

THE FIRST SCHEDULE

(See section 30)

AMENDMENTS TO THE INSURANCE ACT, 1938

(4 OF 1938)

1. In the Act, except in clause (5B) of section 2 and section 2B, for “Controller” wherever it occurs, substitute “Authority” and such consequential changes as the rules of grammar may require shall also be made.

2. In sections 27, 27A, 27B, 31, 32A, 40A, 48B, 64F, 64G, 64-I, 64J, 64L, 64R, 64UC, 64UM, 113 and 115, for “Central Government” wherever they occur, substitute “Authority”.

3. Section 2,—

(a) after clause (I), insert the following:—

‘(IA) “Authority” means the Insurance Regulatory and Development Authority established under sub-section (I) of section 3 of the Insurance Regulatory and Development Authority Act, 1999;’;

(b) for clause (5B), substitute the following:—

‘(5B) “Controller of Insurance” means the officer appointed by the Central Government under section 2B to exercise all the powers, discharge the functions and perform the duties of the Authority under this Act or the Life Insurance Corporation Act, 1956 (31 of 1956) or the General Insurance Business (Nationalisation) Act, 1972 (57 of 1972) or the Insurance Regulatory and Development Authority Act, 1999;’;

(c) after clause (7), insert the following:—

‘(7A) “Indian insurance company” means any insurer being a company—

(a) which is formed and registered under the Companies Act, 1956 (1 of 1956);

(b) in which the aggregate holdings of equity shares by a foreign company, either by itself or through its subsidiary companies or its nominees, do not exceed twenty-six per cent. paid-up equity capital of such Indian insurance company;

(c) whose sole purpose is to carry on life insurance business or general insurance business or re-insurance business.

Explanation.—For the purposes of this clause, the expression “foreign company” shall have the meaning assigned to it under clause (23A) of section 2 of the Income-tax Act, 1961 (43 of 1961);’;

(d) in clause (14), for “section 114”, substitute “this Act”.

4. After section 2, insert the following:—

“2A. *Interpretation of certain words and expressions.*—Words and expressions used and not defined in this Act but defined in the Life Insurance Corporation Act, 1956 (31 of 1956), the General Insurance Business (Nationalisation) Act, 1972 (57 of 1972) and the Insurance Regulatory and Development Authority Act, 1999 shall have the meanings respectively assigned to them in those Acts.”.

5. Section 2B, for sub-section (I), substitute the following:—

“(I) If at any time, the Authority is superseded under sub-section (I) of section 19 of the Insurance Regulatory and Development Authority Act, 1999, the Central Government may, by notification in the Official Gazette, appoint a person to be the Controller of Insurance till such time the Authority is reconstituted under sub-section (3) of section 19 of that Act.”.

6. Section 2C, in sub-section (1), after the second proviso, insert the following:—

“Provided also that no insurer other than an Indian insurance company shall begin to carry on any class of insurance business in India under this Act on or after the commencement of the Insurance Regulatory and Development Authority Act, 1999.”.

7. Section 3,—

(a) in sub-section (1), after the first proviso, insert the following:—

“Provided further that a person or insurer, as the case may be, carrying on any class of insurance business in India, on or before the commencement of the Insurance Regulatory and Development Authority Act, 1999, for which no registration certificate was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he had made an application for such registration within the said period of three months, till the disposal of such application:

Provided also that any certificate of registration, obtained immediately before the commencement of the Insurance Regulatory and Development Authority Act, 1999, shall be deemed to have been obtained from the Authority in accordance with the provisions of this Act.”;

(b) in sub-section (2),—

(i) in the opening portion, for “Every application for registration shall be accompanied by—”, substitute the following:—

“Every application for registration shall be made in such manner as may be determined by the regulations made by the Authority and shall be accompanied by—”;

(ii) in clause (d), for “working capital”, substitute “paid-up equity capital or working capital”;

(iii) in clause (f), in the proviso, omit “and” occurring at the end;

(iv) for clause (g), substitute the following:—

“(g) the receipt showing payment of fee as may be determined by the regulations which shall not exceed fifty thousand rupees for each class of business as may be specified by the regulations made by the Authority;

(h) such other documents as may be specified by the regulations made by the Authority.”;

(c) after sub-section (2A), insert—

“(2AA) The Authority shall give preference to register the applicant and grant him a certificate of registration if such applicant agrees, in the form and manner as may be specified by the regulations made by the Authority, to carry on the life insurance business or general insurance business for providing health cover to individuals or group of individuals.”;

(d) in sub-section (4),—

(i) in clause (f), for “of any rule or order made thereunder, or”, substitute the following:—

“of any rule or any regulation or order made or, any direction issued thereunder, or”;

(ii) in clause (h), insert “or” at the end;

(iii) after clause (h), insert the following:—

“(i) if the insurer makes a default in complying with any direction issued or order made, as the case may be, by the Authority under the Insurance Regulatory and Development Authority Act, 1999, or

(j) if the insurer makes a default in complying with, or acts in contravention of, any requirement of the Companies Act, 1956 (1 of 1956) or the Life Insurance Corporation Act, 1956 (31 of 1956) or the General Insurance Business (Nationalisation) Act, 1972 (57 of 1972) or the Foreign Exchange Regulation Act, 1973 (46 of 1973).”;

(e) in sub-section (5C),—

(i) for “clause (h)”, substitute “clause (h) or clause (i) or clause (j)”;

(ii) for “any requirement of this Act or of any rule or order made thereunder”, substitute the following:—

“any requirement of this Act or the Insurance Regulatory and Development Authority Act, 1999, or of any rule or any regulation, or any order made thereunder or any direction issued under those Acts”;

(f) after sub-section (5D), insert the following:—

“(5E) The Authority may, by order, suspend or cancel any registration in such manner as may be determined by the regulations made by it:

Provided that no order under this sub-section shall be made unless the person concerned has been given a reasonable opportunity of being heard.”;

(g) for sub-section (7), substitute the following:—

“(7) The Authority may, on payment of such fee, not exceeding five thousand rupees, as may be determined by the regulations, issue a duplicate certificate of registration to replace a certificate lost, destroyed or mutilated, or in any other case where the Authority is of opinion that the issue of duplicate certificate is necessary.”.

8. Section 3A,—

(a) in sub-section (1), for “the 31st day of December, 1941.”, substitute the following:—

“the 31st day of March, after the commencement of the Insurance Regulatory and Development Authority Act, 1999.”;

(b) in sub-section (2),—

(i) for “prescribed fee”, substitute “fee as determined by the regulations made by the Authority”;

(ii) for clause (i), substitute the following:—

“(i) exceed one-fourth of one per cent. of such premium income or rupees five crores, whichever is less.”;

(iii) for clause (ii), substitute the following:—

“(ii) be less, in any case, than fifty thousand rupees for each class of insurance business.”;

(c) in sub-section (3), for “prescribed fee”, substitute “fee as determined by the regulations made by the Authority”;

(d) in sub-section (4), for “prescribed fee”, substitute “fee as determined by the regulations made by the Authority, and”.

9. For section 6, substitute the following:—

“6. *Requirement as to capital.*—No insurer carrying on the business of life insurance, general insurance or re-insurance in India on or after the commencement of the Insurance Regulatory and Development Authority Act, 1999, shall be registered unless he has,—

(i) a paid-up equity capital of rupees one hundred crores, in case of a person carrying on the business of life insurance or general insurance; or

(ii) a paid-up equity capital of rupees two hundred crores, in case of a person carrying on exclusively the business as a re-insurer:

Provided that in determining the paid-up equity capital specified under clause (i) or clause (ii), the deposit to be made under section 7 and any preliminary expenses incurred in the formation and registration of the company shall be excluded:

Provided further that an insurer carrying on business of life insurance, general insurance or re-insurance in India before the commencement of the Insurance Regulatory and Development Authority Act, 1999 and who is required to be registered under this Act, shall have a paid-up equity capital in accordance with clause (i) and clause (ii), as the case may be, within six months of the commencement of that Act.”.

10. Section 6A,—

(a) in sub-section (4), in clause (b),—

(I) in sub-clause (i), omit “and” occurring at the end;

(II) in sub-clause (ii), for “sanction of the Central Government has been obtained to the transfer.”, substitute “approval of the Authority has been obtained to the transfer.”;

(III) after sub-clause (ii), insert the following:—

‘(iii) where, the nominal value of the shares intended to be transferred by any individual, firm, group, constituents of a group, or body corporate under the same management, jointly or severally exceeds one per cent. of the paid-up equity capital of the insurer, unless the previous approval of the Authority has been obtained for the transfer.

Explanation.—For the purposes of this sub-clause, the expressions “group” and “same management” shall have the same meanings respectively assigned to them in the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969).’;

(b) in sub-section (11),—

(i) for “*Explanation 1*”, substitute “*Explanation*”;

(ii) omit *Explanation 2*.

11. After section 6A, insert the following:—

“6AA. *Manner of divesting excess shareholding by promoter in certain cases.*—(1) No promoter shall at any time hold more than twenty-six per cent. or such other percentage as may be prescribed, of the paid-up equity capital in an Indian insurance company:

Provided that in a case where an Indian insurance company begins the business of life insurance, general insurance or re-insurance in which the promoters hold more than twenty-six per cent. of the paid-up equity capital or such other excess percentage as may be prescribed, the promoters shall divest in a phased manner the share capital in excess of the twenty-six per cent. of the paid-up equity capital or such excess paid-up equity capital as may be prescribed, after a period of ten years from the date of the commencement of the said business by such Indian insurance company or within such period as may be prescribed by the Central Government.

Explanation.—For the removal of doubts, it is hereby declared that nothing contained in the proviso shall apply to the promoters being foreign company, referred to in sub-clause (b) of clause (7A) of section 2.

(2) The manner and procedure for divesting the excess share capital under sub-section (1) shall be specified by the regulations made by the Authority.”.

12. Section 7,—

(a) in sub-section (1),—

(i) omit “not being an insurer specified in sub-clause (c) of clause (9) of section 2”;

(ii) for clauses (a) and (b), substitute the following:—

“(a) in the case of life insurance business, a sum equivalent to one per cent. of his total gross premium written in India in any financial year commencing after the 31st day of March, 2000, not exceeding rupees ten crores;

(b) in the case of general insurance business, a sum equivalent to three per cent. of his total gross premium written in India, in any financial year commencing after the 31st day of March, 2000, not exceeding rupees ten crores;

(c) in the case of re-insurance business, a sum of rupees twenty crores.”;

(b) omit sub-sections (IA), (IB), (IC), (ID) and (IE).

13. Section 11,—

(a) in sub-section (I), for “calendar year”, substitute “financial year”;

(b) after sub-section (I), insert the following:—

“(IA) Notwithstanding anything contained in sub-section (I), every insurer, on or after the commencement of the Insurance Regulatory and Development Authority Act, 1999, in respect of insurance business transacted by him and in respect of his shareholders’ funds, shall, at the expiration of each financial year, prepare with reference to that year, a balance-sheet, a profit and loss account, a separate account of receipts and payments, a revenue account in accordance with the regulations made by the Authority.

(IB) Every insurer shall keep separate accounts relating to funds of shareholders and policy-holders.”.

14. Section 13,—

(a) in sub-section (I),—

(i) for “once at least in every three years”, substitute “every year”;

(ii) in the first proviso, for “not later than four years”, substitute “not later than two years”;

(iii) after the second proviso, insert the following:—

“Provided also that for an insurer carrying on life insurance business in India immediately before the commencement of the Insurance Regulatory and Development Authority Act, 1999, the last date as at which the first investigation after such commencement should be caused by an actuary, shall be the 31st day of March, 2001.”;

(iv) after the third proviso, insert the following:—

“Provided also that every insurer, on or after the commencement of the Insurance Regulatory and Development Authority Act, 1999, shall cause an abstract of the report of the actuary to be made in the manner specified by the regulations made by the Authority.”;

(b) in sub-section (4), after the proviso, insert the following:—

“Provided further that the statement referred to in sub-section (4) shall be appended in the form and in the manner specified by the regulations made by the Authority.”.

15. After section 27B, insert the following:—

“27C. *Prohibition for investment of funds outside India.*—No insurer shall directly or indirectly invest outside India the funds of the policy-holders.

27D. *Manner and conditions of investment.*—(1) Without prejudice to anything contained in sections 27, 27A and 27B, the Authority may, in the interests of the policy-holders, specify by the regulations made by it, the time, manner and other conditions of investment of assets to be held by an insurer for the purposes of this Act.

(2) The Authority may give specific directions for the time, manner and other conditions subject to which the funds of policy-holders shall be invested in the infrastructure and social sector as may be specified by regulations made by the Authority and such regulations shall apply uniformly to all the insurers carrying on the business of life insurance, general insurance, or re-insurance in India on or after the commencement of the Insurance Regulatory and Development Authority Act, 1999.

(3) The Authority may, after taking into account the nature of business and to protect the interests of the policy-holders, issue to an insurer the directions relating to the time, manner and other conditions of investment of assets to be held by him:

Provided that no direction under this sub-section shall be issued unless the insurer concerned has been given a reasonable opportunity of being heard.”.

16. Section 28A, in sub-section (1), for “31st day of December”, substitute “31st day of March”.

17. Section 28B, in sub-section (1), for “31st day of December”, substitute “31st day of March”.

18. Section 31B,—

(a) in sub-section (1), for “Central Government” at both the places where they occur, substitute “Authority”;

(b) in sub-section (2), for “a statement in the prescribed form”, substitute “a statement, in the form specified by the regulations made by the Authority,”;

(c) after sub-section (3), insert the following:—

“(4) Every direction under this section shall be issued by an order made by the Authority:

Provided that no order under this section shall be made unless the person concerned has been given an opportunity of being heard.”.

19. After section 32A, insert the following:—

“32B. *Insurance business in rural or social sector.*—Every insurer shall, after the commencement of the Insurance Regulatory and Development Authority Act, 1999, undertake such percentages of life insurance business and general insurance business in the rural or social sector, as may be specified, in the Official Gazette by the Authority, in this behalf.

32C. *Obligations of insurer in respect of rural or unorganised sector and backward classes.*—Every insurer shall, after the commencement of the Insurance Regulatory and Development Authority Act, 1999, discharge the obligations specified under section 32B to provide life insurance or general insurance policies to the persons residing in the rural sector, workers in the unorganised or informal sector or for economically vulnerable or backward classes of the society and other categories of persons as may be specified by regulations made by the Authority and such insurance policies shall include insurance for crops.”.

20. For section 33, substitute the following:—

‘INVESTIGATION

33. *Power of investigation and inspection by Authority.*—(1) The Authority may, at any time, by order in writing, direct any person (hereafter in this section referred to as “Investigating Authority”) specified in the order to investigate the affairs of any insurer and to report to the Authority on any investigation made by such Investigating Authority:

Provided that the Investigating Authority may, wherever necessary, employ any auditor or actuary or both for the purpose of assisting him in any investigation under this section.

(2) Notwithstanding anything to the contrary contained in section 235 of the Companies Act, 1956 (1 of 1956), the Investigating Authority may, at any time, and shall, on being directed so to do by the Authority, cause an inspection to be made by one or more of his officers of any insurer and his books of account; and the Investigating Authority shall supply to the insurer a copy of his report on such inspection.

(3) It shall be the duty of every manager, managing director or other officer of the insurer to produce before the Investigating Authority directed to make the investigation under sub-section (1), or inspection under sub-section (2), all such books of account, registers and other documents in his custody or power and to furnish him with any statement and information relating to the affairs of the insurer as the said Investigating Authority may require of him within such time as the said Investigating Authority may specify.

(4) Any Investigating Authority, directed to make an investigation under sub-section (1), or inspection under sub-section (2), may examine on oath, any manager, managing director or other officer of the insurer in relation to his business and may administer oaths accordingly.

(5) The Investigating Authority shall, if he has been directed by the Authority to cause an inspection to be made, and may, in any other case, report to the Authority on any inspection made under this section.

(6) On receipt of any report under sub-section (1) or sub-section (5), the Authority may, after giving such opportunity to the insurer to make a representation in connection with the report as, in the opinion of the Authority, seems reasonable, by order in writing,—

(a) require the insurer, to take such action in respect of any matter arising out of the report as the Authority may think fit; or

(b) cancel the registration of the insurer; or

(c) direct any person to apply to the court for the winding up of the insurer, if a company, whether the registration of the insurer has been cancelled under clause (b) or not.

(7) The Authority may, after giving reasonable notice to the insurer, publish the report submitted by the Investigating Authority under sub-section (5) or such portion thereof as may appear to it to be necessary.

(8) The Authority may by the regulations made by it specify the minimum information to be maintained by insurers in their books, the manner in which such information shall be maintained, the checks and other verifications to be adopted by insurers in that connection and all other matters incidental thereto as are, in its opinion, necessary to enable the Investigating Authority to discharge satisfactorily his functions under this section.

Explanation.—For the purposes of this section, the expression “insurer” shall include in the case of an insurer incorporated in India—

(a) all its subsidiaries formed for the purpose of carrying on the business of insurance exclusively outside India; and

(b) all its branches whether situated in India or outside India.

(9) No order made under this section other than an order made under clause (b) of sub-section (6) shall be capable of being called in question in any court.

(10) All expenses of, and incidental to, any investigation made under this section shall be defrayed by the insurer, shall have priority over that debts due from the insurer and shall be recoverable as an arrear of land revenue.’

21. Section 33A, omit “Central Government or the”.

22. Section 34H,—

(a) in sub-section (1),—

(i) for “Controller”, substitute “Chairperson of the Authority”;

(ii) for “an Assistant Controller of Insurance”, substitute “an officer authorised by the Authority”;

(b) in sub-sections (5) and (7), for “Controller” wherever it occurs, substitute “Chairperson of the Authority”.

23. Section 35,—

(a) in sub-section (1), for “sanctioned by the Controller”, substitute “approved by the Authority”;

(b) in sub-section (3),—

(i) in the first paragraph, for “to sanction any such scheme”, substitute “to approve any such scheme”;

(ii) in the second paragraph, for “the amalgamation or transfer if sanctioned”, substitute “the amalgamation or transfer if approved”.

24. Section 36,—

(a) in sub-section (1), for “may sanction the arrangement”, substitute “may approve the arrangement”;

(b) in sub-section (2),—

(i) for “the insurers concerned in the amalgamation, the Controller may sanction”, substitute “the insurers concerned in the amalgamation, the Authority may approve”;

(ii) for “contracts as sanctioned by the Controller”, substitute “contracts as approved by the Authority”.

25. Section 37, in clause (c), for “scheme sanctioned”, substitute “scheme approved”.

26. In section 40A, in sub-section (3), for the portion beginning with the words “an amount exceeding” and ending with the words “ten per cent. of the premium payable on the policy”, substitute “an amount not exceeding fifteen per cent. of the premium payable on the policy where the policy relates to fire or marine insurance or miscellaneous insurance.”.

27. Section 42,—

(a) for sub-section (1), substitute the following:—

“(1) The Authority or an officer authorised by it in this behalf shall, in the manner determined by the regulations made by it and on payment of the fee determined by the regulations, which shall not be more than two hundred and fifty rupees, issue to any person making an application in the manner determined by the regulations, a licence to act as an insurance agent for the purpose of soliciting or procuring insurance business:

Provided that,—

(i) in the case of an individual, he does not suffer from any of the disqualifications mentioned in sub-section (4); and

(ii) in the case of a company or firm, any of its directors or partners does not suffer from any of the said disqualifications:

Provided further that any licence issued immediately before the commencement of the Insurance Regulatory and Development Authority Act, 1999 shall be deemed to have been issued in accordance with the regulations which provide for such licence.”;

(b) for sub-section (3), substitute the following:—

“(3) A licence issued under this section, after the date of the commencement of the Insurance Regulatory and Development Authority Act, 1999, shall remain in force for a period of three years only from the date of issue, but shall, if the applicant, being an individual does not, or being a company or firm any of its directors or partners does not, suffer from any of the disqualifications mentioned in clauses (b), (c), (d), (e) and (f) of sub-section (4) and the application for renewal of licence reaches the issuing authority at least thirty days before the date on the licence ceases to remain in force, be renewed for a period of three years at any one time on payment of the fee determined by the regulations made by the Authority which shall not be more than rupees two hundred and fifty, and additional fee of an amount determined by the regulations

not exceeding rupees one hundred by way of penalty, if the application for renewal of the licence does not reach the issuing authority at least thirty days before the date on which the licence ceases to remain in force.”;

(c) in sub-section (3A), for the proviso, substitute the following:—

“Provided that the Authority may, if satisfied that undue hardship would be caused otherwise, accept any application in contravention of this sub-section on payment by the applicant of a penalty of seven hundred and fifty rupees.”;

(d) in sub-section (4), after clause (d), insert the following:—

“(e) that he does not possess the requisite qualifications and practical training for a period not exceeding twelve months, as may be specified by the regulations made by the Authority in this behalf;

(f) that he has not passed such examination as may be specified by the regulations made by the Authority in this behalf:

Provided that a person who had been issued a licence under sub-section (1) of this section or sub-section (1) of section 64UM shall not be required to possess the requisite qualifications, practical training and pass such examination as required by clauses (e) and (f);

(g) that he violates the code of conduct as may be specified by the regulations made by the Authority.”;

(e) for sub-section (6), substitute the following:—

“(6) The Authority may issue a duplicate licence to replace a licence lost, destroyed or mutilated, on payment of such fee not exceeding fifty rupees as may be determined by the regulations.”;

(f) in sub-section (7),—

(i) for “fifty rupees”, substitute “five hundred rupees”;

(ii) for “one hundred rupees”, substitute “one thousand rupees”;

(g) in sub-section (8), for “fifty rupees”, substitute “five thousand rupees”.

28. Section 42A, in sub-section (1),—

(a) for “Controller or an officer authorised by him”, substitute “Authority or an officer authorised by it”;

(b) for “an application to him”, substitute “an application to it”.

29. After section 42C, insert the following:—

“42D. *Issue of licence to intermediary or insurance intermediary.*—(1) The Authority or an officer authorised by it in this behalf shall, in the manner determined by the regulations made by the Authority and on payment of the fees determined by the regulations made by the Authority, issue to any person making an application in the manner determined by the regulations, and not suffering from any of the disqualifications herein mentioned, a licence to act as an intermediary or an insurance intermediary under this Act:

Provided that,—

(a) in the case of an individual, he does not suffer from any of the disqualifications mentioned in sub-section (4) of section 42, or

(b) in the case of a company or firm, any of its directors or partners does not suffer from any of the said disqualifications.

(2) A licence issued under this section shall entitle the holder thereof to act as an intermediary or insurance intermediary.

(3) A licence issued under this section shall remain in force for a period of three years only from the date of issue, but shall, if the applicant, being an individual does not, or being a company or firm any of its directors or partners does not suffer from any of the disqualifications mentioned in clauses (b), (c), (d), (e) and (f) of sub-section (4) of section 42 and the application for renewal of licence reaches the issuing authority at least thirty days before the date on which the licence ceases to remain in force, be renewed for a period of three years at any one time on payment of the fee, determined by the regulations made by the Authority and additional fee for an amount determined by the regulations, not exceeding one hundred rupees by way of penalty, if the application for renewal of the licence does not reach the issuing authority at least thirty days before the date on which the licence ceases to remain in force.

(4) No application for the renewal of a licence under this section shall be entertained if the application does not reach the issuing authority before the licence ceases to remain in force:

Provided that the Authority may, if satisfied that undue hardship would be caused otherwise, accept any application in contravention of this sub-section on payment by the applicant of a penalty of seven hundred and fifty rupees.

(5) The disqualifications above referred to shall be the following:—

(a) that the person is a minor;

(b) that he is found to be of unsound mind by a court of competent jurisdiction;

(c) that he has been found guilty of criminal misappropriation or criminal breach of trust or cheating or forgery or an abetment of or attempt to commit any such offence by a court of competent jurisdiction:

Provided that, where at least five years have elapsed since the completion of the sentence imposed on any person in respect of any such offence, the Authority shall ordinarily declare in respect of such person that his conviction shall cease to operate as a disqualification under this clause;

(d) that in the course of any judicial proceeding relating to any policy of insurance of the winding up of an insurance company or in the course of an investigation of the affairs of an insurer it has been found that he has been guilty of or has knowingly participated in or connived at any fraud dishonestly or misrepresentation against an insurer or an insured;

(e) that he does not possess the requisite qualifications and practical training for a period not exceeding twelve months, as may be specified by the regulations made by the Authority in this behalf;

(f) that he has not passed such examinations as may be specified by the regulations made by the Authority in this behalf;

(g) that he violates the code of conduct as may be specified by the regulations made by the Authority.

(6) If it be found that an intermediary or an insurance intermediary suffers from any of the foregoing disqualifications, without prejudice to any other penalty to which he may be liable, the Authority shall, and if the intermediary or an insurance intermediary has knowingly contravened any provision of this Act may cancel the licence issued to the intermediary or insurance intermediary under this section.

(7) The Authority may issue a duplicate licence to replace a licence lost, destroyed or mutilated, on payment of such fee, as may be determined by the regulations made by the Authority.

(8) Any person who acts as an intermediary or an insurance intermediary without holding a licence issued under this section to act as such, shall be punishable with fine, and any insurer or any person who appoints as an intermediary or an insurance intermediary or any person not licensed to act as such or transacts any insurance business in India through any such person, shall be punishable with fine.

(9) Where the person contravening sub-section (8) is a company or a firm, then, without prejudice to any other proceedings which may be taken against the company or firm, every director, manager, secretary or other officer of the company, and every partner of the firm who is knowingly a party to such contravention shall be punishable with fine.”.

30. Section 64UA, in sub-section (1), in sub-clause (a), for “Controller of Insurance”, substitute “Chairperson of the Authority”.

31. Section 64UB,—

(a) for sub-section (1), substitute the following:—

“(1) The Authority may, by notification in the Official Gazette, make regulations to carry out the purposes of this Part.”;

(b) in sub-section (2), for “rules”, substitute “regulations”;

(c) in sub-section (3), for “Central Government” at both the places where it occur, substitute “Authority”;

(d) in sub-section (5), for “Controller of Insurance”, substitute “Chairperson of the Authority”.

32. Section 64UC, in sub-section (1), in proviso, for “the Controller may, with the previous approval of the Central Government”, substitute “the Authority may”.

33. Section 64UD, after sub-section (1), insert the following:—

“Provided that the Chairperson of the Authority shall become the Chairman of the Advisory Committee with effect from the commencement of the Insurance Regulatory and Development Authority Act, 1999 and function as such, and any Chairman of the Tariff Committee holding office immediately before such commencement shall cease to be the Chairman.”.

34. Section 64UJ, in sub-section (5), for “Central Government”, wherever it occurs, substitute “Authority”.

35. Section 64UM,—

(a) in sub-section (1),—

(i) in paragraph (B), after “the Insurance (Amendment) Act, 1968”, insert “but before the commencement of the Insurance Regulatory and Development Authority Act, 1999”;

(ii) after paragraph (B), insert the following:—

“(BA) Every person who intends to act as a surveyor or loss assessor after the expiry of a period of one year from the commencement of the Insurance Regulatory and Development Authority Act, 1999, shall make an application to the Authority within such time, in such manner and on payment of such fee as may be determined by the regulations made by the Authority:

Provided that any licence issued immediately before the commencement of the Insurance Regulatory and Development Authority Act, 1999 shall be deemed to have been issued in accordance with the regulations providing for such licence.”;

(iii) in paragraph (C), for “as may be prescribed”, substitute “as may be determined by the regulations”;

(iv) in paragraph (D), in clause (i),—

(A) for item (a), substitute the following:—

“(a) has been in practice as a surveyor or loss assessor on the date of commencement of the Insurance Regulatory and Development Authority Act, 1999, or”;

(B) in item (f), for “prescribed”, substitute “specified by the regulations made by the Authority”;

(b) after sub-section (I), insert—

“(IA) Every surveyor and loss assessor shall comply with the code of conduct in respect of their duties, responsibilities and other professional requirements as may be specified by the regulations made by the Authority.”.

36. Section 64V,—

(a) in sub-section (I),—

(i) in clause (i), after sub-clause (g), insert the following:—

“(h) such other asset or assets as may be specified by the regulations made in this behalf;”;

(ii) in clause (ii),—

(A) in sub-clause (b), in items (i) and (ii), for “40 per cent.”, substitute “50 per cent.”;

(B) after sub-clause (f), insert the following:—

“(g) such other liability which may be made in this behalf to be included for the purpose of clause (ii).”;

(b) for sub-section (2), substitute the following:—

“(2) Every insurer shall furnish to the Authority with his returns under section 15 or section 16, as the case may be, a statement certified by an auditor approved by the Authority in respect of general insurance business, or an actuary approved by the Authority in respect of life insurance business, as the case may be, of his assets and liabilities assessed in the manner required by this section as on the 31st day of March of the preceding year.

(3) Every insurer shall value his assets and liabilities in the manner required by this section and in accordance with the regulations which may be made by the Authority in this behalf.”.

37. Section 64VA,—

(a) in sub-section (I), for “at all times”, substitute “at all times before the commencement of the Insurance Regulatory and Development Authority Act, 1999”;

(b) after sub-section (I), insert the following:—

“(IA) Every insurer shall, at all times, on or after the commencement of the Insurance Regulatory and Development Authority Act, 1999, maintain an excess of the value of his assets over the amount of his liabilities of not less than the amount arrived at as follows (hereinafter referred to in this section referred to as the “required solvency margin”), namely:—

(i) in the case of an insurer carrying on life insurance business, the required solvency margin shall be the higher of the following amounts—

(a) fiftycrores of rupees (one hundred crores of rupees in case of re-insurers); or

(b) the aggregate sums of the results arrived at in items (I) and (II) stated below:—

(I) the aggregate of the results arrived at by applying the calculation described in item (A) below (Step I) and the calculation described in item (B) below (Step II):

(A) for Step I—

(A. 1) there shall be taken, a sum equal to a percentage determined by the regulations not exceeding five per cent. of the mathematical reserves for direct business and re-insurance acceptances without any deduction for re-insurance cessions;

(A. 2) the amount of mathematical reserves at the end of the preceding financial year after the deduction of re-insurance cessions shall be expressed as a

percentage of the amount of those mathematical reserves before any such deduction; and

(A. 3) the sum mentioned in item (A. 1) above shall be multiplied—

(A.3.1) where the percentage arrived at under item (A. 2) above is greater than eighty-five per cent. (or in the case of a re-insurer carrying on exclusive re-insurance business, fifty per cent.), by that greater percentage; and

(A.3.2) in any other case, by eighty-five per cent. (or in the case of a re-insurer carrying on exclusive re-insurance business, by fifty per cent.);

(B) for Step II—

(B. 1) there shall be taken, a sum equal to a percentage determined by the regulations made by the Authority not exceeding one per cent. of the sum at risk for the policies on which the sum at risk is not a negative figure, and

(B. 2) the amount of sum at risk at the end of the preceding financial year for policies on which the sum at risk is not a negative figure after the deduction of re-insurance cession shall be expressed as a percentage of the amount of that sum at risk before any such deduction, and

(B. 3) the sum arrived at under item (B. 1) above shall be multiplied—

(B. 3.1) where the percentage arrived at under item (B. 2) above is greater than fifty per cent., by that greater percentage; and

(B. 3.2) in any other case, by fifty per cent.

(II) a percentage determined by the regulations made by the Authority of the value of assets determined in accordance with the provisions of section 64V;

(ii) in the case of an insurer carrying on general insurance business, the required solvency margin, shall be the highest of the following amounts:—

(a) fiftycrores of rupees (one hundred crores of rupees in case of re-insurer); or

(b) a sum equivalent to twenty per cent. of net premium income; or

(c) a sum equivalent to thirty per cent. of net incurred claims,

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

Provided that if in respect of any insurer, the Authority is satisfied that either by reason of an unfavourable claim experience or because of sharp increase in the volume of the business, or for any other reason, compliance with the provisions of this sub-section would cause undue hardship to the insurer, the Authority may direct, for such period and subject to such conditions, such solvency margin not being less than the lower of the amount mentioned in sub-clause (i) or sub-clause (ii) above as the case may be.

Explanation.—For the purposes of this sub-section, the expressions—

(i) “mathematical reserves” means the provision made by an insurer to cover liabilities (excluding liabilities which have fallen due and liabilities arising from deposit back arrangement in relation to any policy whereby an amount is deposited by re-insurer with the cedant) arising under or in connection with policies or contracts for life insurance business. Mathematical reserves also include specific provision for adverse deviations of the bases, such as mortality and morbidity rates, interest rates, and expense rates, and any explicit provisions made, in the valuation of liabilities, in accordance with the regulations made by the Authority for this purpose;

(ii) “net incurred claims” means the average of the net incurred claims during the specified period of not exceeding three preceding financial years;

(iii) “sum at risk”, in relation to a life insurance policy, means a sum which is—

(a) in any case in which an amount is payable in consequence of death other than a case falling within sub-clause (b) below, the amount payable on death, and

(b) in any case in which the benefit under the policy in question consists of the making, in consequence of death, of the payments of annuity, payment of a sum by instalments or any other kind of periodic payments, the present value of that benefit,

less in either case the mathematical reserves in respect of the relevant policies.’;

(c) after sub-section (2), insert the following:—

“(2A) If, at any time an insurer does not maintain the required solvency margin in accordance with the provisions of this section, he shall, in accordance with the directions issued by the Authority, submit a financial plan, indicating a plan of action to correct the deficiency to the Authority within a specified period not exceeding three months.

(2B) An insurer who has submitted a plan under sub-section (2A) to the Authority shall propose modifications to the plan if the Authority considers it inadequate, and shall give effect to any plan accepted by the Authority as adequate.

(2C) An insurer who does not comply with the provisions of sub-section (2A) shall be deemed to be insolvent and may be wound up by the court.”;

(d) after sub-section (6), insert the following:—

“(7) Every insurer shall furnish to the Authority his returns under section 15 or section 16, as the case may be, in case of life insurance business a statement certified by an actuary approved by the Authority, and in case of general insurance business a statement certified by an auditor approved by the Authority, of the required solvency margin maintained by the insurer in the manner required by sub-section (1A).”.

38. Section 70, in sub-section (1), for “the Controller a certificate of registration”, substitute “the Authority, before the date of commencement of the Insurance Regulatory and Development Authority Act, 1999, a certificate of registration”.

39. Section 95, in sub-section (1), for “In this Part—”, substitute “In this Part, before the date of commencement of the Insurance Regulatory and Development Authority Act, 1999,—”.

40. Section 101A,—

(a) in sub-section (1), for “the Central Government”, substitute “the Authority, with the previous approval of the Central Government,”;

(b) in sub-section (2), for “the Central Government”, substitute “the Authority”.

41. Section 101B,—

(a) in sub-section (1), for “the Central Government”, substitute “the Authority with the previous approval of the Central Government.”;

(b) in sub-section (2), for “prescribed”, substitute “determined by the regulations made by the Authority”.

42. For sections 102 to 105, substitute the following:—

“102. *Penalty for default in complying with, or act in contravention of, this Act.*—If any person, who is required under this Act, or rules or regulations made thereunder,—

(a) to furnish any document, statement, account, return or report to the Authority, fails to furnish the same; or

(b) to comply with the directions, fails to comply with such directions;

(c) to maintain solvency margin, fails to maintain such solvency margin;

(d) to comply with the directions on the insurance treaties, fails to comply with such directions on the insurance treaties,

he shall be liable to a penalty not exceeding five lakh rupees for each such failure and punishable with fine.

103. *Penalty for carrying on insurance business in contravention of sections 3, 7 and 98.*—If a person makes a statement, or furnishes any document, statement, account, return or report which is false and which he either knows or believes to be false or does not believe to be true,—

(a) he shall be liable to a penalty not exceeding five lakh rupees for each such failure; and

(b) he shall be punishable with imprisonment which may extend to three years or with fine for each such failure.

104. *Penalty for false statement in document.*—If a person fails to comply with the provisions of section 27 or section 27A or section 27B or section 27C or section 27D, he shall be liable to a penalty not exceeding five lakh rupees for each such failure.

105. *Wrongfully obtaining or withholding property.*—If any director, managing director, manager or other officer or employees of an insurer wrongfully obtains possession of any property or wrongfully applies to any purpose of the Act, he shall be liable to a penalty not exceeding two lakh rupees for each such failure.

105A. *Offences by companies.*—(1) Where any offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) “company” means any body corporate, and includes—

(i) a firm; and

(ii) an association of persons or a body of individuals whether incorporated or not; and

(b) “director”, in relation to—

(i) a firm, means a partner in the firm;

(ii) an association of persons or a body of individuals, means any member controlling the affairs thereof.

105B. *Penalty for failure to comply with section 32B.*—If an insurer fails to comply with the provisions of section 32B, he shall be liable to a penalty not exceeding five lakh rupees for each such failure and shall be punishable with imprisonment which may extend to three years or with fine for each such failure.

105C. *Penalty for failure to comply with section 32C.*—If an insurer fails to comply with the provisions of section 32C, he shall be liable to a penalty not exceeding twenty-five lakh rupees for

each such failure and in the case of subsequent and continuing failure, the registration granted to such insurer under section 3 shall be cancelled by the Authority.”.

43. In sections 110A, 110B and 110C, for “Controller” wherever it occurs, substitute “Chairperson of the Authority”.

44. Section 110G, for “Controller” at both the places where it occurs, substitute “Chairperson of the Authority”.

45. Section 110H, in sub-section (1), for “under sections”, substitute “under sections 27D,”.

46. Section 114, in sub-section (2),—

(a) after clause (a), insert the following:—

“(aa) such other percentage of paid-up equity capital in excess of twenty-six per cent. of the paid-up equity capital and the period within which such excess paid-up equity capital shall be divested under sub-section (1) of section 6AA.”;

(b) omit clauses (g) and (ll).

47. After section 114, insert the following:—

“114A. *Power of Authority to make regulations.*—(1) The Authority may, by notification in the Official Gazette, make regulations consistent with this Act and the rules made thereunder, to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

(a) the matters including fee relating to the registration of insurers under section 3;

(b) the manner of suspension or cancellation of registration under sub-section (5E) of section 3;

(c) such fee, not exceeding five thousand rupees, as may be determined by the regulations for issue of a duplicate certificate of registration under sub-section (7) of section 3;

(d) the matters relating to the renewal of registration and fee therefor under section 3A;

(e) the manner and procedure for divesting excess share capital under sub-section (2) of section 6AA;

(f) the preparation of balance-sheet, profit and loss account and a separate account of receipts and payments and revenue account under sub-section (1A) of section 11;

(g) the manner in which an abstract of the report of the actuary to be specified under the fourth proviso to sub-section (1) of section 13;

(h) the form and manner in which the statement referred to in sub-section (4) of section 13 shall be appended;

(i) the time, manner and other conditions of investment of assets held by an insurer under sub-sections (1), (2) and (3) of section 27D;

(j) the minimum information to be maintained by insurer in their books, the manner in which such information should be maintained, the checks and other verifications to be adopted by insurers in that connection and all other matters incidental thereto under sub-section (8) of section 33;

(k) the manner for making an application, the manner and the fee for issue of a licence to act as an insurance agent under sub-section (1) of section 42;

(l) the fee and the additional fee to be determined for renewal of licence of insurance agent under sub-section (3) of section 42;

(m) the requisite qualifications and practical training to act as an insurance agent under clause (e) of sub-section (4) of section 42;

(n) the passing of examination to act as an insurance agent under clause (f) of sub-section (4) of section 42;

(o) the code of conduct under clause (g) of sub-section (4) of section 42;

(p) the fee not exceeding rupees fifty for issue of duplicate licence under sub-section (6) of section 42;

(q) the manner and the fees for issue of a licence to an intermediary or an insurance intermediary under sub-section (1) of section 42D;

(r) the fee and the additional fee to be determined for renewal of licence of intermediaries or insurance intermediaries under sub-section (3) of section 42D;

(s) the requisite qualifications and practical training of intermediaries or insurance intermediaries under clause (e) of sub-section (5) of section 42D;

(t) the examination to be passed to act as an intermediary or insurance intermediary under clause (f) of sub-section (5) of section 42D;

(u) the code of conduct under clause (g) of sub-section (5) of section 42D;

(v) the fee for issue of duplicate licence under sub-section (7) of section 42D;

(w) such matters as specified under sub-section (2) of section 64UB relating to the Tariff Advisory Committee;

(x) the matters relating to licensing of surveyors and loss assessors, their duties, responsibilities and other professional requirements under section 64UM;

(y) such other asset or assets as may be specified under clause (h) of sub-section (1) of section 64V for the purposes of ascertaining sufficiency of assets under section 64VA;

(z) the valuation of assets and liabilities under sub-section (3) of section 64V;

(za) the matters specified under sub-section (1A) of section 64VA relating to sufficiency of assets;

(zb) the matters relating to re-insurance under sections 101A and 101B;

(zc) the matters relating to redressal of grievances of policy-holders to protect their interest and to regulate, promote and ensure orderly growth of insurance industry; and

(zd) any other matter which is to be, or may be, specified by the regulations made by the Authority or in respect of which provision is to be made or may be made by the regulations.

(3) Every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the regulation or both Houses agree that the regulation should not be made, the regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that regulation.”.

48. Section 116A, for “Central Government”, at both places where they occur, substitute “Central Government, before the date of commencement of the Insurance Regulatory and Development Authority Act, 1999,”.