper

- 4.2.1. The response to the above proposals of the Law Commission has been positive. While welcoming these proposals, the FICCI has suggested that the proposed machinery “would be creative and maintained by appropriate government agencies and that no costs on this account will be borne by the insurance industry”. LIC too has welcomed the suggestion and observed that the burden on the consumer fora will be reduced considerably if the proposal is implemented. LIC has suggested that “a mechanism may be evolved whereby 50% expenses are shared by the Central/State Government and 25% by the IRDA”. Om Kotak Mahindra Life Insurance has suggested that the Insurance Ombudsmen should themselves be redesignated as the GRA and that it must be clearly spelt out as to which of the two decisions – that of the GRA or the consumer forum – would prevail in event of conflict of opinions. This point may straight away be clarified by stating that the creation of the GRA would necessarily oust the jurisdiction of the consumer fora over the same subject matter.
- 4.2.2 The General Insurance Corporation of India has also welcomed the constitution of the GRA as well as an IAT. They have made very specific suggestions as to what kinds of disputes should go before the GRA and what should be the jurisdiction of the IAT. GIC has suggested that the jurisdiction of the GRA should extend to:

- (i) Disputes between the insured and the insurer that pertains to personal lines of insurance on the grounds mentioned in the Rule 12 of the Redressal of Public Grievance Rules;
- (ii) Disputes between Insurer and the Intermediaries; and
- (iii) Disputes between Insurer and Insurer.

4.2.3 As regards the jurisdiction of the IAT, the suggestion of GIC is that it should hear:

- (i) Appeals from the decisions/orders of the GRA;
- (ii) Appeals against the orders passed by the Adjudicating and Investigating Officers appointed by the IRDA; and
- (iii) Appeal against any order passed by the IRDA..

4.2.4 In addition to the above suggestions, GIC has suggested that the GRA must have its own machinery capable of executing its orders on the lines of Recovery Officers of the Debt Recovery Tribunal. However, GIC opposes the idea of investing the adjudicating officers with powers to levy penalties since criminal liability should be determined only by a judicial authority. United India Insurance has also welcomed the suggestion of having the GRA and IAT in place of the existing mechanisms. They suggest that a fee in the nature of ‘adjudications fee’ commensurate with the value of the claim may be levied to meet the expenditure and deter frivolous claims.

4.2.5 However, Birla Sunlife Insurance Co. Ltd., ICICI Prudential Life Insurance and HDFC Standard Life Insurance have expressed reservations about the setting up of the GRA. In their view, the present system of Ombudsman should be further strengthened and made accountable being placed under the overall supervision of the IRDA. They are of the view that the creation of one more tribunal for redressal of policyholders’ grievances will add to their expenses and not provide an effective or efficacious remedy.

- 4.2.6 The Consumer Rights Educational and Awareness Trust, Bangalore has opposed the proposal of ousting the jurisdiction of the consumer fora since the remedy under the Consumer Protection Act is in addition to and not in derogation of the existing laws. They have also opposed the idea of an insurance appellate tribunal. The other consumer body, CERC Ahmedabad has preferred the continuation of the mechanism of Ombudsman by strengthening it with more powers. However, the General Insurers (Public Sector) Association of India has welcomed the suggestion and suggested that a retired High Court Judge should head the GRA. They also would like an adjudication fee to be levied.
- 4.2.7 At this juncture, reference has to be made to an important suggestion by the Law Department of the Government of West Bengal that there should be a specific provision to combat insurance fraud by describing it as a crime and providing for both civil and criminal liabilities for persons indulging in insurance fraud. The suggestion is that there should be a specialized insurance fraud bureau and that immunity must be provided for anyone who shares information about suspected fraud. In the Consultation Paper, the Law Commission had proposed that the power to levy penalties for violation of the provisions of the Act be vested with the GRA itself. However, the criminal justice mechanism would have to be invoked for dealing with frauds since it is a specific offence under the penal law. It would be both confusing and burdensome for the GRA to also exercise criminal jurisdiction. The Law Commission is also not in favour of creating special offences in relation to insurance frauds. The experience with creation of special offences shows that it serves to increase the burden of the judiciary without there being any perceptible positive change either in conviction rates or in disposal of such cases. The Commission is of the view that the existing provisions of the IPC, if strictly enforced, are sufficient to deal with the malaise.
- 4.2.8 By far, the most detailed response that the Commission has received is from the National Insurance Academy, Pune. They have given detailed suggestions in relation to the setting up of the GRA. Principally, they agree with the proposal

that the present system of Ombudsman should be replaced by a statutory mechanism provided for in the Act itself. They further point out that such mechanism should be “cost effective and should also serve the purpose of protecting the interest of policyholders.” The modification that they have suggested to the proposal of the Law Commission is to statutorily mandate, in the first instance, that every insurer should have an “Apex Grievance Redressal Mechanism” within the organisation itself. They suggest that the GRA should be presided over by a retired Judge of the High Court and that the procedure for selecting the two other technical members should be transparent. The screening for the appointments should be by a Committee appointed by the Insurance Council. The IAT should consist of a retired Supreme Court Judge and two other experts. A further appeal against the order of the IAT should lie to the Supreme Court. The idea is that every policyholder should first exhaust the internal mechanism before approaching the GRA. The Commission accepts this suggestion of the National Insurance Academy, Pune.

- 4.2.9 There is one development that has taken place in the recent past which requires to be noticed. It was reported in the January 2004 issue of the IRDA Journal that the Central Government had set up an Appellate Authority to review the rulings of the IRDA. According to the IRDA Journal, the notification issued by the Central Government has set up both a single and a division bench of the Appellate Authority and the Joint Secretary, Ministry of Finance, will constitute the single bench and while on the division bench he would be joined by another Joint Secretary of the Ministry of Law. The Law Commission is constrained to observe that whatever may be the compulsions of the Government to constitute such an Appellate Tribunal, the said arrangement is far from satisfactory in terms of having an independent and impartial adjudicatory appellate body.

Law Commission’s views on the responses

- 4.3.1 The Law Commission has carefully considered the wide range of responses received to its proposal for an independent grievance redressal mechanism. While

the Commission is conscious that there are bound to be different points of view to any proposal for change, the present proposal for an independent GRA must be viewed as having received more or less a positive response barring a few who would like the status quo to continue. The Commission is of the firm view that the existing system of Ombudsman, who is not necessarily a person with judicial background, is not satisfactory from the point of view of consumers and policyholders or even from the point of view of the insurers. The said scheme in the Regulations which does not permit the insurer to question the decision of the Ombudsman but which permits the insured to reject the same, appears to be contrary to the principles of equality to access to justice. In order to instill a degree of confidence in the policyholders and insurers, particularly in the changed scenario where a number of private players are in the market, it is imperative to have an independent, transparent and accountable grievance redressal mechanism to address the concerns of the policyholders. The Commission, therefore, cannot agree with the suggestion that the existing system of Ombudsman should be continued.

- 4.3.2 The Commission accepts the suggestion that it should be statutorily mandatory for every insurer to put in place an in-house grievance redressal mechanism which should be fair and transparent and subject to supervision by the IRDA. It is only after exhausting the remedy of approaching the in-house mechanism, that a complaint should be entertained by the GRA. Of course, where a complaint remains un-attended to by the in-house mechanism for a maximum period to be spelt out in the statute itself, preferably sixty days, it will be open for such person/complainant to approach the GRA. The internal mechanism, it is obvious, must be made to conform to the principles of natural justice and also to a right of personal hearing and a reasoned order must be made.
- 4.3.3 The Commission also accepts the suggestion that the IRDA should itself appoint Adjudicating/ Investigating Officers to adjudicate violations of the Act, Rules and Regulations by insurers, insurance intermediaries and insurance agents and these officers will also have the power to levy the penalties as provided for in the Act.

There will be an appeal from the decision of the Adjudicating/ Investigating Officer to the IAT.

4.3.4 The Commission also accepts the suggestion that the respective scope of powers of GRA and IAT should be clearly spelt out. There will be one further statutory appeal from the decision of the IAT to the Supreme Court. The GRA as the primary authority, as well as the IAT, which is the appellate authority, are dealing with civil rights of parties and are not adjudicating any public law issues or rights. If, on the other hand, the GRA or IAT are dealing with public law issues or rights, it would have become necessary to provide judicial review before the High Court as decided in *L. Chandrakumar v. Union of India* (1997) 3 SCC 261. Yet another aspect of the matter is that though technically the orders of the GRA or IAT can be questioned under Article 226/227 of the Constitution of India, in the High Court, the High Court will not ordinarily exercise its discretionary jurisdiction if an effective alternate remedy is provided and that is why we are recommending a statutory appeal from the GRA to the IAT and then from the IAT to the Supreme Court. The decision of the GRA will be enforceable as a decree of a civil court. The Commission also accepts the suggestion of the levy of an adjudication fee but this will only apply to such of those complainants who are in an economically sound position and not to small policyholders.

4.3.5 The Law Commission has also considered the question of the tenure of members of the GRA and IAT as well as the question of their removal. The nature and composition of the GRA now proposed is akin to that of the District Consumer Forum under the Consumer Protection Act, 1986. The other model of a similar tribunal is under the Administrative Tribunals Act, 1985. The Commission is aware that in both these fora, the tenure of a member or President is for a fixed term of five years and the age of retirement is 65 years. The Law Commission would like to ensure that both the GRAs the IATs are independent and accordingly recommends that the appointments to these two bodies should not be for any fixed tenure but with the age of retirement fixed at 65 years. Since it is

recommended that one of the qualifications for being appointed as member, whether judicial or technical, is at least 20 years' experience, it is only appropriate that such persons are not appointed for a tenure but permitted to hold office till the age of 65 years.

4.3.6 As regards, removal of the President and Members for proven misbehaviour or incapacity, the Commission recommends that insofar as the President and Members of GRA are concerned, they can be removed for proven misbehaviour or incapacity after an enquiry made by a Judge of the High Court and in which enquiry the President or the Member concerned will be informed the charges and given a reasonable opportunity of being heard in respect of those charges. As regards the President or Members of the IAT, the procedure for removal on grounds of proven misbehaviour or incapacity will be the same with one difference. The enquiry will be made by a Judge of the Supreme Court. It is hoped that this will ensure a sufficient degree of independence to the GRA as well as the IAT.

4.3.7 The salary and other terms and conditions applicable to the President and Members of these bodies should be left to be prescribed by the Central Government by way of rules. It is expected that these will correspond to the terms and conditions applicable to members of other statutory tribunals performing similar functions.

Final recommendations of the Law Commission in regard to Grievance Redressal Mechanism

4.3.8 The final recommendations of the Law Commission in regard to the grievance redressal mechanism may be summarised thus:

Adjudicating Officers/ Investigating Officers

- (i) The IRDA will appoint Adjudicating Officers/ Investigating Officers to adjudicate/investigate violations of the Act, Rules and Regulations by insurers, insurance intermediaries and insurance agents and levy penalties

as provided in the Act. Any person aggrieved by the decision of the Adjudicating/ Investigating Officers can appeal to the Insurance Appellate Tribunal (IAT).

In house mechanism

- (ii) Every insurer will set up an in-house grievance redressal mechanism under the overall supervision of the IRDA. It will be incumbent for every person seeking to file a claim before the Grievance Redressal Authority (GRA) to first approach the in-house mechanism. Where the decision of the in-house mechanism is not satisfactory to the claimant or where no decision is given within the period of 60 days from the date of making such claim to the in-house mechanism, it will be open to the claimant to approach the GRA within a period of 60 days from the date of receipt of the decision of the in-house mechanism and of the expiry of 60 days after the making of the claim whichever is later.

Grievance Redressal Authority (GRA)

- (iii) The present system of having Ombudsmen under the 1998 Rules at the major metropolises be replaced by the GRA constituted by appropriate amendments to the Insurance Act, 1938 itself. These would thus be statutory authorities exercising statutory functions. The GRA will not exercise any jurisdiction in relation to the levy of fines and penalties in relation to offences under the Act.
- (iv) The jurisdiction of the GRA will be to hear:
 - (a) Disputes between the insured and the insurer that pertain to personal lines of insurance on the following matters:
 - (1) any partial or total repudiation of claims by an insurer;
 - (2) any dispute in regard to premium paid or payable in terms of the policy;
 - (3) any dispute on the legal construction of the policies in so far as such disputes relate to claims;

- (4) delay in settlement of claims;
 - (5) non-issue of any insurance document to customers after receipt of premium; and
 - (6) any other complaint against an insurer.
- (b) Disputes between Insurer and the Intermediaries;
 - (c) Disputes between Insurer and Insurer; and
 - (d) Disputes between the assignees of a policy as to priority of assignment.

Location of GRA

- (v) The GRAs should be dispersed as geographically widely as possible. For instance, there could be GRAs in each of the major cities in the country. This is necessary given the large number of policyholders at present and the prospect of this growing in the future. There could be more than one GRA in a State depending on the number of cases in that State.

Powers and jurisdiction of GRA

- (vi) The powers and jurisdiction of the GRAs would include all the powers and functions of the civil court and would involve adjudication of issues of fact and law.
- (vii) In addition to the above, it could be provided that all pending disputes arising under the Insurance Act, 1938 before the consumer fora would be transferred to the GRAs for disposal in accordance with the provisions of the Insurance Act, 1938. To this extent an amendment may have to be made in the Consumer Protection Act, 1986 to provide that disputes arising under the Insurance Act, 1938 will not be entertained under the Consumer Protection Act, 1986.

Exclusion of Civil Courts

- (viii) There will be a clause expressly excluding the jurisdiction of civil courts and other tribunal/ fora in regard to such matters that form the subject

matter of the jurisdiction of the GRA. Every claimant before the GRA will be required to make an express declaration that no similar claim has been made before any other fora or tribunal and further that he has availed the in-house mechanism of the insurer as indicated in para (ii) above.

Alternate dispute resolution

- (ix) With a view to encouraging alternate dispute resolution (ADR) by way of mediation or conciliation, it may be provided that a claimant may have the choice to opt for mediation or conciliation, in which case the GRA will refer the dispute for mediation or conciliation by a person or body agreed upon, or where there is no agreement, by a person or body nominated by the GRA from a panel prepared by it. Further, the GRA may itself refer the pending dispute before it to an ADR process at any stage of the proceedings, with the consent of the parties.

Powers of GRA regarding enforcement of decisions

- (x) The decision of the GRA, or the final decision on appeal, will be enforceable by the GRA which pass the initial order and for that purpose the GRA will exercise all the powers of a civil court.

Composition of GRA

- (xi) The GRA should be a multi-member body comprising of one judicial member who will be the President and two technical members. The President and Members of the GRA will hold office till the age of 65 years. The President of the GRA should be a retired Judicial Officer not below the rank of a senior Civil Judge or a lawyer with not less than 20 years of experience nominated in consultation with the Chief Justice of the High Court.
- (xii) As regards, appointment of technical members to the GRA is concerned, consultation with the Chief Justice of the High Court is not necessary. A panel of names of persons of not less than 15 years experience in the insurance industry can be prepared by the Central Government and sent to a Selection Committee comprising the members of the Insurance Councils

constituted under s.64C of the Act. The said Selection Committee will recommend the names from among the panel of technical members to be appointed to the GRA. The Central Government will make rules in relation to the salaries and allowances and other terms and conditions of service of the President and Members of the GRA.

- (xiii) The GRA will formulate rules of procedure to cover matters relating to filing of claims, completion of pleadings, evidence on affidavits or otherwise, passing of awards and furnishing copies. These rules of procedure will also deal with matters relating to enforcement of the decisions of the GRA as finally determined in appeals therefrom.

Removal of President and Members of GRA

- (xiv) The President or Members of GRA shall not be removed from office except by an order made by the President on ground of proved misbehaviour or incapacity after enquiry made by a Judge of the High Court in which such President or Member has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. The Central Government will make rules to regulate the procedure for the investigation of misbehaviour or incapacity of the President and Members of the GRA.

Insurance Appellate Tribunal (IAT)

- (xv) An appeal will lie from the decision of the GRA to an Insurance Appellate Tribunal (IAT) the jurisdiction of which will extend to hearing:
 - (a) Appeals from the GRA;
 - (b) Appeals against the orders passed by the Adjudicating/ Investigating Officers appointed by the IRDA;
 - (c) Appeal against any order passed by the IRDA. With the constitution of the IAT, the appellate authority constituted by a notification of the Central Government (as noticed in para 4.2.9 *infra*) will have to be wound up and the appeals pending before it will stand automatically transferred to the IAT;

- (d) Making of interim orders, conditional or otherwise, in relation to the above matters.

Composition of IAT

- (xvi) The IAT should be a multi-member body of a judicial member as President and two technical members. The IAT should be presided over by a retired High Court Judge nominated in consultation with the Chief Justice of India. A certain degree of transparency should be induced in the process of selection of such members. The appointments of technical members to the IAT should also be done in consultation with the Chief Justice of India. For this purpose, a panel of names of persons of not less than 20 years experience in the insurance industry should be sent by the Insurance Councils (constituted under s.64C of the Act) to the Chief Justice of India. The names of technical members will be chosen with the concurrence of the Chief Justice of India. The Central Government will make rules in relation to the salaries and allowances and other terms and conditions of service of the President and Members of the IAT.

Term and removal of President and Members of IAT

- (xvii) The President and Members of the IAT will hold office till the age of 68 years. The removal of the President and the Members of the IAT for proven misbehaviour or incapacity will be upon enquiry by a Judge of the Supreme Court in which such President or Member has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. The Central Government will make rules to regulate the procedure for the investigation of misbehaviour or incapacity of the President and Members of the IAT.

Location and Benches of IAT

- (xviii) The Principal Bench of the Insurance Appellate Tribunal (IAT) should be in New Delhi. It is preferable that there is one IAT in each State. However, there can be one IAT for one or more States as may be decided

by the Central Government, or by agreement between State Governments on the pattern of s.4(3) of the Administrative Tribunals Act, 1985.

- (xix) The IAT will formulate rules of procedure to cover matters relating to filing of appeals, completion of pleadings, making of orders both interim and final and furnishing copies.

Expenditure of GRA and IAT

- (xx) The expenditure for the constitution of the GRAs and the IATs and their maintenance must be borne by the Central Government in as much as they are to adjudicate disputes arising under a central statute.

Further appeal to Supreme Court

- (xxi) There will be a further statutory appeal to the Supreme Court from the decision of the IAT. The appeal will have to be filed within 60 days of the decision of the IAT.

Adjudication fee

- (xxii) There should be an adjudication fee levied in respect of a claim before the GRA and an appeal before the IAT. However, any individual policyholder, may upon showing sufficient cause, be exempt by the GRA or the IAT, as the case may be, from paying such adjudication fee.

CHAPTER V

LEGAL ISSUES REQUIRING REFORM IN INSURANCE LAWS:

REPUDIATION OF LIFE INSURANCE POLICY

The existing law

- 5.1.1 S.45 of the Insurance Act, 1938 provides that a policy of life insurance cannot be called in question by an insurer after the expiry of two years from the date on which it was effected on the ground that a statement made in the proposal for insurance or in any other document leading to the issue of the policy was inaccurate or false **“unless the insurer shows that such statement was on a material matter or suppressed facts which it was material to disclose and that it was fraudulently made by the policyholder and that the policyholder knew at the time of making it that the statement was false or that it suppressed facts which it was material to disclose”**.
- 5.1.2 The position, therefore, is that at any time up to two years after the date on which a life insurance policy is effected, an insurer can repudiate the policy if any material facts contained in the proposal or document on the basis of which the policy was issued was inaccurate or false; this can be done unilaterally by the insurer without having to prove the basis for repudiating the policy. However, after the expiry of a period of two years after the date on which a life insurance policy is effected such policy can be repudiated by the insurer on the ground that a statement made in the proposal for insurance or in any other document leading to the issue of the policy was inaccurate or false only if all the three conditions enumerated in the second part of s.45 are satisfied conjointly, i.e., (a) the statement must be on a material matter, or it suppresses facts which it was material to disclose; (b) the suppression must have been fraudulently made by the policy-holder; and (c) the policy-holder must have known that it was false or it suppressed facts which it was material to disclose. (See *Mithoolal Nayak v. LIC of India* AIR 1962 SC 814)

The principle of uberrimae fidei

- 5.1.3 The principle governing s.45 is that of *uberrimae fidei* (also referred to as *uberrima fides*) which requires that the insured should fully disclose to the insurer at the time of entering into the contract of insurance all material facts within the knowledge of insured. This principle of common law, which has been adopted in India, has been elucidated in the judgment of Lord Mansfield in *Carter v. Boehm* [(1758-1774) All ER Rep 183] in the following words:

“Insurance is a contract upon speculation. The special facts upon which the contingent chance is to be computed lie more commonly in the knowledge of the insured only; the underwriter trusts to the insured’s representations and proceeds upon confidence that he does not keep back any circumstance in his knowledge to mislead the underwriter into the belief that the circumstance does not exist. The keeping back such circumstance is a fraud and, therefore, the policy is void. Although the suppression should happen through mistake without any fraudulent intention but still the underwriter is deceived and the policy is void; because the risk run is really different from risk understood and intended to be run at the time of the agreement... Good faith forbids the other party, by concealing what he privately knows, to draw the other into a bargain from his ignorance of the fact and his believing the contrary”.

Decisions of Indian courts

- 5.1.4 The above principle has been reiterated in the judgments of the High Courts as well as the Supreme Court of India in the context of challenges by the claimants under a life insurance policy to the decision of the insurer to repudiate such policy. The decision in *Mithoolal Nayak* (supra), already referred to, has been followed in *Life Insurance Corporation of India v. Smt. G.M. Channabasamma*, (1991) 1 SCC 357 and more recently in *Life Insurance Corporation of India v. Asha Goel* (2001) 2 SCC 160.
- 5.1.5 What constitutes a material fact, which affects the risk sought to be undertaken by the insurer, would depend upon the facts and circumstances of a particular case

and can be established only by leading evidence. [See *Seaton v. Bernard* (1900) AC 135] A suppression of a fact or a misrepresentation in relation to the health status of the insured, it has been held, will enable the insurer to repudiate a policy [*Life Insurance Corporation of India v. Sosamma Punnan* (1992) 74 Comp Cas 218 (Ker)]. However, the misstatement of age, for instance, need not in every case tantamount to a material misstatement although it would be relevant for fixing the quantum of premium in relation to the sum assured (*Life Insurance Corporation of India v. Vasappa* AIR 1987 Kar 216).

5.1.6 The courts in India (and the consumer fora) have been consistent in requiring the insurer to prove the existence of all the three conditions in the second part of s.45 where the insurer seeks to repudiate a life insurance policy after the expiry of two years of its coming into effect. [See *Life Insurance Corporation of India v. Smt. Kusuma T. Rai* (1991) 70 Comp Cas 86 (Kar); *Shanta Trivedi v. Life Insurance Corporation of India* AIR 1988 Del 39 and *Senior Divisional Manager, LIC v. Smt. J. Vinaya* (2003) 1 CPJ 50 (NC)] In this context, the following observations of the Supreme Court in the recent decision of 2001 in *Life Insurance Corporation of India v. Asha Goel* (supra) are relevant (para 16, p.170 SCC):

“In course of time the Corporation has grown in size and at present it is one of the largest public sector financial undertakings. The public in general and crores of policyholders in particular, look forward to prompt and efficient service from the Corporation. Therefore, the authorities in charge of the management of the affairs of the Corporation should bear in mind that its credibility and reputation depend on its prompt and efficient service. **Therefore, the approach of the Corporation in the matter of repudiation of a policy admittedly issued by it, should be one of extreme care and caution. It should not be dealt with in a mechanical and routine manner.**” (emphasis supplied)

5.1.7 The decision in *Life Insurance Corporation of India v. Dharam Vir Anand* (1998) 7 SCC 348 underscores the distinction between “the date of the policy” and the

“date of commencement of risk”. In that case it was held that the liability of the insurer will not begin until the expiry of three years from the date of the policy, as specified in the policy. Since the death of the insured had occurred within three years of the said date of the policy (although beyond three years from the date of commencement of risk) the insurer was held not liable.

Law Commission’s earlier recommendation

5.1.8 The Law Commission on an earlier occasion examined the working of s.45 and noted the difficulties faced by claimants in seeking to recover the amount due from the insurer under a life insurance policy. In its 112th Report on *S.45 of the Insurance Act, 1938* (1985) it recommended that the period after which no policy of life insurance could be called into question on the ground of misstatement of fact be increased from two to three years. This would be counter balanced by enabling the insurer to repudiate a policy at any time within three years from the date on which such policy was effected or revived on the ground that a statement material to the expectancy of the life of the insured was incorrectly made in the proposal on the basis of which the policy was issued. This proposal was a drastic change from what was contained in s.45. This change, it was felt, would reconcile the rights of both the insurer as well as the insured.

Law Commission’s Suggestion in the Consultation Paper

5.1.9 The Consultation Paper followed the recommendation of the Law Commission in its 112th Report and proposed that a policy of life insurance shall not be called in question on the ground of misstatement after the expiry of three years from the date on which the policy is effected or, as it may be, the date on which it is revived. It was accordingly proposed that s.45 of the Insurance Act, 1938 be recast as under:

“(1) No policy of life insurance shall be called in question after the expiry of three years from the date on which the policy is effected or where the policy is revived after it has lapsed for any reason, from the date on which it is so revived.

- (2) A policy of life insurance may be called in question at any time within three years from the date on which the policy is effected or, as the case may be, the date on which it is revived, on the ground that any statement being a statement 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.”

5.1.10 It will be noticed that this proposal was in total variance with s.45.

Response to the Proposal in the Consultation Paper

5.1.11 The response received to the above proposal in the Consultation Paper has been a mixed one. Predictably, the private insurers have opposed the change arguing that it would encourage frauds and is liable to be misused. Birla Sun Life Insurance Company Ltd. points out that that the recommendation of the Law Commission would “completely negate the *uberrimae fidei* character of a life insurance contract.” Birla Sunlife is of the view that the courts are anyway leaning in favour of the claimant. ICICI Prudential Life Insurance Ltd. suggests retention of the present s.45 without change. HDFC Standard Life Insurance Ltd., while insisting that there should be no change, has suggested that a proviso be inserted to the effect that even within two years a policy can be called in question by the insurer only if the statement incorrectly made is material to the expectancy of life. OM Kotak Mahindra Life Insurance Co. suggests retention of the provision subject to the condition that where the repudiation is after the expiry of three years after the coming into force of the policy, the onus of proving materiality of the misstated fact/fraud shifts to the insurer. Aviva Life Insurance suggests increasing the period of unilateral repudiation by the insurer to three years and retention of the second part of the present s.45.

5.1.12 The public sector major, LIC, has also suggested retention of the existing provision subject to the following changes:

“In sub-section (1) the words ‘on which the policy is effected’ may be replaced by the words ‘date on which proposal is accepted/ policy is revived/ reinstated’”.

“In clause (2) the words ‘material to the expectancy of the life insured’ may be substituted with ‘material to the assessment of risk or deciding premium on the life of the insured’. Further the words ‘reinstated’ may be added at the end of the clause”.

5.1.13 LIC opposes the three year time limit as being “a very short period” and states that **“if at all this is to be provided we may agree that if policy has been continuously in force for a period of 6-8 years without being in question the insurer shall be deemed to have waived his right to repudiate the policy on whatever ground”**. LIC also suggests that where a claim is repudiated on the ground of fraud, there should be no additional requirement for the insurer to establish the nexus between the non-disclosure of the material fact and the assessment of the risk.

5.1.14 The suggestion by the Federation of Indian Chambers of Commerce and Industry (FICCI) is that the present provision be retained. FICCI suggests that the interest of the consumer (policy holder) be protected by providing a remedy if there is a breach of contract by the insurer. FICCI has nevertheless pointed out that the law obtaining in the United Kingdom restricts, by negative definition, the grounds on which an insurer can repudiate the policy. Para 2 (b) of the statement of General Insurance Practice issued in 1986 in the U.K. reads thus:

“An insurer will not repudiate to indemnify a policy holder –

On grounds of non-disclosure of a material fact which a policyholder could not reasonably be expected to have disclosed.

On grounds of misrepresentation unless it is a deliberate or negligent misrepresentation of a material fact.”

5.1.15 FICCI also points out that in the USA, a majority of the States have refused to apply the strict rule of disclosure to non-marine risks and therefore a failure by the insured to state a material fact, if innocent, does not avoid the contract but only a wilful concealment of fact known by the insured to be material to the risk. The test in both Canada and USA is that a material misrepresentation sufficient to deny a claim cannot be just any misstatement but one that if fully and truthfully disclosed would have led to a refusal by the insurer to issue the policy, at least on the terms and conditions on which it issued the policy. FICCI finally suggests that the test of ‘reasonable man’ be adopted for determining whether a fact that has been suppressed is ‘material’ or not. The additional safeguards it suggests from the point of view of the insured are:

No repudiation of the policy to be permitted on ground of misstatement of fact “where the insured can prove that the statement was true to the best of his knowledge and belief.”

That a person who solicits and negotiates a contract of insurance “should be deemed for the purpose of the formation of the contract, to be the agent of the insurers, and that the knowledge of such person should be deemed to be the knowledge of the insurers.”

The defence to a claim to be disallowed if the repudiation of the policy is not communicated in writing by the insurer to the insured.

5.1.16 The National Insurance Academy views that the proposed change is not justified and suggests that a policy could be called in question even after three years on the ground of fraud. The policy can be repudiated within three years “if concealment or misrepresentation of material facts (materiality referring to the factors affecting all the risks that are being covered) is proved.”

5.1.17 The Actuarial Society of India (ASI) has also not agreed with the proposal of the Law Commission as contained in the Consultation Paper. It states that “from the moral hazard perspective, and as a protection to the bonafide policyholders from the fraudulent ones, it is necessary that a life insurer is able to prove, anytime, that the incorrect information given was on a material matter or suppressed facts which it was material to disclose and that it was fraudulently made by the policyholder and that the policyholder knew at the time of making it that the statement was false or that it suppressed facts which it was material to disclose”. The ASI suggests that a policy of life insurance or a rider granted subsequent thereto could be called in question “at any time” if the insurer shows that the inaccurate or false statement on the basis of which the policy was issued “was on a material matter or suppressed facts which it was material to disclose and that it was fraudulently made by the policy holder and that the policy holder knew at the time of making it that the statement was false or that it suppressed facts which it was material to disclose.”

5.1.18 The views of the consumer groups are quite the opposite. The Consumer Education Research Centre, Ahmedabad has wholeheartedly welcomed the Law Commission’s proposal. They point out how in the United States even a material misstatement would not automatically result in repudiation of the policy but a re-working of the sum liable to be paid as if the policy was issued after accounting for the changed circumstance. The Consumer Rights Education and Awareness Trust, Bangalore also support the Law Commission’s proposal but want the period to be retained at two years.

5.1.19 In this context it is also necessary to notice an important fact highlighted in the response received from the Institute of Insurance Surveyors and Adjusters which refers to a sensitivity survey conducted by the General Insurance Corporation of India to get a report on customer satisfaction and feedback from policyholders. As per this Report “feedback from over 10,000 policy holders indicated that 99.8% were by and large satisfied with the services of insurers **although there was a**

common complaint regarding delay in settlement of claims, which was rated as high as 65%”.

Views of the Law Commission

5.1.20 The responses to the proposal contained in the Consultation Paper can be broadly stated in the following terms:

- (a) The insurers want no dilution of the principle of *uberrimae fidei* in relation to insurance contracts.
- (b) The insurers by and large want retention of their option of repudiating a policy of life insurance at any time on the ground of fraud subject to the condition that where the repudiation is after the expiry of two/ three years after the coming into force of the policy, the onus of proving that the misstated fact is material to the risk shifts to the insurer.
- (c) LIC is prepared to say that if a life policy has been in force continuously for a period of 6-8 years no repudiation on any ground should thereafter be permitted.
- (d) FICCI suggests retention of the existing provision with important additions that would protect policyholders’ interests.
- (e) The consumers agree entirely with the proposal of the Law Commission.

5.1.21 The Law Commission views the present exercise of law reform as providing an opportunity to balance the competing interests of the insurers on the one hand and of the policyholders on the other. First it is proposed to examine the difficulties faced by the policyholders or those claiming under them. It cannot be gainsaid that the consumer fora and courts are increasingly being petitioned to decide disputes involving the legal heirs of a deceased policyholder and the insurers. By all accounts, it appears that the rate of settlement of claims by insurers has not been satisfactory. Secondly, it is only after a claim is lodged by the family of the

deceased policyholder that the insurer makes the effort to find out about the misstatement made or fraud played by the policyholder (at the time of taking the policy) and by this time several years have elapsed during which the premium has also been paid. This is compounded by the fact that the entire premium that has been paid also stands forfeited. Thirdly, very often the family members may not at all be aware of any such misstatement by the policyholder and have no means to prove to the contrary. The insurer on the other hand would be armed with the records unearthed by the surveyor appointed by it. There is an unequal battle here with the claimant being then forced to go to the courts or consumer fora and wait for an uncertain result. Fourthly, there is the issue of delay in disposal of the claims by the courts with insurers being known to contest an adverse order up to the final court. Finally, a factor that cannot be lost sight of is that there has been for several years now a hardselling of life insurance policies by insurers through a wide network of agents who go and personally collect the forms, the premium and arrange for the requisite medical certificate for issuance of the policy. (This is perhaps the flip side of the adage that in India “insurance is not bought but sold”) The practical reality of the policyholder, in such a situation, of not being informed of his duties and liabilities, cannot be lost sight of. It is in this context that the question of a deliberate intention on the part of the policyholder to defraud an insurer requires to be examined. This is even more significant when one considers the present moves on the part of the insurance industry to foray into the untapped ‘rural’ sector.

5.1.22 From the point of view of the insurers, that an insurance policy is essentially a contract governed by the mandatory principle of true and full disclosure by the parties to the contract of all material facts affecting the contract, cannot be overemphasised. The proposition that fraud vitiates all contracts is also unexceptionable. Nevertheless, there is also the principle of limitation for bringing actions both in civil and criminal law. The LIC in its response concedes that where a policy has been continuously operative for six to eight years, an insurer would be deemed to have waived its right to repudiate the policy on any

ground whatsoever. Given the fact that this response comes from the largest player in the life insurance business (commanding as of January 2004 over 88% of the total premiums and 94% of the total policies), it could be said to reflect a realistic position from the point of view of the insurer. The expectation of the role of the life insurer has been succinctly stated by the Supreme Court in *Asha Goel's* case (supra) in the following words, which bear repetition:

“The public in general and crores of policy holders in particular, look forward to prompt and efficient service from the Corporation. Therefore, the authorities in charge of the management of the affairs of the Corporation should bear in mind that its credibility and reputation depend on its prompt and efficient service. **Therefore, the approach of the Corporation in the matter of repudiation of a policy admittedly issued by it, should be one of extreme care and caution. It should not be dealt with in a mechanical and routine manner.**” (emphasis supplied)

5.1.23 While it may be argued that the present provision is best left untouched, since it is the view of several insurers that the courts are any way inclined to interpret it in favour of the policyholder, it cannot be forgotten that only a small number of contested claims, for reasons not hard to imagine, reach the courts. A greater clarity in the statute would facilitate easy and efficient disposal of the claims from the point of view of both the insurer and the claimant. The Law Commission is of the view that the provision requires to be amended in light of the experience gained over the years.

5.1.24 The Law Commission is of the firm view that there should be no unilateral repudiation of a life insurance policy by an insurer. Accordingly, s.45 of the Act requires to be amended to expressly state this position. Further, the Law Commission accepts in principle the suggestion by the LIC that if a policy of life insurance has been in force continuously for a period, no repudiation on any ground should thereafter be permitted. Although the Law Commission in its Consultation Paper had suggested that this period should be three years, taking

into account the view of LIC (which still controls nearly 90% of the life insurance business in this country) that this period should be 6-8 years, the Law Commission finally recommends that this period should be fixed at 5 years, i.e. five years after the coming into force of the policy, i.e. the date of issuance of the policy or the date of commencement of the policy or the date of the revival of the policy or the date of the rider to the policy whichever is later (this is to account for the problem that was noticed in the *Dharam Vir Anand* case (para 5.1.7 *supra*). In other words, no insurer should be permitted to repudiate a life insurance policy on any ground whatsoever, five years after the coming into force of the policy, i.e., the date of issuance of policy or the date of commencement of the policy or the date of the revival of the policy or the date of the rider to the policy whichever is later.

5.1.25 The question that remains is about the grounds on which an insurer should be permitted to repudiate a policy of life insurance any time after the commencement of the policy and upto the expiry of five years from that date. After considering the various responses received to the proposals in the Consultation Paper, the Law Commission finds merit in the need to make a distinction, only in regard to the ensuing consequences, between repudiation on the ground of fraud and repudiation on the ground of misstatement or suppression of facts that were material to the expectancy of the life of the insured. It is unexceptionable as a legal proposition that fraud vitiates all actions. A party to a contract that is vitiated by fraud can legitimately repudiate it and the party guilty of the fraud can legitimately be deprived of all benefits under such contract. Further, since a policy of life insurance is essentially a contract between the insurer and the insured, it may be useful to refer to s.17 of the Indian Contract Act, 1872, which defines fraud thus:

“**Fraud’ defined** – “Fraud” means and includes any of the following acts committed by a party to a contract, or with his connivance or by his agent

with intent to deceive another party thereto or his agent, or to induce him to enter into the contract –

- (1) the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;
- (2) the active concealment of a fact by one having knowledge or belief of the fact;
- (3) a promise made without any intention of performing it;
- (4) any other act fitted to deceive;
- (5) any such act or omission as the law specially declares to be fraudulent.

Explanation: Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is, in itself, equivalent to speech.” (emphasis supplied)

5.1.26 Where an insurer seeks to repudiate a policy of insurance on the ground that it is vitiated by fraud, he has to discharge a greater burden of proof to show that there was the intention on the part of the insured to deceive the insurer. The element of *mens rea* would require to be established. The present s.45 of the Insurance Act requires the insurer to satisfy the existence of all of the following elements in order to repudiate a policy at any time after the expiry of two years from the date on which it was effected:

- (i) that a statement made in the proposal for insurance or any report of medical officer, or referee, or friend of the insured, or in any other document leading to the issue of the policy;
- (ii) the said statement was on a material matter or suppressed facts which it was material to disclose; and
- (iii) that it was fraudulently made by the policy holder; and
- (iv) that the policy holder knew at the time of making that the statement postpones or that it suppressed facts which it was material to dismissed.

5.1.27 Thus, it is open under the present s.45 for the insurer **at any time after the expiry of two years** after the coming into effect of the life insurance policy, to repudiate such policy by showing that all the above elements constituting fraud exist. The consequence that results upon the insurer so repudiating the policy is that **the entire amount of premium paid till then stands forfeited and no amount whatsoever is payable under the policy**. In other words, the claimants under the policy so repudiated would get nothing. There would be many instances where the suppression of fact or misstatement may not be to the extent of a fraud and actually may be an innocent misstatement. In other words, such misstatement, made without any intention to deceive, may fall short of fraud. However, the present s.45 makes no such distinction and the consequences of repudiation with forfeiture of premiums would result even in the case of misstatement or suppression of material fact. The practical working of s.45 of the Act as is evident in the cases that have come before the courts is that the insurers invariably try and prove the existence of the parameters of s.45 and are able to deny the claimants even the premium amounts paid till the date of discovery of fraud. This compounds the hardship caused to the family of the deceased policyholder. It bears repetition that in many an instance, the claimants or the family of the deceased policy holder may not even be aware of the policy having been vitiated

on the ground of fraud. In other words, the present s.45 is like an all or nothing clause.

5.1.28 The recommendation of the Law Commission that an outer limit of time (five years from the date of commencement of the policy) beyond which no repudiation is permissible be incorporated in s.45 is clearly in favour of the policy holders and the claimants and makes a clear departure from the present s.45. Further, it has been recommended that no insurer be permitted to unilaterally repudiate a policy of life insurance. In addition to the above, the Law Commission would not want the policyholders or their claimants to be deprived of the premiums paid under a life policy which is sought to be repudiated on the ground of misstatement or suppression of facts, although material to the expectancy of life, but not amounting to fraud. Thus, the policyholders or their claimants must have an opportunity of showing that the misstatement or suppression of the material fact was true to the best of the knowledge and belief of the insured or that there is no deliberate intention to suppress the fact or make the misstatement or that such misstatement or suppression of a material fact was within the knowledge of the insurer or the agent of the insurer.

5.1.29 What really happens in a market where policies are sold and not bought is that an agent of an insurance company will approach the prospective policyholder and get him to sign the proposal form. The agent will also assure the policyholder that he will arrange for the requisite medical certificates to the approved panel of doctors. Very often, the proposal form is not filled by the policyholder himself. In the peculiar social circumstances in India, where an illiterate policyholder (also perhaps even literate ones) can hardly be expected to read the fine print or be aware of the consequences of either filling up or not filling up a particular column in the proposal form, the knowledge of the agent should be deemed to be the knowledge of the insurer. The law should be amended to expressly provide for this.

5.1.30 At this juncture, it may help to illustrate the proposition. An agent of an insurance company approaches a prospective policyholder, a farmer, and sells him an insurance policy by getting him to sign the proposal form as well as make payment towards the first premium. The proposer (insured) is addicted to chewing tobacco but in the proposal form the relevant column is left blank. The information in this regard is a material fact, a fact that is material to the assessment of the risk undertaken by the insurer. However, the policyholder in this case goes entirely by the agent who assures him that all he has do is to sign the proposal form and agree to be examined by a panel doctor. The agent organises the medical certificate by the panel doctor and subsequently a life insurance policy comes to be issued. The policyholder dies within three years from the date of commencement of the policy after suffering from cancer of the mouth. The claimants are his family members comprising the widow and two children who at no point in time were privy to the transaction between the agent, the policyholder and the insurance company.

5.1.31 In the above instance, the insurance company would seek to repudiate the policy on the ground that the fact of the policyholder being a tobacco addict was a material fact; that it was deliberately suppressed; that such suppression was fraudulent and that the policyholder knew that it was material to disclose such fact. Normally, in the above circumstances, the insurance company would be able to make good its case by showing that the relevant column in the proposal form was left blank. The claimants would be hard pressed to show that this was not a fraudulent suppression of fact. The Law Commission is aware of the practice in the U.S.A of the policy being reworked where, for instance, the insurer discovers the material fact subsequent to the issuance of the policy. In the illustration narrated above, the policy premium would be reworked as if the life is being insured after accounting for the risk and premium amounts recalculated accordingly. Thus the repudiation of the policy may not be automatic. It may be open, even in India, for an insurer to do so particularly where private insurance

companies have made the business competitive. However, that is a matter for the consideration of the insurers.

5.1.32 The Law Commission is of the view that in cases like the above, the family or claimants of a deceased policyholder should not suffer unduly by having to lose even the premium amounts. While they may not be able to recover the amount under the policy, they should not stand to lose the premiums collected by the insurance company on the policy. Of course, the insurance company will have to communicate in writing to the claimants the reasons for which it seeks to repudiate the policy of life insurance on the ground of misstatement or suppression of a material fact. This also prompts the Law Commission to recommend that the knowledge of the agent about the facts concerning the insured at the time of submission of the proposal would be deemed to be the knowledge of the insurer. The Law Commission is aware that this places an extra burden on the insurer to ensure that its agents perform their duties with a sense of responsibility so that the ‘uberrimae fidei’ principle is honoured. The insurer will have to rework its contract with the agent and seek to indemnify itself against claims brought about as a result of the negligence of the agent. It may also entail more serious consequences for the agent but these are matters for consideration of the insurer.

5.1.33 The Law Commission accordingly recommends that in case of repudiation of the policy on the ground of misstatement or suppression of a material fact, and not on the ground of fraud, the premiums collected on the policy till the date of repudiation will be liable to be returned to the insured or the legal representatives/ nominees/ assignees of the insured.

5.1.34 Having said the above, by the Law Commission wishes to reiterate that in a case where the insurance company is able to conclusively prove that the suppression or misstatement of a material fact was fraudulent, i.e., where the claimants have failed to show that such suppression or misstatement was not with an intent to deceive, the insurance company would be entitled to deny the claimants even the

premium amounts since fraud vitiates the entire contract. To illustrate, there could be a situation where a policyholder has undergone a heart bypass surgery one year prior to the date of proposal and in the proposal form in response to the question “have you undergone any major surgery in the past two years?” he fills up the column with ‘no’. In such an instance it will be impossible for the claimants to argue that there was no intention on the part of the insured to deceive the insurer. The insurance company will be justified, in such instance, to repudiate the policy on the ground of fraud. However, the insurance company should disclose the reasons on the basis of which it has come to such a conclusion and has to communicate such reasons to the claimants under the life insurance policy which is sought to be repudiated.

- 5.1.35 The illustrations given are only for distinguishing the two situations, viz., a misstatement or suppression of a material fact without an intention to deceive and one with an intention to deceive. There may be myriad situations that cannot possibly be illustrated. However, the principle for determining the existence of fraud needs to be clearly understood.
- 5.1.36 Accordingly, the Law Commission recommends that the insurer can repudiate a policy of life insurance at any time before the expiry of a period of five years from the date of issuance of the policy or the date of commencement of risk or the date of revival of the policy or the date of the rider to the policy whichever is later on the ground of fraud. Where repudiation is on the ground of fraud, the insurer is not obliged to pay even the premium amounts to the claimants under the policy. The insurer will have to communicate in writing to the insured or the legal representatives/ nominees/ assignees of the insured the grounds and materials on which such decision is based. The Law Commission recommends that the statutory provision to give effect to the above change will also set out the definition of ‘fraud’, for which s.17 of the Indian Contract Act can be referred to.
- 5.1.37 The practice of issuance of life insurance policies for a total period of less than 5 years may possibly exist but no such details have been brought to the notice of the

Law Commission. It is expected that where the entire term of the life insurance policy is as short as five years or less, the insurance company would be doubly careful to ensure that the antecedents of the policyholder are thoroughly checked.

5.1.38 The above approach, it is expected, sufficiently balances the interests of both the policyholders as well as the insurers. It also accounts for the apprehension expressed by the insurer that any dilution in the existing provision will encourage fraudulent practices. It requires greater degree of diligence on the part of both the insurers as well as policyholders.

Final recommendations in regard to s.45

5.1.39 To summarise the final recommendations of the Law Commission in regard to s.45:

- (i) The period beyond which no repudiation of a life insurance policy on any ground whatsoever be fixed at five years. This should be a sufficient period for an insurer to check the veracity of the details provided by the insured at the time of issuance of the policy. After a period of 5 years after the coming into force of a life insurance policy, i.e., the date of issuance of the policy or the date of commencement of such policy or the date of the revival of such policy or the date of the rider to such policy whichever is later, no insurer can repudiate a claim thereunder on any ground whatsoever.
- (ii) The insurer can repudiate a policy of life insurance at any time before the expiry of a period of five years from the date of issuance of the policy or the date of commencement of risk or the date of revival of the policy or the date of the rider to the policy whichever is later on the ground of fraud. The insurer will have to communicate in writing to the insured or the legal representatives/ nominees/ assignees of the insured the grounds and materials on which such decision is based. The claimants will in such instance not be entitled to either the policy amount or the premium amounts.

- (iii) The insurer can repudiate a policy of life insurance at any time before the expiry of a period of five years from the date of the policy or the date of commencement of risk or the date of revival of the policy or the date of the rider to the policy whichever is later on the ground that the insured had made a misstatement of or suppressed a material fact, i.e., a fact material to the assessment of the risk, either in the proposal form or any other document on the basis of which the life insurance policy was issued or revived or a rider issued to it. While such repudiation will result in the claimants forfeiting the policy amount it will not entail their forfeiting the premium amounts collected on the policy. Thus in case of repudiation of the policy on the ground of misstatement or suppression of a material fact, and not on the ground of fraud, the premiums collected on the policy till the date of repudiation will be liable to be returned to the insured or the legal representatives/ nominees/ assignees of the insured.
- (iv) The misstatement of or suppression of fact will not be considered material unless it has a direct bearing on the risk undertaken by the insurer. The onus is on the insurer to show that had the insurer been aware of the said fact no life insurance policy would have been issued to the insured.
- (v) No repudiation of the policy to be permitted on the ground of fraud where the insured can prove that the suppression or misstatement of the material fact made was true to the best of his knowledge and belief or that there was no deliberate intention to suppress the fact or that such misstatement of or suppression of a material fact was within the knowledge of the insurer or the agent of the insurer.
- (vi) A person who solicits and negotiates a contract of insurance should be deemed for the purpose of the formation of the contract, to be the agent of the insurers, and that the knowledge of such person should be deemed to be the knowledge of the insurers.

- (vii) The insurer will have to communicate in writing to the insured or the legal representatives/ nominees/ assignees of the insured the grounds and materials on which the decision to repudiate a policy on the ground of misstatement or suppression of a material fact is based.

Suggested amendment of s.45

5.1.40 Accordingly it is recommended that S.45 be amended as follows:

- (1) No policy of life insurance shall be called in question on any ground whatsoever after the expiry of five years from the date of the policy, i.e. from the date of issuance of the policy or the date of commencement of risk or the date of revival of the policy or the date of the rider to the policy whichever is later
- (2) A policy of life insurance may be called in question at any time within five years from the date of issuance of the policy or the date of commencement of risk or the date of revival of the policy or the date of the rider to the policy whichever is later on the ground of fraud

Provided that the insurer will have to communicate in writing to the insured or the legal representatives/nominees/assignees of the insured the grounds and materials on which such decision is based

Explanation I: For the purposes of this sub-section, the expression 'fraud' means any of the following acts committed by the insured or by his agent, with the intent to deceive the insurer or to induce the insurer to issue a life insurance policy:

- (a) the suggestion, as a fact of that which is not true and which the insured does not believe to be true;
- (b) the active concealment of a fact by the insured having knowledge or belief of the fact;
- (c) any other act fitted to deceive; and
- (d) any such act or omission as the law specially declares to be fraudulent.

Explanation II: Mere silence as to facts likely to affect the assessment of the risk by the insurer is not fraud, unless the circumstances of the case are such that, regard being had to them,

it is the duty of the insured or his agent, keeping silence to speak, or unless his silence is, in itself, equivalent to speech.

- (3) Notwithstanding anything contained in sub-section (2) hereinabove, no insurer shall repudiate a life insurance policy on the ground of fraud if the insured can prove that the misstatement of or suppression of a material fact was true to the best of his knowledge and belief or that there was no deliberate intention to suppress the fact or that such misstatement of or suppression of a material fact was within the knowledge of the insurer or the agent of the insurer.

Explanation: A person who solicits and negotiates a contract of insurance should be deemed for the purpose of the formation of the contract, to be the agent of the insurer, and that the knowledge of such person should be deemed to be the knowledge of the insurer.

- (4) A policy of life insurance may be called in question at any time within five years from the date of issuance of the policy or the date of commencement of risk or the date of revival of the policy or the date of the rider to the policy whichever is later on the ground 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

Provided that the insurer will have to communicate in writing to the insured or the legal representatives/nominees/assignees of the insured the grounds and materials on which such decision to repudiate the policy of life insurance is based.

Provided further that in case of repudiation of the policy on the ground of misstatement or suppression of a material fact, and not on the ground of fraud, the premiums collected on the policy till the date of repudiation shall be paid to the insured or the legal representatives/ nominees/ assignees of the insured within a period of ninety days from the date of such repudiation.

Explanation: For the purposes of this sub-section, the misstatement of or suppression of fact will not be considered material unless it has a direct bearing on the risk undertaken by the insurer; the onus is on the insurer to show that had the insurer been aware of the said fact no life insurance policy would have been issued to the insured.

- (5) Nothing in this section shall prevent the insurer from calling for proof of age at any time if he is entitled to do so, and no policy shall be deemed to be called in question merely because the terms of the policy are adjusted on subsequent proof that the age of the life insured was incorrectly stated in the proposal.

CHAPTER VI

ASSIGNMENT AND TRANSFER

Existing Law

6.1.1 S.38 of the Insurance Act, 1938 provides for assignment and transfer of insurance policies. S.38 provides for the transfer or assignment of a policy of life insurance by an endorsement upon the policy itself or by separate instrument signed by the transferor/assignor or by any authorized agent and attested by one witness setting forth the fact of transferring assignment. The transfer/ assignment can be made in favour of the insurer also but shall not confer upon the transferee or assignee or his legal representative any right to sue for the amount secured under such policy until a notice in writing of the transfer has been delivered both by the transferor and transferee to the insurer. There can be more than one transfer/ assignment as per sub-section (3) of this section. In such cases the priority of claims shall be governed in the order in which notices have been delivered.

6.1.2 This section deals with both absolute and conditional assignments, the former transferring to the assignee all rights, title and interest which the assignor has in the policy without any defeasance clause, and the latter being a conditional assignment as contemplated under sub-section (7) which creates an immediate vested interest in the assignee but which is liable to be divested on the happening of events specified in the assignment.

Proposals in the Consultation Paper

6.1.3 In the Consultation Paper it was pointed out that there are certain anomalies in the working of sub-section (5) and sub-section (7) of s.38. A question was posed whether a conditional assignee is entitled to obtain a loan under, or surrender, the policy without the concurrence of the insured. It was pointed out that if the said question was answered in the affirmative, the conditional assignment would stand converted into an absolute assignment and defeat the object of the former. To

illustrate, a policyholder (A) obtains a loan from a financier (B) upon assignment of the policy in favour of B. The assignment is on condition that upon repayment of the loan, B will reassign the policy to A. Even before A can repay the loan to B, B borrows a loan from C by assigning the policy in favour of C. This later assignment by B in favour of C renders the assignment by A in favour of B unconditional and defeats the condition attached to that assignment.

6.1.4 While any transfer is subject to the terms and conditions specified in the instrument of transfer, the specific provisions in sub-section (5) of s.38 may mean either or both of the following: First, under sub-section (7), the assignor may become entitled to the policy money if the assignment becomes inoperative (like when it does when the assignor repays the loan to the assignee); second, the insurer may not recognize the assignee as the only person entitled to benefit under the policy if the terms of assignment expressly or by implication do not confer on him any particular right or benefit and treat the insured for such entitlement. For instance, if the insured reserves the right to receive the policy money on maturity, the assignee cannot exercise the right to surrender. Thirdly, sub-section (7) recognises as valid an assignment in favour of a person on condition that “the interest shall pass to some other person on the happening of a specified event during the life time of the person whose life is insured”. To illustrate, A assigns his life insurance policy in favour of B in consideration of B lending A a certain sum of money. One condition stipulated in the assignment is that in the event of the death of A, the amount payable under the policy would pass on to the wife and children of A. Such an assignment is recognised by sub-section (7) as valid. Likewise an assignment by A in favour of his own survivors or any number of persons is also valid. The question that arises is what is the situation vis-à-vis B in such an event. Suppose B pre-deceases A, can the survivors of B claim that they now become the assignees? The section is not clear on this.

6.1.5 The Consultation Paper pointed out that there was another difficulty if an assignment is duly executed but no notice has been delivered to the insurer under sub-section (2). The assignment is not invalid but the assignee will not have the

right to sue the insurer. It was accordingly suggested that, the provisions of sub-sections (5) and (7) need reconsideration and revision so as to remove anomalies. However, a suggestion has been made that sub-section (7) should be dropped. This may, however, attract the application of s.130 of the Transfer of Property Act unless a proviso is made to exclude its application. Presently, sub-section (2) of s.130 which stipulates that the transferee of an actionable claim may sue in his own name without obtaining the consent of the transferor has an exception to the effect that the said provision will not affect the provision of s.38 of the Insurance Act, 1938. The illustration under s.130 reads thus:

“A effects a policy on his own life with an Insurance Company and assigns it to a Bank for securing the payment of an existing or future debt. IF A dies, the Bank is entitled to receive the amount of the policy and to sue on it without the concurrence of A’s executor, subject to the proviso in sub-section (1) of s.130 and to provisions of s.132.”

S.132 of the Transfer of Property Act, 1882 stipulates that “the transferee of an actionable claim shall take it subject to all the liabilities and equities and to which the transferor was subject in respect thereof at the date of the transfer.” In other words, notwithstanding ss.130 and 132 of the Transfer of Property Act, 1882, the assignment of the insurance policy will not be effective against the insurance company till it has notice of the assignment in terms of s.38 of the Act. If s.38 (7) of the Act is to be deleted as suggested, then the applicability s.130 of the Transfer of Property Act will also have to be excluded.

- 6.1.6 The Act does not provide for partial assignment of policies required especially in case of assignments for collateral security for loans, where the sum assured is more than the amount of loan. It was, therefore, suggested that a new sub-section may be inserted to provide for partial assignment of policies with the rider that the original assignor is not allowed to further assign his residual rights to the third party with a view to prevent any clash of interest of several assignees at the time of making the claim.

6.1.7 The Consultation Paper noted that provisions of this section are applicable only to life insurance policies. It was accordingly suggested that the application of this provision be extended to all personal lines of non-life insurance business as well.

6.1.8 Finally a suggestion was made in regard to the fee to be charged for acknowledgment of the notice of the transfer of assignment. Since the fee of one rupee as presently indicated in s.38 (4) was wholly inadequate, it was suggested that the words 'one rupee' may be replaced by the words 'not exceeding an amount prescribed by the Authority in the Regulations'.

Response to the Proposal in the Consultation Paper

6.1.9 By and large the responses received in relation to the suggestions contained in the Consultation Paper have been positive. The response of FICCI has been that s.38 sub-section (7) should be retained. LIC and Aviva Life Insurance Company India (P) Ltd. have also made a similar suggestion.

6.1.10 Om Kotak Mahindra Life Insurance Company Ltd., has recommended that a clear distinction be drawn between absolute and conditional assignment. They also suggested that the absolute assignee should step into the shoes of the policyholder and be entitled to deal with the policy in any manner, including obtaining a loan, without requiring the consent of the original policyholder. Conversely, the conditional assignee should be barred from dealing with the policy without the consent of the original policyholder. As regards notice of assignment not being given to the insurer, it has been suggested that in such a case the insurer should be permitted to proceed on the basis that no assignment has been made.

6.1.11 The advocate M.K.P. Kannan from Madurai suggests that partial assignment of an insurance policy should be permitted with a stipulation that the insured will not further assign the residual right in the policy.

6.1.12 The National Insurance Academy, Pune (NIA) points out that since there does not appear to be any difference between the two terms 'transfer' and 'assignment', the word 'transfer' may be deleted. Further the term 'assignment' may be defined to

mean “transfer of right, interest and title under the policy’. The NIA has agreed to the suggestion made in the Consultation Paper that the provisions of this section be extended to all personal lines of non-life insurance business.

6.1.13 The HDFC Standard Life Insurance Company Ltd. points out that s.38 (7) requires to be amended to make it clear that the conditional assignee does not have the same legal position as the absolute assignee. The present provision in s.38 (7) envisages two eventualities: (i) the assignee predeceasing the insured; and ii) the insured surviving the term of the policy. To illustrate, policyholder A assigns a life insurance policy (for a term of 20 years) in favour of B. The stipulation is that if B pre-deceases A, the benefit under the policy will revert to A. Secondly, if A survives even after the period of the policy is over, then also the benefit under the policy would revert to A. It has been suggested this position be made explicit while redrafting s.38 (7). As regards partial assignment, it has been suggested that the change as proposed in the Consultation Paper may not be necessary at all because in any event it is not intended to permit the original assignor (insured) to further assign the residual rights.

6.1.14 The IRDA has during its interactions with the Commission expressed concern about the actual working of the provision relating to assignment and transfers of policies. It appears that there could be certain unscrupulous elements running a racket whereby even lapsed life insurance policies are purchased for a given price and then revived on the expectancy of receiving the sum on maturity of the policy. However, it is feared that since the amount becomes payable upon the death of the policyholder, it may not encourage such purchasers of policies to go to any length to ensure that the amount becomes payable. Some safeguards will have to be built into the provision to prevent the misuse of this facility.

Views of the Law Commission

6.1.15 The Law Commission after considering the matter and the responses received is of the view that sub-section (7) of s.38 should be retained, with some modification for the purpose of greater clarity.

6.1.16 The Commission also accepts the suggestion that a clear distinction be made between absolute assignment and conditional assignment since this is leading to some confusion while operationalising the scheme of assignment and transfer. There is a need to clearly spell out the contingencies under which an assignment or transfer would be treated as a conditional one. It is proposed to retain both terminologies, viz., assignment and transfer and use them in the alternative to enable greater flexibility in the working of these provisions. It is also proposed that a provision be inserted for partial assignment conditional upon restricting further assignments of the residual rights. This would be by a necessary clarification. Further, the provision should be appropriately amended to extend its applicability to all personal lines of non-life insurance business as well.

6.1.17 The Commission finds considerable merit in the apprehension expressed by the IRDA regarding misuse of the facility of assignment and transfer and accordingly proposes to build in certain safeguards like disclosure of reasons for the assignment, the antecedents of the assignee, the exact terms on which the assignment is being made and an obligation upon the insurer to get the credentials of the assignee verified at the cost of the insured. If the insurer is not satisfied that the assignment is bonafide, there would be an option to decline to register the assignment or transfer upon reasons in writing to be communicated to the policyholder subject to such decision being challenged by way of petition before the Grievance Redressal Authority. Where there is a dispute between assignees as to which of the assignments is prior in point of time for the purposes of a claim, the dispute should be adjudicated by the GRA.

Final recommendations of the Law Commission in regard to s.38

6.1.18 The final recommendations of the Law Commission in regard to s.38 may be summarised as under:

(a) Sub-section (7) of s.38 should be retained, with some modification for the purpose of greater clarity.

- (b) The contingencies under which an assignment or transfer would be treated as a conditional one to be clearly spelt out. The provision be amended to indicate that except where the endorsement of assignment or transfer expressly indicates that the assignment or transfer is conditional in terms of s.38(7), every assignment or transfer will be deemed to be an absolute assignment or transfer and the assignee or transferee as the case may be, will be deemed to be absolute assignee or transferee respectively.
- (c) Both terminologies, viz., assignment and transfer be retained in s.38 and they be used in the alternative to enable greater flexibility in the working of these provisions.
- (d) A separate sub-section be inserted to indicate that in case of partial assignment or transfer of a policy of insurance, the liability of the insurer shall be limited to the amount secured by the partial assignment or transfer and such policy holder shall not be entitled to further assign or transfer the residual amount payable under the same policy.
- (e) The provision should be appropriately amended to extend its applicability to all personal lines of non-life insurance business as well.
- (f) The provision be amended to build in certain safeguards. The policy holder will have to disclose reasons for the assignment, the antecedents of the assignee and the exact terms on which the assignment is being made. There will be an obligation upon the insurer to get the credentials of the assignee verified at the cost of the insured. If the insurer is not satisfied that the assignment is bonafide, there would be an option to decline to register the assignment or transfer upon reasons in writing to be communicated to the policyholder subject to such decision being challenged by way of petition before the Grievance Redressal Authority.

Suggested amendment of s.38

6.1.19 Accordingly the Law Commission recommends that s.38 be recast as under:

- (1) A transfer or assignment of a policy of insurance, wholly or in part, whether with or without consideration, may be made only by an endorsement upon the policy itself or by a separate instrument, signed in either case by the transferor or by the assignor or his duly authorized agent and attested by at least one witness, specifically setting forth the fact of transfer or assignment and the reasons therefor, the antecedents of the assignee and the exact terms on which the assignment is made.

Provided that an insurer may decline to act upon such endorsement where it has sufficient reason to believe that such transfer or assignment is not bonafide or is not in the interests of the policyholder or in public interest.

Provided further that the insurer will record in writing such reasons for refusal to act upon the endorsement and communicate the same to the policyholder not later than 30 days from the date of the policyholder giving notice of such transfer or assignment.

Provided further that any person aggrieved by the decision of an insurer to decline to act upon such transfer or assignment may within a period of not more than 30 days from the date of receipt of the communication from the insurer containing reasons for such refusal, prefer a claim to the Grievance Redressal Authority constituted under section ___.

- (2) Subject to the provisions in sub-section (1), the transfer or assignment shall be complete and effectual upon the execution of such endorsement or instrument duly attested but except where the transfer or assignment is in favour of the insurer shall not be operative as against an insurer and shall not confer upon the transferee or assignee, or his legal representative, any right to sue for the amount of such policy or the moneys secured thereby until a notice in writing of the transfer or assignment and either the said endorsement or instrument itself or a copy thereof certified to be correct by both transferor and transferee or their duly authorized agents have been delivered to the insurer:

Provided that where the insurer maintains one or more places of business in India, such notice shall be delivered only at the place in India mentioned in the policy for the purpose or at the principal place of business of the insurer in India.

- (3) The date on which the notice referred to in sub-section (2) is delivered to the insurer shall regulate the priority of all claims under a transfer or assignment as between persons interested in the policy; and where there is more than one instrument of transfer or assignment the priority of the claims under such instruments shall be governed by the order in which the notices referred to in sub-section (2) are delivered.

Provided that if any dispute as to priority of payment arises as between assignees, the dispute will be referred to the Grievance Redressal Authority.

- (4) Upon the receipt of the notice referred to in sub-section (2), the insurer shall record the fact of such transfer or assignment together with the date thereof and the name of the transferee or the assignee and shall, on the request of the person by whom the notice was given, or of the transferee or assignee, on payment of such fee as may be specified by regulations, grant a written acknowledgement of the receipt of such notice; and any such acknowledgement shall be conclusive evidence against the insurer that he has duly received the notice to which such acknowledgment relates.
- (5) Subject to the terms and conditions of the transfer or assignment, the insurer shall, from the date of the receipt of the notice referred to in sub-section (2), recognise the transferee or assignee named in the notice as the absolute transferee or assignee entitled to benefit under the policy, and such person shall be subject to all liabilities and equities to which the transferor or assignor was subject at the date of the transfer or assignment and may institute any proceedings in relation to the policy, obtain a loan under the policy or surrender the policy without obtaining the consent of the transferor or assignor or making him a party to such proceedings.

Explanation. Except where the endorsement referred to in sub-section (1) expressly indicates that the assignment or transfer is conditional in terms of sub-section (7) hereunder, every assignment or transfer will be deemed to be an absolute assignment or transfer and the assignee or transferee as the case may be will be deemed to be the absolute assignee or transferee respectively.

- (6) Any rights and remedies of an assignee or transferee of a policy of life insurance under an assignment or transfer effected prior to the commencement of this Act shall not be affected by the provisions of this section.
- (7) Notwithstanding any law or custom having the force of law to the contrary, an assignment in favour of a person made upon the condition that

- (a) the proceeds under the policy will become payable to the policyholder or the nominee or nominees in the event of either the assignee/ transferee predeceasing the insured; or
- (b) the insured surviving the term of the policy;

shall be valid.

Provided that a conditional assignee shall not be entitled to obtain a loan on the policy or surrender a policy.

- (8) In the case of the partial assignment or transfer of a policy of insurance under sub-section (1), the liability of the insurer shall be limited to the amount secured by partial assignment or transfer and such policyholder shall not be entitled to further assign or transfer the residual amount payable under the same policy.

CHAPTER VII

NOMINATION

- 7.1.1 S.39 of the Insurance Act, 1938 provides that the holder of a policy of life insurance may nominate one or more persons to whom the money secured by the policy shall be paid in the event of the death of the policyholder. A nomination shall get automatically cancelled as per s.39 (4) where a transfer or assignment of the policy has been made in terms of s.38 of the Act. As per the proviso to s.39 (4), where an assignment is made in favour of the insurer itself in consideration for a loan advanced by the insurer to the policyholder, the nomination will not be cancelled but the rights of the nominee will be effected only to the extent of the insurer's interest in the policy. Where the loan is repaid and the policy is reassigned to the policyholder, the nomination will remain valid. To illustrate, policyholder A is entitled to an amount of Rs.2 lakhs upon maturity of his life insurance policy. A borrows Rs.50,000/- from the insurance company and assigns the policy in its favour. In the event of A's death without repayment of the loan amount, the insurance company can retain only such amount as is payable to it and A's nominees are entitled to receive the balance amount payable under the policy. The Consultation Paper has pointed out that this provision is unclear as to the position where the assignee is not an insurer. The question posed was whether in such an event, the prepayment of the loan advanced by the assignee would automatically revive the nomination made by the policyholder.
- 7.1.2 Another area, which required clarification, was that of a beneficial nominee as distinguished from a collector nominee. Under s.38 (6) where a nominee survives the insured person, the policy money would be payable to such nominee survivor. The question then arises whether this payment to the nominee is to the exclusion of the legal representatives and heirs or even creditors who may have a legitimate claim against the estate of the deceased of which the money payable on maturity of the life insurance policy forms part.

Law Commission's earlier recommendation

- 7.1.3 The Consultation Paper referred extensively to the earlier recommendations made by the Law Commission in its 82nd Report on ***Effect of nomination under s.39, Insurance Act, 1938*** (1980). The Law Commission had in the said Report noted that a policyholder cannot confer on any nominee any right higher than what he himself has. The Commission recommended the insertion of certain provisions in s.39 to the effect that “where the holder of a policy of life insurance on his own life nominates his parents, or his spouse, or his children, or his spouse and children, or any of them, the nominee or nominees shall be beneficially entitled to the amount payable by the insurer to him or them under sub-section (6) unless it is proved that the holder of the policy, having regard to the nature of his title to the policy, could not have conferred any such beneficial title on the nominee”. The other recommendation was that where the nominee survives the policyholder but dies before the amount is paid, such amount “shall be payable to the heirs or legal representatives of the nominee or nominees or the holder of a succession certificate, as the case may be, and they shall be beneficially entitled to such amount”.
- 7.1.4 The Government did not act upon the aforementioned recommendation. Meanwhile, in 1984, the Supreme Court in *Sarbati Devi v. Usha Devi* AIR 1984 SC 346 held that the provisions of s.39 could not alter the position of succession under the law. It was clarified that a mere nomination made under s.39 does not have the effect of conferring on the nominee any beneficial interest in the amount payable under the policy on the death of the assured. The court further observed that the nominee acquires no interest in the policy during the life time of the policy holder, therefore, after the death of the policy holder, the amount under the policy becomes payable to his legal heirs, the nominee is only the authorized person to collect the payment so that insurer gets a valid discharge of its liability under the policy.
- 7.1.5 The decision in *Sarbati Devi* prompted the Law Commission to modify its earlier view while dealing with nomination in regard to Provident Fund. In its 137th

Report on the “*Need for creating office of Ombudsman and for evolving legislative administrative measures inter alia to relieve hardships caused by inordinate delays in settling Provident Fund claims of beneficiaries*” (1990), the Commission recommended that a statutory provision be made to the effect that the amount payable will vest in the nominee who will be called the ‘beneficiary nominee’ unless the policyholder names some person as a ‘collector nominee’ for the purpose of collecting the amount on behalf of the legal representatives of the deceased policyholder. In other words, an option would be available to the policyholder to express in clear terms whether the nominee concerned is a beneficial nominee or a collector nominee.

- 7.1.6 In the Consultation Paper, the above recommendation made in the 137th Report was reiterated. An alternative was to confer the absolute ownership of the policy money on the nominee to bring it on par with the status of a nominee under s.45ZA of the Banking Regulation Act, 1949. It was further suggested in the Consultation Paper that a proviso may be added that where a policyholder dies after the maturity of the policy but before he can be paid the proceeds thereunder the nomination made would continue to be effectual for receiving the maturity amount on the policy.

Responses to the Consultation Paper

- 7.1.7 As far as FICCI is concerned, they have made a suggestion that “the proposed amendment to s.39 should retain the provision of nomination for unassigned portion of the policy.” Birla Sun Life Insurance Co. Ltd., has pointed out that it is desirable to amend s.39 to bring it on par with that under s.45ZA of the Banking Regulation Act, 1949 so that the insurer gets a valid discharge for the policy monies upon payment to the nominee without the insurer getting embroiled in a litigation between the legal heirs of the policyholder. They have however pointed out that there is a difference between nomination under s.39 and that under s.45ZA of the Banking Regulation Act, 1949 in as much as the right under a life insurance contract is the right to a debt, which is more in the nature of an actionable claim. Thus, the nominee’s right is only to receive the policy monies

subject to all liabilities and equities to which the policyholder himself was subject.

7.1.8 The Punjab State Law Commission has communicated its support to bringing s.39 on par with s.45ZA of the Banking Regulation Act, 1949.

7.1.9 Om Kotak points out that there is a need for clarification in regard to the concept of ‘absolute nominee’. They also suggest that there should be a full discharge of the insurer once the amount is paid to the nominee. The National Insurance Academy has suggested that the law be made clear that a nominee does not have ownership rights to money. This suggestion has been concurred with by the HDFC.

7.1.10 The Government of West Bengal has suggested that the provision be amended to bring out the distinction between collector nominee and beneficial nominee.

7.1.11 Life Insurance Corporation of India has recommended that s.39 be retained as it is. The General Insurers Public Sector Association has agreed to the proposal of the Law Commission in its Consultation Paper.

The Law Commission’s views

7.1.12 There appears to be a consensus of sorts on the need for drawing a clear distinction between a beneficial nominee and a collector nominee. It is not possible to agree to the suggestion made by some of the insurers that in all cases the payment to the nominee would tantamount to a full discharge of the insurer’s liability under the policy and that unless the contrary is expressed, the nominee would be the beneficial nominee. Although it is true that this is the law in USA, Canada and South Africa, the social realities of our country where the death of a sole breadwinner of the family immediately throws the remaining family into hardship cannot be lost sight of. To deny, in such instance, the right of the legal representatives to the policy amount on the basis that the nominee is a different person seems harsh. On the other hand, what appears reasonable is to give an option to the policyholder to clearly express whether the nominee will collect the

money on behalf of the legal representatives (in other words such nominee will be the collector nominee) or whether the nominee will be the absolute owner of the monies in which case such nominee will be the beneficial nominee. Public interest and the peculiar social realities in India cannot permit the adoption of the procedures followed in Canada, USA or South Africa. The Commission is not agreeable to the suggestion that a provision similar to s.45 ZA as in the Banking Regulation Act, 1949 should be adopted.

7.1.13 The suggestion that a proviso be added to make the nomination effectual for the nominee to receive the policy money in case the policyholder dies after the maturity of the policy but before it can be encashed, has also been welcomed by the responses, and is hereby recommended.

Final recommendations of the Law Commission in regard to s.39

7.1.14 After considering all the responses and reexamining the entire issue, the final recommendations of the Law Commission regard to s.39 may be summarised as under:

- (a) A clear distinction be made in the provision itself between a beneficial nominee and a collector nominee.
- (b) It is not possible to agree to the suggestion made by some of the insurers that in all cases the payment to the nominee would tantamount to a full discharge of the insurer's liability under the policy and that unless the contrary is expressed, the nominee would be the beneficial nominee.
- (c) An option be given to the policyholder to clearly express whether the nominee will collect the money on behalf of the legal representatives (in other words such nominee will be the collector nominee) or whether the nominee will be the absolute owner of the monies in which case such nominee will be the beneficial nominee.

- (d) A proviso be added to make the nomination effectual for the nominee to receive the policy money in case the policyholder dies after the maturity of the policy but before it can be encashed.

Suggested amendment of s.39

7.1.15 To give effect to the above recommendations, the Law Commission is of the view that s.39 be recast as follows:

- (1) The holder of a policy of life insurance on his own life may, when effecting the policy or at any time before the policy matures for payment, nominate the person or persons to whom the money secured by the policy shall be paid in the event of his death:

Provided that, where any nominee is a minor, it shall be lawful for the policyholder to appoint in the prescribed manner any person to receive the money secured by the policy in the event of his death during the minority of the nominee.

- (2) Any such nomination in order to be effectual shall, unless it is incorporated in the text of the policy itself, be made by an endorsement on the policy communicated to the insurer and registered by him in the records relating to the policy and any such nomination may at any time before the policy matures for payment be cancelled or changed by an endorsement or a further endorsement or a will, as the case may be, but unless notice in writing of any such cancellation or change has been delivered to the insurer, the insurer shall not be liable for any payment under the policy made bona fide by him to a nominee mentioned in the text of the policy or registered in records of the insurer.
- (3) The insurer shall furnish to the policy-holder a written acknowledgment of having registered a nomination or a cancellation or change thereof, and may charge such fee as may be specified by regulations for registering such cancellation or change.
- (4) A transfer or assignment of a policy made in accordance with s.98 shall automatically cancel a nomination:

Provided that the assignment of a policy to the insurer who bears the risk on the policy at the time of the assignment, in consideration of a loan granted by that insurer on the security of the policy within its surrender value, or its re-assignment on repayment of the loan shall not cancel a

nomination, but shall affect the rights of the nominee only to the extent of the insurer's interest in the policy.

Provided that the transfer or assignment of a policy, whether wholly or in part, in consideration of a loan advanced by the transferee or assignee to the policyholder, will not cancel the nomination but shall affect the rights of the nominee only to the extent of the interest of the transferee or assignee as the case may be in the policy.

Provided that the nomination, which has been automatically cancelled consequent upon the transfer or assignment, the same nomination shall stand automatically revived when the policy is reassigned by the assignee or retransferred by the transferee in favour of the policy holder on repayment of loan other than on a security of policy to the insurer.

- (5) Where the policy matures for payment during the lifetime of the person whose life is insured or where the nominee or, if there are more nominees than one, all the nominees die before the policy matures for payment, the amount secured by the policy shall be payable to the policy-holder or his heirs or legal representatives or the holder of a succession certificate, as the case may be.
- (6) Where the nominee or if there are more nominees than one, a nominee or nominees survive the person whose life is insured, the amount secured by the policy shall be payable to such survivor or survivors.
- (7) Subject to the other provisions of this section, where the holder of a policy of insurance on his own life nominates his parents, or his spouse, or his children, or his spouse and children, or any of them, the nominee or nominees shall be beneficially entitled to the amount payable by the insurer to him or them under sub-section (6) unless it is proved that the holder of the policy, having regard to the nature of his title to the policy, could not have conferred any such beneficial title on the nominee.
- (8) Subject as aforesaid, where the nominee, or if there are more nominees than one, a nominee or nominees, to whom sub-section (7) applies, die after the person whose life is insured but before the amount secured by the policy is paid, the amount secured by the policy, or so much of the amount secured by the policy as represents the share of the nominee or nominees so dying (as the case may be), shall be payable to the heirs or legal representatives of the nominee or nominees or the holder of a succession certificate, as the case may be, and they shall be beneficially entitled to such amount.

- (9) Nothing in sub-sections (7) and (8) shall operate to destroy or impede the right of any creditor to be paid out of the proceeds of any policy of life insurance.
- (10) The provisions of sub-sections (7), (8) and (9) shall apply to all policies of life insurance maturing for payment after the commencement of this Act.
- (11) Every policyholder shall have an option to indicate in clear terms whether the person or persons being nominated by the policyholder is/ are a beneficiary nominee(s) or a collector nominee(s).

Provided where the policyholder fails to indicate whether the person being nominated is a beneficiary nominee or a collector nominee it will be deemed that the person nominated is a beneficiary nominee.

Explanation: For the purposes of this sub-section the expression 'beneficiary nominee' means a nominee who is entitled to receive the entire proceeds payable under a policy of insurance subject to other provisions of this Act and the expression 'collector nominee' means a nominee other than a beneficiary nominee.

- (12) The collector nominee shall make payment the benefits arising out of policy to the beneficiary nominee or his legal heirs or representative in accordance with the regulations made by the Authority.
- (13) Where a policyholder dies after the maturity of the policy but the proceeds and benefit of his policy has not been made to him because of his death, in such a case, his nominee shall be entitled to the proceeds and benefit of his policy.
- (14) The provisions of this section shall not apply to any policy of life insurance to which s.6 of the Married Women's Property Act, 1874, applies or has at any time applied:

Provided that where a nomination made whether before or after the commencement of this Act, in favour of the wife of the person who has insured his life or of his wife and children or any of them is expressed, whether or not on the face of the policy, as being made under this section, the said s.6 shall be deemed not to apply or not to have applied to the policy.

CHAPTER VIII

PROVISIONS RELATING TO PENALTIES AND OTHER CHANGES

8.1.1 Paras 8.8 and 8.9 of the Consultation Paper (Appendix I to this Report) discussed the proposed changes to the provisions of the Act that prescribed penalties and other provisions in which changes were called for. The responses received have more or less welcomed the proposals. For want of specific response from the Central Government and the IRDA, the Law Commission, however, is not expressing any view on the proposal in the Consultation Paper in regard to the Insurance Councils (s.64C, powers of the Executive Committee (s.64I), and powers of the Executive Committee of the Life Insurance Councils to hold examination for insurance agents (s.64UI). Likewise, no recommendation is being made on the proposal that a trade union be permitted to carry on insurance business.

Final recommendation of the Law Commission in regard to penalties and other provisions

8.1.2 The final recommendation of the Law Commission in regard to the other proposals in the Consultation Paper concerning penalties and certain other provisions are as under:

- (i) The amount of penalties prescribed in ss.102-105C be enhanced so that it is of a deterrent nature. A minimum penalty be indicated in each of these provisions.
- (ii) The penalties will be adjudicated and levied after an enquiry by the Adjudicating/ Investigating Officer to be appointed by the IRDA as indicated in para 4.3.8 above. The provisions will be accordingly amended to indicate this position.
- (iii) In relation to s.53 (2) (b) which deals with the grounds on which the IRDA can apply for winding up by the court, since clauses (i), (ii) and (iii) of sub-section (2) are the very grounds on which the IRDA can cancel the registration of an insurance company under s.3 (4), these clauses may be

omitted. However, clause (iv) may be retained. In sub-section (1) of s.53, reference to Companies Act, 1913 be substituted by Companies Act, 1956.

- (iv) In relation to s.54 concerning voluntary winding up, the provision be amended to the effect that an insurance company should not be wound up except on the ground that by reason of its liabilities it cannot continue its business.
- (v) In relation to s.58 concerning the scheme for partial winding up in sub-sections (3) and (4), reference to the Companies Act, 1913 may be substituted by the Companies Act 1956. In sub-section (4), the words 's.12 of the Indian Companies Act, 1913' be substituted by 's.15 of the Companies Act, 1956' and the words 'ss.15 and 16' be replaced by 's.17'.
- (vi) In relation to ss.52A to 52G which deal with the management by an administrator, the provisions be amended to provide that if the IRDA after giving an opportunity to the insurer and after taking into consideration the interest of policy holders, is of the opinion that it is necessary and proper to appoint an administrator to manage the affairs of the insurer carrying on life insurance business, the IRDA may, by an order, do so. The administrator shall receive such remuneration as the IRDA may direct. The IRDA may appoint some other person as an administrator if the one appointed earlier is not able to manage the affairs of the insurer. Sub-sections (1), (2) and (3) of s.52A be amended to give effect to the aforesaid recommendations.
- (vii) S.52A be amended to provide for the period for which an administrator will initially be appointed. It may be appropriate if the limit in this regard is provided in the statute subject to the proposed provisions of s.52D. Since s.52BB (9) which vests in the administrator powers of the civil court, s.52A be amended to indicate that the administrator so appointed should be qualified and competent to exercise such powers.
- (viii) S.52BB (2) be amended to provide that the appeal against the order of the Administrator will lie to the IRDA.

- (ix) S.52D dealing with termination of appointment of administrator be amended to confer the power of cancellation of the order of appointment on the IRDA.
- (x) The punishment by way of fine for withholding documents of property from the Administrator under s.52F be enhanced to Rs.5,000/-.
- (xi) The protection of action taken in good faith, as provided for in s.52G, be extended to the officers of the IRDA.
- (xii) In light of the above amendments, s.52E be amended to substitute the word “Central Government” with ‘IRDA’.
- (xiii) Ss.52H to 52N be deleted in view of the changed policy whereby private players have been permitted to carry on insurance business.
- (xiv) The words and digits “or s.98” occurring in s.59 relating to return of deposits, be omitted.
- (xv) In view of the express provision that no insurer other than an Indian insurance company shall begin to carry on any class of insurance business in India, the provisions relating to external companies, ss.62 to 64, be repealed.
- (xvi) S.64UL be amended to substitute the word “Central Government” by “IRDA”.
- (xvii) S.113 (1) relating to acquisition of surrender values be amended to indicate that the IRDA may from time to time notify the minimum amount of the paid up value and annuity.

CHAPTER IX

OTHER TOPICS IN THE CONSULTATION PAPER ON WHICH THE LAW COMMISSION DOES NOT PROPOSE TO MAKE ANY RECOMMENDATION AT THIS STAGE

9.1.1 In the Consultation Paper, a large number of grounds of revision had been indicated. However, the recommendation marked the following issues have been further elaborated upon in the consultation exercise and final recommendations have been made hereinabove:

- (a) Deletion of redundant provisions in the Insurance Act, 1938;
- (b) Deletion of transitional provisions;
- (c) Merger of provisions of the IRDA Act with the Insurance Act;
- (d) Issues of assignment, nomination and repudiation of claims;
- (e) Setting up of an independent Grievance Redressal Mechanism;

9.1.2 However, as regards the following topics, the consultation exercise has revealed that they involve either policy decisions or deliberation by expert bodies. The Law Commission is not in a position to make recommendations on these topics unless there is further examination at various levels in consultation with expert bodies. Some of these topics are briefly discussed hereunder:

Insurance Surveyors

9.1.3 S.64 UM of the Insurance Act, 1938 provides for licencing of surveyors and loss assessors. The Consultation Paper had proposed as under:

“The provision requires to be amended to expressly empower the Authority to issue licence on the same grounds of qualifications and disqualifications as specified in s.42 (1) & (2) for insurance agents.

The ground found in Regulation 8 (4) for cancellation of licence of a surveyor who fails to discharge duties and responsibilities in a satisfactory and professional manner or violates the code of conduct prescribed by the Regulations requires to be incorporated in S.64 UM (1) (G).

A provision for suspension of licence, as provided in Regulation 8 (4) should be incorporated in the Act”.

9.1.4 S.64 UM (1A) of the Act requires every surveyor and loss assessor to comply with the code of conduct and other professional requirements as may be specified by regulations made by the IRDA. Consequent to this provision, the IRDA has framed regulations prescribing minimum qualifications for licencing of surveyors and loss assessors. The Consultation Paper had proposed that there be in expression provision in regard to the functions to be performed by surveyors and loss assessors strictly in accordance with the code of conduct laid down in the regulations of the IRDA. The power to settle claims be exercised by an Adjudicating Officer to be appointed by the IRDA. It was further proposed that appointment and payment to surveyors/loss assessors should be on rotation and controlled by IRDA. Finally, it was proposed that the requirement of a written test for issuing licence to any person to act as a surveyor be done away with because the new trainees are well-qualified technical graduates.

Response to the proposal

9.1.5 Although a wide range of the responses have been received to the above proposal contained in the Consultation Paper, the most exhaustive response has been from the Institute of Insurance Surveyors and Adjusters (IISA). The principal suggestion is that “the Act should spell out only the Policy Framework. All regulatory issues should be within the purview of the Regulator. All operational and administrative issues should fall under the purview of the self-regulating Chartered Institute”. Consequently, the IISA has suggested that the system of licencing of surveyors should be abolished. They would like to have a system of issuance of certificate of practice by a Chartered Institute of Insurance Surveyors

and Loss Adjusters of India. The IISA suggests that where the claim is not less than Rs.20,000/-, the holding of such certificate should be mandatory before an insurer can entrust the work of survey or loss assessment to such surveyor/ loss assessor. Another important suggestion of the IISA is that there should be a provision for appointing joint surveyor/ loss assessor depending on the requirement.

9.1.6 While the Law Commission appreciates the detailed suggestions given by the IISA, it realises that the issue involves a policy decision to be taken. For instance, the decision to abolish the system of licencing and to constitute a Chartered Institute for loss assessors has to be taken at a policy level. The Law Commission does not consider such decisions to be within the scope of its present reference. Therefore, the Law Commission is not in a position to accept the suggestion of the IISA in this regard.

9.1.7 The response of the General Insurers' (Public Sector) Association of India has been for a retention of the existing provisions where the appointment of surveyors is within the domain of the insurer rather than give any further powers to the IRDA. It is suggested that the decision to settle a claim after a report is called for from a second surveyor, should be left to the GRA. The response of the General Insurance Company is that there should be no interference by the regulator after a licence is issued to a surveyor. It suggests that the IISA may also be consulted in the matter of appointment of surveyors. Likewise, United India Insurance Company also opposes a change in the provisions to give any greater role to the IRDA.

9.1.8 FICCI's suggestion is that there should be no practice of licencing of surveyors and that the IRDA should be empowered to prescribe the qualifications. It has suggested that there should be an institute of surveyors approved by the IRDA. Also, it has suggested that the monetary limit for mandating survey should be done away with and that the IRDA should be empowered to prescribe the class of

business and monetary limits for which survey by qualified surveyors is made mandatory.

Law Commission's response

9.1.9 The Law Commission appreciates the concerns expressed by the respondents to the proposals made in regard to surveyors and loss assessors. However, it appears that there is no agreement as such on whether the system of licencing should be continued or abolished and whether there should be a greater role for the IRDA in this regard. Moreover, this is essentially a policy decision is not within the scope be taken by the Law Commission.

9.1.10 The Law Commission does not therefore consider it appropriate to make any recommendations in regard to the provisions concerning surveyors and loss assessors.

Provisions relating to investments

9.1.11 The Consultation Paper had sought to make suggestions in regard to the provisions concerning investments, loans and management. This in turn entailed an understanding of what should be designated as 'approved securities' for the purposes of investment of funds by the insurers, what should be the "Solvency Margin" to be maintained by insurers. The relevant provisions of the Insurance Act, 1938 are ss.27, 27A and 27B and s.64 VA. Although, the Commission has received a variety of responses to the proposals made in the Consultation Paper, there has been no response from either the Central Government or the IRDA. We should have received a more detailed and adequate response to enable the Commission to make recommendation.

Provisions relating to tariffs

9.1.12 S.64 UA - 64ULA of the Insurance Act, 1938 contained provisions that deal with the Tariff Advisory Committee (TAC) including its composition and powers. The Consultation Paper had sought to make detailed proposals in this regard.

9.1.13 There has been no response received either from the Central Government or the IRDA to these proposals. FICCI has categorically stated that "an administered

tariff regime is antithesis of liberalisation and market must move to a detariffed regime”. The private insurance companies would also favour a de-tariffed regime. In the context of liberalisation, insurance companies demand freedom to unburden themselves of loss making portfolios like motor vehicle insurance, for instance. On the other hand, the countervailing liability as presently found in the Insurance Act, 1938 is the obligation of insurers to rural and social sectors. These issues again throw up policy considerations. The questions that arise are:

- a. Do we want to detariff the entire insurance industry or retain tariff structures for certain types of insurance business?
- b. Should the detariffing, even in select types of insurance business, be done gradually or at once?
- c. What should be the precise role of the IRDA?

9.1.14 The above questions cannot possibly be attempted to be answered by the Law Commission of India. The answers to these questions have to come from the Government itself in consultation with the IRDA, the industry and other experts in the field. The change in the law in this regard has to be consequent upon the taking of such policy decision and not the other way around. Therefore, this is not taken up for action.

Shareholder’s funds and policyholder’s funds

9.1.15 S.49 of the Insurance Act, 1938 provides for restrictions of payments of dividends and bonuses. In the Consultation Paper, the following change was proposed:

“An enabling provision may be inserted for transfer from shareholders funds to policyholders funds in case of an insurance company in the initial years of operation. This could be by way of a proviso to the following effect:

“provided further that an amount not exceeding the aggregate amount, which was transferred from the shareholders funds, in the previous years,

shall be transferred back to the shareholders funds, in case of surplus, prior to the declaration of bonus to the policyholders”.”

9.1.16 In response to the above proposal, FICCI has suggested that where there is a transfer from the shareholder’s funds to the policyholders fund for meeting the cost of payment of new bonus to policyholders, such amount should not be allowed to be transferred back to the shareholder’s fund at any time. Further, FICCI would like a distinction to be drawn between the temporary and permanent deficit in the policyholder’s funds. The National Insurance Academy has also submitted a very detailed response. At the outset, the NIA states that “during all these years, this provision has conformed to the requirements of the market and hence a review at this stage is not called for.” However, according to NIA, if money is sought to be transferred from the shareholder’s funds to the policyholder’s funds on account of deficit arising out of ‘new business strain’, several safeguards will have to be built in. NIA has accordingly suggested a draft amended s.49.

9.1.17 The Subedar Committee Report commissioned by the Actuarial Society of India has also dealt with this issue extensively. Importantly, that Report states that as regards this issue “convergence of views as between the Industry, Regulator and actuarial profession is key to an acceptable and sustainable solution”. Ultimately, the Report has suggested that there is a need for a wider debate on the issue.

9.1.18 The Law Commission of India is of the view that the specific question of the use of shareholder’s funds and policyholder’s funds, and transfer from the former to the latter, requires deliberations both within the industry as well as between the industry and the government. The IRDA would also have to play a pro-active role in helping evolve a consensus on the issue.

9.1.19 As at present, the Law Commission does not have the benefit of the views of either the Government or the IRDA on this issue. Also, there does not appear to

be any agreed response from within the industry as well. In these circumstances, the Law Commission is not suggesting any changes in s.49 for the present.

Extent of foreign shareholding

9.1.20 One issue that repeatedly surfaced during discussions with the industry was whether the law should be amended to permit greater foreign equity participation than the present limit of 26%. There were also questions raised about permitting insurance companies to have branches outside of India and to conduct business outside India. The Law Commission does not have the benefit of the views of the Government or the IRDA on these matters. In the Law Commission's perception these are matters on which a policy decision will have to be taken by the Government in consultation with the industry and the IRDA. The Law Commission is not making any research in this matter.

CHAPTER X

SUMMARY OF RECOMMENDATIONS

10.1.1 To summarise the recommendations in this Report,

- (i) The complete final list of changed definitions as recommended by the Law Commission of India is set out in a separate table and appended to this Report as **Appendix-II**. The said recommendations cover amendments to ss.2 (9), 2C, 4, 6A(1), 6A(10), 6B, 6C, 7(1), 9, 10, 11, 12, 13, 15, 16, 28, 28A, 29, 31, 31B, 32A, 32B, 32C, 35, 37A, 40, 40A, 40B, 40C, 43, 44, 48A, 50, 51, 52BB, 52D, 52E, 53, 58 and 64UL of the Insurance Act, 1938 [*para 2.1.3*]
- (ii) For the reasons explained in Chapter X *infra*, the proposals in relation to Investments (ss.27, 27A, 27B and 27C), restriction on dividends and bonuses (s.49), the Tariff Advisory Committee (ss.64UA, 64UB, 64UE, 64UJ, 64UK and 64UL), valuation of assets (s.64V), solvency margin (s.64VA) and restriction on opening new place of business (s.64VC) have not been finalised and no recommendations are being made in regard to these provisions [*para 2.1.4*]
- (iii) Provisions that are set out in a separate table at **Appendix-III** to this Report be deleted from the Act. The said recommendations cover deletions in s.2(12), s.2(13), s.2(16), s.2(17), s.2B(1), s.2C, s.3(5), s.3(4)(a), s.3(4)(ee), s.3(5), s.4, s.5(2) & (3) first and second proviso, s.6A(1) proviso, s.7(7), s.7(9B), s.10(1), s.10(2), s.10(2A), s.11(1A), s.12, s.13(1), s.13(3), s.13(4), s.13(6), s.14, s.15, s.15(2), s.15(3), s.16, s.22, s.27(2)(a), (b) and (6), s.27A, s.27B, s.28(4), s.29, s.31B, s.32, s.33(7), s.35(1), s.35(3), s.40, s.40A, s.44(1)-Explanation, s.48, s.49, s.48A, s.52, s.52H to 52N, s.53, s.59, s.62 to 64, s.64UB (3) and (4), s.64UD, s.64UF

to UI, s.64UJ (2) to (6), s.64UM, s.64VA, s.65 to 94, s.95 to 101 and s.114 (f) [*para 2.1.5*]

- (iv) It is recommended that the following provisions of the IRDA Act, 1999, viz., s.2 (Definitions), Chapter II dealing with establishment and incidental matters of authority (ss.3-12); Chapter IV dealing with duties, powers and functions of the authority (s.14); Chapter V dealing with grants by central government, IRDA fund, accounts and audit (ss.15– 17); Chapter VI dealing with powers of central government (ss.18 – 23 & 25); s.24 providing the central government with power to make Rules; s.26 empowering Authority to make Regulations; s.27 requiring laying of Rules and Regulations before Parliament and s.28 (not barring application of other laws) be merged with the provisions of the Insurance Act, 1938 as indicated in **Appendix-IV** to this Report [*para 3.1.3*]
- (v) The final recommendations in relation to the changes be made in the provisions concerning the powers and functions of the Insurance Regulatory Development Authority (IRDA) are set out in **Appendix-V** to this Report. The sections of the Insurance Act, 1938 which are required to be accordingly amended are s.3, s.3(2)(f), s.3(2A), s.94A(2) (second proviso), s.3(2C), s.3(3), s.3(4), s.3A, s.3A(2), s.3A(3), s.3A(4) and s.3A(5) [*para 3.1.5*]
- (vi) The final recommendations concerning the powers of the IRDA in relation to revaluation of the affairs of the insurer, investigation, search and seizure, appointment and removal of managerial persons are set out in **Appendix-VI** to this Report. These recommendations to cover amendments to the following sections of the Insurance Act, 1938: s.33(1), s.33 (4), s.33(8), s.34B (4), s.34C, s.34E, s.34G, s.34H, s.35(1), s.35(3), s.36, s.37A(2), s.37A(4), s.42 (1), s.42(2), s.42(3), s.42(4), s.42(5), s.42(6), s.42(7), s.42D, s.42D (1) proviso (a), s.42D(8) & (9), s.64UM, s.64UM (1A) s.44, s.47A and s.53 [*para 3.1.6*]

- (vii) There is one development that has taken place in the recent past which requires to be noticed. It was reported in the January 2004 issue of the IRDA Journal that the Central Government had set up an Appellate Authority to review the rulings of the IRDA. According to the IRDA Journal, the notification issued by the Central Government has set up both a single and a division bench of the Appellate Authority and the Joint Secretary, Ministry of Finance, will constitute the single bench and while on the division bench he would be joined by another Joint Secretary of the Ministry of Law. The Law Commission is constrained to observe that whatever may be the compulsions of the Government to constitute such an Appellate Tribunal, the said arrangement is far from satisfactory in terms of having an independent and impartial adjudicatory appellate body. **[para 4.2.9]**
- (viii) The final recommendations of the Law Commission in regard to the grievance redressal mechanism are as under:
- (a) Adjudicating Officers/ Investigating Officers be appointed by the IRDA to adjudicate/ investigate violations with the Act, Rules and Regulations by insurers, insurance intermediaries and insurance agents and levy penalties as provided in the Act. Any person aggrieved by the decision of the Adjudicating/ Investigating Officers can appeal to the Insurance Appellate Tribunal (IAT).
 - (b) Every insurance company will set up an in-house grievance redressal mechanism under the overall supervision of the IRDA. It will be incumbent for every person seeking to file a claim before the Grievance Redressal Authority (GRA) to first approach the in-house mechanism. Where the decision of the in-house mechanism is not satisfactory to the claimant or where no decision is given within the period of 60 days from the date of making such claim to the in-house mechanism, it will be open to the claimant to

approach the GRA within a period of 60 days from the date of receipt of the decision of the in-house mechanism and of the expiry of 60 days after the making of the claim whichever is later.

(c) The Grievance Redressal Authority (GRA) will replace the present system of having Ombudsmen under the 1998 Rules at the major metropolises. The GRA will be a statutory authority exercising statutory functions. The GRA will not exercise any jurisdiction in relation to the levy of fines and penalties in relation to offences under the Act.

(d) The jurisdiction of the GRA will be to hear:

(I) Disputes between the insured and the insurer that pertain to personal lines of insurance on the following matters:

- i. any partial or total repudiation of claims by an insurer;
- ii. any dispute in regard to premium paid or payable in terms of the policy;
- iii. any dispute on the legal construction of the policies in so far as such disputes relate to claims;
- iv. delay in settlement of claims;
- v. non-issue of any insurance document to customers after receipt of premium; and
- vi. any other complaint against an insurer.

(II) Disputes between Insurer and the Intermediaries;

(III) Insurer and Insurer; and

(IV) Disputes between the assignees of a policy as to priority of assignment.

- (e) The GRAs should be dispersed as geographically widely as possible. For instance, there could be GRAs in each of the major cities in the country. This is necessary given the large number of policyholders at present and the prospect of this growing in the future. There could be more than one GRA in a State depending on the number of cases in that State.
- (f) The powers and jurisdiction of the GRAs would include all the powers and functions of the civil court and would involve adjudication of issues of fact and law.
- (g) In addition to the above, it could be provided that all pending disputes arising under the Insurance Act, 1938 before the consumer fora would be transferred to the GRAs for disposal in accordance with the provisions of the Insurance Act, 1938. To this extent an amendment may have to be made in the Consumer Protection Act, 1986 to provide that disputes arising under the Insurance Act, 1938 will not be entertained under the Consumer Protection Act, 1986.
- (h) There will be a clause expressly excluding the jurisdiction of civil courts and other tribunal/ fora in regard to such matters that form the subject matter of the jurisdiction of the GRA. Every claimant before the GRA will be required to make an express declaration that no similar claim has been made before any other fora or tribunal and further that he has availed the in-house mechanism of the insurer as indicated in para (ii) above.
- (i) With a view to encouraging alternate dispute resolution (ADR) by way of mediation or conciliation, it may be provided that a claimant may have the choice to opt for mediation or conciliation, in which case the GRA will refer the dispute for mediation or conciliation by a person or body agreed upon, or where there is no agreement, by a person or body nominated by the GRA from a

panel prepared by it. Further, the GRA may itself refer the pending dispute before it to an ADR process at any stage of the proceedings, with the consent of the parties.

- (j) The decision of the GRA, or the final decision on appeal, will be enforceable by the GRA which pass the initial order and for that purpose the GRA will exercise all the powers of a civil court.
- (k) The GRA should be a multi-member body comprising of one judicial member who will be the President and two technical members. The President and Members of the GRA will hold office till the age of 65 years. The President of the GRA should be a retired Judicial Officer not below the rank of a senior Civil Judge or a lawyer with not less than 20 years of experience nominated in consultation with the Chief Justice of the High Court.
- (l) As regards, appointment of technical members to the GRA is concerned, consultation with the Chief Justice of the High Court is not necessary. A panel of names of persons of not less than 15 years experience in the insurance industry can be prepared by the Central Government and sent to a Selection Committee comprising the members of the Insurance Councils constituted under s.64C of the Act. The said Selection Committee will recommend the names from among the panel of technical members to be appointed to the GRA. The Central Government will make rules in relation to the salaries and allowances and other terms and conditions of service of the President and Members of the GRA.
- (m) The GRA will formulate rules of procedure to cover matters relating to filing of claims, completion of pleadings, evidence on affidavits or otherwise, passing of awards and furnishing copies. These rules of procedure will also deal with matters relating to

enforcement of the decisions of the GRA as finally determined in appeals therefrom.

- (n) The President or Members of GRA shall not be removed from office except by an order made by the President on ground of proved misbehaviour or incapacity after enquiry made by a Judge of the High Court in which such President or Member has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. The Central Government will make rules to regulate the procedure for the investigation of misbehaviour or incapacity of the President and Members of the GRA
- (o) An appeal will lie from the decision of the GRA to an Insurance Appellate Tribunal (IAT). the jurisdiction of which will extend to hearing:
 - (I) Appeals from the GRA;
 - (II) Appeals against the orders passed by the Adjudicating/ Investigating Officers appointed by the IRDA;
 - (III) Appeal against any order passed by the IRDA. With the constitution of the IAT, the appellate authority constituted by a notification of the Central Government (as noticed in para 4.2.9 *infra*) will have to be wound up and the appeals pending before it will stand automatically transferred to the IAT;
 - (IV) Making of interim orders, conditional or otherwise, in relation to the above matters.
- (p) The IAT should be a multi-member body of a judicial member as President and two technical members. The IAT should be presided over by a retired High Court Judge nominated in consultation with the Chief Justice of India. A certain degree of transparency should be induced in the process of selection of such members. The

appointments of technical members to the IAT should also be done in consultation with the Chief Justice of India. For this purpose, a panel of names of persons of not less than 20 years experience in the insurance industry should be sent by the Insurance Councils (constituted under s.64C of the Act) to the Chief Justice of India. The names of technical members will be chosen with the concurrence of the Chief Justice of India. The Central Government will make rules in relation to the salaries and allowances and other terms and conditions of service of the President and Members of the IAT.

- (q) The President and Members of the IAT will hold office till the age of 68 years. The removal of the President and the Members of the IAT for proven misbehaviour or incapacity will be upon enquiry by a Judge of the Supreme Court of India in which such President or Member has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. The Central Government will make rules to regulate the procedure for the investigation of misbehaviour or incapacity of the President and Members of the IAT.
- (r) The Principal Bench of the Insurance Appellate Tribunal (IAT) should be in New Delhi. It is preferable that there is one IAT in each State. However, there can be one IAT for one or more States as may be decided by the Central Government, or by agreement between State Governments on the pattern of s.4(3) of the Administrative Tribunals Act, 1985.
- (s) The IAT will formulate rules of procedure to cover matters relating to filing of appeals, completion of pleadings, making of orders both interim and final and furnishing copies.

- (t) The expenditure for the constitution of the GRAs and the IATs and their maintenance must be borne by the Central Government in as much as they are to adjudicate disputes arising under a central statute.
- (u) There will be a further statutory appeal to the Supreme Court from the decision of the IAT. The appeal will have to be filed within 60 days of the decision of the IAT.
- (v) There should be an adjudication fee levied in respect of a claim before the GRA and an appeal before the IAT. However, any individual policyholder, may upon showing sufficient cause, be exempt by the GRA or the IAT, as the case may be, from paying such adjudication fee.

[para 4.3.8]

- (ix) The final recommendations of the Law Commission in regard to s.45 are:
 - (a) The period beyond which no repudiation of a life insurance policy on any ground whatsoever be fixed at five years. This should be a sufficient period for an insurer to check the veracity of the details provided by the insured at the time of issuance of the policy. After a period of 5 years after the coming into force of a life insurance policy, i.e., the date of issuance of the policy or the date of commencement of such policy or the date of the revival of such policy or the date of the rider to such policy whichever is later, no insurer can repudiate a claim thereunder on any ground whatsoever.
 - (b) The insurer can repudiate a policy of life insurance at any time before the expiry of a period of five years from the date of issuance of the policy or the date of commencement of risk or the date of revival of

the policy or the date of the rider to the policy whichever is later on the ground of fraud. The insurer will have to communicate in writing to the insured or the legal representatives/ nominees/ assignees of the insured the grounds and materials on which such decision is based. The claimants will in such instance not be entitled to either the policy amount or the premium amounts.

- (c) The insurer can repudiate a policy of life insurance at any time before the expiry of a period of five years from the date of the policy or the date of commencement of risk or the date of revival of the policy or the date of the rider to the policy whichever is later on the ground that the insured had made a misstatement of or suppressed a material fact, i.e., a fact material to the assessment of the risk, either in the proposal form or any other document on the basis of which the life insurance policy was issued or revived or a rider issued to it. While such repudiation will result in the claimants forfeiting the policy amount it will not entail their forfeiting the premium amounts collected on the policy. Thus in case of repudiation of the policy on the ground of misstatement or suppression of a material fact, and not on the ground of fraud, the premiums collected on the policy till the date of repudiation will be liable to be returned to the insured or the legal representatives/ nominees/ assignees of the insured.
- (d) The misstatement of or suppression of fact will not be considered material unless it has a direct bearing on the risk undertaken by the insurer. The onus is on the insurer to show that had the insurer been aware of the said fact no life insurance policy would have been issued to the insured.
- (e) No repudiation of the policy to be permitted on the ground of fraud where the insured can prove that the suppression or misstatement of the material fact made was true to the best of his knowledge and belief

or that there was no deliberate intention to suppress the fact or that such misstatement of or suppression of a material fact was within the knowledge of the insurer or the agent of the insurer.

- (f) A person who solicits and negotiates a contract of insurance should be deemed for the purpose of the formation of the contract, to be the agent of the insurers, and that the knowledge of such person should be deemed to be the knowledge of the insurers.
- (g) The insurer will have to communicate in writing to the insured or the legal representatives/ nominees/ assignees of the insured the grounds and materials on which the decision to repudiate a policy on the ground of misstatement or suppression of a material fact is based.

[para 5.1.39]

- (x) S.45 be amended to reflect the changes recommended above. S.45 be recast as indicated in para 5.1.40.
- (xi) In relation to s.38 of the Insurance Act, 1938 concerning assignment or transfer of policy, the final recommendations of the Law Commission are:
 - (a) Sub-section (7) of s.38 should be retained, with some modification for the purpose of greater clarity.
 - (b) The contingencies under which an assignment or transfer would be treated as a conditional one to be clearly spelt out. The provision be amended to indicate that except where the endorsement of assignment or transfer expressly indicates that the assignment or transfer is conditional in terms of s.38 (7), every assignment or transfer will be deemed to be an absolute assignment or transfer

and the assignee or transferee as the case may be, will be deemed to be absolute assignee or transferee respectively.

- (c) Both terminologies, viz., assignment and transfer be retained in s.38 and they be used in the alternative to enable greater flexibility in the working of these provisions.
- (d) A separate sub-section be inserted to indicate that in case of partial assignment or transfer of a policy of insurance, the liability of the insurer shall be limited to the amount secured by the partial assignment or transfer and such policy holder shall not be entitled to further assign or transfer the residual amount payable under the same policy.
- (e) The provision should be appropriately amended to extend its applicability to all personal lines of non-life insurance business as well.
- (f) S.38 be amended to build in certain safeguards. The policy holder will have to disclose reasons for the assignment, the antecedents of the assignee and the exact terms on which the assignment is being made. There will be an obligation upon the insurer to get the credentials of the assignee verified at the cost of the insured. If the insurer is not satisfied that the assignment is bonafide, there would be an option to decline to register the assignment or transfer upon reasons in writing to be communicated to the policyholder subject to such decision being challenged by way of petition before the Grievance Redressal Authority.

[para 6.1.18]

- (xii) S.38 be amended to reflect the changes recommended above. S.38 be recast as indicated in para 6.1.19.
- (xiii) In relation to s.39 concerning nominations, the final recommendations of the Law Commission are:
 - (a) A clear distinction be made in the provision itself between a beneficial nominee and a collector nominee.
 - (b) It is not possible to agree to the suggestion made by some of the insurers that in all cases the payment to the nominee would tantamount to a full discharge of the insurer's liability under the policy and that unless the contrary is expressed, the nominee would be the beneficial nominee.
 - (c) An option be given to the policyholder to clearly express whether the nominee will collect the money on behalf of the legal representatives (in other words such nominee will be the collector nominee) or whether the nominee will be the absolute owner of the monies in which case such nominee will be the beneficial nominee.
 - (d) A proviso be added to make the nomination effectual for the nominee to receive the policy money in case the policyholder dies after the maturity of the policy but before it can be encashed.

[para 7.1.14]

- (xiv) S.39 be amended to reflect the changes recommended above. S.39 be recast as indicated in para 7.1.15.
- (xv) The final recommendation of the Law Commission in regard to penalties and certain other provisions are as under:

- (a) The amount of penalties prescribed in ss.102-105C be enhanced so that it is of a deterrent nature. A minimum penalty be indicated in each of these provisions.
- (b) The penalties will be adjudicated and levied after an enquiry by the Adjudicating/ Investigating Officer to be appointed by the IRDA as indicated in para 4.3.8 above. The provisions will be accordingly amended to indicate this position.
- (c) In relation to s.53 (2) (b) which deals with the grounds on which the IRDA can apply for winding up by the court, since clauses (i), (ii) and (iii) of sub-section (2) are the very grounds on which the IRDA can cancel the registration of an insurance company under s.3 (4), these clauses may be omitted. However, clause (iv) may be retained. In sub-section (1) of s.53, reference to Companies Act, 1913 be substituted by Companies Act, 1956.
- (d) In relation to s.54 concerning voluntary winding up, the provision be amended to the effect that an insurance company should not be wound up except on the ground that by reason of its liabilities it cannot continue its business.
- (e) In relation to s.58 concerning the scheme for partial winding up in sub-sections (3) and (4), reference to the Companies Act, 1913 may be substituted by the Companies Act 1956. In sub-section (4), the words ‘s.12 of the Indian Companies Act, 1913’ be substituted by ‘s.15 of the Companies Act, 1956’ and the words ‘ss.15 and 16’ be replaced by ‘s.17’.
- (f) In relation to ss.52A to 52G which deal with the management by an administrator, the provisions be amended to provide that if the IRDA after giving an opportunity to the insurer and after taking

into consideration the interest of policy holders, is of the opinion that it is necessary and proper to appoint an administrator to manage the affairs of the insurer carrying on life insurance business, the IRDA may, by an order, do so. The administrator shall receive such remuneration as the IRDA may direct. The IRDA may appoint some other person as an administrator if the one appointed earlier is not able to manage the affairs of the insurer. Sub-sections (1), (2) and (3) of s.52A be amended to give effect to the aforesaid recommendations.

- (g) S.52A be amended to provide for the period for which an administrator will initially be appointed. It may be appropriate if the limit in this regard is provided in the statute subject to the proposed provisions of s.52D. Since s.52BB (9) which vests in the administrator powers of the civil court, s.52A be amended to indicate that the administrator so appointed should be qualified and competent to exercise such powers.
- (h) S.52BB (2) be amended to provide that the appeal against the order of the Administrator will lie to the IRDA.
- (i) S.52D dealing with termination of appointment of administrator be amended to confer the power of cancellation of the order of appointment on the IRDA.
- (j) The punishment by way of fine for withholding documents of property from the Administrator under s.52F be enhanced to Rs.5,000/-.
- (k) The protection of action taken in good faith, as provided for in s.52G, be extended to the officers of the IRDA.

- (l) In light of the above amendments, s.52E be amended to substitute the word “Central Government” with ‘IRDA’.
- (m) Ss.52H to 52N be deleted in view of the changed policy whereby private players have been permitted to carry on insurance business.
- (n) The words and digits “or s.98” occurring in s.59 relating to return of deposits, be omitted.
- (o) In view of the express provision that no insurer other than an Indian insurance company shall begin to carry on any class of insurance business in India, the provisions relating to external companies, ss.62 to 64, be repealed.
- (p) S.64UL be amended to substitute the word “Central Government” by “IRDA”.
- (q) S.113 (1) relating to acquisition of surrender values be amended to indicate that the IRDA may from time to time notify the minimum amount of the paid up value and annuity.

[para 8.1.2]

- (xvi) Given the scope of the present reference and the nature of the issues involved, the Law Commission does not consider it appropriate to make any recommendations in regard to the provisions concerning surveyors and loss assessors; investments, tariffs, shareholders’ and policyholders’ funds and extent of foreign shareholding, **[paras 9.1.10 to 9.1.20]**.

10.1.2 We acknowledge the extensive contribution made by Dr. S. Muralidhar, Part-time Member of Law Commission, in preparing this Report as well as Consultation Paper.

We recommend accordingly.

(Justice M. Jagannadha Rao)

Chairman

(Dr. N.M. Ghatate)

Vice-Chairman

(Dr. K.N. Chaturvedi)

Member-Secretary

Dated: 1st June, 2004

**CONSULTATION PAPER OF THE LAW COMMISSION OF INDIA ON
REVISION OF THE INSURANCE ACT 1938**

[Para 1.6.1]

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

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

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

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

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

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

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

Some tentative grounds of revision

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

- I. The Insurance Act, 1938 being a legislation of colonial era, contains **provisions that are redundant and accordingly require deletion**. For example, provisions regarding provident societies and mutual insurance companies as also principal agents, chief agents and special agents, or references thereof, are no longer required and such provisions need to be deleted.
- II. Some of the provisions of the Act, are of **transitional** nature and should, therefore, be **deleted**. Further, matters covered in the Regulations framed by the IRDA should be deleted from the Act, in order to avoid duplication. Further, The IRDA Act, 1999 has inserted some provisions in the Insurance Act, 1938, the effect of which was to nullify some existing provisions. They have not been deleted, thus giving rise to anomalies, for example, definitions of the term 'insurance company' [s.2 (8)]. Such provisions require to be deleted.
- III. References in the Insurance Act, 1938 to older enactments have to be replaced by references to the corresponding new legislations that have replaced such enactments. For e.g., references to the Indian Companies Act, 1913 have to be replaced by the Companies Act, 1956.
- IV. The insurance sector, which earlier covered only a few areas like life and marine insurance, has now expanded to cover various kinds of risk activities. Hence **reclassification of insurance businesses** is necessary. For instance, insurance business may broadly be classified as 'life' and 'non-life' or 'short term' and 'long term' insurance business. For this purpose, the definition of the term 'insurance' and 'insurer' would have to be amended.
- V. The IRDA exercises its powers by and large under the provisions of the principal Act. Therefore, it is appropriate as well as necessary that the **relevant provisions of IRDA Act be merged in the Insurance Act, 1938**.
- VI. The IRDA while regulating the business activities of the insurers exercises quasi-judicial powers, in addition to the administrative powers, e.g., issue, renewal and cancellation of registration certificate to insurers, order in regard to investigation of the affairs of the insurers, making application to the court for the winding up of the insurance companies, grant of licenses to the insurance agents etc. It is felt necessary that there must be a **provision of appeal against the decisions of the IRDA to an independent body constituted under the Act itself**.
- VII. The insurance business has increased several fold even while policy holders have not been entirely satisfied with the manner of functioning of insurance companies, particularly in the area of settlement of claims. Although at present, there is in place of the office of an Ombudsman under the Redressal of Public Grievances Rules, 1998, complaints nevertheless continue to be filed in the consumer fora constituted under the Consumer Protection Act, 1986. In order to provide a more effective grievance redressal missionary, while at the

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

- VIII. The principle of *uberrimae fidei*, i.e., of absolute good faith, governs both the parties to a contract of insurance. Though standardized insurance policies prohibit certain misleading contract provisions, problems have arisen with misrepresentation or non-disclosure whenever personal characteristics are collected by insurance agents for risk classification. In this context, the issue is whether a failure to make a disclosure of the material information would render the contract void or voidable. For this purpose, some **specific statutory enumerations are required for protecting the interest of policyholders so that unintended minor mistakes in disclosure do not lead to a loss of coverage**.
- IX. Provisions regarding investments, loans and management need review and revision. The IRDA has made detailed investment regulations, hence provisions are to be revised so as to eliminate inconsistencies and duplication. **The term “approved securities” is required to be revised in the context of new economic policy and business practices.**
- X. At present, there is no provision in the principal Act for motivation or encouragement for insurers to invest in “Research & development” or “Technology up gradation” as regards valuation of assets for the purpose of solvency margin calculations. There is a suggestion that it is appropriate if such **provisions for taking a portion of the investment/ expenditure in areas as directed by the IRDA are incorporated in the Act for the purpose of “Solvency Margin” so as to encourage insurers to take up such investments.**
- XI. The provisions regarding solvency margin of the principal Act have been amended by the IRDA Act, 1999. But these provisions still require revision because they stipulate minimum level of solvency margin without a control level, i.e., a position below which the Authority can get warning signals in respect of a particular insurer. **The Principal Act is required to be amended so as to empower the Authority to intervene whenever the solvency margin falls below the control level.** IRDA has framed regulations for the determination of the amount of liabilities, solvency margin and valuation of assets. But the provisions regarding solvency margin are still to address the extent of appropriate matching of assets and liabilities.
- XII. The Principal Act and IRDA Act empower the Central Government and the Authority to frame rules and regulations. These are to be revised and harmonized with the Act in the context of new regulatory regime.
- XIII. The Act provides for **penalties** in the miscellaneous part of the Act, for contravention or non-compliance of the provisions of the Act or Regulation or rules under ss.102 to 105C. **These provisions of the Act are to be reviewed and revised as the amount of fine or penalty provided therein is not adequate enough to be considered now as a fine or penalty.** In addition to these provisions, there are other provisions which provide for the punishment along with the other provisions requiring mandatory compliance. It is

appropriate that all such specific clauses on penalty may be shifted to the chapter dealing with the penalties.

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

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

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

8. Proposals for revision

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

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

8.1.3 For this purpose, the definitions enumerated in s.2 may be merged in the definition part of the Principal Act. Chapter II of the Act of 1999 dealing with the establishment and other incidental matters regarding Authority (SS. 3-12); Chapter IV dealing with the duties, powers and functions of the Authority (S.14); Chapter V dealing with the grants by Central Government, IRDA fund and Accounts and Audit (Ss. 15-17); Chapter VI dealing with powers of the Central Government (Ss. 18-23 and 25) may be placed together and merged in the Principal Act before part II of the Principal Act under the proposed part "Part IA" to be entitled as 'Insurance Regulatory and Development Authority'. S.24 providing the Central government the power to make rules, s.26 providing the Authority power to make regulations and S.27 providing for laying of rules and regulations before the Houses of Parliament may be merged respectively in ss.114 and 114 A of the principal Act providing for the same. Again S.28 may be shifted to the principal Act after s.114A.

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

8.1.5 For ready reference, a table showing the scheme for merger of the provisions of the IRDA Act with the Insurance Act is set out hereunder: (already appended to main Report as Appendix-IV and therefore not repeated here)

8.2 Changes in definitions, deletions and other amendments

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

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

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

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

8.3 Powers of the IRDA

8.3.1 The powers of the IRDA include the power to grant registration, to refuse the registration, to cancel or suspend or renew registration. In all these areas, it is proposed to make certain changes which are set out in the form of a table as under: (already appended to main Report as Appendix V and therefore not repeated here)

8.3.2 In regard to the other powers of the IRDA in relation to revaluation of the affairs of the insurer, investigation, search and seizure, appointment and removal of managerial persons, the changes proposed are set out in a tabular form as under: (already appended to main Report as Appendix VI and therefore not repeated here)

8.4 Obligations of the insurers under the Act

8.4.1 These obligations can be broadly categorised as under:

- (i) Restriction on the name of the user (s.5);
 - a. Maintaining of deposits (s.7)
 - b. Maintaining separation of accounts and funds (s.10)
 - c. Preparing accounts and balance sheet (s.11)
 - d. Requirements as to audit (s.12)
 - e. Submission of actuarial report and abstract (s.13)
 - f. Maintaining register of policies (s.14)
 - g. Submission of returns (s.15)
 - h. Returns by insurers outside of India (s.16)
 - i. Making of investments (s.27)
 - j. Investment of controlled fund (s.27A)
 - k. Investment by insurers carrying on general insurance business (s.27B)
 - l. Investments not to be made outside India (s.27C)
 - m. Submission of statement of investments of assets (s.28)
 - n. Submission of return of investments (s.28A & B)
 - o. Prohibition on giving of loans (s.29)
 - p. Maintaining of assets (s.31)
 - q. Restriction on payment of excessive remuneration (s.31B)
 - r. Limitation on employment of managing agents (s.32)
 - s. Prohibition of common officers (s.32A)
 - t. Obligations in rural and social sector (s.32B & C)
 - u. Statements after amalgamation (s.37A)
 - v. Prohibition of payment of commission (s.40)
 - w. Payment of renewal commission [s.40 (2A)]
 - x. Heritable commission (s.44)
 - y. Limitation on expenses of management (s.40B & C)
 - z. Prohibition on rebates (s.41)
 - aa. Register of insurance agents (s.43)
 - bb. Restriction on dividends and bonus (s.49)
 - cc. Prohibition of business on dividing principle (s.52)
 - dd. Maintenance of solvency margin (s.64V & VA)
 - ee. Restriction on opening of new place of business (s.64VC)

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

8.5 Interests of the policyholders

8.5.1 Supply of copies of proposal and medical reports

Every insurer carrying on life insurance business is under an obligation to supply to the policyholder under s.51 certified copies of the questions put to him and his answers thereto contained in his proposal for insurers and in the medical report supplied in connection therewith, on an application by the policyholder and payment of the fee which shall not exceed Re.1. The fee prescribed is too inadequate. It would be appropriate if the fee which is to be charged for such purpose is prescribed in the regulations. Hence amendment to this effect may be made.

8.5.2 Notice to given of the options on the lapsing of the policy

Every insurer carrying on life insurance business is required under s.50 of the principal Act to give notice to the holder of life insurance policy before the expiry of three months from the date on which the premium in respect of a policy of life insurance were payable but not paid, informing him of the options available unless these are set forth in the policy.

The notice given by the life insurer is certainly a notice given prior to the lapsing of the policy and in fact protect the interests of policyholders. But the provisions of this section do not mentioned of this notice if the options available to the assured on the lapsing of the policy are set forth in the policy. It is suggested that even if the policy details about options, such a notice is required because life insurance policies are long-term policies and in the ordinary course of business. These options are seldom noticed by the policyholder. Hence the words “unless these are set forth in a policy” may be omitted, which would make the notice requirement unconditional.

8.5.3 Policy not to be called in question on the ground of mis-statement after two years

8.5.3.1 S. 45 places restrictions on the right of the insurer to repudiate his liability under the policy. This section provides that a life insurance policy cannot be called in question after the expiry of two years from the date on which it was effected on the ground of mis-statement in the policy unless it is shown that all the three conditions enumerated in second part of s.45 are satisfied, viz., (i) the statement must be on a material fact, (ii) there has been suppression of the material fact which it was material to disclose or the facts have been fraudulently made by the policy holder, and (iii) 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.

8.5.3.2 The section was enacted to prevent immense loss and hardships caused to the insured and his legal representatives because the insurers avoided contract of life insurance policy due to incorrect statements whether material or not made by the insured even after the policy had been in force for several years and all the premium paid were

forfeited in that case by the insurer. Thus the provision in effect mitigated the rule of *uberrima fides*, i.e., utmost good faith. The life insurance contracts are basically governed by this rule and obligation to deal fairly and honestly is upon both the parties equally.

8.5.3.3 The provisions of this section does not affect the insurer's right for a period of two years from the date of the policy, but thereafter, no policy can be challenged on the ground that mis-statement made in the proposal or in any report of the medical officer was inaccurate or false unless it was material to disclose and it was fraudulently made. However, the provisions of this section do not confirm any right on the insurer to repudiate a policy which has been in force for less than two years on the grounds as stated above irrespective of its materiality.

8.5.3.4 In the past, problems have arisen with misrepresentation or non-disclosure whenever personal characteristics are collected by insurance agents for risk classification. The legal questions involving this characteristic usually center on the disclosure of material information by the insured. In this context, the issue is when would failure to make such a disclosure render the contract void or voidable. There have been several judgments of the Hon'ble Supreme Court in this regard which have underscored the importance of the burden of proof shifting to the insurer after the expiry of two years after the effective date of the policy, if the insurer seeks to repudiate the claim on the basis of fraud or suppression of facts which were material be disclosed. (For e.g., *Mithoolal Nayak v. Life Insurance Corporation of India*, AIR 1962 SC 814 and *Life Insurance Corporation of India v. Smt. G.M. Channabasamma*, (1991) 1 SCC 357).

8.5.3.5 In its 112th Report in 1985, the Law Commission of India dealt with the question of repudiation of claim by the LIC in the context of s.45 of the Act. After considering the views of the insurers and policyholders, as well as the judgment reports, the Commission suggested that s.45 be amended to provide that:

- (1) No policy of life insurance shall be called in question after the expiry of three years from the date on which the policy is effected or where the policy is revived after it has lapsed for any reason, from the date on which it is so revived.
- (2) A policy of life insurance may be called in question at any time within three years from the date on which the policy is effected or, as the case may be, the date on which it is revived, on the ground that any statement being a statement 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."

8.5.3.6 It is proposed that the changes recommended by the Law Commission in its 112th Report as stated above be once again recommended. This will, it is hoped, sufficiently protect the interests of the policyholders.

8.5.4 Policyholders to elect the directors of insurers

S.48 of the Act provides for election of one-fourth of the directors of the insurance company by the holders of life insurance policies and also as to the eligibility

requirements of policyholders for such election. This section had become irrelevant since the nationalization and establishment of LIC, therefore should have been repealed long back. But in the changed economic scenario and private players in the field, the provisions again require the reconsideration, especially in the context of insurance cooperative society as insurers, where the directors are elected by not only the members of the society but even by policy holders because many of them would be member-policy holders.

The deletion of this section has been suggested in view of the regulations relating to the protection of policyholder's interest, which adequately ensure the protection of their interest. It may be noted here that the IRDA itself has a member to represent the consumers. Moreover, regulations relating to solvency margin and investments also secure their interest. If this section is repealed, consequently s.114 (2) (f) would be required to be deleted as it empowers the Central Government to make rules for the purposes of s.48. Further, Rules 13, 14 and 15 of Insurance Rules would have to be deleted as they laid down the procedure for election of the Director by the policyholders.

This suggestion may be considered but in case of insurance cooperative society, the directors are elected by the members of the society and would be elected even by policyholders because many of them would be member-policy holders. Hence, in view of this, the repeal of this section would not be appropriate.

8.5.5 Life Insurance agents not to be appointed as directors of life insurance companies

8.5.5.1 S. 48A prohibits life insurance agents to become or to remain as directors of any insurance company in order to protect the interests of policyholders. The disqualification prescribed in this section may also be made applicable to insurance agents of general insurance business. Therefore, the provisions of s.48A may be amended to that effect.

8.5.5.2 The words "or general insurance business" may be added after the words "life insurance business". Consequently, marginal note to the section would also require amendment. The word "Life" occurring in the marginal note may be omitted.

8.5.5.3 The words "and no chief agent or special agent" are required to be omitted. Similarly, the words, "carrying on life insurance business" need deletion, so also the proviso to this section.

8.5.6 Assignment and transfer of policies

8.5.6.1 Life insurance policies are held by the policyholders to secure their future as these policies create a vested interest and have been dealt as having the features of intangible property. S.38 therefore provides for the transfer or assignment of a policy of life insurance by an endorsement upon the policy itself or by separate instrument signed by the transferor/ assigner or by any authorized agent and attested by one witness setting forth the fact of transferring assignment. The transfer/ assignment can be made in favour

of the insurer also but shall not confer upon the transferee or assignee or his legal representative any right to sue for the amount secured under such policy until a notice in writing of the transfer have been delivered both by this transfer and transferee to the insurer. There can be more than one transfer/ assignment as per sub-section (3) of this section. In such cases the priority of claims shall be governed in the order in which notices have been delivered.

8.5.6.2 Although s.38 resembles s.130 of the Transfer of Property Act, 1882, it excludes the operation of the latter provision from the field since the former (s.38 of the Insurance Act, 1938) is a specific statutory provision.

8.5.6.3 This section deals with both absolute and conditional assignments, the former transferring to the assignee all rights, title and interest which the assigner has in the policy without any defeasance clause, and the latter being a conditional assignment as contemplated under sub-section (7) which creates an immediate vested interest in the assignee but which is liable to be divested on the happening of events specified in the assignment. **A question arises whether a conditional assignee is entitled to obtain a loan under, or surrender, the policy without the concurrence of the insured.** If it is answered in affirmative, the conditional assignment would stand converted into an absolute assignment and defeat the object of the former. While any transfer is subject to the terms and conditions specified in the instrument of transfer, the specific provisions in sub-section (5) of s.38 may mean either or both of the following: First, under sub-section (7), the assignor may become entitled to the policy money if the assignment becomes inoperative; second, the insurer may not recognize the assignee as the only person entitled to benefit under the policy if the terms of assignment expressly or by implication do not confer on him any particular right or benefit and treat the insured for such entitlement. If the insured reserves the right to receive the policy money on maturity, the assignee cannot exercise the right to surrender.

8.5.6.4 The interpretation of sub-section (7) may create some difficulty in view of sub-section (5), for example, a specified event during the life time of the insured may not refer to an event affecting the status etc of the assignee.

8.5.6.5 There is another difficulty if an assignment is duly executed but no notice has been delivered to the insurer under sub-section (2). The assignment is not invalid but the assignee will not have the right to sue the insurer. In this backdrop, the provisions of sub-sections (5) and (7) need reconsideration and revision so as to remove anomalies. However, a suggestion has been made that sub-section (7) should be dropped. This may, however, attract the application of s.130 of the Transfer of Property Act unless a proviso is made to exclude the application of s.130 of the Transfer of Property Act.

8.5.6.6 S.38 (4) prescribes one rupee as the fee for acknowledgement of the notice of the transfer of assignment. This amount is wholly inadequate. Hence, the words one rupee may be replaced by the words “not exceeding an amount prescribed by the Authority in the Regulations”.

8.5.7 Proposal for partial assignment of policies

8.5.7.1 The Act does not provide for partial assignment of policies required especially in case of assignments for collateral security for loans, where the sum assured is more than the amount of loan. **It is, therefore, suggested that a new sub-section may be inserted to provide for partial assignment of policies with the rider that the original assignor is not allowed to further assign his residual rights to the third party with a view to prevent any clash of interest of several assignees at the time of making the claim.**

8.5.7.2 The provisions of this section are applicable to only life insurance policies. **It is desired that its application be extended to all personal lines of non-life insurance business.**

8.5.8 Nomination by policyholder

8.5.8.1 S.39 provides for nomination of life insurance policies. It enables the holder of the policy to nominate the person to whom money secured by the policy shall be paid in the event of death of the policyholder. Such a nomination can be made when effecting the policy or at any time before the policy matures and can be changed or cancelled by an endorsement or a will. However, any change or cancellation in this regard is to be notified to the insurer under sub-section (2); otherwise insurer would not be liable to make any payment to the nominee.

8.5.8.2 Sub-section 3 prescribes fee of Re.1 to be charged for written acknowledgement in respect of registration of nomination or any change thereof. The fee is inadequate and hence be enhanced. The maximum limit may be specified in regulations by the Authority. Accordingly, sub-section may be amended. Thus the words “amount as specified in the regulations by the Authority” be substituted for the words “one rupee”.

8.5.8.3 Sub-section (4) contemplates automatic cancellation of a nomination in case of transfer and assignment of the policy except where the assignment is made in favour of insurer for advancement of loan. What about a situation where a policy is assigned to a non-insurer under s.38? In such cases, the problem of nomination and related matters may create difficulties. In order to deal with this problem **it is appropriate that the existing proviso to this section may be given effect to cover this situation or another provision may be inserted to the effect that the nomination stands automatically revived when the policy is reassigned by the assignee in favour of the policyholder on repayment of loan other than on security of policy to the insurer.**

8.5.8.4 Generally, upon reassignment of the policy, the policyholders forget to intimate insurer of any change of nomination or their intention to continue the same nomination which existed at the time of assignment of the policy. Hence **an explicit provision may be inserted to the effect that nomination that existed at the time of assignment be restored or on assignment of the policy to the holder that very nomination shall be deemed to be in force till it is cancelled or changed as provided in sub-section (2).**

This kind of additional provision would facilitate insurers in discharging their liabilities expeditiously in respect of policy money.

8.5.8.5 Sub-section (6) of the section provides that if a nominee survives the insured person, the amount of the policy money would be payable to such nominee-survivor/s. The section does not indicate clearly as to whether the nominee is entitled to retain the money so paid as the beneficial owner of the amount or he is merely the nominal owner of the money which forms part of the estate of the insured person so that his heirs, creditors, legatees may have claims on that money.

8.5.8.6 The case law on this issue reveals two trends. One is that s.39 (6) confers on the nominee merely the right to collect and receive from the insurer, the policy money. The other is that the nominee is not merely a recipient of the money but also the beneficial owner thereof. Various High Courts have adopted different approaches in interpretation of the provisions of sub-section (6) of s.39 giving rise to two views. The Gujarat, Calcutta, Karnataka, Kerala and Orissa High Courts adopted one view and the Andhra Pradesh and Allahabad High Courts took the other view.

8.5.8.7 The Law Commission of India in its 82nd Report in 1980, dealt with the issue of the rights of the nominee, heirs, creditors, legatees of the insured of the money secured by the policy of life insurance after it is paid to the nominee. The Commission surveyed the then existing case law and other legislative precedents. It also considered the aspect of social justice i.e. legitimate expectations of the near relatives, especially women, parents and children who deserve financial protection after the death of policy holder because death is like to have the deepest impact on their personal lives and found that the existing provisions fail to fulfil the same. The Commission also noted that when a person makes a nomination, he cannot confer on any nominee any right higher than what he himself has and that this would accordingly determine the rights of the nominee in the sum assured under the life insurance policy. Accordingly, the Commission in its 82nd Report (1980) recommended the inclusion of the following provisions:

“(6A) Subject to the other provisions of this section, where the holder of a policy of life insurance on his own life nominates his parents, or his spouse, or his children, or his spouse and children, or any of them, the nominee or nominees shall be beneficially entitled to the amount payable by the insurer to him or them under sub-section (6) unless it is proved that the holder of the policy, having regard to the nature of his title to the policy, could not have conferred any such beneficial title on the nominee.

(6B) Subject as aforesaid, where the nominee, or if there are more nominees than one, a nominee or nominees, to whom sub-section (6A) applies, die after the person whose life is insured but before the amount secured by the policy is paid, the amount secured by the policy, or so much of the amount secured by the policy as represents the share of the nominee or nominees so dying (as the case may be), shall be payable to the heirs or legal representatives of the nominee or nominees

or the holder of a succession certificate, as the case may be, and they shall be beneficially entitled to such amount.

(6C) Nothing in sub-sections (6A) and (6B) shall operate to destroy or impede the right of any creditor to be paid out of the proceeds of any policy of life insurance.

(6D) The provisions of sub-sections (6A), (6B) and (6C) shall apply to all policies of life insurance maturing for payment after the commencement of the Insurance (Amendment) Act.....”

8.5.8.8 In *Sarbati Devi v. Usha Devi*, AIR 1984 SC 346, the Hon’ble Supreme Court held that a mere nomination made under s.39 does not have the effect of conferring on the nominee any beneficial interest in the amount payable under the policy on the death of the assured. The court further observed that the nominee acquires no interest in the policy during the life time of the policy holder, therefore, after the death of the policy holder, the amount under the policy becomes payable to his legal heirs, the nominee is only the authorized person to collect the payment so that insurer gets a valid discharge of its liability under the policy. A very important observation made in this case is that the provisions of s.39 cannot alter the course of succession under the law. The observations in the aforesaid case were followed by various High Courts.

8.5.8.9 The above decision in *Sarbati Devi’s* case was taken note of by the Law Commission when it submitted its 137th Report in 1990 on the Employees’ Provident Fund Act. The Commission modified its earlier view and recommended as under:

- 5.11 On giving anxious consideration to all the relevant aspects, it appears possible to evolve a formula which would satisfy the demands of social justice and fairness besides according due weightage to the desire of the employee concerned. The solution strikes as eminently satisfactory is this. A statutory provision may be made to the effect that the amount payable under the Act and the Scheme will vest in the nominee who will be called the ”beneficiary-nominee” unless the concerned employee has named some person as a “collector-nominee” for the specific purpose of collecting the amount on behalf of the members of the family as defined in Para 2(g) for disbursement as per Para 70(ii) of the scheme. In other words, it would tantamount to giving an option to the workmen concerned who can name either a beneficiary nominee or a collector-nominee upon the significance of such nomination being explained to him. He may be required to express his option in clear terms stating that the nominees will be a beneficiary-nominee and not a collector-nominee or vice versa. The same formula can also be evolved in respect of life insurance policies and the recommendation by the Law Commission in its 82nd Report may be reiterated with this modification.
- 5.12 Nomination under life insurance policies – While it is outside the scope of the subject matter of this report it may not be inappropriate that a similar formula can be adopted in respect of nominations under life insurance policies in the context

of the recommendation made by the Commission in its 82nd report presented more than a decade ago on 2nd February, 1980.

- 5.13 For, even in respect of life insurance policies, the public at large is perhaps unaware of the true legal position. Many of the persons seeking the protection of insurance policies may well be labouring under the misconception that the nominee would become an absolute beneficiary in his or her own right. The same would be the case with regard to those who are covered by the Act and the Scheme. It is, therefore, essential in the interest of all concerned that the position of law is settled. As has been recounted earlier, the Commission has already recommended amendment of the Life Insurance Act with a view to making a nominee a person in whom the beneficial interest would vest to the exclusion of other heirs. Since, however, no decisions has been taken on the recommendation of the Law Commission, the matter is still not free from vagueness in the sense that the members of the public may not be full aware of the implications of nominations and the import of the decision of the Supreme Court in Sarbati Devi's case. That is why the course suggested in para 5.12 read with para 5.11 hereinabove deserves to be adopted.

The above recommendation is reiterated and views are invited on whether s.39 can be amended accordingly.

8.5.8.10 A suggestion has been made that, in case the policyholder dies after the maturity of the policy but is not able to encash the proceeds because of his death, a nominee may be entitled to the same. To this effect, a proviso may be added to make the nomination effectual for receiving policy money.

8.5.8.11 Another suggestion has come for enabling the insured person, by way of an option, to make a nomination that confers absolute ownership of policy money on the nominee upon the death of the life assured. According to this suggestion, such a nomination will place the nominee on the same status as that of a nominee under s.45ZA of the Banking Regulation Act, 1949.

8.5.9 Payment of money into court

Many a times, it is impossible for the insurer to satisfactorily discharge any life insurance policy for payment due to conflicting claims, or insufficiency or proof of title, to the amount secured thereby. In such situations, the insurer may, under the provisions of s.47, with the permission of the court and subject to conditions specified in sub-sections (3) and (4) of the section, make payment of the same (deposit) into the court. The claimants in such cases would certainly like to engage lawyers and ultimately in this process the claimants become the victim rather beneficiary of the amount so claimed. **It is, therefore, suggested that insurer may, in the circumstances as aforesaid, may deposit the amount with IRDA or the apparent tribunal as the case may be. It is appropriate if an Insurance Lok Adalat is constituted for disposing of such claims.** Such a procedure would be in the interest of the claimants because disposal by Lok Adalat would be speedy and without any technicalities.

8.6 Tariff Advisory Committee – composition and powers

8.6.1 The tariff rates in respect of general insurance business are determined by a body known as Tariff Advisory Committee established under a principal Act in 1968 (Insurance Amendment Act of 1968). Before its establishment, tariff committee regulated the rates and advantages in respect of general insurance business.

8.6.2 The principal Act provides under s.64 U for the establishment of a Tariff Advisory Committee (TAC), a body corporate having perpetual succession and common seal, to control and regulate the rates advantages, terms and conditions that may be offered by insurers in respect of general insurance business.

8.6.3 It is an important body functioning under the control of the Authority since 1999. Before 1999, TAC was functioning under the Controller of Insurance. The primary objective of the committee is to fix the price of the insurance products scientifically in order to standardize decision-making choice of the consumer.

8.6.4 Composition of TAC

The Act prescribes the composition of TAC, as to consist of a Chairman (ex-officio chairman of the Authority), a Vice Chairman (a Senior Officer of the IRDA to be nominated by the Authority), not more than 10 elected representative of insurers and not more than four representative of insurers domiciled outside India but registered in India.

8.6.5 At present the practice is that members of the Advisory Committee are not elected but are nominated or co-opted. In view of this practice, the provisions may be amended. The following provision may be substituted in clause (c) of s.64 UA (1):

“not more than 10 representatives of Indian insurers and not more than 4 representatives from government departments, professional bodies, etc. nominated by the Authority and/or the Central Government”.

8.6.6 The Authority is empowered to nominate Secretary of the TAC (S.64UA (2)) who functions under the direction and control of the Authority (sub-section (5))

8.6.7 Powers of the TAC

(i) Power to control rates, advantages, terms and conditions in respect of risk other than life (general insurance)

8.6.7.1 The Act empowers TAC, under s.64 UC to control and regulate the rates, advantages, terms and conditions offered by the insurers in respect of any class of risk and it shall be binding on all insurers. However, in certain cases it may permit any insure for a limited period (not exceeding 2 years) to adopt different rates from those fixed by it, subject to such conditions as may be imposed by TAC.

8.6.7.2 Sub-section 3 provides that every decision of TAC would be valid only after its ratification by the Authority, whereas, provisions of sub-section (4) states that the

decisions of TAC under the provisions of this section would be final. The provisions of both these sub-sections reveal inconsistency, therefore provisions need to be recast so as to remove the same. The issue is – when decisions have to be ratified by the Authority, then obviously those should be treated as final, why should the provisions of sub-section (4) be retained?

8.6.7.3 The insurers, who commit any breach of rate/ advantage fixed by TAC, are guilty of the contravention of the provisions of this Act under sub-section (5) of this section. Surprisingly, proviso to this sub-section allows the Authority to make good the contravention by recovering from the insurer deficiency in the premium or compounding the offence of contravention by allowing the insurer to make payment to the Advisory committee of the fine of the amount not exceeding Rs.1000.

8.6.7.4 **The amount of fine is not adequate, hence should be enhanced.** Again, if deficiency in premium is not rectified then 25% of the difference of the premium to be recovered from the insurer may be provided for.

(ii) Power of TAC to require information

8.6.7.5 TAC may require by notice under S.64 UE any insurer to supply necessary information within the period specified by it and failure to do so would be deemed as contravention of the Act. This provision is similar to that of the s.44A wherein the Authority has been empowered to exercise similar powers.

8.6.7.6 Sub-section (3) of s.64 UE empowers the Authority to depute any of its officers to make personal inspection of accounts, ledger etc. in order to verify accuracy of statements furnished by the insurer.

8.6.7.7 Advisory committee is a statutory body and it is appropriate that the powers under this section be exercised by TAC instead of Authority because verification of whatever submitted by the insurers under sub-section [1] should be done by the Advisory committee and not by the Authority. Therefore, in sub-section (3), the word “Authority” may be substituted by words ‘committee on its own or as directed by the Authority.’

8.6.7.8 TAC is also empowered to make arrangements for inspection on application of the insurer under sub-section (4) in respect of risks, adjustment of losses etc. However, the proviso to it states that such inspection can only be made with the written permission of the organization (insurer). **It is appropriate if instead of ‘written permission’ the words ‘prior written intimation’ be substituted, because inspection under this sub-section is on the application of the insurer, hence permission of organization seems to be irrelevant.**

(iii) Power of the TAC to constitute Regional committee

8.6.7.9 The provisions of S.64 UJ empowers the Advisory Committee to constitute regional committees. As already stated, the regional committees aren’t functioning

anymore, hence sub-sections (2) to (6) may be deleted and sub-section (1) may be recast as follows:

“The Authority/ Advisory Committee may constitute such regional or other committees for the purpose as it deems fit.”

(iv) Power to make rules

8.6.7.10 The authority has been empowered under S. 64 UB to make regulations in respect of functions to be performed by the TAC, terms of the office of its members, procedure for election & other matters relating to the transaction of its business.

8.6.7.11 Clause (b) of sub-section (2) may be amended so as to give effect to ‘nomination’ in place of election of its members.

8.6.7.12 Sub-section (3) empowers TAC to make regulations in respect of Regional Committees. As the Regional Committees are not functioning anymore, the provisions of this sub-section may be deleted.

8.6.7.13 Again, the provisions of sub-section (4) need omission as they are transitional in nature and have become redundant long back.

8.6.8 Need for repeal of certain provisions relating to TAC in part IIB of the principal Act

8.6.8.1 Some of the provisions in part IIB of the principal Act are required to be repealed as being transitional in nature which are as follows:

(a) The provisions of S. 64 UD, except proviso to sub-section (1) (inserted by Act of 1999), being transitional in nature need to be repealed as they have become redundant long back.

(b) Proviso to sub-section (1) may also be repealed because its provisions have been taken care of under clause (a) of S.64 UA (1).

(c) The provisions of S. 64 UF providing for assets and liabilities of General Insurance Council to vest in the Advisory Committee after the commencement of the Amendment Act, 1968 need to be repealed as the assets and liabilities have already been vested in TAC.

(d) The provisions of S.64 UG also need to be repealed because its provisions have become irrelevant as all the contracts/ agreements made by the Tariff Committee before 1968 are dealt by the Advisory committee as also the suits or legal proceedings filed by or against Tariff committee after 1968 Amendment are being dealt by TAC . It is obvious that after a period of more than 3 decades, these provisions do not have any relevance.

(e) Similarly, provisions of S.64UH protecting the interest of the employees of Tariff Committee who were in employment before the Amendment Act 1968 need to be repealed because all those employees are now the employees of the Advisory Committee and others, who could not, should have availed the benefits mentioned under this section.

(f) The provisions of S.64 UI obligates every person, who is in possession or custody of the property of the Tariff Committee or is in possession of documents relating to such property, to deliver those to the Advisory Committee. Here also there' is every possibility that the transfer of such possession of property and documents have taken place. Hence, provisions have become redundant, therefore, to be repealed. Even if such delivery has not taken place, can it be claimed under the law after a period of more than 3 decades?

8.7 Machinery for redressal of grievances/ claims

The 1998 Rules

8.7.1 In 1998, the central government framed the Redressal of Public Grievances Rules, 1998 in exercise of the powers under s.114 (1) of the Insurance Act, 1938. Under these Rules, there was to be a governing body of Insurance Council which was in turn, under Rule 6 to appoint one or more persons as Ombudsman for the purposes of these Rules. An Ombudsman is appointed under Rule 7 for a term of three years and shall be eligible for reappointment. However, no Ombudsman shall hold office after attaining the age of 65 years.

8.7.2 Under Rule 12 the powers of the Ombudsman are to receive and consider:

- (a) complaints under Rule 13 - i.e., a grievance by a person against an insurer, which complaint has to be made after rejection of such persons representation by the insurer;
- (b) any partial or total repudiation of claims by an insurer;
- (c) any dispute in regard to premium paid or payable in terms of the policy;
- (d) any dispute on the legal construction of the policies in so far as such disputes relate to claims;
- (e) delay in settlement of claims;
- (f) non-issue of any insurance document to customers after receipt of premium;

8.7.3 Under Rule 12 (2) the Ombudsman “shall act as counsellor and mediator in matters which are within his terms of reference and, if requested do so in writing by mutual agreement by the insured person and the insurance company”.

8.7.4 The decision of the Ombudsman is final. Under Rule 15 it appears that the insurance company has to comply with the decision of the Ombudsman whereas an option is given to the complainant whether or not he accepts the award. Where there is no such acceptance by the complainants, it is open to the Ombudsman pass an award “which he thinks fare in the facts and circumstances of the case”.

The protection of policyholders interests Regulations

8.7.5 The IRDA has, in exercise of its powers under s.114A (2) (zc) made the IRDA (Protection of Policyholders’ Interest) Regulations, 2002. Regulation 5 mandates that every insurer “shall have in place proper procedures and effective mechanism address complaints and grievances of policyholders efficiently and with speed and the same along with the information in respect of Insurance Ombudsman shall be communicated to the policyholder along with the policy document and as may be found necessary.” Under Regulation 8 the procedure for maintaining and processing a claim in regard to a life insurance policy has been set out. Regulation 9 lays down a similar procedure in respect of a general insurance policy.

Other mechanisms

8.7.6 Apart from the above mechanisms, at present a large number of complaints are being filed by dissatisfied policyholders under the Consumer Protection Act, 1986 alleging deficiency of service when either a claim is not settled or only partially settled. An analysis of the decisions rendered by the various consumer fora would reveal that a number of cases under this subject is growing by the day and the consumer fora are called upon frequently to interpret the provisions of the Insurance Act 1938. However, on account of the large number of other cases that are pending decision before the consumer fora, this remedy is no longer a speedy or efficient one.

8.7.7 Further, although there is some mechanism, as spelt out in the above Rules and Regulations in so far as the grievances of policyholders are concerned, there is no effective mechanisms as regards insurers vis-à-vis the IRDA. This also will have to be taken into account while suggesting a suitable grievance redressal machinery.

SEBI model

8.7.8 The Securities and Exchange Board of India Act, 1992 (SEBI Act) established the Securities and Exchange Board of India (SEBI) is entrusted the functions of a regulator of the stock markets. Chapter VI A of the said Act provides for penalties in adjudication. Section 15A and 15H provide for penalties for contravention or failure to follow the regulations prescribed by the SEBI and penalties will be adjudicated by adjudicating officers appointed under section 15 I of the Act. The adjudicating officers shall be appointed from amongst the officers of the SEBI not below the rank of a Division Chief who will hold an inquiry in the prescribed manner and after giving a reasonable opportunity of being heard, impose a penalty. Section 15J spells out the factors to be taken into account by the adjudicating officer. Appeals from the orders of the

Adjudicating Officers will lie to the Securities Appellate Tribunal (SAT) presided over by a sitting or a retired Judge of the Supreme Court or a sitting or a retired Chief Justice of a High Court. The other Members of the Tribunal shall be appointed from persons who have expertise in dealing with problems relating to securities market and having qualifications and experience of corporate law, securities law, finance, economics and accountancy. Under s.15 Z of the SEBI Act, as amended in 2002, a further appeal to the Supreme Court from the decision of the SAT has been provided.

8.7.9 It is proposed to adopt SEBI model with certain modifications and additions. In addition to redress the grievance of the policy holders, it is proposed to provide for the establishment of a three -member Grievance Redressal Authority (GRA) in the major cities to hear complaints from policy holders/consumers against the insurers. The GRA will be presided over a by a sitting or a retired district judge and in addition will consist of two members who have expertise in the field of insurance.

8.7.10 Further, on similar lines as the SEBI Act, it is proposed to provide for adjudication in matters involving contravention of the Act, Rules and Regulations made by the IRDA with maximum penalties specified in the Insurance Act, 1938 itself. In addition, ss. 102-105C of the Insurance Act 1938 prescribe penalties for contravention of or default in compliance with the provisions of the Act. It appears from the reading of the provisions that the penalty will be determined by the criminal courts since it appears to be in the nature of a fine. It is proposed to modify these provisions and provide that these penalties will be levied after an adjudication/inquiry by adjudicating officers on the pattern of the SEBI Act. These adjudicating officers will be appointed from amongst the officers of the IRDA above a certain level like the Adjudicating Officers of the SEBI. The Adjudicating Officers will be positioned in different locations in the country to facilitate the widest geographical access to insurers, insurance intermediaries and insurance agents.

8.7.11 It is also proposed to provide for the establishment of an Insurance Appellate Tribunal (IAT) to hear appeals from the orders of the adjudicating officers and also from the decisions of the GRAs. The IAT will also hear appeals from the orders of the IRDA on matters involving insurers and insurance agents including registration and grant of licences. The IAT will have a retired or sitting judge of the Supreme Court or a retired or sitting Chief Justice of a High Court as its Presiding Officer. Two other members of the IAT will be persons of integrity, ability and standing and having requisite qualifications and experience in the field of insurance. It is proposed that there should be a further appeal to the Supreme Court from the decisions of the IAT similar to s.15 Z of the SEBI Act.

Recommendation

8.7.12 The tentative proposals for a full fledged grievance redressal mechanism are as under:

- (a) The present system of having Ombudsman under the 1998 Rules at the major metropolises be replaced by Grievance Redressal Authorities (GRA) constituted by appropriate amendments to the Insurance Act, 1938 itself. These would thus be statutory authorities exercising statutory functions.
- (b) The GRA could be multi-member bodies comprising one judicial member and two technical members. A certain degree of transparency should be induced in the process of selection of such members.
- (c) The GRAs should be dispersed as geographically widely as possible. For instance, that could be GRAs in each of the major cities in the country. This is necessary given the large number of policyholders at present and the prospect of this growing in the future.
- (d) The powers and jurisdiction of the GRAs would include all the powers and functions presently performed by Ombudsman under the 1998 Rules.
- (e) In addition to the above, it could be provided that all pending disputes arising under the Insurance Act, 1938 before the consumer fora would be transferred to the GRAs for disposal in accordance with the provisions of the Insurance Act, 1938. To this extent an amendment may have to be made in the Consumer Protection Act, 1986 to provide that disputes arising under the Insurance Act, 1938 will not be entertained under the Consumer Protection Act, 1986.
- (f) IRDA will appoint adjudicating officers in inquire/adjudicate violations of the Act, Rules and Regulations by insurers, insurance intermediaries and insurance agents and levy penalties as provided for in the Act.
- (g) An Insurance Appellate Tribunal (IAT) on the lines of the one under the SEBI Act should be constituted having its sitting as a principal bench in New Delhi and by circuit in the four major metropolises. The IAT will hear appeals against decisions of the GRAs and the Adjudicating Officers decision of the IAT will be final. The IAT will also entertain appeals against the decisions/orders of the IRDA concerning insurers, insurance intermediaries and insurance agents including those pertaining to registration and licensing.
- (h) There will lie a further statutory appeal to the Supreme Court from the decision of the IAT on the lines of s.15 Z of the SEBI Act. The appeal will have to be filed within 60 days of the decision of the IAT.
- (i) There will be a clause expressly excluding the jurisdiction of civil courts in disputes arising under the Insurance Act, 1938. However, this will not include claims/ disputes arising under the Motor Vehicles Act, 1988 and the Marine Insurance Act 1963.

- (j) On the lines of ss.41 & 42 of the LIC Act, 1956, the decision of the GRA may be made enforceable in any civil court within the local limits of whose jurisdiction the decree holder actually and voluntarily resides.
- (k) With a view to encouraging alternative dispute resolution (ADR) mechanisms, it may be provided that a claimant may be first referred to an ADR mechanism, which would include mediation and/ or conciliation, and only if that fails, should the matter be placed before GRA. Further, the GRA may itself refer the pending dispute before it to an ADR process at any stage of the proceedings, with the consent of the parties.

8.7.13 The above framework of a grievance redressal mechanism is a tentative one and will require to be further developed and modified after consultation with all concerned parties.

8.8 Penal provisions

8.8.1 Ss.102-105C prescribe penalties for contravention of or default in complying with the provisions of the Act; false statement in document; wrongfully withholding or obtaining any property; offences under the Act committed by companies and failure to comply with the provisions of ss.2B and 32C.

8.8.2 S.105C prescribes a penalty for failure to comply with s.32C. **It has been suggested that this section be amended to indicate a minimum penalty to be imposed so as to make the provisions deterrent in nature. Further these penalties will be determined and levied after adjudication/inquiry by Adjudicating Officers as stated in para 8.7.10.**

8.9 Miscellaneous provisions.

Investments

8.9.1.1 It requires consideration whether the details of investments provided in ss. 27, 27A and 27B ought to be shifted to the Regulations framed by the IRDA even while retaining the essential guidelines in the substantial provisions of these sections. Alternatively, whether the existing provisions relating to investments under ss. 27, 27A and 27B be retained with an additional safeguard that prior approval of RBI should be sought in drawing up the list of such investments by the IRDA.

8.9.1.2 It requires to be consider whether the provisions pertaining to investments and maintenance of solvency margin should be equally applicable to the public sector insurance companies including Life Insurance Corporation of India and GIC and its subsidiaries.

Winding up by the court (S. 53)

8.9.2 The Insurance Act provides for winding up by the court under s.53. The Act does not allow voluntary winding up by the insurance company except on the grounds mentioned in s.54. It also provides for partial winding up if the scheme for the same is

confirmed by the court under s.58. The provisions of s.53 enables the court to pass orders for winding up of an insurance company not only as per the provisions of the Companies Act but also if a petition is filed under sub-section 2 of this section after obtaining the previous sanction of the court in this behalf by one tenth shareholders of the company or not less than fifty policy holders.

8.9.3 This section also enables the Authority under clause (b) of sub-section (2) to apply for winding up if (i) the company fails to deposit or keep deposited the amount required under s.7 or 98, or (ii) the company has continued failure to comply with the requirements of this Act or contravention of any provisions of this act for a period of three months after notice of such contravention or non-compliance has been conveyed to it by the Authority, or (iii) returns furnished by the company or investigations made under this Act reveal that the company is or is deemed to be insolvent, or (iv) continuance of the company is prejudicial to the interest of policy holders or public interest generally.

8.9.4 These very grounds stated above in (i) - (iii) on which the authority has been empowered to apply for winding up under this section are also some of the grounds for which it can cancel the registration of any insurance company under section3(4).On cancellation of registration, the company cannot carry on insurance business. Hence provisions under clauses (i), (ii)and (iii) of sub-section (2) (b) may be omitted. However, clause (iv) may be retained.

8.9.5 In sub-section (1) of s.53, reference to Companies Act, 1913 be substituted by Companies Act 1956 (Act VII of 1956).

8.9.6 In sub-clause (i) of clause (a) of sub-section (2) of s. 53, the words “or s.98” are to be omitted.

Voluntary winding up (S.54)

8.9.7 S.54 excludes voluntary winding up of insurance companies except for the purpose of amalgamation or reconstruction of the company or it cannot continue its business because of its liabilities. But amalgamation or reconstruction of the company does not presuppose winding up and interests of the shareholders are considered and protected under the scheme approved by the Authority. While in the case of winding up, the process is altogether different. Therefore, **s.54 may be amended to the effect that insurance companies should not be wound up except on the ground that by reason of its liabilities it cannot continue its business.**

Scheme for partial winding up (S. 58)

8.9.8 Section 58 provides for partial winding up of insurance companies. In its sub-sections (3) and (4), reference to the Companies Act, 1913 may be substituted by the Companies Act 1956.

8.9.9 In sub-section (4), reference of s.12 of the Companies Act 1913 be substituted by '15' and sections 15 and 16 be replaced by s.17 of the Companies Act 1956.

Management by administrator (Ss.52A-52G)

8.9.10 Section 52A to 52G deal with the management by an administrator. These sections were added in 1950 in order to protect the interest of policyholders of life insurance.

8.9.11 Section 52A provides that, if the Authority has reason to believe that an insurer is acting in a manner prejudicial to the interest of holders of life insurance policies, then the Authority may after giving the insurer an opportunity to be heard make a report to the Central Government and the central government may after considering the report, appoint an administrator to manage the affairs of the insurer.

8.9.12 IRDA is a high powered body and competent to decide and act in a given situation. Hence, **it is suggested that Authority after giving an opportunity to the insurer and after taking into consideration the interest of policy holders, is of the opinion that it is necessary and proper to appoint an administrator to manage the affairs of the insurer carrying on life insurance business, the Authority may, by an order, do so.** The administrator shall receive such remuneration as the Authority may direct. The Authority may appoint some other person as an administrator if the one appointed earlier is not able to manage the affairs of the insurer.

8.9.13 In the context of the proposed suggestions, sub-sections (1), (2) and (3) of s.52A may be amended to give effect to the aforesaid proposals.

8.9.14 At present, the provisions of s.52A do not mention the period for which an administrator will initially be appointed. It may be appropriate if the limit in this regard is provided in the statute subject to the proposed provisions of s.52 D.

Powers of the administrator respecting property (S. 52BB)

8.9.15 S. 52BB (9) vests in the administrator powers of the civil court. Sub-section (1) provides that an administrator may, pending the institution of proceedings against a person, who has rendered himself liable to be proceeded against under s.106, by order in writing, prohibit him or any other person from transferring or disposing of any property which, in his opinion, would be liable to attachment.

8.9.16 Sub section (2) provides for an appeal against such orders of the administrator to Central Government. It would be appropriate if the Authority is made the appellate authority under this sub-section. The words "Central Government" occurring in sub-sections (2) and (3) are to be replaced by the word "Authority".

8.9.17 As aforesaid, **the administrator would be exercising powers of a civil court. He should, therefore, be well qualified and competent to exercise such powers. A provision to this effect may be added to s.52 (A).**

Termination of appointment of administrator (S.52 D)

8.9.18 In consequence of aforementioned suggestions proposed in sections 52A and 52BB, **the provisions of s.52 D would have to be amended as follows:**

“If at any time, it appears to the Authority that the purpose of the order appointing the Administrator has been fulfilled or that, for any reason, it is undesirable that the order of appointment should remain in force, the Authority may cancel the order and thereupon the Administrator shall be divested of the management of the insurance business which shall, unless otherwise directed by the Authority, again vest in the person in whom it was vested immediately prior to the appointment of Administrator or any other person appointed by the insurer in this behalf”.

Penalty for withholding documents of property from Administrator (S. 52 F)

8.9.19 Section 52 F provides punishment of six months imprisonment or fine extending of six months to Rs. 1000/- or with both for withholding documents of property of an administrator. It is **desirable that punishment of fine under this section may be enhanced to Rs. 5000/-**.

Protection of Action (S. 52G)

8.9.20 Section 52 G provides for the protection of action taken by the central government in good faith under sections 52A, 52B or 52D and by the administrator under s.52A, 52B or 52B or 52C.

8.9.21 **It is suggested that the protection extended to central government, at present should be extended to the Authority because, as proposed the action may be taken under the aforesaid sections by the Authority.** Therefore, amendments may be made in these sections.

Finality of decision appointing Administrator (S. 52E)

8.9.22 In the backdrop of the amendments suggested in s.52A, the provisions of s.52 E need consequent changes, *viz.*, the words “Central Government” are to be replaced by the word “Authority”.

Powers of the central government to acquire the undertaking of insurers in certain cases (Section 52H to 52N)

8.9.23 Section 52 H provides that the central government may acquire the undertaking of any insurer if the Authority reports to it that the insurer has persistently failed in complying with the directions given to it by the Authority under s.34, 34F or 34G or any order under s.34E or is managing its affairs in a manner detrimental to the public interest.

8.9.24 Section 52-I empowers the central government to prepare a scheme for acquisition of undertaking of any insurer and enumerates the powers for the same as also provides for the publication of such scheme if so made. s.52J provides for the

compensation to be paid to the acquired insurer by the Central Government and if the amount of compensation is not acceptable to the insurer, then it may request the central government to refer the matter to the tribunal, constituted under s.52K by the central government for this purpose, which shall have the powers of civil court (s.52L) and regulate its own procedure (s.52M). Special provisions for dissolution of acquired insurers is set out in s.52N.

8.9.25 In view of the policy of permitting privatisation and moving away from nationalization, these powers of acquisition are no longer relevant and it is suggested that ss.52H to 52N be deleted.

Return of deposits (s.59)

8.9.26 S.59 provides for the return of deposits made under s.7 or 98 in case of insolvency or winding up of insurance companies. The words and digits “or s.98” occurring in this section are to be omitted.

Special provisions relating to external companies (Ss. 62-64)

8.9.27 Ss.62 to 64 provide for non-Indian companies/insurers established outside India. These provisions had become redundant even before the enactment of IRDA Act 1999 and Insurance (Amendment) Act 2002. Now the IRDA Act 1999 which also amended the Insurance Act 1938, specifically provides that no insurer other than an Indian insurance company shall begin to carry on any class of insurance business in India after the commencement of IRDA Act (proviso to s.2C of the Act of 1938). In view of this provision, obviously, the aforesaid special provisions relating to non-Indian companies have become irrelevant and, therefore, require repeal.

Insurance councils and powers of the Executive Committee (S.64-I)

8.9.28.1 The functioning of the Insurance councils constituted under s.64C acquires importance in view of the changed policy of permitting private players in the insurance field. A suggestion has been made that the representative of the IRDA in these councils should not also be the chairperson of such councils. This requires some discussion.

8.9.28.2 S.64 UI deals with the power of the executive committee of the Life Insurance Councils to hold examinations for insurance agents. The repeal of the section has been suggested in the context of accreditation to Insurance Institute of India.

Power to remove difficulties (S. 64 UL)

8.9.29 In this section, the words “Central Government” may be replaced by the word ‘Authority’.

Acquisition of surrender values by policy (S.113)

8.9.30 This sub-section provides that the sub-sections (2) and (3) shall not apply in case of the paid up value or the reduced annuity falling below a minimum amount. **It is suggested that this minimum amount of paid up value and annuity may be allowed to be notified by the Authority from time to time.**

8.9.31 Sub-section (4) (c) provides that the subsections (2) and (3) are not applicable to policies in which the surrender value would be automatically applied under the terms of the contract to maintain the policy in force after its lapse because of non-payment of premium. It is suggested that a proviso be added to this sub-section to provide for this.

Exemptions (s.118)

8.9.32 It has been suggested that if insurance business is carried on by any trade union registered under the Indian Trade Unions Act 1926 the same shall be brought under the purview of regulations. **It is suggested that the scope and the manner of the regulation (may be linked to the size) – number and fund – of the Union) be incorporated in the insurance laws.**

Provisions that required to be amended
(other than those concerning powers of the IRDA)

[Para 2.1.3]

S.2 (9)	<p>Definition of ‘Insurer’. Has to be changed to include Insurance Co-operative Society as defined in S.2 (8A) and an Indian Insurance Company as defined in S.2 (7A).</p> <p>The inclusion of government organisations within this term may be considered under exceptions/ exemptions.</p>
S.2C	<p>Prohibition of transaction of Insurance business by certain persons:-</p> <p>With the introduction of the third proviso to S.2 C in 1999, the prohibition spelt out in S.2C has become redundant. The provision may be recast as under:</p> <p>“No insurer shall begin to carry on any class of insurance business in India under this Act unless it is –</p> <p>(a) an Indian insurance company as defined in clause (7A) of s.2, or</p> <p>(b) an insurance cooperative society as defined in clause (8A) of s.2 :</p> <p>Provided that the Central Government” (first proviso may be retained)</p>
S.4	<p>It is proposed that minimum limits for annuities and other benefits secured by policies of the insurance require upward revision and this should be specified by the Regulations from time to time. The section may, therefore, be amended accordingly.</p>
S.6A (1)	<p>It is proposed that S.6A (1) be amended to permit insurers to issue preference shares. However, the prior permission of the IRDA should be obtained for every fresh issue of capital and in accordance with the Regulations issued by the IRDA in this behalf.</p>

S.6A (10)	It is proposed that the power of the Central Government to issue directions in regard to capital structure and voting rights should be exercised by the IRDA.
S.6B	It is proposed that the power of the Central Government to issue directions for appointing an officer to examine any scheme to enable an insurer to bring its capital structure in line with the requirements of S.6A should be entrusted to the IRDA.
S.6B (4)	If S.6B (1) is amended by adding the words ‘General Insurance Business’ after the words ‘Life Insurance Business’ then there would be no need for S.6B (4) which may accordingly be omitted.
S.6C	At present a public company limited by shares can convert itself to a company limited by guarantee with the approval of the Central Government. It is proposed that the approval should instead be given by the IRDA and the provision amended accordingly.
S.6C (5)	The words ‘Indian Companies Act 1913 (7 of 1913)’ may be replaced by the words ‘Companies Act 1956’.
S.7 (1)	<p>Deposits:</p> <p>It is proposed that there should be an amendment to S.7 (1) to clarify that the deposits made by an insurer at the time of making the application for registration should be treated as deposits under S.7 (1).</p> <p>The formula regarding the amount to deposits, based on total gross premium, does not help insurers applying for registration for the first time. A provision has to be incorporated for such first time insurers.</p> <p>Under the IRDA Regulations first time insurers are required to deposit a sum of Rs.10 lakhs along with their application. This requires to be reflected in S.7 (1) itself.</p> <p>S.7 (1) empowers the Central Government to apply this requirement with modification in the event that an insurer does not have a Share Capital. It is</p>

	<p>proposed that this power should be exercised by the IRDA in consultation with the Central Government. Accordingly, the words ‘Central Government’ in the second proviso to S.7 (1) may be replaced by the word ‘Authority’ with a clarification that the authority will exercise the power in consultation with the Central Government.</p>
S.7 (9A) & 7 (9B)	<p>It is proposed that the power of Reserve Bank of India, in the matter of sale of securities/ investment of deposits held by the insurer, should be exercised in consultation with the IRDA. The provision may be amended accordingly.</p> <p>Further, in clause (b) of s.7(9B), the words “Central Government” should be replaced by the word “Authority”.</p>
S.9	<p>Refund of Deposits:-</p> <p>It is proposed that IRDA may be empowered to pass orders for refund of deposits to the insurer upon the Insurer ceasing to carry on insurance business. Where the ceasing of business is pursuant to winding up proceedings in court, such order may be made by the court.</p>
S.10 (1)	<p>The proviso to this section which prohibits prescribing of certain sub-clauses of miscellaneous insurance business needs review and modification.</p>
S.10 (2)	<p>The requirement that all receipts due in respect of life insurance business “shall be carried to and shall form a separate fund to be called the life insurance fund...” is irrelevant as the life insurers cannot carry general insurance business. However, general insurers can be obligated to maintain separate accounts and funds in respect of sub-classes of general insurance business, hence amendments to be made.</p>
S.11(2)	<p>Preparation of accounts and balance sheet:</p> <p>S.11(2) is required to be amended because of the legislative changes prohibiting partnership firms from carrying on insurance business and</p>

	<p>introducing cooperative societies as insurers. The part of the section referring about the signatory of a partnership firm should be dropped as it cannot transact insurance business. However, signatories in respect of insurance cooperative societies are be inserted.</p>
S.12	<p>Liability of the auditor:</p> <p>The words “s.145 of the Indian Companies Act 1913” may be substituted by the words “s.233 of the Companies Act 1956.”</p>
S.13(4)	<p>The provision of sub-section (4) needs to be recast in view of the Regulations made by the Authority as follows:</p> <p>“(4) There shall be appended to every such abstract a statement prepared in accordance with the regulations contained in Part I of the Fifth Schedule in respect of the accounts of the insurer, which are made up for the purposes of such abstract, in the form and in the manner specified by the regulations made by the Authority.”</p>
S.15	<p>Submission of returns:</p> <p>Since s.11 (2) also provides for the signing of the documents, sub-sections (1) and (2) of s.15 need to be recast in order to simplify them which may be as follows:</p> <p>“15(1) The audited accounts and statements referred to in s.11 or sub-section (5) of s.13 and the abstract and statements referred to in s.13 should be submitted in four copies within six months from the end of the financial year.”</p> <p>(2) The statements referred to in sub-section (1) 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 director, in case of insurance cooperative society by _____:</p> <p>Provided that in addition to the persons mentioned in sub-section (2) above, the statements shall be signed by auditors and the actuary who made</p>

	the valuation.”
S.16	<p>Returns by Insurers outside India:</p> <p>The words in s.16 (2) (b) “Third Schedule applicable to that class or sub-class of insurance business.” may be deleted and replaced by the word “Regulations” in view of Insurance (Amendment) Act 2002.</p>
S.28	<p>Submission of statement of investment of assets:</p> <p>S. 28(1) and (2) may be recast as follows:</p> <p>“(1) Every insurer carrying the business of life insurance shall every year submit to the Authority a return showing as at the 31st day of March of the preceding year as to the assets held invested in accordance with s.27 within the time and in the manner as specified in the regulations in this regard.</p> <p>(2) Every such insurer shall also furnish quarterly return of the assets held invested showing at the end of June, September and December within the time and in the manner as specified in the Regulations.”</p>
S.28(3)	S. 28(3) needs to be recast. The words” August” and “June” are then to be replaced by the words ‘November’ and ‘September’ respectively.
S.28 A & 28 B	<p>Submission of return of investments:</p> <p>In view of the detailed Investment Regulations, the provisions of ss. 28A and 28B providing for submission of return of investments by the life insurers and general insurers respectively to the Authority are not required to be provided in the principal Act, hence, may be amended so as to make just a reference of the manner specified in the regulations.</p>
S.29	<p>Prohibition on giving of loans:</p> <p>The provisions of s.29 restrict an insurer to the giving of loans or temporary advances to any director, manager, actuary, auditor or officer and partner. However, life insurers may advance loans or advances to insurance agents to facilitate carrying out their functions as such under</p>

	<p>clause (b) of sub-section (3) of this section. It would be appropriate if the provisions of s.29(3) are also made applicable to insurers carrying on general insurance business.</p> <p>The advancement of loans etc. to its employees being the internal matter of the insurance company, some relaxation in this regard would be appropriate. It is, therefore, suggested s.29(3)(a) may be amended so as to replace the words “except such loan as are specified in sub-section (1) of s.27A” with the words “except as per the scheme of the insurer duly approved by its Board of Directors.”</p> <p>A suggestion has been made that the temporary advances given to the employees may be exempted from the application of s.29.</p> <p>In s.29 (2), for the words “86D of the companies Act, 1913 (7 of 1913)”, words, “220 of the Companies Act 1956 should be substituted.</p>
S.31	<p>Maintenance of assets by insurers:</p> <p>The principal Act provides in s.31 as to in whose name the assets of company or firm or an individual are to be kept. As the partnership firm or an individual cannot carry on insurance business under this Act, their references in the section have become redundant. Hence the words “in the name of partners, if a firm, or in the name of proprietor, if an individual” may be deleted from this section and the words “in the name the society, if an insurance co-operative society” may be substituted because of the introduction of insurance co-operative societies as insurers by the Insurance (Amendment) Act, 2002.</p>
S.31B (3)	<p>Restriction on payment of excessive remuneration:</p> <p>The provisions of sub-section (3) empowers the Authority to issue notice to the insurer to submit certified copies of the agreement between the insurer and the agent in case remuneration exceeding Rs. 5000 has been received by persons other than chief agent, principal agent or special agent. The limit of Rs. 5000 as mentioned in sub-sections (2) and (3) may be enhanced</p>

	appropriately.
S.32A	<p>Prohibition of common officers:</p> <p>The Managing Director or other officer of a life insurer are prohibited to act as such for other insurer or banking company under sub section (1) of section 32A and the insurer are under an obligation to keep whole time managing director or an officer under sub-section (2) if the insurance funds exceeds 50 lakh or life insurance funds Rupees 25 lakh. Sub-section (2) needs review and revision as the requirement of whole time managing director is conditional under this sub-section. It would be appropriate if such employment is made unconditional, i.e., without depending on the amount of the funds of the insurers. It would be more appropriate if the provisions of this section are made part of regulations.</p>
S.32B & 32C	<p>Social and rural sector:</p> <p>The word “or” may be replaced with the word ‘and’ so as to eliminate the choice of rural or social sector by the insurer so that insurers are obligated to contribute to the development of both the sectors without having an option to choose either of them. In consequence, the marginal note to these sections would also be required to be amended accordingly.</p> <p>The third proviso to the said Regulation 3 empowers the Authority to revise the obligation stated in this regulation every five years. This power of the Authority should find place in the Act and may after necessary changes be made proviso to s.32C because Authority should derive its power to revise to the percentage from the statute otherwise exercise of such power would be <i>ultra vires</i> the principal Act.</p> <p>The provisions of s.32 C obligates every insurer to provide life insurance or general insurance policies including crop insurance in the social sector as may be specified by the regulations. However, Regulation 3 in clause (b) states about number of lives in respect of the obligation for the first five years. It is suggested that for the word “lives”, the word “policies” be</p>

	<p>substituted.</p> <p>The word “official gazette” in section 32 B(1) may be replaced by the word “Regulations”.</p>
S.35	<p>Amalgamation:</p> <p>The principal Act allows amalgamation of insurance business under a scheme to be sanctioned by the Central Government whether prepared by the Authority or not. Where such a scheme is sanctioned, then the insurers carrying on amalgamated business or the transferee insurers are required to furnish scheme, agreement, balance sheets etc. in respect of transfer and amalgamation to the Authority even where the amalgamation or transfer has not been made in accordance with the scheme approved by the Authority under clause (c). This part of the section appears to be inconsistent with the provisions of ss.35 and 36 whereby no amalgamation can take place without approval of the Authority. Therefore, this inconsistency may be removed by way of addition of an explanation in the provisions.</p> <p>With a view to avoiding any duplication or ambiguity about the operation of the Companies Act, 1956 and the Insurance Act, 1938, an express provision has to be made to the effect that no option to amalgamate under the Companies Act should be given without compliance with the requirements of the Insurance Act, 1938.</p>
S.37A	<p>Power of IRDA to prepare scheme of amalgamation:</p> <p>The details of the scheme for amalgamation set out in s.37A may be shifted to the Regulations.</p>
S.40 (2)	<p>Payment of commission to insurance agents:</p> <p>The following may be substituted in sub-section 2.</p> <p>“No insurance agents shall be paid or contracted to be paid by way of commission or as remuneration in any form an amount of not exceeding</p>

	the amount as specified in the regulations in respect of policies, whether life or non-life and as also in respect of renewal of policies.”
S.40 (2A)	<p>Payment of renewal commission:</p> <p>S.40 (2A) be amended to provide that subsequent renewal commission be paid to the agent other than the agent through whom the policy was effected.</p> <p>In consequence, the proviso to this sub-section may also be amended to provide that commission on renewal premium to be paid to only one agent who assisted in effecting revival of the policy which stood lapsed due to non-payment of the premium. Thus the agent who procured the policy will be prohibited from receiving the commission. In this regard the Authority may frame regulations.</p>
S.40A	<p>Limitation of expenditure on commission:</p> <p>S.40A may be recast as follows:</p> <p>“40A. No insurer whether carrying on life insurance business or general insurance business shall pay or contract to pay to an insurance agent and no insurance agent shall receive or contract to receive, by way of commission or remuneration in any form in respect of any kind of policy issued except as specified in the regulations made in this behalf by the Authority.”</p> <p>In consequence of the proposed section, sub-section (5) may be recast.</p> <p>Again, the punishment for contravention of sub-sections (1) and (3) of existing s.40A is provided in sub-section (5) as fine extending to Rs.100. This amount is inadequate and hence it may be enhanced appropriately.</p>
S.40B & C	<p>Limitation on expenses of management:</p> <p>Clause (b) of the Explanation of the Section 40B explains the term “expenses of management”. This term further needs inclusion of other expenses in the context of recent trends of business in this century. It</p>

	<p>would be appropriate if this term finds place in the regulations.</p> <p>Similarly, provisions of section 40C prohibits an insurer of carrying on general insurance business to spend as expenses of management in excess of the prescribed limits.</p> <p>In both the sections and the explanations attached to them, the reference of the word “calendar” may be replaced by the word “financial”.</p>
S.41	<p>Prohibition of rebates:</p> <p>For the contravention of the provisions of s.41, sub-section (2) of this section prescribes fine up to Rs.500. The amount of fine is inadequate and needs to be increased. A suggestion has come that section 41 may be amended to enhance the penalty to 100 per cent of the premium or Rs.10000 whichever is higher.</p>
S.43	<p>Register of insurance agents:</p> <p>For the word “register”, the word ‘record’ may be substituted which would encompass both the register and records in the electronic form as well. In consequence, the marginal note would be required to be amended accordingly, i.e., ‘Record of insurance agents’.</p> <p>The section does not indicate any time frame (maximum time-limit) for maintaining records. It has been suggested that maximum time limit in this regard may be specified in the section.</p>
S.44	<p>Heritable Commission:</p> <p>The amount of Rs.50,000 and percentage of renewal commission (4%) mentioned in clause (b) of the proviso to s.44 (1) need upward revision. However, it is appropriate that same be left to be determined by the Authority in the regulations.</p> <p>The condition of continuously serving for 10 years by an agent exclusively for one insurer under clause (c) also needs to be reviewed.</p>

	<p>The provisions of clause (c) absolutely prevents an agent to solicit or procure business for any other insurer even after he ceases to be an agent for the former insurer. This condition appears to be unreasonable in this age of liberalization. The provision may be amended to be effect that after the lapse of five years from the date he ceases to be an agent, he can solicit or procure business for another insurer.</p> <p>The word “and exclusively” in clauses (b) and (c) may be dropped in view of the development that an agent can act for one life insurer and one general insurer (see Regulation)</p> <p>The payment of renewal commission should be paid only if the agent continues to serve the policy. S.44 should be amended accordingly.</p> <p>The word “person” occurring in s.44 (1) may be replaced by the word ‘insurer’.</p>
S.48A	<p>The words “or general insurance business” may be added after the words “life insurance business”. Consequently, marginal note to the section would also require amendment. The word “Life” occurring in the marginal note may be omitted.</p>
S.50	<p>Notice of options:</p> <p>The words “unless these are set forth in the policy” may be omitted.</p>
S.51	<p>Supply of copies of proposals etc.:</p> <p>The words ‘a fee not exceeding one rupee’ be substituted by the words ‘a fee as may be prescribed in the Regulations’.</p>
S.52BB	<p>Powers of administrator:</p> <p>The words “Central Government” occurring in sub-sections (2) and (3) are to be replaced by the word “Authority”.</p>
S.52D	<p>Termination of appointment of administrator:</p> <p>S.52 D would have to be amended as follows:-</p>

	<p>“If at any time, it appears to the Authority that the purpose of the order appointing the Administrator has been fulfilled or that, for any reason, it is undesirable that the order of appointment should remain in force, the Authority may cancel the order and thereupon the Administrator shall be divested of the management of the insurance business which shall, unless otherwise directed by the Authority, again vest in the person in whom it was vested immediately prior to the appointment of Administrator or any other person appointed by the insurer in this behalf”.</p>
S.52E	<p>Finality of decision appointing administrator:</p> <p>The words “Central Government” are to be replaced by the word “Authority”.</p>
S.53	<p>Winding up by the court:</p> <p>In sub-section (1) of s.53, reference to Companies Act, 1913 be substituted by Companies Act 1956 (Act VII of 1956).</p>
S.58	<p>Partial winding up:</p> <p>In sub-section (4), reference of s.12 of the Companies Act 1913 be substituted by ‘15’ and sections 15 and 16 be replaced by s.17 of the Companies Act 1956.</p>
S.64 UL	<p>Power to remove difficulties:</p> <p>The words “Central Government” may be replaced by the word ‘Authority’.</p>

APPENDIX-III

Provisions that have become redundant and required to be deleted

[Para 2.1.5]

Provision of the Insurance Act, 1938	Details
S.2 (12) and 2 (13)	Definition of Manager, Officer and Managing Agent. These posts are no longer in vogue and therefore not relevant.
S.2 (16) and 2 (17)	<p>The terms ‘Private Company’ and ‘Public Company’ are not relatable any longer to the Companies Act, 1913 as indicated in S.2 (16) of the Act. Therefore, it is proposed that this definition needs to be deleted.</p> <p>The concept of ‘Special Agent’ is no longer in vogue. It is therefore, proposed that S.2 (17) also be deleted.</p>
S.2B (1)	In view of the proposed merger of the provisions of the IRDA Act with the Insurance Act, s.2B (1) may be deleted even while sub-section (2) providing for appointment of a Controller of Insurance in the event of supersession of the IRDA may be retained.
S.2C	<p>In respect of persons who can carry on insurance business, by virtue of the third proviso to S.2C (1), inserted in 1999, only Indian Insurance Companies can carry on insurance business in India. Accordingly, this renders redundant S.2C (1) and the third and second provisos thereto.</p> <p>Accordingly, it is suggested that S.2C (1) and its first and second provisos be deleted and further that the third proviso to S.2C (1) be renumbered as S.2C. Further, S.2C (2) will also have to be repealed.</p>

S.3 (5)	The reference to S.3 (3) in sub section (5) may be deleted in view of the change proposed to s. (3) repealed in view of the third proviso to S.2C (1).
S.3 (4) (a)	The mention of the words ‘or S.98’ occurring in S.3 (4) (a) may be deleted in view of the proposed repeal of part IV of the Act which contains S.98.
S.3 (4) (ee)	One of the grounds for cancellation of registration is where the central government so directs under S.33 (4). Since this provision is redundant, it requires to be omitted.
S.3 (5)	The mention of sub-section (3) of S.3 in S.3 (5) is no longer relevant and may be omitted.
S.4	References of co-operative life insurance society and mutual insurance company in S.4 may be omitted as being irrelevant.
S.5 (2) and 5 (3) First and second proviso	The first and second proviso to s.5(2) and s.5(3) have become redundant and may be omitted as they provide in respect of insurers who carried on business under the Act of 1912 or business carried on by provident societies.
S.6A (1) Proviso	The proviso to S.6A (1) may be omitted as being redundant.
S.7 (7)	This provision concerning deposits with the Controller of Currency in compliance with the Indian Life Assurance Companies Act, 1912 has become redundant and may be deleted.
S.7 (9B)	In clause (a) of s.7 (9B), the words “or were sold or where the securities matured or were sold before the 21 st day of March, 1940, within a period of four months from the commencement of the Insurance (Amendment) Act 1940” should be deleted as being redundant.

S. 10(1)	<p>Maintaining separate accounts for each class of insurance business:</p> <p>This obligation has become irrelevant as composite business is not allowed. S.10 (1) can be deleted.</p>
S. 10(2)	<p>In s.10(2) the words “after the expiry of six months from the commencement of Insurance (Amendment) Act, 1946” and the words “under the law of the insurer’s country” should be deleted as being redundant.</p>
S.10 (2A)	<p>The provisions of s.10 (2A) stipulates a requirement to be fulfilled by an insurer carrying on life insurance business if he wants to obtain a registration certificate for any class of insurance business in addition to the life insurance business. The provisions of this sub-section need to be deleted as the composite insurance business is not allowed.</p>
S.11 (1) and (1A)	<p>Insurers are under an obligation to prepare the balance sheet, profit and loss account, separate account of receipts and payment and revenue account in accordance with the regulations contained in First, Second and Third Schedule of the Act as per the provisions of sub-section (1) of section 11. These schedules have been repealed by Insurance (Amendment) Act 2002. Hence, sub-section (1) is redundant and is required to be repealed.</p> <p>The amendments of 1999 inserted sub-sections (1A) and (1B) in this section which independently take care of the matters relating to the preparation of such documents. Hence, no further insertion/addition is required. Accordingly, the words in sub-s.(1A) “notwithstanding anything contained in sub-section (1)” is required to be deleted.</p>

S.12	The words “in the case of an insurer specified in sub-clause (a) (ii) or sub-clause (b) of clause (9) of s.2” and the words “and in the case of any other insurer in respect of the insurance business transacted by him in India” should be omitted.
S.13	<p>The words “contained in Part I of the Fourth Schedule and in conformity with the requirements of Part II of that Schedule” should be deleted as being redundant in view of the Insurance (Amendment) Act 2002 and Regulations made by the Authority in regard to Actuarial report and Abstract.</p> <p>The second, third and fourth proviso to s.13(1) should be repealed as being redundant. These provisos respectively provide for investigation to be made before the commencement of Insurance Amendment Act 1950 and IRDA Act 1999.</p>
S.13 (3)	The provisions requiring certificate of the insurer about the particulars of the policy holders to be appended to every abstract (S.3 (3)) are required to be omitted to avoid duplication as these provisions are in the regulations.
S.13 (4)	In view of the proposal for recast of sub-section (4), the second proviso to this sub-section would obviously have to become irrelevant and to be deleted.
S.13 (6)	The provisions of sub-section (6) refer to sub-class of insurance business falling under the class “miscellaneous insurance” as may be prescribed in s.10(1). However, s.10 (1) does not prescribe so. Hence, it is suggested that sub-classes of insurance business may either be specified in the definition of the term miscellaneous insurance or the words “as may be prescribed under sub-section (1) of s.10” may be deleted.

S.14	Every insurer is required under s.14 to maintain register or record of policies and claims. The word “register” in clauses (a) and (b) of this section may be omitted because now the records may be kept in the electronic form as well. The term “records” would cover both the register as well as e-record.
S.15	Submission of returns: The proviso to s.15(1) is to be deleted as being redundant.
S.15 (2)	Sub-section (2) talks of signatories to these documents if the insurer is company or a firm or an individual. The references to a partnership firm and an individual are to be deleted as being irrelevant in view of the recent legislative developments.
S.15 (3)	The provisions of sub-section (3) which provide for insurers who are domiciled outside India or whose principal place of business is outside India, has become redundant because now no such insurer is allowed to transact business in India. Hence, it is required to be repealed.
S.16	The provisions of prescribing the manner of furnishing of return by the insurers established outside India, have become obsolete hence is required to be repealed.
S.22	The reference of s.16 (2) (c) should be deleted in sub sections (1) and (2) of s.22 should be deleted as s.16 (2) (c) requires submission of valuation report by an insurer domiciled outside India, hence such reference to be omitted.
S.27 (2) (a), (b) & (6)	The reference of s.98 in clause (a) of s.27 (2) may be omitted. The provisions of s.27 (2) (b) including its proviso may be repealed as being irrelevant.

	<p>The provisions of s.27 (6) also have become irrelevant and need repeal because they deal with the insurers domiciled outside India.</p>
S.27 A	<p>Clause (b) of s.27A (1) should be deleted as being irrelevant as providing for securities by the Government of United Kingdom.</p> <p>In s.27A (1) (n), the words “or in any other country” may be deleted as Schedule I and Schedule II of Investment Regulations exclude expressly immovable property situated in other countries for the purpose of approved investments. This would remove inconsistency between the Act and Regulations. Moreover, such a repeal would be in consonance with the tenor of s.27C.</p> <p>The provisions of sub-section (12) should be repealed as it requires the insurer in existence at the commencement of Insurance Act 1950 to submit within 90 days from such commencement report about investments made in contravention of s.27A. Such insurers are no more in existence.</p>
S. 27 B	<p>In sub-section (16), the meaning of the term “assets” has been described for different classes of business referring to assets shown in the forms prescribed in part II of the first schedule. The first schedule has been repealed by the Insurance (Amendment) Act, 2002. Hence provisions of this sub-section have become irrelevant. Moreover, this term has been defined in Para 2 (6a) of the Regulations relating to investments. Therefore, the sub-section is required to be repealed.</p> <p>In s.27B (1) (i), the reference of the words, “or in any other country” may be deleted in view of the provisions of Schedule</p>

	<p>II of the Investment Regulations which exclude expressly first mortgage on immovable property situated out of India.</p> <p>In clause (i) of sub-section (1), the reference of the words, “or in any other country where the insurer is carrying an insurance business” are to be deleted for the reasons assigned in respect of similar provision in s.27A.</p>
S.28 (4)	<p>Sub-section (4), which provides for insurers domiciled outside India, is redundant, hence to be repealed.</p>
S.29	<p>As the partnership firm cannot transact insurance business, the reference to a firm or partner in sub section (1) should be omitted.</p> <p>References to chief agent or special agent in sub-section (3)(b) and the ‘Explanation’ may be deleted, so also sub-clauses (i) and (ii) of clause (b) of sub-section (3) dealing exclusively with chief agent and special agent respectively. Similarly, in sub-section (6) reference to chief agent should be omitted.</p> <p>The provisions of sub-section (4) which imposes an obligation on the Authority to notify about the loan or advances at the commencement of the Act of 1950 has obviously become obsolete, hence to be repealed.</p> <p>The provisions of sub-section (4) which imposes an obligation on the Authority to notify about the loan or advances at the commencement of the Act of 1950 has obviously become obsolete, hence to be repealed.</p>
S.31B	<p>The system of chief agent, principal agent and special is no more in existence. Hence the possibility of remuneration being paid to any person other than insurance agent or intermediary does not arise. Therefore, necessary deletions are required to</p>

	be made.
S.32	The insurers are prohibited from employing the managing agents. Under the provisions of s.32 (1). Subsequent sub-sections (2) and (3) dealing with their employment and remuneration have, obviously, become redundant as also because of their transitional nature. Hence, sub-sections (2) and (3) need omission.
S.33 (7)	The publication of the report in sub-section (7) envisages a prior notice to the insurer. Since sub-s.(6) contemplates the availability of the report to the insurer and a reasonable opportunity to respond to it, there is no need to give any further notice. Therefore sub-section (7) can be deleted.
S.35 (1)	The words “any person or transferred to” in s.35 (1) seem to be redundant and hence should be omitted.
S.35 (3)	In the proviso to s.35 (3), the reference of the words and figures “or ss.7 and 8 of the Indian Life Assurance Companies Act, 1912)” are required to be omitted as being redundant.
S.40	Reference to principal, chief or special agents in sub-section (1) needs deletion. The words “after the expiry of six months from the commencement of this Act.” are to be omitted as being irrelevant. The provisions of Sub-section (2) provides the limit of the commission to be paid to an agent in respect of the life insurance policy effected through him before 31 st Day of December, 1950 in respect of life insurance policy and of general insurance policy before the commencement of Insurance Amendment Act, 1950. Obviously, the provisions of this sub section have become redundant especially in view of the second proviso with this sub-section, hence to be repealed.

S.40A	Provisions of sub-sections (2) and (4) providing for payment of commission to special agents of life insurance business and principal agents of general business respectively have become irrelevant and redundant in view of the legislative changes made during the last five decades or so. It is, therefore, suggested that these sub-sections may be deleted.
S.44 (1) – Explanation	“Explanation” to s.44 (1) has become irrelevant and redundant and may, therefore, be repealed.
S.48	Policyholders to elect Directors of Insurers. In view of the changed scenario permitting privatisation, it is proposed that this section be deleted.
S.48A	The words “and no chief agent or special agent” are required to be omitted. Similarly, the words, “carrying on life insurance business” need deletion, so also the proviso to this section.
S.49	In sub-section (1) the words “or to the central government under s.11 of the Indian Life Assurance Companies Act, 1912 (6 of 1912)” require deletion.
S.52	The provisions of s.52 which prohibit an insurer to carry on its business on the dividing principle are no more relevant. Moreover, some of its provisions being of transitional nature have become redundant long back. Hence s.52 is required to be repealed.
S.52 H to 52 N	These pertain to acquisition of undertaking of insurers as contained in s.52 H to s.52 N. These are no longer relevant and required to be deleted.
S.53	Clauses (i) to (iii) of sub-section 2 (b) may be omitted. In sub-clause (i) of clause (a) of sub-section (2) of s.53, the words “or s.98” are to be omitted.

S.59	The words and digits “or s.98” occurring in this section are to be omitted.
S.62 to 64	The special provisions relating to External Companies as contained in s.62 to 64 are also no longer relevant. Since the present scheme is not to permit such External Companies.
S.64 UB (3) and (4)	<p>Sub-section (3) empowers TAC to make regulations in respect of Regional Committees. As the Regional Committees are not functioning anymore, the provisions of this sub-section maybe deleted.</p> <p>The provisions of sub-section (4) need omission as they are transitional in nature and have become redundant long back.</p>
S.64 UD	<p>Except proviso to sub-section (1) (inserted by Act of 1999), being transitional in nature, s.64 UD needs to be repealed as it has become redundant long back.</p> <p>Proviso to sub-section (1) may also be repealed because its provisions have been taken care of under clause (a) of S.64 UA (1).</p>
S.64 UF to UI	<p>The provisions of S.64 UF providing for assets and liabilities of General Insurance Council to vest in the Advisory Committee after the commencement of the Amendment Act, 1968 need to be repealed as the assets and liabilities have already been vested in TAC.</p> <p>The provisions of S.64 UG also need to be repealed because its provisions have become irrelevant as all the contracts/ agreements made by the Tariff Committee before 1968 are dealt by the Advisory committee as also the suits or legal proceedings filed by or against Tariff committee after 1968 Amendment are being dealt by TAC.</p>

	<p>Similarly, provisions of S.64UH protecting the interest of the employees of Tariff Committee who were in employment before the Amendment Act 1968 need to be repealed because all those employees are now the employees of the Advisory Committee and others, who could not, should have availed the benefits mentioned under this section.</p> <p>The provisions of S.64 UI obligates every person, who is in possession or custody of the property of the Tariff Committee or is in possession of documents relating to such property, to deliver those to the Advisory Committee has become redundant and requires to be repealed.</p>
S.64 UJ (2) to (6)	Since the regional committees constituted by the TAC are not functioning, sub-sections (2) to (6) may be deleted.
S.64 UM	<p>S.64 UM (1) needs to be recast. In sub-section (1) (A), the words “ after the expiry of a period of one year from the commencement of the Insurance (Amendment) Act, 1968 “ are to be deleted as being irrelevant.</p> <p>Again, sub-section (1) (B) should be deleted as its provisions have become irrelevant in view of the provisions of sub-section (1) (BA) inserted by the IRDA Act which also takes care of the licenses issued to surveyor before the Act of 1999.</p> <p>Sub-section (5) needs deletion as being irrelevant</p>
S.64 VA	The provisions of sub-section (1) are now irrelevant as providing for the insurers before the commencement of the IRDA Act, 1999, hence may be deleted. In consequence, sub-sections (2), (5) and (6) would have to be deleted.
S.65 to 94	The whole of Part III pertaining to Provident Societies is no longer relevant and ss.65 to 94 contained in this Part require to

	be deleted.
S.95 to 101	The whole of Part IV relating to Mutual Insurance Companies and Co-operative Life Insurance Societies are also no longer relevant and ss.95 to 101 contained in this Part require to be deleted.
S.114 (f)	In view of the proposed deletion of s.48 the corresponding rule making power of the central government in s.114 (f) is no longer relevant and accordingly may be deleted. Further, Rules 13, 14 and 15 of the Insurance Rules 1939 may also be deleted.

APPENDIX-IV

Proposals with regard to merger of provisions of the IRDA Act, 1999 with the Insurance Act, 1938

[Para 3.1.3]

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

Changes in relation to the Powers and functions of the IRDA with regard to grant of registration and refusal, cancellation, suspension, and renewal of registration.

[Para 3.1.5]

Provision of the Insurance Act, 1938	Change proposed
S.3	<p>Registration of Insurers:-</p> <p>The particulars of the documents/ statements required to be submitted to the IRDA for the purpose of obtaining registration, could be spelt out in the Regulations made by the IRDA.</p> <p>Accordingly, it is suggested that S.3 (2) be recast as under:</p> <p>‘Every application for registration shall be made in such a manner as may be determined by the Regulations made by the Authority and shall be accompanied by such documents as may be specified by the Regulations.’</p>
S.3 (2) (f)	<p>Under s.3 (2) (f) every applicant seeking registration as insurer of life insurance business is required to furnish the certificate of an actuary. The Subhedar Committee has recommended that this requirement may be extended for applicants for general insurance business as well. If this is accepted, s.3 (2) (f) has to be accordingly amended and then shifted to the Regulations.</p>

S.3 (2A)	<p>Grant of Certificate of Registration:-</p> <p>Sub-section (2A) of s.3 sets out the conditions that have to be fulfilled before Registration can be granted by IRDA. It is suggested that this should also include compliance with the requirements of S.6 and 6A. However, the requirements of S.31A and 32, which deal with Managers and managing agents are irrelevant and require to be omitted. The recast S.3 (2A) (d) would read as under:</p> <p>“(d) The applicant has complied with the provisions of ss.2C, 5, 6 and 6A and has fulfilled all the requirements of this section applicable to him.” (remaining portion to be retained)</p> <p>It is also proposed that there should be a time limit within which, if all other requirements/ formalities have been complied with by the applicant, the IRDA should take a decision in regard to the grant/ refusal of the certificate of registration. It is proposed that this time limit should be a period of 60 days from the date of completion of all formalities, upon the expiry of which, the insurer would be deemed to have been granted the certificate of registration if no decision is taken by the IRDA within that time.</p>
S.94A (2) second proviso	<p>It is proposed that with a view to providing a level playing field with other corporate insurers, the proviso enabling exemption from certain provisions in their applicability to cooperative societies carrying on insurance business should be deleted.</p>

	<p>Alternatively, if the power has to be retained, it should be ensured that it cannot be for all provisions of the Act. The exemption will have to be only in relation to select provisions of the Act and that too for reasons and writing.</p> <p>Further, it is proposed that this power should be with the central government and not the Authority.</p>
	<p>In regard to departments, organisations and associations carrying on insurance business without obtaining certificate of registration from the IRDA (i.e., Army welfare associations, Postal insurance etc.), it is suggested that such departments or associations be brought within the purview of the regulatory regime but requirements of capital and deposits may be either relaxed or suspended in such cases.</p>
S.3 (2C)	<p>Appeal against refusal of registration:-</p> <p>At present the appeal lies to the Central Government. It is proposed that in the first instance, a challenge to the order of refusal could be made by an applicant before the Grievance Redressal Authority, as is proposed later in this paper. Thereafter an appeal could lie to an appellate tribunal to be constituted under the Act itself.</p>
S.3 (3)	<p>Cancellation/ withholding of Registration of insurer having place of business outside India on the ground of absence of reciprocity by the other country:-</p> <p>This provision may not be relevant in the present</p>

	<p>context were joint ventures are being permitted. Accordingly, it is suggested that sub-section (3) of s.3 may be modified and substituted as follows:</p> <p>“In the case of any insurer having joint venture with a partner having its principal place of business domiciled outside India, the Authority shall withhold registration or cancel registration already made if it is satisfied that in the country in which the foreign partner has principal place of business has been debarred by law or practice of that country to carry on insurance business.”</p> <p>Accordingly, the reference to S.3 (3) in S.3 (5) is no longer relevant.</p>
S.3 (4)	<p>Cancellation of Registration:-</p> <p>One ground of cancellation should include the insurer being found guilty of an offence under any law in force in India.</p> <p>The contravention of the LIC Act and other Acts as a ground for cancellation is no longer relevant. On the other hand, a contravention of the Societies Registration Act/ Multi-State Co-operative Societies Act should be a ground for cancellation. An amendment to S.3 (4) has to be made accordingly.</p> <p>The provision that empowers IRDA to cancel registration “either wholly or in so far as it relates to a particular insurance business” may not be relevant</p>

	<p>since as a matter of policy composite business is not permitted. This sub-section will have to be accordingly re-worded.</p>
	<p>Suspension of Registration:-</p> <p>The Act does not provide for suspension of registration. However, regulations regarding registration provide in clause 23 the grounds of suspension of an insurance company. It is appropriate if this very clause and clause 24 of the regulations are made a part of the statute and placed appropriately in s.3. The grounds of suspension may also include grounds referred to in sub-section (4) under its clauses (a), (aa), (e), (f), (g), (h), (i) and (j).</p> <p>It is to be noted that the provisions of sub-section (5C) of S.3 empowers the Authority to revive the registration cancelled on these very grounds referred in the clauses of sub-section (4). It is suggested that on these grounds, the Authority may suspend registration of the insurer. If the insurer fails to comply with conditions stipulated in these sections or directions of the Authority within six months, then Authority may proceed to cancel registration.</p> <p>Regulation 24 of the IRDA (Registration of Companies) Regulations, 2000 stipulates that no order of suspension or cancellation of certificate of registration shall be made without holding an enquiry as specified in the Regulations. This clause (clause 24) requires to be shifted into the Act itself.</p>

S.3A	<p>Renewal of Registration:-</p> <p>This is required to be done every year by an insurer. It is proposed that this period may be increased and that the registration may be kept valid for a period of three years especially in the case of life insurance business, after which it could be renewed.</p> <p>The word ‘December’ may be replaced by the word ‘March’ as a similar change for this effect has been made by the 1999 Amendment.</p>
S.3A (2)	<p>The determination of the renewal fee for registration provided under s.3A (2) referring to the percentage of premium income as also the amount specified in s.3A (2)(i) requires reconsideration. The suggestion is that the same should be reduced.</p>
S.3A (3)	<p>The provisions for making deposits in respect of the renewal fee in the Reserve Bank of India has both been made in s.3A (3) of the Act and regulation 21 of Chapter IV of the Regulations. It is suggested that the statutory provision may be amended so as to provide – “in the manner as provided in the regulations” and the words “the Reserve Bank of India” in the regulation may be replaced by the words “any Scheduled Bank.”</p>
S.3A (4)	<p>The provisions of sub-section (4) of s.3A provide for an appeal to be made to the Central Government against the order of the Authority imposing a penalty on the insurer. Here, the penalty is in the nature of the</p>

	late fee and the ceiling limit has been spelt out in this very provision. Hence, the provision of appeal seems to be irrelevant. It is suggested that amendments may be made in this regard.
S.3A (5)	For every renewal the compliance of all requirements for fresh registration must be insisted upon apart from compliance of S.32B and 32C regarding insurance in rural and social sector. Accordingly, S.3A (5) may be amended.

APPENDIX-VI

Changes in relation to the powers and functions of the IRDA other than those with regard to grant of registration etc. set out in Appendix- V above
[Para 3.1.6]

Provision of the Insurance Act, 1938	Change proposed
S.33 (1) – Investigation by IRDA into affairs of insurer	<p>The provisions of s.33 does not lay down standards or criteria (grounds) to guide the Authority to cause investigation judiciously. In absence of such criteria, the power may be misused for ulterior motive. Hence the provisions of sub-section (1) may be amended by adding the words “if it considers expedient to do so” in sub-section (1).</p> <p>It is to be noted that the section uses the term “Authority” for both the Regulating Authority and investigating authority though the latter is mentioned as investigating authority in the section. Yet such a usage may give rise to some confusion. It is, therefore, appropriate to change the terminology from investigating authority to investigating officer.</p>
S.33 (4) – Examination by Investigating Authority of insurer’s officer on oath	<p>The section does not provide for the qualification/ experience/ rank of the person to be appointed as the investigating authority who is obligated to examine on oath the officers of the insurer under sub-section (4). This may be rectified by suitable amendments. A provision may also be incorporated so as to prevent appointment of incompetent person.</p>
S.33 (8) – Information to be	The provisions of sub-section (8) speaks of the

maintained by insurers	minimum information as specified in the regulations to be maintained by the insurers so as to facilitate the investigating authority to discharge its functions. The kind of information which this section indicates is of general nature and should be maintained by every insurer whether its affairs are investigated or not. Hence, the contents of this sub-section should be made a part the obligations of insurers to be especially framed for this purpose.
S.34B (4) – Penalty for contravention of provisions regarding removal by IRDA of managerial persons	The provisions of sub-section (4) of this section prescribes punishment for contravention of s.34B or of proviso under s.34B (2) in the nature of fine extendable to Rs. 250 per day. The amount of fine is not adequate enough to deter an officer from contravening the orders of IRDA. Therefore, the same may be enhanced appropriately.
S.34C – Power of IRDA to appoint additional directors	This power should be exercise by IRDA in consultation with the central government and particularly in case of insurance cooperative societies.
S.34E – Power to caution or advise insurers	In s.34 (E), the word “Controller” should be substituted by the word ‘Authority’ as the powers described in this section are now exercised by the Authority by virtue of the IRDA Act.
S.34G – Power of authority to order closure of foreign branches	This provision is no longer relevant since private players, now permitted, can themselves decide on closure of their branches without being directed by the IRDA. This provision may be deleted.

S.34H – Search and seizure	<p>The rank of the officer conducting search and seizure should be clarified.</p> <p>The words ‘Code of Criminal Procedure, 1898’ should be substituted by ‘Code of Criminal Procedure, 1973’.</p>
S.35 (1) – Amalgamation and transfer of insurance business	<p>At present, the provision applies only to life insurance business. It is suggested that this be made applicable to general insurance business as well.</p> <p>Further, a time limit may be specified within which IRDA has to approve the scheme of transfer or amalgamation.</p> <p>The title of the marginal note requires minor change in the context of the provisions of this section. The word “and” be replaced by the word “or”.</p>
S.35 (3) – Requirement of preparation of actuarial reports	<p>The provisions of sub-clause (c) of s.35 (3) states that actuarial reports are to be prepared as per the requirements of Part II of Fourth and Fifth Schedules. As the Fourth Schedule has been repealed by the Insurance (Amendment) Act 2002, clause (c) of s.35 (3) may be amended by deleting the reference of Schedule IV and to provide that actuarial reports be prepared in conformity with the regulations made by the Authority.</p>
S.36 – Approval of amalgamation by IRDA	<p>The Authority is empowered under s.36 of the Act to approve the arrangement of amalgamation after giving adequate opportunity of hearing to the directors and policy holders who desire so and to pass consequential orders to give effect to the amalgamation including the</p>

	<p>disposal of deposits made under ss. 7 or 98. S.98, which provides for mutual insurance companies and co-operative life insurance societies, has become redundant. Therefore, the words “or s.98” may be omitted. Similar omission is required in clause (c) of the proviso to this section.</p> <p>The provisions of amalgamation may be made applicable to general insurance business, as well. If this is done, then the words “life policy” in s.36 (1) would have to be replaced by the words ‘of any kind of policy’.</p> <p>The word ‘and’ in the marginal note be replaced by the word ‘or’.</p>
<p>S.37A (2) – Power of IRDA to prepare scheme of amalgamation</p>	<p>The contents of sub-section (2) which enumerates the clauses which the scheme should contain can be made part of the Regulations.</p>
<p>S.37A (4) – Central government is specify scheme of amalgamation sanctioned by it</p>	<p>The following may be added in s.37 (A) (4) after the words “in this behalf”.</p> <p>“in the Official Gazette with such constitution, with such property, powers, rights, interests, authorities and privileges and with such liabilities, duties and obligations as may be specified in the order.”</p> <p>The following provisions may also be incorporated to protect the interest of policy holders or shareholders etc. as provided in the Companies Act:</p> <p>“(4A) Every policyholder or shareholder or member of each of the insurers, before amalgamation, shall have the</p>

	<p>same interest in, or rights against the insurer resulting from amalgamation as he had in the company of which he was originally a policyholder or shareholder or member:</p> <p>Provided that where the interests or rights of any shareholder or member are less than his interest in, or rights against, the original insurer, he shall be entitled to compensation, which shall be assessed by the Authority as may be prescribed.</p> <p>(4B) The compensation so assessed shall be paid to the shareholder or member by the insurance company resulting from such amalgamation.</p> <p>(4C) Any member or shareholder aggrieved by the assessment of compensation made by the Authority under sub-section (4A) (proposed) may within thirty days from the publication of such assessment prefer an appeal to the Central Government.”</p>
<p>S.42 (1) – Licensing of insurance agents</p>	<p>Consistent with the Regulations the Authority should itself authorise officers of the insurers who can issue or renew licences.</p> <p>Subject to changes made in the Regulations in this behalf from time to time by the IRDA, the fee limit for issuing of licence should be increased beyond the present limit of Rs.250/-.</p>
<p>S.42 (2) – Number of insurers for whom a person can act as agent</p>	<p>Consistent with the Regulations, sub-section (2) of S.42 should be amended to provide that an agent can act for “only one life insurer and/ or one non-life</p>

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

	deliberately contravenes the provisions of the Act.
S.42 (6) – Issue of duplicate licence	The designated officer instead of the Authority may be authorized to issue duplicate licence.
S.42 (7) – Punishment for acting as agent without licence	The present fine of Rs.500/- on a person acting as agent without licence and Rs.1000/- on an insurer appointing a person to act as such are inadequate and require to be enhanced.
S.42D – Licence to intermediary or insurance intermediary	The power to issue licence should be exercised by an officer authorised by the IRDA and not the IRDA itself.
S.42D (1) proviso (a)	In view of the inconsistency with 42D (5), it is proposed that clause (a) of the proviso to S.42D (1) may be amended so as to substitute words in figures ‘(5) of this section’ in place of words and figures ‘(4) of s.42’.
S.42D (8) & (9) – Fine to be imposed for contravention	These required to be specified.
S.64 UM – Issue of licence to surveyors/ loss assessors	The provision requires to be amended to expressly empower the Authority to issue licence on the same grounds of qualifications and disqualifications as specified in S.42 (1) & (2) for insurance agents. The ground found in Regulation 8 (4) for cancellation of licence of a surveyor who fails discharge duties and responsibilities in a satisfactory and professional manner or violate the code of conduct prescribed by the Regulations requires to be incorporated in S.64 UM (1) (G).

	<p>A provision for suspension of licence, as provided in Regulation 8 (4) should be incorporated in the Act.</p>
<p>S.64 UM (1A)</p>	<p>At present there is no transparency on appointment of surveyor/ loss assessor by general insurers. Public sector general insurers, by and large, appoint some privileged surveyors with some understanding with respective department/ staff/ officer/ manager. By an appropriate amendment, this should be done away with. General insurers should publish a list of appointed surveyors in notice board/Web Sites regularly indicating fees paid to be to the surveyor/loss assessor.</p> <p>The principal Act does not provide about the functions to be performed by a surveyors or loss assessor, but mandates them to comply with the code of conduct in respect of their duties and responsibilities as provided in Regulation 13 (2). Hence a provision in regard to the functions to be performed by a surveyors or loss assessor may be incorporated after sub-section (1A) as follows:</p> <p>“A surveyor and loss assessor shall investigate, survey, manage, quantify, value and deal with losses on behalf of the insurer or insured arising from any contingency, carry out the work with objectivity and professional integrity by strictly adhering to the code of conduct expected of such surveyor and loss assessor and report thereon within the time specified in the regulations.”</p> <p>It is suggested that the Authority should exercise the</p>

	<p>power under sub-section (3) to call for independent report from an approved surveyor upon receiving a complaint. There is also a suggestion for appointment of a second surveyor or loss assessor, if any complaint is received by the Authority. It would be appropriate if the power to settle the claims under this section are exercised by an adjudicating officer to be appointed by the Authority.</p> <p>It has been suggested that appointment and payment to surveyors/loss assessors should be on rotation and controlled by IRDA with the help of respective State Chapter of Institute of Surveyor/ Loss Assessor so that surveyors/loss assessors are independent of general insurers and need not to appease the respective department/ staff/ officer/ manager for getting appointment and payment.</p> <p>There is a suggestion that to set aside the written test for issuing licence to any person to act as a surveyor because the new trainees are well qualified technical graduates. Moreover, the candidates have to go through one year training under a senior surveyor.</p>
<p>S.44 – Power to call for information</p>	<p>The provisions of this section is to be recast because the system of principal agent, chief agent or special agent is no more in existence and in consequence of which, the repeal of ss.42B and 42C has already been proposed. Hence, in this section, wherever there is a reference to the principal agent or special agent or chief agent, or references to ss.42B and 42C, such references require</p>

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