

BLOCK 1

UNIT 1: HISTORY OF LIFE INSURANCE

Structure

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1.0 OBJECTIVES

On reading this unit the students would be able to understand -

1. Genesis of insurance
2. Evolution of insurance
3. Enactments which governs the insurance business.

1.1 INTRODUCTION

The concept of insurance indicates a transfer of pure risk from the insured to the insurer for a consideration payable to the insured for undertaking the risk. Wherein, it mitigates the extent of individual losses which are collectively predictable. The predictable loss is then shared proportionately by all units in combination. Thus, it encourages reducing the uncertainty and sharing of losses. Collection and accumulation of fund in the form of premium from the individual insured and pool it into the common stock to meet estimated future losses. The scheme of insurance signifies –

- a) Social science
- b) Accumulation of funds
- c) It involves a group of risks
- d) Transfer of risk to the whole group

1.2 LIFE INSURANCE

Although man is claiming himself as a social animal, a rational being, he is not free from the fear of uncertainty and death. One has to have timely or untimely uncertainty or death sooner or later. No one can escape from it on any count. His search for security and certainty, to save his life and property from future losses, was eternal. Thus, he is exerting himself to secure his life undertaking one or the other activity i.e. economic activity or household activity. The economic activity leads him to earn livelihood and also makes him to have little savings. The savings so made - has acted as bulwark against any eventualities (unexpected and uncertain) i.e. old age, disability, illness death or business risks i.e. fire, earthquake, theft - instilled a ray of hope that it will take care of him/his assets. The habit of reserving the fund to secure once life or property is the essence of insurance. It is a process moving from individualistic attitude to collective approach, sprouting two division in insurance sector i.e. life and general or non-life insurance. Life insurance deals with only human lives and non-life deals with other than human life. It is a reciprocal gestures emerging from the community life in the form of donation, i.e. money, food, clothing and

other materials of life including contribution towards marriage, education, healthcare expenses or mishap, to the bereaved members of deceased family has kindled a ray of hope in ones' life by mitigating the loss to a little extent. The gesture showered was individualistic, used flow from an individual to individual or individual to group of individual, which has taken a commercial outlook on the passage of time leading to the origination of the concept of insurance.

The concept of life insurance has been transpired as an organized commercial activity in different parts of the world at different point of times. It is said, the first policy on life assurance was offered to Richard Martin on the life of William Gibbons, on 18th June 1583 AD in London, with coverage for a period of 12 months. It was underwritten by 16 individuals for £383-6s-8d with a premium of £30-13s-4d @ 8%. A claim was made on the death of the insured, i.e. on 25th May 1584, within one year from the date of purchase of the policy. Though the underwriters disputed the claim, stating that it shall not be honored as the insured was survived for more than 12 lunar months (month of 28 days), it was finally settled in favor of the insured. The "Amicable Society" , established in 1705, and "Equitable society", initiated in 1762, floated their business, on the basis of mortality tables (death rate per 1000 at each age up to the age of 100 years) on somewhat scientific lines.

1.3 PRACTICES IN INDIA

Of course, the practice of insurance is not new to India. Its fruition could be traced from the since Vedic age. The Sanskrit term "YOGAKSHEMAVAHAMYAHAM" in the Rig-Veda, indicates, the practice of insurance since Aryans times, i.e. 3000 years ago. The code of Manu, prescribed many practices, levying special charge on goods carried from one city to another to ensure their safe carriage to the destination, to the people for social harmony and development in Ancient India. writings of Yagnavalkya (Dharmasastra) and Kautilya (Arthasastra) has advocated the pooling of resources to re-distribute it in times of calamities such as fire, floods, epidemics and famine. This was, perhaps, a prelude to the growth of modern day insurance. The practice of insurance in the form of marine trade loans and carriers' contracts could be trace from the Ancient Indian history.

Initiation of life insurance business on the Indian soil, in 1818, was made by the Oriental Life Insurance Company, Calcutta, but it did not long last. The foreign insurance offices like Albert Life Assurance, Royal Insurance, Liverpool and London Globe Insurance, 1870, were emerged as leaders in Indian life insurance market and did good business. More than 50

British and other foreign agencies have started their business, with foreign capital, in India by 1885 but lived for a short period. It was followed by the Madras Equitable (1829), Bombay Mutual Assurance Society Ltd (1871), Oriental Life Assurance Society Ltd, (1874), Bharat (1896) and Empire of India (1897) along with The New India, Vulcan, Jupiter, British India General and the Universal companies. These companies have promoted life/general insurance business under their aegis. The Swadeshi Movement of 1905 and the call given by Mahatma Gandhi have consolidated the position of Indian companies in insurance business. In consequences whereof, more Indian companies entered the Life Insurance sector e.g. Hindustan Co-operative, United India, Bombay Life, National and Laxmi.

However, these companies had tough time in facing the competition with 150 foreign offices including some of the largest Insurance groups in the world as they known for their irregularities and unfair trade practices. Sensing their circuitous tendency the Government of India ventured for the publication of returns of Insurance Companies in India, in 1914, and began to exercise legal control, a pioneering legislative step, through the Indian Life Assurance Companies Act, 1912. The Indian Insurance Companies Act, 1928, became a tool to the Government for the collection of statistical information on life and non-life business transacted in India by Indian and foreign insurers including provident insurance societies. The Government has consolidated these legislations and passed a new legislation called as the Insurance Act, 1938, which was amended from time to time, for controlling Investment of funds, expenditure and Management of insurers and to safeguard the interest of insurance public. At this time 170 Insurance offices and 80 P.F. Societies registered companies were operation in India in the Life Insurance sector.

In spite of these efforts, the administration of insurance companies was not satisfactory. They were reeling under malpractices and looking for major surgery, thus, paving way for nationalization of insurance industry. In pursuit of which an Ordinance was issued by the the Government of India, on 19th January, 1956, nationalizing the Life Insurance sector and promoted Life Insurance Corporation, for the following reasons -

- a) Nofull guarantee to the Policyholders (who are insured);
- b) The concept of trusteeship (confidence) was lacking;
- c) Many insurance companies went into liquidation (bankrupt);
- d) There was malpractice in the business;
- e) Non-Spreading of life insurance;
- f) No insurance in rural areas;
- g) No group insurance; and

h) No social security

The policy on the nationalization of insurance business leading to the formation of Life Insurance Corporation unveiled following features –

- a) The Central Govt. guaranteed the Policyholders through the LIC;
- b) Being a Corporation formed under Special Act Passed by the Parliament therefore the public can trust;
- c) The LIC cannot be liquidated without the order of the Central Govt;

Under the LIC Act, all day-to-day functions of the Corporation and the method of Investment in Govt. Securities were defined. Therefore, the malpractices were eliminated

The LIC absorbed 154 Indian, 16 non-Indian insurers as also 75 provident societies - 245 Indian and foreign insurers in all

The conservative approach of insurance industries did not show the desired performance. Their attitude towards the penetration of insurance as compared to Indian population and its size and other developing countries was very gloomy. Illiteracy level, prevailing in the territory, was frustrating the efforts in popularizing the insurance products/scheme among the populace. On the raise of Liberalization, Privatization and Globalization (LPG) in global scenario made the Government of India to ponder on revamping insurance industries in furtherance of welfare of the people vis-a vis the Indian economy and leading to the formation of Malhotra committee in 1993 to study whether the insurance sector should be opened for private players. The committee recommended to Liberalize, Privatize and Globalize (LPG) the insurance sector.

1.4 GENERAL INSURANCE

The history of general insurance dates back to the Industrial Revolution in the west and the consequent growth of sea-faring trade and commerce in the 17th century. It came to India as a legacy of British occupation. General Insurance in India has its roots in the establishment of Triton Insurance Company Ltd., in the year 1850 in Calcutta by the British. In 1907, the Indian Mercantile Insurance Ltd was set up. This was the first company to transact all classes of general insurance business. 1957 saw the formation of the General Insurance Council, a wing of the Insurance Association of India. The General Insurance Council framed a code of conduct for ensuring fair conduct and sound business practices. In 1968, the Insurance Act was amended to regulate investments and set minimum solvency margins. The Tariff Advisory Committee was also set up then. In 1972 with the passing of the General Insurance Business (Nationalization) Act, general insurance business was

nationalized with effect from 1st January, 1973. 107 insurers were amalgamated and grouped into four companies, namely National Insurance Company Ltd., the New India Assurance Company Ltd., the Oriental Insurance Company Ltd and the United India Insurance Company Ltd. The General Insurance Corporation of India was incorporated as a company in 1971 and it commenced business on January 1st 1973. The purposes of nationalization of insurance business may be noted from the speech of the then Finance Minister Mr. Y. B. Chavan thus –

“The primary objective of nationalization of general Insurance was to make it meaningful to the common man, to carry its message to the remotest corner of the country and to give it its rightful place in the economy of the country. When it was in the private sector it was a mere handmaid to trade and industry and served to cater to the interests of a limited clientele. Worse still it functioned in a manner favoring the interests of a few at the expense of, needless to say, the majority. There were allegations of malpractices on a big scale.” “It was the objective of nationalization to remove these malpractices and usher in an era of Insurance run on sound business principles and functioning on healthy and egalitarian lines. The emphasis should be on spreading the message of Insurance as widely as possible and on ensuring that it gives the right weightage to the weaker sections of the society. The principle of competition must have its useful role to play, but not at the expense of unhealthy rivalry.” “General Insurance is a service and proper and efficient service is due to the policyholder as a matter of right. The Corporation exists for the benefit of the policyholder.”

“Business must cease to work under purely mercenary motives. Whenever, one feels the need for protection against an unpredictable contingency, a suitable Insurance cover should be available. No excuse should be given that a particular cover is not conventionally given or that other markets of the world do not give it.” “Healthy employer-employees relationship is of vital importance to achieve the main objectives of nationalization.” “It will be necessary for the Corporation to review the rating structure in order to ensure that all classes of the policyholder receive a fair deal and the equitable rate of premium.”

The policy of nationalization led to the formation of General Insurance Company (GIC) by transferring General Insurance business of LIC, of Indian Insurance Companies and the units of other Insurance Companies operating in India, into its fold and made them as its subsidiary by allowing them to operate through four companies, selected as flag companies, from 4 zones they are –

1. National Insurance Co. Ltd., with its Head Office at Calcutta.
2. The New India Assurance Co. Ltd. with its Head Office at Mumbai.
3. The Oriental fire & Insurance Co. Ltd., with its Head Office at New Delhi (from 1974) (now named as The Oriental Insurance Co. Ltd.)
4. United India fire & General Insurance Co. Ltd., with its Head Office at Madras (now named United India Insurance Co. Ltd.)

1.5 OBJECT OF INSURANCE

The seed of fear, making everyone to crumble despite of his effort in shielding himself against all risks, never deterred him in finding food, clothing and shelter to not only for himself but also for his dependents. He is constantly in pursuit of exploring the possibilities to tap a source of income to meet his basic needs either through service or business. In that process, on meeting his basic needs, he used to invest the surplus on assets i.e. vehicles, property or jewelry etc. He began to run-after saving formula to secure his life, on the stoppage of earnings and earning capacity owing to old age and death or uncertainty i.e. accident, illness or disability, and assets from destruction through accident, fire or earthquake etc. The concept of insurance, alone, has acted as a panacea for all risks like -

- a) Illness (malnutrition, environment, chronic) – uncertain
- b) Accident – (uncertain)
- c) Disability – Permanent or Temporary (uncertain)
- d) Old Age – (certain)
- e) Death – (certain)

The life insurance is, acting as a soothing agent, enabling a person in distress to face all uncertainties and certainties i.e. illness or accident, death or old age, disruption or destruction of his ability. Thus it is aiming to –

- a) Protect human life, human created assets, human disability and business liabilities possessed by human beings which have a definite value;
- b) Save assets and human life generate benefit and income for the owner and his/her family members;
- c) Prevent loss of assets / human life – from the stoppage of benefits and income, for any reason, to the owner and family members respectively;
- d) Avert a fall in living standards of the family, quality of life and future growth of the associated family members;
- e) Reduce any such, adverse consequences through pooling, spreading and sharing of risk. Thus, standing complimentary to the Government efforts in social management.
- f) Reduce the Business Losses;
- g) Ensure the welfare of employees;
- h) Eliminate dependency;

- i) Encourage savings;
- j) Cater individual needs like - family needs, old age needs, re-adjustment needs, special needs i.e. education, marriage, health, rituals, ceremonies;
- k) Accord security and safety;
- l) Provide peace of mind;

1.6 HUMAN RIGHTS AND INSURANCE

All human beings are born free, equal in dignity and rights. Everyone of us do have a right to adequate standard of living for health and well being of himself and his family, including food, clothing, housing, medical care, necessary social services and the right to security in the event of unemployment, sickness, disability, widowhood, or other lack of livelihood in circumstances beyond his control (Article 1, 25, United Nations Declaration of Human Rights 1948). This right will get frustrated if we fail in our duty to develop the scientific temper, humanism and spirit of enquiry and reform. The concept of insurance teaches us how to imbibe and promote these traits for the cause of humanity. The principle of insurance is originated with a slogan “yogakshemam vahamyaham” i.e. welfare and well being of all. It is intending and ever striving to better our tomorrows. It shall be our way of life to achieve social harmony and development.

1.7 INDIAN CONSTITUTION AND INSURANCE

India is a socialistic country, aspiring to secure justice, liberty and equality by assuring dignity of individual and the unity and integrity of the Nation. The State, within limits of its economic capacity and development, shall take needful step to identify and generate the resources to secure the right to work, to education and to provide public assistance in case of unemployment, old age, sickness and disablement (Article 41, Constitution Law of India). The Government of India is having exclusive say on insurance. It can supervise, control and regulate insurance business. Thus, the legislation made, in this behalf, has contributed for the growth and development of insurance sector (Entry47, Union List, 7th Schedule, Constitution Law of India). The progress of insurance industries may be noticed in three stages, they are –

1. Formation of insurance industry in India;
- 2.Nationalization of insurance business in India; and
- 3.Era of privatization of insurance business.

1.8 INSURANCE AND ECONOMIC DEVELOPMENT

The aim of the insurance is to contributing its might to preserve human life values and assets by indemnify the loss caused to it, apart from facilitating economic development of the country either by offering long term loan or making investment in the manufacture and infrastructure oriented industries e.g. communication, transport – rail, road sea and air, steel, cement etc. the insurance industries are known for its social security plans like child care, education, health, employment, annuity, pension etc. in addition to this it concentrates on agriculture, animal husbandry, machine and tools. Today, it has proved its worth in the field of production, distribution and supply of goods and services. Thus, it has shown the way of generating the income, mobilization of public savings and containing the rate of inflation. Further, it is acting as a conduit to gain, indirectly, the following advantages -

- Better living standards
- Higher productivity
- Improved Law and Order
- Higher GDP
- Healthy Generation
- Discouragement of bad habits and practices causing damage to human life
- Higher mortality
- Happy society
- Enhanced self-esteem
- Creative Minds
- Entrepreneurship qualities
- Social upliftment of the society as a whole

1.9 REGULATION OF INSURANCE BUSINESS IN INDIA

The journey of insurance business has been originally mooted by the private sector and, thereafter, gained the Government sponsorship. Since early 1990s, both the private and public sector is rocking in the insurance business. Thanks to the recommendation, to revamp the insurance sector, of the Amphora Committee, constituted by the Government of India in 1993. The objectives of the recommendation are to fillip the reforms initiated in the financial sector. The committee in its report, 1994, advised the Government to allow the private sector to enter the insurance industry and suggested the Government to let the foreign companies to float Indian companies, preferably a joint venture with Indian partners. Further it advocated for the establishment of an independent regulatory authority to regulate and develop the

insurance industry. Resultantly, the Insurance Regulatory and Development Authority (IRDA), a statutory body, was constituted in 1999. In April, 2000, the IRDA was incorporated and it emerged as an autonomous body. The main objectives of IRDA is to -

- a) Promote competition by enhancing the customer satisfaction through increased consumer choice and lower premiums;
- b) Ensure the financial security of the insurance market.

The IRDA entered the market in August 2000 by inviting application from the incorporated bodies for registrations. Foreign companies were allowed ownership of up to 26%. The Authority has been endowed with a power to frame regulations to regulate the insurance business vis-a-vis the activities of insurers and to further the policyholders' interests under Section 114A of the Insurance Act, 1938.

The Government of India has reorganized the subsidiaries of the General Insurance Corporation of India, in December, 2000, and transformed the GIC as a national re-insurer. The bill in respect of de-linking the four subsidiaries from GIC was duly approved by the Parliament in July, 2002. Resultantly, the functions of GIC have been restricted to reinsurance and civil aviation Insurance. This move, today, enabled 24 general insurance companies including the ECGC and Agriculture Insurance Corporation of India and 23 life insurance companies to engage in the insurance business in the country. The Reinsurance Program of every Insurer, carrying on general insurance business, shall be guided by the following objectives viz -

- a) To maximize retention within the country;
- b) To develop adequate capacity;
- c) To secure the best possible protection for the reinsurance costs incurred; and
- d) To simplify the administration of business.

In addition to IRDA Act and Insurance Act, 1938, a few more common legislations/statute/regulations is governing the General and Life Insurance Business in India.

1.10 ACTS/REGULATIONS COMMON TO GENERAL AND LIFE INSURANCE BUSINESS IN INDIA

The following Acts regulate the insurance business in India.

- Insurance Act, 1938
- IRDA Act, 1999
- Insurance Amendment Act, 2002
- Exchange Control Regulations (FEMA)
- Insurance Co-op Society
- Indian Stamp Act, 1899
- Consumer Protection Act, 1986
- Insurance Ombudsman

Regulations governing/ affecting Life Insurance Business in India: The following Acts govern /regulate the life insurance business in India -

- LIC Act, 1956
- Amendments to LIC Act

Regulations affecting General Insurance Business in India: The following Acts affect, circumscribe or regulate in some way or the other, some aspect of the General Insurance Business in India -

- General Insurance Nationalization Act, 1972
- Amendments to GIN Act, 1972
- Multi-Modal Transportation Act, 1993
- Motor Vehicles Act. 1988
- Inland Steam Vessels Amendment Act, 1977
- Marine Insurance Act, 1963
- Carriage of Goods by Sea Act, 1925
- Merchant Shipping Act, 1958
- Bill of Lading Act, 1855
- Indian Ports (Major Ports) Act, 1963
- Indian Railways Act, 1989
- Carriers Act, 1865
- Indian Post Office Act, 1898
- Carriage by Air Act, 1972
- Workmens' Compensation Act, 1923ESI Act, 1948
- Public Liability Insurance Act. 1991

1.11 SUMMARY

The concept of insurance is not of recent origin. It has been in vogue since ages. It is not only being introduced to safeguard the interest of the people but also to promote the economic well being of the society. In view of the Constitutional mandate and Human Rights edict the Government is keeping its eagle eye in monitoring the insurance business.

1.12 KEY WORDS

1. Human Rights
2. Insurance Regulatory and Development Authority (IRDA)
3. General Insurance Corporation (GIC)
4. Life Insurance Corporation of India (LIC)
5. Liberalization
6. Privatization and Globalization (LPG).

1.13 SELF ASSESSMENT QUESTIONS

1. What is insurance? What are the objects of insurance? How it is helpful in promoting the economic development of the nation?
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.....
2. Outline the evolution of the concept of insurance.
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.....
3. “The concept of insurance is an offshoot of legal mandate”, elucidate.
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.....
4. Write note on –
 - (a) Human rights and Insurance.
 - (b) Constitutional Law and Insurance.
 - (c) Genesis of Insurance Regulatory and Development Authority Act, 1999.

1.14 REFERENCES

- Principles of insurance law: Life - fire - marine - motor and accident: M.N.Srinivasan.
- Modern Law of Insurance: KSN Murthy and KVS Sarma.
- Life insurance corporation of India : Impact of privatization and performance: Sumninder Kaur Bawa.
- Commentaries on the public liabilities insurance act 1991: G.S Karkara.
- Insurance law: A comprehensive treatise on law of insurance covering all risks except marine insurance: Brij Nandan Singh.
- The Law of Insurance Contracts: A. Malcolm.
- International encyclopaedia of laws: Insurance Law: R. Blanpain.
- Insurance law manual with IRDA circulars and notifications: Taxmann.
- Insurance law: Relating to all risks other than marine: E.J. Macgillivray.
- Modern insurance law: John Birds and Norma J Hird.
- Law Relating to Marine Insurance: Mitra, B.C.
- Law of Insurance: Jaiswal J V N
- General Principles of Insurance Law: Hardy Ivamy E R
- Law Relating to Insurance: Vats R M

UNIT 2: INSURANCE REGULATORY AND DEVELOPMENT AUTHORITY ACT, 1999

STRUCTURE

- 2.0 Objectives
- 2.1 Introduction
- 2.2 Composition of Authority
- 2.3 Meeting of the Authority
- 2.4 Duties, Powers And Functions Of Authority
- 2.5 Funds of the Authority
- 2.6 Accounts and Audit
- 2.7 Supersession of the Authority
- 2.8 Insurance Advisory Committee
- 2.9 Amalgamation and Transfer of Life Insurance Business
- 2.10 Submission of Application
- 2.11 Notice of Intention
- 2.12 'In-principle' approval
- 2.13 Final approval from the Authority
- 2.14 Information on insurance products and services
- 2.15 Opening new places of business
- 2.16 Health Insurance
- 2.17 Submission of returns to the Authority
- 2.18 Investigation
- 2.19 Issue of license to intermediary or insurance intermediary
- 2.20 Penalties
- 2.21 Summary
- 2.22 Key Words
- 2.23 Self Assessment Questions
- 2.24 References

2.0 OBJECTIVES

On reading this unit the students would be able to comprehend on the following -

- Constitution of Authority
- Nature of administration of the Authority
- Penal provisions

2.1 INTRODUCTION

With the introduction of liberalization, privatization and globalization scenario of insurance business was changed. The role of the Controller of Insurance in significance, on the passage of time, was started fading on the nationalization of the life insurance industry in 1956 and the general insurance industry in 1972. To revamp the legal mechanism and control the Government of India constituted a high power committee, in April, 1993, headed by Sri. R.N. Malhotra, former Governor, Reserve Bank of India. The Committee felt the need of establishment of Insurance Regulatory Authority, a statutory autonomous institution, on the lines of the securities and Exchange Board of India (SEBI) to provide strong and effective base to the insurance sector. Keeping in mind the recommendations of the Report submitted by the Committee, on 7th January, 1994, the then Government introduced, on the 20th December, 1996, the Insurance Regulatory Authority Bill, 1996 to regulate, promote and ensure orderly growth of the insurance industry and for matter connected therewith or incidental thereto. The attempt was failed. Again the Bill was placed before the Lok Sabha on the 15th December, 1998, for its consideration and approval. The Bill was made a provision for setting up of a Statutory Insurance Regulatory Authority and containing three Schedules incorporating amendments to the Insurance Act, 1938, the Life Insurance Corporation Act, 1956 and the general Insurance Business (Nationalization) Act, 1972 to permit the entry of private Indian Companies into the insurance sector and to make certain consequential amendments to the Insurance Act, 1938. The desire of the Government, as reflected in the Budget Speech, 1998, is to open up the insurance sector and also to establish a Statuary Insurance Regulatory Authority with a view to provide better insurance coverage to our citizens and also to augment the flow of long-term resources for financing infrastructure. However, the Bill could not be taken up for consideration consequent on the dissolution of the Lok Sabha. On the constitution of new Lok Sabha the Bill titled 'Insurance Regulatory and Development Authority Bill' was re-introduced on the basis of recommendations of the Standing Committee.

2.2 COMPOSITION OF AUTHORITY

The proposed authority shall be a body corporate having perpetual succession and a common seal with power to acquire, hold and dispose a property and to contract. It will consist of a Chairperson and other members not exceeding nine in number, of whom not more than five shall serve full time and the remaining four shall be part-time members, to be appointed by the Central Government from amongst persons of ability, integrity and standing who have knowledge and experience of life insurance, general insurance, actuarial , insurance , finance , economics , law , accountancy , administration or any other discipline which in the opinion of Central Government shall be useful to the Authority . The Chairperson is bestowed with power to have general superintendence and direction in respect of all administrative matters of the Authority. The Chairperson and other whole time members shall hold the office for a term of 5 years or until the age of 65 years in the case of Chairperson and 62 years on the case of other whole time members whichever is earlier and they shall be eligible for reappointment subject to age consideration. A part-time member shall hold office for a term not exceeding 5 years. He is entitled for remuneration as may be prescribed. Immediately after cessation of office he/she shall not accept any employment, save with the approval of the Government, either under the Central Government or under any State Government; or any appointment in any company in the insurance sector. The Chairperson, members, officers and other employees of Authority shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860). The Authority may make regulations for the transaction of business at its meetings (Sec.3, 4, 7, 8, 9, 10, 21, Insurance Regulatory and Development Authority Act, 1999). The member may relinquish his/her office at any time by giving 3 months notice to the Government. On the other hand the Government may remove any member who -

- a) is, or at any time has been, adjudged as an insolvent; or
- b) has become physically or mentally incapable of acting as a member; or
- c) has been convicted of any offence which, in the opinion of the Central Government, involves moral turpitude; or
- d) has acquired such financial or other interest as is likely to affect prejudicially his functions as a member; or
- e) has so abused his position as to render his continuation in office detrimental to the public interest.

Any such member shall be removed only after he/she has been given with a reasonable opportunity of being heard in the matter. (Sec.6, Act, 1999).

2.3 MEETING OF THE AUTHORITY

The meeting of the Authority shall be conducted at such place and time, subject to the rules and procedures prescribed. The meeting shall be presided by the chairperson of the Authority. In his/her absence any other member chosen by the members present from amongst themselves at the meeting shall preside at the meeting. The resolution shall be passed by a majority of votes by the members present and voting, and in the event of equality of votes, the Chairperson, or in his absence, the person presiding shall have a second or casting vote. (Sec.10, Act, 1999). No act or proceeding of the Authority shall become invalid on the ground of vacancy in, or any defect in the constitution of, the Authority; or any defect in the appointment of a person acting as a member of the Authority; or any irregularity in the procedure of the Authority not affecting the merits of the case. (Sec.11, Act, 1999).

Transfer of assets, liabilities, etc., of interim insurance regulatory authority: All the assets and liabilities, debts, obligations and liabilities incurred, all contractual rights and obligations, all suits and other legal proceedings instituted by or against the Interim Insurance Regulatory Authority immediately before the day of commission of Authority is stand transferred to, and vested in, the Authority (Sec.13, Act, 1999).

2.4 DUTIES, POWERS AND FUNCTIONS OF AUTHORITY

For the purposes of regulation, promotion and ensuring of orderly growth of the insurance business and re-insurance business the Authority, subject to the provisions of this Act and any other law for the time being in force, may -

- a) issue to the applicant a certificate of registration, renew, modify, withdraw, suspend or cancel such registration;
- b) protection of the interests of the policy holders in matters concerning assigning of policy, nomination by policy holders, insurable interest, settlement of insurance claim, surrender value of policy and other terms and conditions of contracts of insurance;
- c) specifying requisite qualifications, code of conduct and practical training for intermediary or insurance intermediaries and agents;
- d) specifying the code of conduct for surveyors and loss assessors;
- e) promoting efficiency in the conduct of insurance business;
- f) promoting and regulating professional organizations connected with the insurance and re-insurance business;

- g) levying fees and other charges for carrying out the purposes of this Act;
- h) calling for information from, undertaking inspection of, conducting enquiries and investigations including audit of the insurers, intermediaries, insurance intermediaries and other organizations connected with the insurance business;
- i) control and regulation of the rates, advantages, terms and conditions that may be offered by insurers in respect of general insurance business not so controlled and regulated by the Tariff Advisory Committee under section 64U of the Insurance Act, 1938 (4 of 1938);
- j) specifying the form and manner in which books of account shall be maintained and statement of accounts shall be rendered by insurers and other insurance intermediaries;
- k) regulating investment of funds by insurance companies;
- l) regulating maintenance of margin of solvency;
- m) adjudication of disputes between insurers and intermediaries or insurance intermediaries;
- n) supervising the functioning of the Tariff Advisory Committee;
- o) specifying the percentage of premium income of the insurer to finance schemes for promoting and regulating professional organizations referred to in clause (f);
- p) specifying the percentage of life insurance business and general insurance business to be undertaken by the insurer in the rural or social sector; and
- q) Exercising such other powers as may be prescribed. (Sec.14, Act, 1999).

2.5 FUNDS OF THE AUTHORITY

The funds of the Authority shall consist of all Government grants, fees and charges received, all sums received from such other source as may be decided upon by the Central Government and the percentage of prescribed premium income received from the insurer. The Fund shall be applied to meet the salaries, allowances and other remuneration of the members, officers and other employees and such the other expenses of the Authority in connection with the discharge of its functions and for the purposes of this Act (Sec.15, 16, Act, 1999).

2.6 ACCOUNTS AND AUDIT

The Authority shall maintain proper books of accounts and other relevant records and prepare an annual statement of accounts as per the accounting standards as prescribed by the Central

Government in consultation with the Comptroller and Auditor-General of India. The Comptroller and Auditor-General of India may audit the books of accounts at such intervals as it deems fit and designate its personnel to audit and submit the report. The Central Government shall lay such report before each House of Parliament for its consideration. The expenses in this behalf shall be met by the Authority (Sec.17, Act, 1999).

The Authority shall submit its annual returns, regarding proposed or existing programs/activities including the activities for promotion and development of the insurance business during the previous financial year, to the Central Government in a prescribed manner. The report so submitted by the Authority shall be laid before the each House of Parliament. (Sec.20, Act, 1999).

2.7 SUPERSESSION OF THE AUTHORITY

The Authority is required to act in consonance with the provisions of the Act, 1999 and directions given by the Central Government. In the event of persistent failure, on the part of the Authority, in discharging the functions or performing the duties or default in complying with any directions makes the Authority or the administration of the Authority financially to suffer or the circumstances prevailing warrants in public interest the Government, if it forms such an opinion, may keep the Authority in supersession for a period not exceeding 6 months and appoint a person to be the Controller of Insurance under section 2B of the Insurance Act, 1938 (4 of 1938). The Central Government shall issue a notification, in this behalf, by recording the reasons thereon. The Chairperson and other members shall lay down their office from the date of supersession. However, before taking such measure the Government shall provide an opportunity to the Authority to make representation. The Central Government shall place a copy of the notification and a full report before each House of Parliament at the earliest (Sec.19, Act, 1999).

2.8 INSURANCE ADVISORY COMMITTEE

The Authority may establish 'Insurance Advisory Committee', by issuing a notification, to advise the Authority on matters relating to the making of the regulations under section 26 and on such other matters as may be prescribed. The Committee shall consist of -

- a) Not more than twenty-five members excluding exofficio members to represent the interests of commerce, industry, transport, agriculture, consumer fora, surveyors,

agents, intermediaries, organizations engaged in safety and loss prevention, research bodies and employees' association in the insurance sector.

- b) The Chairperson and the members of the Authority shall be the ex officio Chairperson and ex officio members of the Insurance Advisory Committee (Sec.25, Act, 1999).

2.9 AMALGAMATION AND TRANSFER OF LIFE INSURANCE BUSINESS

The insurance companies carrying on life insurance business may amalgamate and transfer of life insurance business in accordance with the provisions of the Insurance Regulatory and Development Authority (Scheme of Amalgamation and Transfer of Life Insurance Business) Regulations, 2013.

2.10 SUBMISSION OF APPLICATION

The insurance company shall submit application seeking 'in-principle' approval to the Authority furnishing all the information as detailed in the Insurance Regulatory and Development Authority (Scheme of Amalgamation and Transfer of Life Insurance Business) Regulations, 2013. The fees for the processing of the application for an 'in-principle' approval shall be jointly remitted by the parties to the transaction by a demand draft issued by a scheduled bank in favor of the Insurance Regulatory and Development Authority payable at Hyderabad. The fees shall be one-tenth of one per cent of the total gross premium written direct in India by the transacting parties during the financial year preceding the financial year in which the application is filed with the Authority which shall be subject to a minimum of fifty lakh rupees, but shall not be higher than five crore rupees.

The Scheme of amalgamation will come into force only after it is finally approved by the Authority. However, the Authority shall not approve the proposed scheme of amalgamation when it is in the opinion of the Authority -

- (i) The available solvency margin of the merged entity will be lower than the required minimum regulatory level; or
- (ii) The Scheme is not compliant with any applicable laws and regulations; or
- (iii) The Scheme is not in the best interests of the policyholders; or
- (iv) The Scheme is not conducive to the orderly growth of the Notice of Intention

2.11 NOTICE OF INTENTION

A notice of intention, stating the reasons, to implement the scheme of amalgamation and transfer shall be served, in writing, to the Authority at least two months before filing application seeking the approval and it shall be duly published in such manner and such period as the Authority may direct. The notice shall be accompanied with a certified copies, four in number, of each of the following documents and these documents shall be kept open for the inspection of the members and policyholders at the principal and branch offices –

- a) A draft of the proposed agreement or deed or Scheme of amalgamation and transfer;
- b) balance-sheets, prepared, in respect of the insurance business of each of the insurers concerned in accordance with the IRDA (Preparation of Financial Statements and Auditor's Report of Insurance Companies) Regulations, 2002;
- c) Financial Condition Report; Appointed Actuaries' Annual Report; and Solvency Statement prepared in conformity with the requirements of relevant regulations and Circulars issued by the Authority, including Assets, Liabilities and Solvency Margin Regulations;
- d) A report on the proposed amalgamation and transfer, prepared by an independent actuary;
- e) A synopsis / executive summary of the proposed transaction, and the terms on which such transaction has been contemplated;
- f) A report on the manner in which the interest of the policyholders will be protected;
- g) A report on compliance in pursuance to the relevant laws applicable, including the Competition Act, 2002 and the employment laws; and
- h) Audited financial statements most proximate to the appointed date and latest quarter's unaudited financial statements.

2.12 'IN-PRINCIPLE' APPROVAL

On the receipt of the application the Authority shall - take steps as expeditiously as possible to process and pass appropriate orders - give opportunity to the directors, such policyholders as may apply to be heard and any other persons whom it considers entitled to be heard. At any time before granting final approval to the proposed Scheme it may secure actuarial report on the insurance business of the transacting parties encompassing the assets, liabilities and

solvency position. It may accord , subject to certain terms and conditions, ‘In-principle’ approval on being satisfied that the proposed scheme is -

- a) In the interests of the orderly growth of the insurance sector;
- b) In compliance with any requirements as the Authority may deem fit in the context of its regulatory mandate;
- c) Free from any reasonable objection from policyholders; and
- d) In the context of public interest.

On obtaining the ‘In-principle’ approval the copies of the proposed Scheme to be kept open for inspection by policyholders at the registered office and the main corporate office of the transacting parties, and simultaneously the same shall be uploaded on the website of the respective insurers and the same be kept open until the complete implementation of the Scheme. Further, it shall be published in at least one National Daily and one vernacular newspaper, copies of which shall be filed with the Authority. Thereafter the applicant shall seek the approval of such other regulatory bodies as may be required including –

- a) Filing of scheme of arrangement (along with the 'in-principle' approval of the Authority) with the High Court /Tribunal concerned for confirmation of the scheme of arrangement in terms of sections 391 to 394 of the Companies Act, 1956 and compliance with all requirements under the Companies (Court) Rules, 1959.
- b) Filing of applications with the Foreign Investment Promotion Board (FIPB) and the Reserve Bank of India (RBI) seeking requisite approvals, if any;
- c) Seeking approval from the regulatory agencies of competent jurisdiction, if such approval is required, where a foreign joint venture partner is also associated with the transaction.
- d) Seeking of approval, if need be, from the Securities and Exchange Board of India (SEBI), Stock Exchange(s) and Competition Commission of India (CCI).

2.13 FINAL APPROVAL FROM THE AUTHORITY

On completion of the various processes afore cited and upon receipt of approvals from various applicable regulatory authorities, as applicable, the transacting parties shall approach the Authority for the final approval of the Scheme. The transacting parties shall ensure that the Scheme to be finally implemented is consistent not only with conditions, if any, imposed by the Authority, but also with such requirements or stipulations as may be imposed by the other competent authorities while according their regulatory approval. However, on securing the ‘In-principle’ approval but before the grant of final approval the parties to the Scheme

shall ensure that the insurance operations are carried out in compliance with all requirements of the Insurance Act, 1938, the regulations framed there under and the directions issued by the Authority. The transferee insurer carrying on the amalgamated business shall, within three months from the date of the completion of the amalgamation and transfer, furnish in duplicate a certified copy of the scheme, agreement or deed of amalgamation / transfer and a declaration, stating that every payment is made or will be made subject to the conditions set forth in final approval, to the Authority.

2.14 INFORMATION ON INSURANCE PRODUCTS AND SERVICES

Every insured and the general public are generally anxious to know the products/services, and matters connected thereon, offered by the insurers. Corresponding obligations is on the insured to furnish the information proactively not only for the purposes of publicize its products but also to provide latest updates to its customers to make the transactions more transparent market friendly. In this regard it may commission the services of Web Aggregator, who is proficient in the operation and maintenance of website. The Web Aggregator is eligible to may extend its/his/her services to the insurer only after securing license from the IRDA in accordance with the Insurance Regulatory and Development Authority (Web Aggregators) Regulations, 2013. The Web Aggregator is required to display only authentic information provided by the insurer/s on their website. However, no information relating to ratings, rankings, endorsements or bestsellers of insurance products shall be displayed on their website.

Insurance Surveyors and Loss Assessors: The Authority may grant license to any person, mentioning the level of membership i.e. Licentiate, Associate and Fellow, to act as a surveyor and loss assessor in respect of general insurance in accordance with the Insurance Surveyors and Loss Assessors (Licensing Professional Requirements and Code of Conduct)(Amendment)Regulation2013. Person who is desirous to act as a surveyor and loss assessor shall be a member of the Indian Institute of Insurance Surveyors and Loss Assessors (IISLA). While granting the license the Authority shall mention particular class/department or subject of general insurance business namely fire, marine cargo, marine hull, engineering, motor, miscellaneous, crop insurance and loss of profit allotted on their technical/professional/insurance qualification and other qualification as specified in Regulation3(2) of IRDA Surveyor Regulation 2013.

2.15 OPENING NEW PLACES OF BUSINESS

The insurers will thrive in expanding its market for its products and service only when they succeed shall reach the doors of the people. Insurer may open a new place of business to facilitate customer within their reach. Before opening a new place of business the insurers is required to submit an Annual Business Plan, not later than June 30th of the financial year i.e. April – March for consideration of the Authority, containing the proposals for opening new places of business in the urban centers, semi-urban and rural centers. The Authority after considering the places of Business specified in the Annual Business Plan may grant or deny permission subject to the provisions of Section 64 VC of the Act and the Insurance Regulatory and Development Authority (Places of Business) Regulations, 2013. The insurers shall at least offer policy holders' services such as collection of premiums/proposal deposits and attending policy service requests at all the new places of business. The Authority shall permit the closure or relocation of the places of business only after considering all the factors, including the possible inconvenience to its policyholders. All the Insurers shall comply the following while closing or relocating the places of business.

2.16 HEALTH INSURANCE

Health Insurance products may be offered only by entities with a valid registration under the Insurance Regulatory and Development Authority (Registration of Indian Insurance Companies) Regulations 2001. Life Insurance Companies may offer long term health products but the premium for such products shall remain unchanged for at least a period of every block of three years, thereafter the premium may be reviewed and modified as necessary. Non-Life and Standalone Health insurance companies may offer individual health products with a minimum tenure of one year and a maximum tenure of three years, provided that the premium shall remain unchanged for the tenure. Group Health Insurance Policies may be offered by any insurance company, provided that all such products shall only be one year renewable contracts. However, the non-life and standalone health insurers may offer group personal accident products with term less than one year also to provide coverage to any specific events. Overseas or Domestic Travel Insurance policies may only be offered by non-life and standalone health insurance companies, either as a standalone product or as an add-on cover to an existing health policy, provided that the premium for the add-on cover is approved by the Authority.

No health insurance product shall be marketed by any insurer unless it has the prior clearance of the Authority accorded as per the File and Use Procedure. (“File and Use Procedure” means a procedure to be followed for health insurance product approval by the insurers in accordance with guidelines/circular issued by the Authority.) Any subsequent revision or modification of any approved health insurance product shall also require the prior clearance of the Authority as per the guidelines issued from time to time. Any revision or modification in a policy which is approved by the Authority shall be notified to each policy holder at least three months prior to the date when such revision or modification comes into effect. The notice shall set out the reasons for such revision or modification, in particular the reason for an increase in premium and the quantum of such increase. The possibility of a revision or modification of the terms of the policy including the premium must be disclosed in the prospectus. File & Use application for the prior approval of the Authority shall be certified by the Appointed Actuary and the CEO of the insurance company and shall be in such formats and accompanied by such documentation as may be stipulated by the Authority from time to time.

The health insurance coverage may envelop both allopathic and AYUSH method of treatment provided such treatment is availed in a government hospital or in any institute recognized by government and/or accredited by Quality Council of India/National Accreditation Board on Health or any other suitable institutions.

The health insurance product once offered shall not be withdrawn by the insurer without obtaining prior approval of the Authority. Reasons for such withdrawal, options that would be available to the policyholder and complete details of the treatment to the existing policyholders shall be intimated by anticipating response of the insured. If the insured fails to respond to the call on time the insurer may withdraw the policy on the renewal date and the insured shall have to take a new policy available with the insurer, subject to portability conditions. Thereafter the insurer shall refrain from offering the same product to the prospective customers. However, the insurer shall not compel the insured to migrate to other health insurance products, if it is disadvantageous to the insured.

The coverage of health insurance product may be designed to offer –

- a) To specified age or gender groups
- b) To different age groups
- c) To treatment in all hospitals throughout the country, provided the definition of hospital is met

- d) To treatment in specified hospitals only, provided the morbidity rates used are representative
- e) To treatment in specified geographies only, provided the morbidity rates used are representative etc

However, such specifications are disclosed upfront and clearly in the product prospectus, documents and sale process.

The insurers shall publicize information on all their health insurance products - including prospectus as approved under the File and Use Procedure, proposal form, policy document wordings and premium rates inclusive and exclusive of Service Tax as applicable - on their websites.

2.17 SUBMISSION OF RETURNS TO THE AUTHORITY

Every insurer is required to submit a statement of valuation Assets, Liabilities, and a statement of determination of Solvency Margin, as at 31st March of every financial year, in respect of life insurance business and/or general insurance business, as the case may be to the Authority. Where the insurer undertakes insurance business in a foreign country he shall present a copy of the statements or returns or any such particulars which has been filed before the public authority of that country to the Authority including a separate statement for the business transacted within India. The Authority may ask, if needed and expedient, 'Appointed Actuary' to furnish information by paying personal visit to its office. (R 3-9, Insurance Regulatory and Development Authority (Assets, Liabilities, and Solvency Margin of Insurers) Regulations, 2000).

Insurance business in rural or social sector - Every insurer shall 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. Every insurer owes an obligations to provided life insurance or general insurance policies to the persons residing in the rural sector, workers in the unorganized or informal sector or for economically vulnerable or backward classes of the society and other categories of persons as may specified by regulations made by the Authority and such insurance policies shall include insurance for crops." (Sec.32B&32C, Insurance Act, 1938).

2.18 INVESTIGATION

The Authority may, at any time, by order in writing, direct any person (i.e. "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. In pursuance to the

order the Investigating Authority may inspect any insurer and his books and account; and the Investigating Authority shall supply to the insurer a copy of this report on such inspection. The Investigating Authority may, wherever necessary, may take the service of any auditor or actuary or both for the purpose of assisting him in any investigation.

It is the duty of every manager, managing director or other officer of the insurer to produce before the Investigating Authority 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. The Investigating Authority may examine them in relation to his business on oath. After the completion of the investigation the Investigating Authority shall submit its report to the Authority. On receipt of any report, 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.

The Authority may, after giving reasonable notice to the insurer, publish the report submitted by the Investigating Authority or such portion thereof as may appear to it to be necessary. The order made, in this behalf, by the Authority shall be capable of being called in question in any court. All expenses of, and incidental to, any investigation made 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.'. (Sec.33, Insurance Act,1938).

2.19 ISSUE OF LICENSE TO INTERMEDIARY OR INSURANCE INTERMEDIARY

The Authority or an officer authorized 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 license to act as an intermediary or an insurance intermediary provided they do not suffer from any disqualification. A license so issued shall remain in force for a

period of three years only from the date of issue. If the applicant, does not suffer from any of the disqualifications, and the application for renewal of license reaches the issuing authority at least thirty days before the date on which the license 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 license does not reach the issuing authority at least thirty days before the date on which the license ceases to remain in force.

No application for the renewal of a license shall be entertained if the application does not reach the issuing authority before the license ceases to remain in force. However, the Authority may, if satisfied that undue hardship would be caused otherwise, accept any application on payment by the applicant of a penalty of seven hundred and fifty rupees.

The person is said to be disqualified if -

- a) he is a minor;
- b) he is found to be of unsound mind by a court of competent jurisdiction;
- c) 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) in the course of any judicial proceedings 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) 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) he has not passed such examinations as may be specified by the regulations made by the Authority in this behalf;
- g) he violates the code of conduct as may be specified by the regulations made by the Authority.

If it be found that an intermediary or an insurance intermediary suffers from any of the foregoing disqualifications the Authority may cancel the license issued to the intermediary or

insurance intermediary. The Authority may issue a duplicate license to replace a license lost, destroyed or mutilated, on payment of such fee, as may be determined by the regulations made by the Authority.

Any person, an individual or company or a firm, who acts as an intermediary or an insurance intermediary without holding a license 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 (Sec.42, 42D, Insurance Act, 1938).

Every insurer shall, at all times, shall maintain an excess of the value of his assets over the amount of his liabilities (Sec. 64VA, Insurance Act, 1938).

2.20 PENALTIES

Failure to comply the provisions of the Act: Where any person, owes an obligation under the Act, fails to -

- 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 (Sec.102, Insurance Act, 1938).

Behaves in contravention of the Act: 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 (Sec. 3,7,98,103, Insurance Act, 1938).

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 (Sec.104, Insurance Act, 1938).

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 (Sec.105, Insurance Act, 1938).

Offences by companies: (1) Where any offence 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;

However, no person shall be subjected 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.

where any offence 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 (Sec.105A, Insurance Act, 1938).

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 (Sec.105B, Insurance Act, 1938)...

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. (Sec.105C, Insurance Act, 1938).

2.21 SUMMARY

Today the IRDA Act, 1999 is taking care of insurance business. The Authority constituted therein is an apex body. The affairs of each insurer is being supervised and regulated by the Authority. It is empowered to issue license, monitor the insurance business, poke its nose in the matter of intermediaries and penalize the people who rub the wrong edge.

2.22 KEY WORDS

1. Authority
2. Supersession
3. Insurance Advisory Committee
4. 'In-principle' approval
5. Investigation
6. insurance intermediary

2.23 SELF ASSESSMENT QUESTIONS

1. Who can become a member to the Authority? What are the powers and functions of the Authority?
.....
.....
2. What do you mean by 'In-principle' approval? Who shall grant it? What are the implications of 'In-principle' approval?
.....
.....
3. Write note on -
 - a. insurance intermediary
 - b. Supersession of the Authority
 - c. Opening new places of business

2.24 REFERENCES

1. Principles of insurance law: Life - fire - marine - motor and accident: M.N.Srinivasan.
2. Modern Law of Insurance: KSN Murthy and KVS Sarma.
3. Life insurance corporation of India : Impact of privatization and performance: Sumninder Kaur Bawa.
4. Commentaries on the public liabilities insurance act 1991: G.S Karkara.
5. Insurance law: A comprehensive treatise on law of insurance covering all risks except marine insurance: Brij Nandan Singh.
6. The Law of Insurance Contracts: A. Malcolm.
7. International encyclopaedia of laws: Insurance Law: R. Blanpain.
8. Insurance law manual with IRDA circulars and notifications: Taxmann.

UNIT 3: INSURANCE ACT, 1938

STRUCTURE

- 3.0 Objectives
- 3.1 Introduction
- 3.2 Commencement of Insurance Business
- 3.3 Procedure for registration
- 3.4 Suspension of certificate
- 3.5 Cancellation of Registration
- 3.6 Capital Structure
- 3.7 Submission of returns
- 3.8 Obligations of Insurers to Rural or Social Sectors
- 3.9 Amalgamation and Transfer of Insurance Business
- 3.10 Preparation of scheme of Amalgamation
- 3.11 Summary
- 3.12 Key Words
- 3.13 Self Assessment Questions
- 3.14 References

3.0 OBJECTIVES

On reading this unit the students would be able to appreciate the following –

- Commencement of Insurance Business
- Procedure for registration
- Obligations of Insurers to Rural or Social Sectors
- Amalgamation and Transfer of Insurance Business

3.1 INTRODUCTION

During the medieval period and early modern period was heyday for many insurers. No effective legal control mechanism was introduced to deal with the erring insurers. Many insurers took the undue advantage of such a void situation in the legal regime to exploit the innocent and gullible public. Those who have invested their hard earned money, to secure their future, were made to run from pillar to post for no fault of them. This has made them to see the insurers with a suspicion. The concept of insurance was on the verge of losing its credibility. This development paved the way for according an institutional structure for the governance of insurance business. In consequences whereof, The Insurance Act, 1938, has been introduced to facilitate both the insurers and the insured. This has been consolidated and amended from time to time to keep the provisions in tune with needs of the society. Today, the insurance business shall be transacted in consonance with the Insurance (Amendment) Act, 2002 [4 of 1938].

3.2 COMMENCEMENT OF INSURANCE BUSINESS

The institutions which may carry on insurance business is as under –

- a) Public company, or
- b) Society registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in any State relating to co-operative societies, or
- c) Body corporate incorporated under the law of any country outside India not being of the nature of a private company (Sec.2C, Insurance Act, 1938).

The Institution which desires to commence the insurance business shall obtain certificate of registration, for the particular class of insurance business, from the Insurance Regulatory and Development Authority. However, if any certificate of registration, obtained immediately prior to the commencement of the Insurance Regulatory and Development Authority Act, 1999, be deemed as valid. The certificate of registration so granted shall be renewed periodically (Sec.3, 3A, Act, 1938).

3.4 PROCEDURE FOR REGISTRATION

The person/ applicant who are desiring to carry on insurance business in India shall make a requisition for registration application in Form IRDA/R1 for each class of insurance business i.e. –

- a) Life insurance business consisting of linked business, non-linked business or both; or,
- b) general insurance business including health insurance business (or health cover).

Every insurer carrying on insurance business in India before the commencement of the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999) and requiring registration under the Act, shall make an application, in Form IRDA/R2 for grant of certificate of registration, within three months from the commencement of the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999).

The application for the registration shall be, made to the Controller, IRDA, indicating the name of the company which shall not be undesirable in the opinion of the Authority, accompanied with –

- a) Certified copy of the memorandum and articles of association;
- b) Certified copy of the deed of partnership or of the deed of constitution of the company, as the case may be, or, in the case of an insurer having his principal place of business or domicile outside India, the document specified in Clause (a) of Section 63;
- c) Name, address and the occupation, if any, of the directors/ managers where insurer is a company incorporated under the Indian Companies Act, 1913 (7 of 1913), or under the Indian Companies Act, 1882 (6 of 1882), or under the Indian Companies Act, 1866 (10 of 1866) etc;
- d) Statement of the class or classes of insurance business to be done;
- e) Statement that the amount required to be deposited, u/s 7, with the Reserve Bank of India;
- f) Declaration verified by an affidavit made by the principal officer of the insurer authorized, u/s 6 or 97 if applies, as to paid-up equity capital or working capital have been complied with;
- g) Statement verified by an affidavit made by the principal officer of the insurer setting forth the requirements (if any), where an insurer having his principal place of business or domicile outside India;
- h) Certified copy of the published prospectus, if any;
- i) Standard policy forms of the insurer;
- j) Statements of the assured rates, advantages, terms and conditions to be offered in connection with insurance policies together with a certificate in connection with life insurance business by an actuary that such rates, advantages, terms and conditions are workable and sound;
- k) Receipt showing payment of fee as may be determined by the regulations;

- 1) Such other documents as may be specified by the regulations made by the Authority.

The Authority may ask the applicant to furnish further information or clarification regarding the matters relevant to consider the requisition for registration application. The Authority, on being satisfied that it is complete and correct in all respects, may accept the requisition and direct the applicant to submit the application for registration in Form IRDA/R2 for grant of a certificate of registration (Regulation 3,4,5,6,7,29, Insurance Regulatory and Development Authority (Registration of Indian Insurance Companies) Regulations, 2000).

The application for grant of certificate of registration shall be accompanied with a fee of rupees fifty thousand for each class of business for registration shall be remitted by a bank draft issued by any scheduled bank in favour of the Insurance Regulatory and Development Authority payable at New Delhi. The application for grant of certificate of registration shall be accompanied by –

- a) documentary proof evidencing the making of deposit required under section 7 of the Act.
- b) evidence of having rupees one hundred crore or more paid up equity share capital, in case the application for grant of certificate is for life insurance business or general insurance business;
- c) evidence of having rupees two hundred crore or more paid up equity share capital, in case the application for grant of certificate is for re-insurance business;
- d) an affidavit by the principal officer and the promoters of the applicant certifying that the requirements of the first proviso to section 6 of the Act to the effect that paid up share capital is adequate after excluding any preliminary expenses incurred in the formation and registration of the company and the deposit required to be made under section 7 of the Act have been satisfied;
- e) a statement indicating the distinctive numbers of shares issued to each promoter and shareholder in respect of share capital of the applicant;
- f) an affidavit by the principal officer and the promoters of the applicant certifying that the paid up equity capital referred to in sub-clause (b) of clause (7A) of section 2 of the Act, calculated is in accordance with regulation 11 does not exceed twenty six percent;
- g) a certified copy of the published prospectus, if any;
- h) a certified copy of the standard forms of the insurer and statements of the assured rates, advantages, terms and conditions to be offered in connection with insurance policies together with a certificate by an actuary in case of life insurance business that such rates, advantages, terms and conditions are workable and sound;
- i) a certified copy of the memorandum of understanding entered into between the Indian promoter and the foreign promoter, if any, or amongst the promoters as a whole including details of the support comfort letters exchanged between the parties;
- j) the original receipt showing payment of the fee of rupees fifty thousand for a class of business;

- k) a certificate from a practising chartered accountant or a practising company secretary certifying that all the requirements relating to registration fees, share capital, deposits, and other requirements of the Act have been complied with by the applicant;
- l) any other information required by the Authority during the processing of the application for registration (Regulation 10,15, Insurance Regulatory and Development Authority (Registration of Indian Insurance Companies) Regulations, 2000).

The Authority while attending the application for grant of certificate to the applicant it may consider the following –

- a) the record of performance of each of the promoters in the fields of business/profession they are engaged in;
- b) the record of performance of the directors and persons in management of the promoters and the applicant;
- c) the capital structure of the applicant company;
- d) the extent of obligation to provide life insurance or general insurance policies to the persons residing in the rural sector, workers in the unorganised sector or informal sector or for economically vulnerable or backward classes of the society and other categories of persons specified by the Authority;
- e) the nature of insurance products;
- f) the planned infrastructure of the applicant company, including branches in rural areas, to effectively carry out the insurance business;
- g) the level of actuarial and other professional expertise within the management of the applicant company;
- h) the organisation structure of the applicant to meet the requirements of regulation 7(c).
- i) other relevant matters for carrying out the provisions of the Act.

However, the Authority may give preference in grant of certificate of registration to those applicants who propose to carry on the business of providing health covers to individuals or groups of individuals(Regulation 12, Insurance Regulatory and Development Authority (Registration of Indian Insurance Companies) Regulations, 2000).

At the time of granting the certificate of registration, in Form IRDA/R3, the Authority shall make an enquiry and satisfy itself that the –

- a) applicant is eligible, and in its opinion, is likely to meet effectively its obligations imposed under the Act;
- b) financial condition and the general character of management of the applicant are sound;
- c) volume of business likely to be available to, and the capital structure and earning prospects of, the applicant will be adequate;
- d) interests of the general public will be served if the certificate is granted to the applicant in respect of the class of insurance business specified in the application; and
- e) Applicant has complied with the provisions of sections 2C, 5, 31A 32 and 32A, Insurance Act, 1938. (Regulation 16, Insurance Regulatory and Development Authority (Registration of Indian Insurance Companies) Regulations, 2000).

On receipt of the certificate, but within 12 months of the date of registration, the applicant shall commence insurance business for which he has been authorised. In case he find hard to commence the insurance business within the specified period of 12 months, it can before the time limit expires, seek an extension, by a proper written application, to the Authority however, no extension shall be granted beyond 24 months(Regulation 17,18, Insurance Regulatory and Development Authority (Registration of Indian Insurance Companies) Regulations, 2000).

However, the Authority may reject such requisition for registration application when the -

- a) requisition for registration application has been rejected by the Authority at any time during the preceding five financial years on the date of requisition for registration application; or
- b) application for registration has been rejected by the Authority at any time during the preceding five financial years on the date of requisition for registration application; or
- c) certificate of registration has been cancelled or withdrawn by the Authority; or
- d) name does not contain the words 'insurance company' or 'assurance company';

When the Authority is of the opinion that the applicant does not meet the requirements, aforementioned, he may reject the application after giving the applicant a reasonable opportunity of being heard and recording the reasons and the grounds thereof. The order rejecting the application shall be communicated by the Authority within thirty days of such rejection. The aggrieved applicant may, within a period of thirty days from the date of such communication, apply to the Authority for reconsideration of its decision. The Authority shall consider the application so made and communicate its decision, as soon as possible, in writing to the applicant. Further, he may approach the Authority with a fresh request for registration application after a period of two years from the date of rejection, with a new set of promoters and or for a class of insurance business other than the originally proposed one (Regulation 3,4,5,8, Insurance Regulatory and Development Authority (Registration of Indian Insurance Companies) Regulations, 2000).

The Authority may refuse to grant the certificate of registration, recording the reasons, when an application for registration is not complete in all respects and does not conform to the regulations or instructions specified in Form IRDA/R2. The order rejecting the application shall be communicated, in writing, by the Authority within thirty days of such rejection to the applicant. An applicant aggrieved by the decision of the Authority may, within a period of thirty days from the date of such communication, appeal to the Central Government for

reconsideration of such decision. The decision of the Central Government on such appeal shall be final and shall not be questioned before any Court. The fees paid in this behalf shall not be refunded. An applicant may approach the Authority with a fresh request for registration after a period of two years from the date of rejection, with a new set of promoters and or for a class of insurance business other than the originally proposed one (Regulation 13,14, Insurance Regulatory and Development Authority (Registration of Indian Insurance Companies) Regulations, 2000).

renewal of certificate: The insurer shall make an application in Form IRDA/R5 for the renewal of the certificate to the Authority before the 31st day of December each year, and such an application shall be accompanied by evidence of the payment of the fee which shall be the higher of –

- a) fifty thousand rupees for each class of insurance business, and
- b) one-fifth of one per cent. of total gross premium written direct by an insurer in India during the financial year preceding the year in which the application for renewal of certificate is required to be made, or rupees five crores, whichever is less; (and in the case of an insurer carrying on solely re-insurance business, instead of the total gross premium written direct in India, the total premium in respect of facultative reinsurance accepted by him in India shall be taken into account)

If the insurer fails to apply for the renewal of registration before the date specified above, the Authority may accept an application for renewal of registration on receipt of the fee payable with the application along with an additional fee by way of penalty of ten per cent. of the fee payable with the application. The fee for renewal of certificate shall be paid to the account of Insurance Regulatory and Development Authority with the Reserve Bank of India (Regulation 20,21, Insurance Regulatory and Development Authority (Registration of Indian Insurance Companies) Regulations, 2000).

Duplicate certificate.--The Authority may, on receipt of fee of rupees five thousand, issue a duplicate certificate to an insurer, if the insurer makes an application to the Authority in Form IRDA/R4(Regulation 22, Insurance Regulatory and Development Authority (Registration of Indian Insurance Companies) Regulations, 2000).

3.5 SUSPENSION OF CERTIFICATE

The Authority after holding an enquiry may pass an order, in writing and recording the reasons, suspending class or classes of insurance business and registration for such period as may be specified if an Indian insurance company or insurer who -

- a) conducts its business in a manner prejudicial to the interests of the policyholders;
- b) fails to furnish any information as required by the Authority relating to its insurance business;
- c) does not submit periodical returns as required under the Act or by the Authority;
- d) does not cooperate in any inquiry conducted by the Authority;
- e) indulges in manipulating the insurance business;
- f) indulges in unfair trade practices;
- g) fails to make investment in the infrastructure or social sector specified under sub-section (1A) of section 27D of the Act,

In case of repeated defaults of the type mentioned above, the Authority may impose a penalty of cancellation of certificate (Regulation 23, 24, Insurance Regulatory and Development Authority (Registration of Indian Insurance Companies) Regulations, 2000).

On and from the date of suspension or cancellation of the certificate, the insurer shall cease to transact new insurance business. The order of the Authority passed shall be published in at least two daily newspapers in the area where the insurer has his principal place of business (Regulation 27,28, Insurance Regulatory and Development Authority (Registration of Indian Insurance Companies) Regulations, 2000).

Show-cause notice and order: On receipt of the report from the enquiry officer, the Authority shall consider the same and if considered necessary by it, issue a show-cause notice as to why a penalty as it considers appropriate should not be imposed. The insurer shall, within twenty-one days of the date of receipt of the show-cause notice, send a reply to the Authority. The Authority after considering the reply to the show-cause notice, if received, shall as soon as possible but not later than thirty days from the receipt of the reply, if any, pass such orders as it deems fit. If no reply is furnished to the Authority by the insurer within 90 days of the service of the notice, the Authority can proceed to decide the issue ex-parte. An order passed shall give reasons therefor including justification of the penalty imposed by that order. The Authority shall send a copy of the order to the insurer (Regulation 25, Insurance Regulatory and Development Authority (Registration of Indian Insurance Companies) Regulations, 2000).

Before registering the applicant as an insurer and granting him a certificate of registration the Controller, on due enquiry, shall confirm that -

- a) The financial condition and the general character of management of the applicant are sound;

- b) The volume of business likely to be available to, and the capital structure and earning prospects of, the applicant will be adequate;
- c) The interest of the general public will be served if the certificate of registration is granted to the applicant in respect of the class or classes of insurance business specified in the application; and
- d) The applicant has complied with the provisions of Sections 2-C, 5, 31A and 32, Act 1938, and has fulfilled all the requirements of this section applicable to him (Sec.3, 5, Act, 1938).

Appeal: The Controller, IRDA, may grant or refuse to grant - certificate of registration. In the event of refusal he shall record the reasons for such decision and shall furnish a copy of it to the applicant. The aggrieved person may prefer an appeal against such decision, within thirty days from the date of receipt of copy of the decision, to the Central Government. The decision of the Central Government is final and shall not be called in question before any Court (Sec.3, Act, 1938).

3.6 CANCELLATION OF REGISTRATION

The Authority may withhold or cancel the registration of an insurer, either wholly or in part i.e. to a particular class of insurance business, as the case may be, in the following circumstances -

- a) if the insurer fails to comply with the provisions of section 7 or section 98 as to deposits, or
- b) if the insurer fails, at any time, to comply the provisions of Sec. 64VA as to the excess of the value of his assets over the amount of his liabilities; or
- c) if the insurer is in liquidation or is adjudged an insolvent, or
- d) if the business or a class of the business of the insurer has been transferred to any person or has been transferred to or amalgamated with the business of any other insurer, or
- e) if the whole of the deposit made in respect of insurance business has been returned to the insurer under Sec. 9, or
- f) if, in the case of an insurer specified in sub-clause (c) of clause (9) of section 2, the standing contract referred to in that sub-clause is cancelled or is suspended and continues to be suspended for a period of six months, or
- g) if the Central Government so directs under sub-section (4) of Sec. 33, or

- h) if the insurer makes default in complying with, or acts in contravention of any requirement of this Act or of any rule or any regulation or order made or, any direction issued there under, or
- i) if the Authority has reason to believe that any claim upon the insurer arising in India under any policy of insurance remains unpaid for three months after final judgment in regular course of law, or
- j) if the insurer carries on any business other than insurance business or any prescribed business , or
- k) 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
- l) 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 (Nationalization) Act, 1972 (57 of 1972), or the Foreign Exchange Regulation Act, 1973 (46 of 1973).

Before taking any decision, to withhold the registration, the Authority shall serve notice in writing to the insurer of his decision mentioning the date of enforcement of the decision, which shall not be less than one month nor more than two months from the date of the receipt of the notice in the ordinary course of transmission. However, the order of cancellation of registration will come into effect from the date of receipt of notice of the order of cancellation by the insurer. Before passing any such decision a reasonable opportunity of being heard be given to the person concerned (Sec.3, Act, 1938).

.Revival of registration:

The Authority may at his discretion may revive the registration if the insurer fulfills the stipulated conditions within six months from the date on which the cancellation put into force or approach the court, after expiry of six months from the date on which the cancellation took effect, seeking an order to wind up the insurance company, or to wind up the affairs of the company in respect of a class of insurance business (Sec.3, Act, 1938).

Duplicate certificate of registration:

The Authority may, on payment of the prescribed fee, issue a duplicate certificate of registration to replace a certificate lost, destroyed or mutilated, or in any other case where he is of opinion that the issue of a duplicate certificate is necessary (Sec.3, Act, 1938).

3.7 CAPITAL STRUCTURE

At the time of commencement of insurance business every insurer, depending upon the nature of insurance business, is required to have minimum paid up equity capital and deposit at the deposit Reserve Bank of India in one of the offices in India of the Bank as under (Sec.6,7, Act, 1938). –

Nature of insurance business	Minimum paid-up equity capital	Deposit with RBI
Life insurance	Rupees one hundred crores	Rupees ten crores
General insurance	Rupees one hundred crores	Rupees ten crores
Re-insurance	Rupees two hundred crores	Rupees twenty crores

For the purposes of determining the paid-up equity capital specified under clause (a) or clause (b), the deposit to be made under section 7 and any preliminary expenses incurred in the formation and registration of the company shall be excluded. Further, 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 such a paid-up equity capital within six months of the commencement of that Act. Further, No insurer shall directly or indirectly invest outside India the funds of the policy-holders (Sec.6 &27C, Insurance Act, 1938).

3.8 SUBMISSION OF RETURNS

The insurer shall maintain separate account of all receipts and payments in respect of each class of insurances business unless the Authority waives this requirement in writing. Balance-sheet, profit & loss account and receipts & payments, including the actuarial report in case of life insurance business, be prepared in the format prescribed. Duly audited accounts and statements, in four sets, shall be submitted to the Authority within six months, extendable by three months in case of such insurer who is carrying on insurance business outside India, from the closure of financial year. The Authority may give-back the returns if it forms an opinion that the returns so submitted is inaccurate or defective and it may –

- a) require from the insurer such further information, certified if he so directs by an auditor or actuary, as he may consider necessary to correct or supplement such return;
- b) call upon the insurer to submit for his examination at the principal place of business of the insurer in India any book of account, register or other document or to supply any statement which he may specify in a notice served on the insurer for the purpose;

- c) examine any officer of the insurer on oath in relation to the return;
- d) decline to accept any such return unless the inaccuracy has been corrected or the deficiency has been supplied before the expiry of one month from the date on which the requisition asking for correction of the inaccuracy or supply of the deficiency was delivered to the insurer or of such further time as the Authority may specify in the requisition and if he declines to accept any such return, the insurer shall be deemed to have failed to comply with the provisions of section 15 or section 16 or section 28 or section 28A or section 28B or section 64V relating to the furnishing of returns.

The aggrieved insurer may make an application, within four months from the date of receipt of the order, against the order of the Authority to the Court seeking cancellation of the order or direction to accept the returns submitted which the Authority has declined to accept (Sec.10-15, 21, Act, 1938).

3.9 OBLIGATIONS OF INSURERS TO RURAL OR SOCIAL SECTORS

The insurers owe obligations to do business in the rural or social sector, enveloping life and general insurance including crop insurance, in order to better the life of people living in both rural and urban areas. “Rural sector” includes Cultivators; Agricultural labourers; Workers in livestock, forestry, fishing, hunting and plantations, orchards and allied activities. Social sector includes **unorganised sector** (means self-employed workers such as agricultural labourers, bidi workers, carpenters, cobblers, construction workers, fishermen, hamals, handicraft artisans, handloom and khadi workers, lady tailors etc.), **informal sector** (means includes small scale, self-employed workers typically at a low level of organisation and technology, having often unwritten and informal employer-employee relationship, pursued with an object to generate employment and income), **economically vulnerable or backward classes**(means persons who live below the poverty line) **and other categories of persons** (means persons with disability as defined in the Persons with Disabilities (Equal Opportunities, Protection of Rights, and Full Participation) Act, 1995 and who may not be gainfully employed; and also includes guardians who need insurance to protect spastic persons or persons with disability), both in rural and urban areas. The insurers shall make sincere endeavour to achieve the quantum of insurance business as determined by the Authority both in the life insurance and general insurance sphere. (Section 32B,32C, Insurance Act, 1938 R-2 to 4, Insurance Regulatory and Development Authority (Obligations of Insurers to Rural or Social Sectors) Regulations, 2002)

3.10 AMALGAMATION AND TRANSFER OF INSURANCE BUSINESS

(Sec.35, Act, 1938).

The life insurance business of an insurer may be transferred to any person or transferred to or amalgamated with the life insurance business of any other insurer in accordance with a scheme approved by the Authority.

(2) Any scheme prepared shall contain an agreement for the proposed transfer or amalgamation. (3) Notice, of at least two months, disclosing the intention to make the application along with a statement of the nature of the amalgamation or transfer, as the case may be, and reasons thereon be sent to the Authority before making an application to the Authority seeking approval of any such scheme. The notice shall be accompanied with following documents, certified copies four in number, shall be kept open, during the two months aforesaid, for the inspection of the members and policy-holders at the principal and branch offices and chief agencies of the insurers concerned, namely -

- a) a draft of the agreement or deed under which it is proposed to effect the amalgamation or transfer;
- b) balance-sheets in respect of the insurance business of each of the insurers concerned in such amalgamation or transfer, prepared in the form set forth in Part II of the First Schedule and in accordance with the regulations contained in Part I of the Schedule;
- c) actuarial reports and abstracts in respect of the life insurance business of each of the insurers so concerned, prepared in conformity with the requirements of Part II of the Fourth and Fifth Schedules and in accordance with the regulations contained in Part I of the Schedule concerned ;
- d) a report on the proposed amalgamation or transfer, prepared by an independent actuary who has never been, professionally connected; with any of the parties concerned in the amalgamation or transfer at any time in the five years preceding the date on which he signs his report;
- e) Any other reports on which the scheme of amalgamation or transfer was founded.

Sanction of amalgamation and transfer by Authority.

On the receipt of the application the Authority shall serve notice of the application to every person resident in India who is the holder of a life policy of any insurer concerned and publish the statement of the nature and terms of the amalgamation or transfer, as the case may be, inviting objections from the directors and such policy-holders as apply to be heard and other persons whom he considers entitled to be heard. Only after giving due opportunity to

the persons mentioned herein the Authority shall approve the arrangement and make consequential orders as are necessary to give effect to the arrangement, including orders as to the disposal of any deposit made.

After the completion of the process of amalgamation and transfer, but within three months, the insurer carrying on the amalgamated business or the person to whom the business is transferred, as the case may be, shall furnish in duplicate to the Authority -

- a) a certified copy of the scheme, agreement or deed under which the amalgamation or transfer has been effected, and
- b) a declaration signed by every party concerned or in the case of a company by the chairman and the principal officer that to the best of their belief every payment made or to be made to any person whatsoever on account of the amalgamation or transfer is therein fully set forth and that no other payments beyond those set forth have been made or are to be made either in money, policies, bonds, valuable securities or other property by or with the knowledge of any parties to the amalgamation or transfer, and
- c) where the amalgamation or transfer has not been made in accordance with a scheme sanctioned by the Authority under Section 36 -
 - i. Balance-sheet in respect of the insurance business of each of the insurers concerned in such amalgamation or transfer, prepared in the Form set forth in Part II of the First Schedule and in accordance with the regulations contained in Part I of that Schedule, and
 - ii. Certified copies of any other reports on which the scheme of amalgamation or transfer was founded.

3.11 PREPARATION OF SCHEME OF AMALGAMATION

The scheme for the amalgamation shall be prepared by the Authority with the consent, in writing, of insurer/transferee insurer and any other insurer concerned in the amalgamation only when the Authority is satisfied that such amalgamation is –

- a) in the public interest; or
- b) in the interests of the policy-holders; or
- c) in order to secure the proper management of an insurer; or
- d) in the interests of insurance business of the country as a whole

The scheme may contain provisions for all or any of the matters mentioned below -

- 1) the constitution, name and registered office, the capital, assets, powers, rights, interests, authorities and privileges, and the liabilities, duties and obligations of the transferee insurer;
- 2) the transfer to the transferee insurer the business, properties, assets and liabilities of the insurer on such terms and conditions as may be specified in the scheme;
- 3) any change in the Board of Directors, or the appointment of a new Board of directors of the transferee-insurer and the authority by whom, the manner in which, and the other terms and conditions on which such change or appointment shall be made, and in the case of appointment of a new Board of Director or of any director, the period for which such appointment shall be made;
- 4) the alteration of the memorandum and articles of association of the transferee insurer for the purpose of altering the capital thereof or for such other purposes as may be necessary to give effect to the amalgamation;
- 5) subject to the provisions of the scheme, the continuation by or against the transferee insurer, of any actions or proceedings pending against the insurer;
- 6) the reduction of the interest or rights which the shareholders, policy holders and other creditors have in or against the insurer before the amalgamation to such extent as the Authority considers necessary in the public interest or in the interests of the shareholders, policy-holders and other creditors or for the maintenance of the business of the insurer;
- 7) the payment in cash or otherwise to policy-holders, and other creditors in full satisfaction of their claim,- (i) in respect of their interest or rights in or against the insurer before the amalgamation; or (ii) where their interest or rights aforesaid in or against the insurer has or have been reduced in respect of such interest or rights as so reduced;
- 8) the allotment to the shareholders of the insurer for shares held by them therein before the amalgamation Whether their interest in such shares has been reduced or not of shares in the transferee insurer and where any shareholders claim payment in cash and not allotment of shares, or where it is not possible to allot shares to any sharp holders the payment in cash to those shareholders in full satisfaction of their claim - (i) in respect of their interest in shares in the insurer before the amalgamation; or (ii) where such interest has been reduced under clause (f) in respect of their interest in shares as so reduced;

- 9) the continuance of their services of all the employees of the insurer (excepting such of them as not being workmen within the meaning of the Industrial Disputes Act, 1947 (14 of 1947), are specifically mentioned in the scheme) in the transferee insurer at the same remuneration and on the same terms and conditions of service, which they were getting or, as the case may be, which they were being governed, immediately before the date of the amalgamation:
- 10) any other terms and conditions for the amalgamation of the insurer;
- 11) Such incidental, consequential and supplemental matters as are necessary to secure that the amalgamation shall be fully and effectively carried out.

The draft copy of the scheme shall be given to the insurer and also to the transferee insurer and any other insurer concerned in the amalgamation including shareholder, policyholder or other creditor of each of those insurers and the transferee insurer inviting suggestions and objections, if any. The Authority may make such modifications, if any, in the draft scheme as he may consider necessary in the light of suggestions and objections received and place the same before the Central Government for its sanction. The Central Government may sanction the scheme with or without any modification as it deems fit and the scheme as sanctioned will come into force from such date as may be specified by the Central Government in this behalf. The scheme sanctioned by the Central Government will become conclusive evidence for all the requirements, of this provision, relating to amalgamation and becomes binding on the insurer or, as the case may be, on the transferee-insurer and any other insurer concerned in the amalgamation and also on all the shareholders, policy-holders and other creditors and employees of each of those insurers and of the transferee insurer, and on any other person having any right or liability in relation to any of those insurers or the transferee insurer. The copies of every such scheme and the order made in this behalf shall be laid before each House of Parliament, in the forth coming session which is scheduled, after the scheme has been sanctioned by the Central Government or the order has been made (Sec.7, 35, 36, 37, 37A, 98, Act, 1938).

3.12 SUMMARY

The Insurance Act, 1938 is detailing with the dos and don'ts of insurance business. No one shall carry on insurance business without obtaining proper license from the Authority. It shall commence its business with sufficient capital as ordained. Maintenance of books of accounts and filing of periodical returns to the Authority is the primary obligation of the insurer. On

the rise of contingencies the insurers may amalgamate and transfer, obtaining prior approval of the Authority, insurance business by drawing the scheme of amalgamation. At the same time one may have recourse to winding up of insurance business vis-a vis the institution.

3.13 KEY WORDS

1. IRDA
2. Insurance Business
3. Registration
4. Returns
5. Amalgamation

3.14 SELF ASSESSMENT QUESTIONS

1. Who can commence the insurance business? How he shall proceed?
.....
.....
2. Explain the procedures for amalgamation and transfer of the insurance institution.
.....
.....
3. Write note on -
 - a. Submission of returns
 - b. Obligations of Insurers to Rural or Social Sectors
 - c. Cancellation of Registration

REFERENCES

Principles of insurance law: Life - fire - marine - motor and accident: M.N.Srinivasan.
Modern Law of Insurance: KSN Murthy and KVS Sarma.
Life insurance corporation of India : Impact of privatization and performance: Sumninder Kaur Bawa.
Commentaries on the public liabilities insurance act 1991: G.S Karkara.
Insurance law: A comprehensive treatise on law of insurance covering all risks except marine insurance: Brij Nandan Singh.
The Law of Insurance Contracts: A. Malcolm.
International encyclopaedia of laws: Insurance Law: R. Blanpain.
Insurance law manual with IRDA circulars and notifications: Taxmann.
Insurance law: Relating to all risks other than marine: E.J. Macgillivray.
Modern insurance law: John Birds and Norma J Hird.
Law Relating to Marine Insurance: Mitra, B.C.
Law of Insurance: Jaiswal J V N
General Principles of Insurance Law: Hardy Ivamy E R
Law Relating to Insurance: Vats R M
Insurance Regulatory and Development Authority Act, 1999
Insurance Act, 1938

UNIT 4: PROVIDENT SOCIETY

STRUCTURE

- 4.0 Objectives
- 4.1 Introduction
- 4.2 Dividing business
- 4.3 Registration
- 4.4 Cancellation of Registration
- 4.5 Renewal of registration
- 4.6 Working capital
- 4.7 Restriction on name of provident society
- 4.8 Actuarial report and abstract
- 4.9 Investment of funds
- 4.10 Inquiry by or on behalf of Authority
- 4.11 Amalgamation and transfer of insurance business
- 4.12 Winding up by Court and voluntary winding up
- 4.13 Appointment of liquidator
- 4.14 Powers of liquidator
- 4.15 Procedure at liquidation
- 4.16 Dissolution of provident society
- 4.17 Mutual Insurance Companies and Co-Operative Life Insurance Societies
- 4.18 Summary
- 4.19 Key Words
- 4.20 Self Assessment Questions
- 4.21 References

4.0 OBJECTIVES

On reading this unit the students would be in a position to understand the following –

1. Significance of the provident society
2. Constitution of provident society
3. Functions of provident society
4. Amalgamation of provident society
5. Winding up of provident society
6. Mutual Insurance Companies and Co-Operative Life Insurance Societies

4.1 INTRODUCTION

The Provident society is a body of persons (whether corporate or unincorporated) promoted to carry on the business of insuring the payment, on the happening of any of the contingencies, of –

- a) An annuity of or equivalent to one hundred rupees or less, payable for an uncertain period, or
- b) A gross sum of one thousand rupees or less whether paid for payable in a lump sum or in two or more installments over a certain period.

The contingencies contemplated are as under -

- a) the birth, marriage or death of any person or the survival by a person of a stated or implied age or contingency;
- b) failure of issue;
- c) the occurrence of social, religious or other ceremonial occasion;
- d) loss of or retirement from employment;
- e) disablement in consequence of sickness or accident;
- f) the necessity of providing for the education of a dependent;
- g) any other contingency which may be prescribed or which may be authorized by the State Government with the approval of the Central Government.

Whether any person or body of persons is or is not a provident society shall be decided by the Authority and his decision is final.

The provident society shall not carry on insurance business unless it is registered as –

- a) A public company; or
- b) A society under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in any State relating to co-operative societies; or
- c) A body corporate under the law of any country outside India not being of the nature of a private company (Sec.65, Act, 1938).

4.2 DIVIDING BUSINESS

No provident society shall carry on any business upon the dividing principle, that is to say, on the principle that the benefit secured by a policy is not fixed but depends either wholly or partly on the results of a distribution of certain sums amongst policies becoming claims within certain time-limits, or on the principle that the premiums payable by a policy-

holder depend wholly or partly on the number of policies becoming claims within certain time-limits. The Authority shall, as soon as possible, take steps to have any provident society which carries on business on dividing principle wound up. However, where any such provident society in existence at the commencement of this Act applies within three months of such commencement to the Authority for permission to continue carrying on its business with a view meanwhile to reorganize its business in accordance with the provisions of this Act, the Authority may at his discretion, with due regard to the past history of the society, permit the society to continue business for a period not exceeding two years from the date of receipt of such permission, so however that no new business on the dividing principle is undertaken by the society (Sec.69, Act, 1938).

4.3 REGISTRATION

No provident society except a provident society registered under the provisions of the Provident Insurance Societies Act, 1912 (5 of 1912), shall receive any premium or contribution until it has, obtained from the Authority, before the date of commencement of the Insurance Regulatory and Development Authority Act, 1999, a certificate of registration. Every application for registration shall be accompanied by -

- a) a certified copy of the rules of the society, and when the society is a company incorporated under the Indian Companies Act (repealed here before) a certified copy of the memorandum and articles of association or where the society is not such a company a certified copy of the deed of constitution of the society;
- b) the names and addresses of the proprietors or directors, and the managers of the society, the full address of the registered office of the society, the full address of the principal office of the society in India the name of the manager at such office, and the name and address of some one or more persons resident in India authorized to accept any notice required to be served on the society;
- c) a certificate from the Reserve Bank of India that the initial deposit referred to in Section 73 has been made;
- d) a declaration verified by an affidavit made by the principal officer of the society authorized in that behalf that the minimum working capital required by Section 72 is available; and
- e) the receipt showing payment in the prescribed manner of the prescribed fee for registration being not more than two hundred rupees.

The Authority may register the society and issue a certificate of registration if he is satisfied that the society has acted in consonance with all the provisions of this Act.

4.4 CANCELLATION OF REGISTRATION

The Authority may, after giving prior notice in writing, specifying the grounds for the proposed cancellation and allowing the society concerned an opportunity of being heard, apply to the Court and obtain sanction for cancellation of the registration made under this provision or made under the provisions of the Provident Insurance Societies Act, 1912 (5 of 1912).—

- a) if he is satisfied from the returns furnished under the provisions of this Act or as the result of an inquiry made under Section 87 –
 - i. that the society is insolvent or is likely to become so, or
 - ii. that the business of the society is conducted fraudulently or not in accordance with the rules thereof, or that it is in the interests of the policy-holders that the society should cease to carry on business, or
- b) if the society, having failed to comply with any requirement or having contravened any provision of this Act, has continued such failure or contravention for a period of one month after notice of such failure or contravention has been conveyed to the society by the Authority.

However, the Authority may, if he thinks fit, instead of applying for cancellation of the registration, as mentioned above, make a recommendation to the Court that the contracts of the society should be reduced in such manner and subject to such conditions as he may indicate.

Further, the Authority may, without previous notice and without application to the Court for sanction -

- a) cancel the registration of a provident society which has failed to have its registration renewed, or
- b) cancel the registration of a provident society if any deposit required by Sec. 73 has not been made, or
- c) cancel on such terms and conditions as he thinks fit, the registration of any provident society which applies to him for such cancellation if he is satisfied that the society has ceased to carry on insurance business and the all its liabilities in respect of insurance policies are either satisfied or otherwise provided for, or

d) cancel the registration of a provident society if he has reason to believe that any claim upon the society arising in India under any policy of insurance remains unpaid for three months after final judgment in regular course of law.

When a registration is cancelled the provident society shall not, after the cancellation has taken effect, enter into any new contracts of insurance, but all rights and liabilities in respect of contracts of insurance entered into by it before such cancellation takes effect shall, subject to the provisions of Section 88, continue as if the cancellation had not taken place.

Where a registration is cancelled, under the above mentioned provisions, or because the society has failed to have its registration renewed, the Authority may at his discretion revise the registration of the provident society, within six months from the date on which the cancellation took effect, makes the deposits required by Section 73 or satisfies the Authority that no claim upon it, as mentioned above, remains unpaid, or has had an application under sub-section (3) of Sec. 70A accepted, as the case may be, and complies with any directions which may be given to it by the Authority.

The Authority may, on payment of the prescribed fee which shall not exceed five rupees, issue a duplicate certificate of registration to replace a certificate lost, destroyed or mutilated, or in any other case where he is of opinion that the issue of a duplicate certificate is necessary (Sec.70, Act, 1938).

4.5 RENEWAL OF REGISTRATION

Every provident society registered under this Act, or under the Provident Insurance Societies Act, 1912 (5 of 1912), shall renew its registration annually for each period of twelve months after that ending on the 30th day of June, 1942. An application for the renewal of a registration shall be made by the society to the Authority before the 30th day of June preceding the period for which renewal is sought. The applicant shall pay the fee prescribed into the Reserve Bank of India, or, where there is no office of that Bank, into the Imperial Bank of India acting as the agent of that Bank, or into any Government treasury and enclose its receipt to the application. However, the fee shall not exceed two hundred rupees but may vary according to the volume of insurance business done by the society. If a provident society fails to apply for renewal of registration before the date specified the Authority may, so long as he has taken no action under Section 88 to have the society wound up, accept an application for renewal of registration on receipt from the society of the fee payable with the application and such penalty, not exceeding the prescribed fee payable by the society, as he

may require. The Authority shall, on being satisfied that the society has fulfilled the requirements of this section, renew the registration and grant it a certificate of renewal of registration (Sec.70A, Act, 1938).

4.6 WORKING CAPITAL

No provident society shall be registered unless it has a paid-up capital sufficient to provide as working capital a net sum of not less than five thousand rupees exclusive of deposits made under this Act and exclusive in the case of a company of any expenses incurred in connection with the formation of the company and it shall maintain deposit with the Reserve Bank of India in one of the offices in India of the Bank, for and on behalf of the Central Government as may be prescribed from time to time (Sec.72,73, 78, Act, 1938).

4.7 RESTRICTION ON NAME OF PROVIDENT SOCIETY

A provident society shall not be registered by a name identical with that by which an insurer or another provident society in existence is already registered, or so nearly resembling that name as to be calculated to deceive, except when the provident society in existence is in the course of being dissolved and signifies its consent, or the insurer in existence signifies his consent to the Authority. If a provident society, through inadvertence or otherwise, is without such consent as aforesaid registered by a name identical with that by which an insurer or another provident society already in existence is registered, or so nearly resembling it as to be calculated to deceive, the first-mentioned society shall, if called upon to do so by the Authority on the application of the insurer or the second-mentioned society, change its name within a time to be fixed by the Authority (Sec.73A, Act, 1938).

Rules: The Rules of every provident society shall contain -

- a) the name, the object and the location of the registered office of the society;
- b) the contingencies or classes of contingency on the happening, of which money is to be paid;
- c) the condition to be complied with before, and the payments to be made on, admission to the society;
- d) the rates of premium or contribution, and the periods for which or the times at which premiums or contributions are payable;
- e) the maximum amount payable to a subscriber or policy-holder;
- f) the nature and amounts of the benefits provided for by the society;
- g) the circumstances in which a bonus may be paid to a policyholder;
- h) the nature of the evidence required for the proof of the happening of any contingency on which money is to be paid;

- i) the circumstances in which policies may be forfeited or renewed or the whole or a part of the premiums paid on a policy may be returned or a surrender value of a policy may be granted;
- j) the penalties for delay in paying or failure to pay premiums or contributions;
- k) the proportion of the annual income of society which may be disbursed on and the provisions to be made for meeting the expenses of the management of the society;
- l) the person or persons who or the authority which shall have power to invest the funds of the society;
- m) the provisions for appointment of auditors and their remunerations;
- n) the procedure to be adopted in altering the rules of the society;
- o) the mode of appointment and removal, the qualification and the powers of a director, manager, secretary or other officer of the society; the manner of raising additional capital; and the provisions for the holding of general meetings of the members and policy holders and for the powers to be exercised and the procedure to be followed thereat - unless these are provided for in the articles of association of a society which is a company incorporated under the Indian Companies Act(repealed here before); and
- p) Such other matters as may be prescribed (Sec.74, Act, 1938).

Amendment of rules:

The rules amended shall be put into action only after obtaining the approval of the Authority and on its registration. However, no amendment shall be registered when he is of the opinion that the amendment unfairly affects the rights of existing members or policy-holders of the society. Copy of the Rules shall be given to its members, on demand, at free of cost and to any person other than a member a copy of such rules be furnished on the payment of a sum not exceeding one rupee. (Sec.75, 76,Act, 1938).

Registered office: Every provident society shall have in India a principal office (on the outside of which it shall keep displayed its name in a conspicuous position in legible characters) to which all communications and notices may be addressed, and shall give notice to the Authority of any change in the location thereof within twenty-eight days of its occurrence (Sec.77,Act, 1938).

Registers and books: Every provident society shall keep at its principal office in India books of accounts and shall at the expiry of the calendar year prepare a, duly audited, revenue account and balance-sheet in the prescribed form verified in the prescribed manner, together with a report on the general state of the society's affairs. The revenue account and balance-sheet along with the auditor's report, printed four copies of these, shall be furnished as returns to the Authority within six months from the end of the period to which they relate. They books of account shall be kept open for inspection, at all reasonable times, by the Authority or any person appointed by him in this behalf or by any member or policy-holder of the

society who has, on application in this behalf, been permitted by the Authority subject to such conditions, if any, as he may impose. (Sec.79, 80, 82, 86, Act, 1938).

4.8 ACTUARIAL REPORT AND ABSTRACT

Every provident society shall once in every five years or at such shorter intervals as may be laid down by the rules of the society cause an investigation to be made as at the last day of a calendar year into its financial condition including the valuation of its liabilities and assets by an actuary including the scheme of insurance, if any. The report of the actuary shall, in abstract, contain -

- a) the general principles adopted in the valuation, including the method by which the valuation age of lives was ascertained;
- b) the rate at each age of the mortality and any other factor assumed and the annuity values used in valuation;
- c) the reserve values held against policies effected;
- d) the rate of interest assumed; and
- e) the provision made for expenses,

The report shall be appended with a certificate signed by a principal officer of the society stating that all material necessary for proper valuation has been placed at the disposal of the actuary and that full and accurate particulars of every policy under which there is a liability either actual or contingent have been furnished to the actuary for the purpose of the investigation.

(3) If the actuary finds that the financial conditions *of* the society is such that no surplus exists for distribution as bonus to the policy-holders, or as dividend to the shareholders, he shall state in his report whether in his opinion the society is insolvent and, if so, whether it should be wound up or not, and the extent to which in his opinion existing contracts should be modified or existing rates of premium should be adjusted to make good the deficiency in the assets(Sec.81,82,83,Act, 1938).

4.9 INVESTMENT OF FUNDS

The funds or investments of a provident society shall be deposited only in the name of the society or in the name of a public officer approved by the Central Government. However, no loan shall be made out of the assets of a provident society to any director, manager, managing agent, auditor, actuary, officer or partner of the society, except on the security of a policy of

insurance held in the society and within its surrender value and no such loans shall be made to any concern of which a director, manager, managing agent, actuary, officer or partner of the society is a director, manager managing agent, actuary, officer or partner. If any loan facility is provided to any of them, they shall repay it within three months from the occurrence of such event or from the commencement of the Insurance (Amendment) Act, 1946 (6 of 1946), whichever is later and in case of default they ceases to hold office and subjected to penal action. (Sec.85,Act, 1938).

4.10 INQUIRY BY OR ON BEHALF OF AUTHORITY

The Authority shall at least once in two years and may, if he thinks fit, at any time visit personally or depute a suitable person to visit the principal office of a provident society or the principal office in India of a society having its principal place of business or domicile outside India and inquire into the affairs of the society or may, after giving notice to the society and giving it an opportunity to be heard, direct such an inquiry to be made by an auditor or actuary appointed by him or by both an auditor and an actuary appointed simultaneously, or first by an auditor only or an actuary only and afterwards by an actuary or auditor. For the purposes of any such inquiry Authority or the auditor or actuary, as the case may be, shall be entitled to examine all books and documents of the society and may demand from the society or any officer of the society such explanations as he may require on any matter relating to the affairs of the society. The results of any such inquiry shall be recorded in writing by the person making the inquiry, and four copies of the record shall be supplied to the Authority and when the inquiry is completed, a copy of the record, or of each such record where more than one are made in the course of the same inquiry, shall be sent by the Authority to the society concerned and shall be open to inspection by any member or policy-holder of the society. All expenses of incidental to any inquiry made by an auditor or actuary including any expenses incurred before the date on which the Authority receives notice of an appeal shall be defrayed by the provident society, shall have priority over other debts due from the society, and shall be recoverable as an arrear of land-revenue. The Authority may by notice in writing require the provident society to comply within a time to be specified therein (not being less than fifteen days from the receipt of the notice by the society) with any directions he may issue to remedy defects disclosed by an inquiry under this section. If the society fails to comply with any direction issued, the Authority may, after giving notice to the society and

giving it an opportunity to be heard, apply to the Court for the winding up of the society (Sec.87, Act, 1938).

4.11 AMALGAMATION AND TRANSFER OF INSURANCE BUSINESS

The insurance business of a provident society may be transferred to any person or transferred to or amalgamated with the insurance business of any other provident society in accordance with a scheme prepared and sanctioned by the Authority. Any scheme prepared shall set out the agreement under which the transfer or amalgamation is proposed to be effected, and shall contain such further provisions as may be necessary for giving effect to the scheme. Before an application is made to the Authority to sanction any such scheme, notice of the intention to make the application together with a statement of the nature of the amalgamation or transfer, as the case may be, and of the reason there for, shall at least two months before the application is made, be sent to the Authority and certified copies, four in number, of each of the following documents shall be furnished to him, and other such copies shall during the two months aforesaid be kept open for the inspection of the members and policy-holders at the principal and branch offices of the provident societies concerned, namely -

- a) a draft of the agreement or deed under which it is proposed to effect the amalgamation or transfer;
- b) balance-sheets in respect of the insurance business of each of the provident societies concerned in such amalgamation or transfer;
- c) actuarial reports and abstracts in respect of the insurance business of each of the provident societies so concerned;
- d) a report on the proposed amalgamation or transfer, prepared by an independent actuary; and
- e) any other reports on which the scheme of amalgamation or transfer was founded;

The balance-sheets, reports and abstracts shall all be prepared as at the date at which the amalgamation or transfer if sanctioned by the Authority is to take effect, which date shall not be more than twelve months before the date on which the application to the Authority is made. However, the Authority may exempt the provident society or societies concerned from furnishing to him and from keeping open for inspection any one or more of the above documents. The Authority may require, for special reasons and direct, that notice of the application shall be sent to every person resident in India who is the holder of a policy of any provident society concerned and may cause a statement of the nature and terms of the

amalgamation or transfer, as the case may be, to be published in such manner and for such periods as he may direct. After hearing the societies concerned, such policy-holders as apply to be heard and such other persons as he may deem fit, may sanction the arrangement, if he is satisfied that no sufficient objection to the arrangement has been established and shall make such consequential orders as are necessary to give effect to the arrangement, including orders as to the disposal of any deposit made under Section 73. A copy of the order, either sanctioning or refusing, to sanction the arrangement shall be sent to each of the societies concerned and to each of the policy-holders who applied to be heard. If the scheme involves a reduction of the amount of the insurance and other contracts of the transfer or society or of any or all of the societies concerned in the amalgamation, the Authority may sanction the scheme, reducing the amount of such contracts upon such terms and subject to such conditions as he may think proper, and the reduction of the contracts as sanctioned by the Authority shall be valid and binding on all the parties concerned (Sec.87, 89, Act, 1938).

4.12 WINDING UP BY COURT AND VOLUNTARY WINDING UP

The Court may order the winding up of a provident society, being a company incorporated under the Indian Companies Act, 1913 (repealed here before), subject to the provisions of this Part. The Court may also order the winding up of a provident society on the application of the Authority, who is hereby authorized to do so, on any of the following grounds, namely -

- a) that the registration of the society has been cancelled under subsection (4) of Section 70;
- b) that it appears from the returns furnished under the provisions of this Act or as the result of an inquiry made under Section 87 that the society, is insolvent;
- c) that the continuance of society is prejudicial to interests of the policy-holders.

A provident society not being a company incorporated under the Indian Companies Act (repealed here before) if a resolution is passed by the proprietors that the society should be wound up voluntarily for the purposes or on the ground specified and the Authority may, in any case where he has ordered the cancellation of the registration of a society under subsection (4) of Sec. 70, order the winding up of the society under this Act (Sec.88, Act, 1938).

4.13 APPOINTMENT OF LIQUIDATOR

Where a provident society is to be wound up the society shall, within seven days from the date of the order of the Court ordering the winding up of the passing of the resolution authorizing the winding up, as the case may be, give notice thereof to the Authority to

appoint the liquidator and determine the remuneration to be paid to him. However, if the Authority is not satisfied that the assets of the society are sufficient to meet the costs of liquidation including the remuneration of the liquidator, he may decline to make such appointment, and in such a case the society shall itself appoint a liquidator who shall carry out the liquidation as if the winding up was being done by an order of the Court. Any liquidator so appointed by the Authority may be removed by the Authority if satisfied that the duties entrusted to him are not being properly discharged (Sec.90, Act, 1938).

4.14 POWERS OF LIQUIDATOR

A liquidator appointed to wind up a society shall have power to -

- a) institute or defend any legal proceedings on behalf of the society by his name of office;
- b) determine the contribution to be made by members of the society respectively to the assets of the society;
- c) investigate all claims against the society and to decide questions of priority arising between claimants;
- d) determine by what persons and in what proportion the costs of the liquidation including the remuneration of the liquidator and any expenses incurred under Clause (g) of this sub-section are to be borne;
- e) give such directions in regard to the collection and distribution of the assets of the society as may appear to him to be necessary for winding up the affairs of the society;
- f) summon, and enforce the attendance of, witnesses and to compel the production of documents by the same means and as far as may be in the same manner as is provided in the case of a civil court by the Code of Civil Procedure, 1908 (5 of 1908);
- g) employ, with the sanction of the Authority, such establishment and to obtain such assistance from an actuary or an auditor as may be necessary for the discharge of his duties;
- h) sell the immoveable and moveable property of the society by public auction or private contract, with power to transfer the whole thereof to any person or society or to sell the same in parcels.
- i) settle the list of contributories and releasing the amount of contributions (Sec.91, Act, 1938).

4.15 PROCEDURE AT LIQUIDATION

The procedure to be complied with by the liquidator is as under -

1. Immediately after his appointment he shall take charge of all property moveable or immoveable of the society and of all its books and documents. If any proprietor or officer of the society or any other person retains any portion of the assets of the society or fails to deliver to the liquidator any book or document when so required by the liquidator, he

shall be punishable with imprisonment which may extend to six months, or with fine which may extend to five hundred rupees, or with both, and the Court may order the delivery of the assets or book or document to the liquidator.

2. He shall, within fifteen days of his appointment, send notice by post to all persons who appear to him to be creditors of the society that a meeting of the creditors of the society will be held on a date not being less than twenty-one or more than twenty-eight days after his appointment, and at a place and hour to be specified in the notice, and shall also advertise notice of the meeting once in the local official Gazette and once at least in two newspapers circulating in the State in which the society is situated. At the meeting so held the creditors shall determine whether an application shall be made for the appointment of any person as liquidator in the place of or jointly with the liquidator already appointed, or for the appointment of a committee of inspection, and, if they so resolve and an application accordingly is made at any time not later than fourteen days after the date of the meeting by any creditor appointed for the purpose at the meeting, the Authority may, if he thinks fit, appoint a suitable person in place of or jointly with the liquidator already appointed, and determine the remuneration to be paid to him and if he considers it desirable, may also appoint a committee of inspection. The committee of inspection shall, subject to any prescribed conditions, have a general power of supervision over the acts of the liquidator and shall have the right to inspect his accounts at all reasonable times.
3. He shall, with such assistance from an actuary as may be required, ascertain as soon as practicable the amount of the society's liability to every person appearing by the society's books to be entitled to or interested in any policy issued by the society, and shall give notice of the amount so found to each such person in the prescribed manner and each such person on receiving such notice shall be bound by the value so ascertained.
4. He shall make a valuation of the assets of the society and an estimate of the costs of the winding up, and shall, on the basis of these settle the list of contributories.
5. He shall apply to the Authority for an order for the return of the deposit made by the society under Section 73 and the Authority shall on such application order the return of the deposit subject to such terms and conditions as he may think fit.
6. He shall have regard to, in administering and distributing the assets of the society, any directions that may be given by the creditors or contributories at a general meeting or by the Authority.

7. He shall keep books of account in which he shall record the proceedings at all meetings attended by him, all amounts received or expended by him and any other matter that may be prescribed, and these books may with the sanction of the Authority be inspected by any creditor or contributory.
8. He shall summon a meeting of the creditors and contributories, if the winding up continues for more than a year, at the end of the first year and of each succeeding year, and shall lay before them an account of his acts and dealings and of the conduct of the winding up, and that account together with any views expressed thereon by the meeting shall be forward by the liquidator within one week after the meeting to the Authority.
9. He shall, in the absence of specific provision under this Act, sofar as practicable follow the procedure to be followed by an official liquidator appointed by the Court for the winding up of a company under the Indian Companies Act, 1913 (7 of 1913).
10. He may defray the costs of the liquidation including expenses incurred in this behalf and his remuneration, if he so decides, that it shall be payable out of the assets of the society, be payable in priority to all other claims (Sec.92, Act, 1938).

4.16 DISSOLUTION OF PROVIDENT SOCIETY

On finalization of liquidation process and preparation of an account of the winding up showing how the winding up has been conducted and the property of the society has been disposed of the liquidator shall take following steps tofacilitate the winding up process –

- a) Shall call a meeting of the members, creditors and contributories for the purpose of laying before it the account and giving any explanation thereof.
- b) Shall issue notice of the meeting to each person individually and shall be advertised in the local official Gazette and in at least two newspapers circulating in the State in which the society is situated.
- c) Shall send, within one week after the meeting, to the Authority a Copy of the account and report, the date of the meeting held and its proceedings. The Authority may return the account to the liquidator if it is incomplete or unsatisfactory and may require the liquidator to carry out any further steps necessary to complete the winding up and the liquidator shall comply with such requirement and shall submit a further report to the Authority within six months.

If the Authority is satisfied that the affairs of the society have been fully wound up he shall register the account of the liquidator who shall forthwith make over to the Authority sums,

If any, remaining undisposed of; and on the expiry of three months from the registering of the account the Authority shall declare the society dissolved and cause the dissolution of the society to be notified in the local official Gazette, and the liquidator shall thereupon be discharged from further responsibility. If within a period of five years from the date on which any sums have been made over to the Authority an order of a court of competent jurisdiction has not been obtained at the instance of any claimant to such sums for their disposal, the said sums shall become the property of Government (Sec.93, Act, 1938).

4.17 MUTUAL INSURANCE COMPANIES AND CO-OPERATIVE LIFE INSURANCE SOCIETIES

“Mutual Insurance Company” means an insurer, being a company incorporated under the Indian Companies Act (repealed here before), which has no share capital and of which by its constitution only and all policy-holders are members. The "Co-operative Life Insurance Society" means an insurer being a society registered under the Co-operative Societies Act, 1912 (2 of 1912) or under an Act of a State Legislature governing the registration of cooperative societies which carries on the business of life insurance and which has no share capital on which dividend or bonus is payable and of which by its constitution only original members on whose application the society is registered and all policy-holders are members. However, any co-operative life insurance society in existence at the commencement of this Act shall be allowed a period of one year to comply with the provisions of this Act. Any other cooperative societies may be admitted as members of a co-operative life insurance society, without being eligible to any dividend, profit or bonus (Sec.95, Act, 1938). The Mutual Insurance Companies and Co-operative Life Insurance Societies shall have at least Rs. fifteen thousand rupees as working capital to the exclusive of the deposit to be made before or at the time of application for registration Act and of the preliminary expenses, if any, incurred in the formation of the company or society (Sec.97, Act, 1938). Further, it shall keep deposit as may be prescribed from time to time, in respect of the life insurance business carried on by it in India, with one of the offices in India, of the Reserve Bank of India for and on behalf of the Central Government (Sec.98, Act, 1938). However, no loan shall be offered to any director, manager, managing agent, actuary, auditor or officer of the company or society (Sec.29,98A, Act, 1938). No transferee or assignee of a policy issued by an insurer shall become a member of a mutual insurance company or a cooperative life insurance society merely by reason of any such transfer or assignment (Sec.99, Act, 1938).

The mutual insurance company or a co-operative life insurance society may, instead of sending the notices and the copies of the balance-sheet, revenue account and other documents which they are required to send to the members under those sections, publish such notice together with a summary in the prescribed form of the balance-sheet and revenue account once in a newspaper published in the English language and in a newspaper published in an Indian language circulating in the place where the principal office of the company is situated: However, where any members of the company are domiciled in a State other than that in which the principal office of the company is situated, publication of the notice of the meetings shall be made in a newspaper or newspapers published in the principal languages of that State and circulating therein and any member of the company domiciled in that State shall be entitled on application to the company to receive from it a copy of the balance-sheet and revenue account (Sec.100, Act, 1938). The mutual insurance company and Co-operative Life Insurance Society shall, on the application of any members, made within two years from the date on which any such document is furnished to the Registrar of Companies or to the Registrar of Co-operative Societies of the State in which the Co-operative Life Insurance Society is registered, furnish a copy of the document free of cost to the member within fourteen days of the application (Sec.101, Act, 1938).

4.18 SUMMARY

The Provident society has been recognized in order to carry on the business of insuring the payment, on the happening of any of the contingencies like birth, marriage or death of any person or the survival by a person. Considering the nature of business that is being carried on by the establishment the Authority will decide whether it is a provident society or not and its decision is final. The public company incorporated under the companies Act, 1956, including foreign company, society under the Co-operative Societies Act, 1912 (2 of 1912) is allowed to promote the provident society. The nature of functions of this society is analogous to any other insurance company with marginal leverages.

4.19 KEY WORDS

1. Provident Society
2. Mutual Insurance Companies and Co-Operative Life Insurance Societies
3. Liquidator
4. Inquiry
5. Actuarial report
6. Winding up

4.20 SELF ASSESSMENT QUESTIONS

1. Define Provident Society. State the procedures for its registration.
.....
.....
2. When the Provident Society may go for amalgamation? Explain the provisions relating thereon.
.....
.....
3. Write note on -
 - a. Restriction on name of provident society
 - b. Powers of liquidator
 - c. Mutual Insurance Companies and Co-Operative Life Insurance Societies

4.21 REFERENCES

1. Principles of insurance law: Life - fire - marine - motor and accident: M.N.Srinivasan.
2. Modern Law of Insurance: KSN Murthy and KVS Sarma.
3. Life insurance corporation of India : Impact of privatization and performance: Sumninder Kaur Bawa.
4. Commentaries on the public liabilities insurance act 1991: G.S Karkara.
5. Insurance law: A comprehensive treatise on law of insurance covering all risks except marine insurance: Brij Nandan Singh.
6. The Law of Insurance Contracts: A. Malcolm.
7. International encyclopaedia of laws: Insurance Law: R. Blanpain.
8. Insurance law manual with IRDA circulars and notifications: Taxmann.
9. Insurance law: Relating to all risks other than marine: E.J. Macgillivray.
10. Modern insurance law: John Birds and Norma J Hird.
11. Law Relating to Marine Insurance: Mitra, B.C.
12. Law of Insurance: Jaiswal J V N
13. General Principles of Insurance Law: Hardy Ivamy E R
14. Law Relating to Insurance: Vats R M
15. Insurance Regulatory and Development Authority Act, 1999
16. Insurance Act, 1938

UNIT 5: ADMINISTRATION OF INSURANCE BUSINESS

STRUCTURE

- 5.0 Objectives
- 5.1 Introduction
- 5.2 Appointment of Administrator
- 5.3 Powers and duties of the Administrator
- 5.4 Acquisition of the Undertakings of Insurers
- 5.5 Non-Indian Insurance Companies
- 5.6 Control over Management
- 5.7 Power of Authority to remove managerial persons from office
- 5.8 Power of Controller to appoint additional directors
- 5.9 Insurance Association of India
- 5.10 The Powers of Life Insurance Council/General Insurance Council
- 5.11 Tariff Advisory Committee
- 5.12 Restrictions on the opening of a new place of business
- 5.13 Investigation and inspection
- 5.14 Search and seizure
- 5.15 Previous sanction of Advocate-General for institution of proceedings
- 5.16 Summary
- 5.17 Key Words
- 5.18 Self Assessment Questions
- 5.19 References

5.0 OBJECTIVES

On reading this unit the students would be able to know the following –

1. Nature of administration of the Authority
2. Controlling mechanism of insurance business
3. investigation

5.1 INTRODUCTION

The Insurance Act, 1938 and IRDA Act, 1999, demands compliances from the insurers and the intermediaries in respect of insurance business. These two enactments basically provide teeth to keep the insurers in restraints to ensure that they shall not transgress the parameters laid down while promoting their business. The Authorities are primarily concerned with the nature and manner of service offered by the insurer and to see that they stand to their promises offered to their customers. In either case, question of determination of nature and extent of accountability shall be determined by the Authority. Thus, the Authority is endowed with managerial, supervisory and quasi judicial functions.

5.2 APPOINTMENT OF ADMINISTRATOR

The authority always trusts that the insurer is carrying on life insurance business in consonance with the provisions of this Act and in compliance with the directions of the Authority. If the Authority, at any time, has reason to believe that an insurer is likely to act in prejudice to the interests of holders of life insurance policies may hold enquiry, giving due opportunity to the insurer to substantiate his stand, and submit a report to the Central Government with a recommendation to appoint an administrator to take care of the management of the insurer concerned. The Central Government, if it forms an opinion on considering the report that honouring of recommendation of the Authority is necessary or proper, may appoint an Administrator to manage the affairs of the insurer under the supervision and control of the Authority. On the appointment of an Administrator entire affairs of the insurer will be vested in such Administrator and he is required to act subject to the directions of the Authority. The Central Government may cancel his appointment at anytime by designating some other person as Administrator. He is entitled for remuneration as directed by the Central Government. The director or officer of the insurer or any other person shall hand over books of account, registers, or any other documents in his custody relating to the business of the insurer to the Administrator immediately after he assumes the office. Failing which they may be punished with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

5.3 POWERS AND DUTIES OF THE ADMINISTRATOR

The powers and functions of the Administrator are as under –

1. He shall conduct the management of the business of the insurer with the greatest economy compatible with efficiency and shall, as soon as may be possible, file with the Authority a report stating which of the following courses is in the circumstances most advantageous to the general interests of the holders of life insurance policies, namely –
 - a) The transfer of the business of the insurer to some other insurer;
 - b) The carrying on of its business by the insurer (whether with the policies of the business continued for the original sum insured with the addition of bonuses that attach to the policies or for reduced amounts);
 - c) The winding up of the insurer; and
 - d) Such other course as he deems advisable.

On the receipt of the report the Authority may take such action as he thinks fit for promoting the interests of the holders of life insurance policies in general and any order passed by the Authority, in this behalf, is binding on all persons concerned.

2. The Administrator, by order in writing, may prohibit any person, whether he is or has been in any way connected with the affairs of the insurer or not, from transferring or otherwise disposing of any property which, in his opinion, would be liable to attachment in proceedings when he has reason to believe that such person has –
 - a) Misapplied or retained or become liable or become accountable for any money or property of the insurer; or
 - b) Been guilty of any misfeasance or breach of trust in relation to the insurer; or Is in wrongful possession of any money or property of the insurer; or
 - c) Any such money or property in his possession wrongfully withholds it or has converted it to any use other than that of the insurer.

The person aggrieved may prefer an appeal, within fourteen days from the date of receipt of the order, against such order to the Central Government. The decision of the Central Government is final.

3. He may, after giving an opportunity to the persons concerned to be heard, cancel or vary (either unconditionally or subject to such conditions as he thinks fit to impose) any contract or agreement (other than a policy) between the insurer and any other

person when he is satisfied that it is prejudicial to the interest of holders of life insurance policies.

No suit, prosecution or other legal proceeding shall lie against, decision taken in good faith by, the Central Government or the Authority or the Administrator (Sec.52A – 52G, 53,106, Act, 1938).

5.4 ACQUISITION OF THE UNDERTAKINGS OF INSURERS

The Central Government may - by order in writing, after giving a reasonable opportunity of showing cause against the proposed action - acquire the undertakings of insurer, in consideration of the report of the Authority, if it is satisfied that an insurer –

- a) has persistently failed to comply with –
 - i. any direction given to him under Section 34, Section 34-F or Section 34G, or
 - ii. any order made under Sec. 34-E; or
- b) is being managed in a manner detrimental to –
 - i. the public interest or to the interests of his policy-holders, or share-holders; and that
 - ii. in the public interest, or in the interest of the policy-holders or share-holders of such insurer, it is necessary to acquire the undertaking of such insurer, the Central Government may, by notified order, acquire the undertaking of such insurer.

The Central Government may, by notification, make a scheme for the acquired insurer to -

- a) transfer of the undertaking, including the property, assets and liabilities of the acquired insurer to an acquiring insurer, and the capital, constitution, name and officer of the acquiring insurer;
- b) constitute the first Board of management (by whatever name called) of the acquiring insurer and all such matters in connection therewith or incidental thereto as the Central Government may consider to be necessary or expedient;
- c) continue the services of all the employees of the acquired insurer (excepting such of them as not being workmen within the meaning of the Industrial Disputes Act' 1947 are specifically mentioned in the scheme) in the Central Government or in the acquiring insurer, as the case may be, on the same terms and conditions, sofar as may be, as are specified in Clauses (i) and (j) of sub-section (2) of Sec. 37A sofar as they may apply;

- d) protect the rights of any person who, on the appointed day, is entitled to, or is in receipt of, a pension or other superannuation or compassionate allowance or benefit from the acquired insurer or any provident, pension or other fund or any authority administering such fund to be paid by, and to receive from the Central Government or the acquiring insurer, as the case may be, or any provident, pension or other fund or any authority administering such fund, the same pension, allowance or benefit so long as he observes the conditions on which the pension, allowance or benefit was granted, and if any question arises whether he has so observed such conditions, the question shall be determined by the Central Government and the decision of the Central Government thereon shall be final;
- e) define the manner of payment to the acquired insurer in full satisfaction of his claim in relation to the compensation payable in accordance with the provisions of Section 52J;
- f) complete, if the provision so provides, the effectual transfer to the Central Government or the acquiring insurer of any asset or liability which forms part of the undertaking of the acquired insurer in any country outside India;
- g) Carry out such incidental, consequential and supplemental matters as may be necessary to secure that the transfer of the undertaking, property, assets and liabilities of the acquired insurer to the Central Government or the acquiring insurer, as the case may be, is effectual and complete.

The Central Government or the acquiring insurer, as the case may be, shall pay compensation to the acquired insurer in respect of the transfer of the undertaking as is determined in accordance with the principles contained in the Eighth Schedule of this Act. If the acquired insurer is not satisfied with the quantum of compensation he may approach the Tribunal, constituted by the Central Government in this behalf. The amount of compensation as determined by the Tribunal will become due for payment on the expiry of one year from the appointed day or on the date of decision of the Tribunal, whichever is earlier. Any default in paying the compensation within the stipulated time makes the Central Government or the acquiring insurer, as the case may be, to pay simple interest at the rate of three per cent per annum on the amount of the compensation for the period from the appointed day to the date on which payment of the compensation becomes due (Sec.52H – 52N,Act, 1938)..

5.5 NON-INDIAN INSURANCE COMPANIES

The Central Government may permit Non-Indian Insurance Companies to establish a place of business within India or to appoint a representative in India to promote insurance business subject to the provisions of the Insurance Act, 1938 and impose certain special requirements in respect of keeping deposits or assets in mother country or otherwise which is not imposed upon insurers of that country under this Act. All the particulars, including books of account, registers and documents which are required to be furnished to the Authority under this Act in respect of the insurance business transacted by it, shall be placed at his principal office in India (Sec.62 – 64, Act, 1938).

5.6 CONTROLS OVER MANAGEMENT

Any amendment to the memorandum or articles of associations, or agreement, in respect of appointment, re-appointment, termination of appointment or remuneration of a managing or whole-time director, or of a manager or a chief executive officer, be made only after obtaining the approval of the Authority. Correspondingly, no appointment, re-appointment or termination of appointment of a managing or whole-time director, or a manager or a chief executive officer, be made without the previous approval of the Authority (Sec. 34A, Act 1938).

5.7 POWER OF AUTHORITY TO REMOVE MANAGERIAL PERSONS FROM OFFICE

Any personnel, including the director or the chief executive officer, of the insurer may be removed from the office by the Authority when it is satisfied that in the public interest or for preventing the affairs of an insurer being conducted in a manner detrimental to the interests of the policy-holders or for securing the proper management of any insurer it is necessary so to do, he may, after giving due opportunity to make representation and for reasons to be recorded in writing, by order, remove from office, with effect from such date as may be specified in the order. Further, in the opinion of the Controller any delay in attending the representation under pending the consideration would be detrimental to the interests of the insurer or his policy-holders he may, at the time of giving the opportunity or at any time thereafter, by order direct that the director or chief executive officer, with effect from the date of such order, shall not -

a) act as such director or chief executive officer of the insurer;

b) in any way, whether directly, indirectly, be concerned with, or take part in the management of the insurer.

c) Be entitled for any compensation for the loss or termination of office.

When such an order is made in respect of a director or chief executive officer of an insurer, he shall cease to be a director or as the case may be chief executive officer of the insurer and shall not, in any way, whether directly or indirectly, be concerned with, or take part in, the management of any insurer for such period not exceeding five years as may be specified in the order. If he acts in contravention of the order, he shall be punishable with fine which may extend to two hundred and fifty rupees for each day during which such contravention continues.

The Authority may, by order in writing, appoint a suitable person in place of the director or chief executive officer who has been removed from his office. The person so appointed shall

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a) hold office during the pleasure of the Controller and subject thereto for a period not exceeding three years or such further periods not exceeding three years at a time as the Authority may specify;

b) not incur any obligation or liability by reason only of his being a director or chief executive officer or for anything done or omitted to be done in good faith in the execution of the duties of his office or in relation thereto (Sec. 34B, Act 1938).

5.8 POWER OF CONTROLLER TO APPOINT ADDITIONAL DIRECTORS

The Authority may appoint additional directors, at any time by order in writing, when it is of opinion that in the public interest or in the interests of an insurer or his policy-holders it is necessary so to do. However, total number of such additional directors shall not, at any time, exceed five or one-third of the maximum strength fixed for the Board by the articles of association of the insurer, whichever is less. Additional director appointed by the Authority shall not be taken into account while reckoning the total number of directors of the insurer.

The additional directors shall -

a) hold office during the pleasure of the Authority, and subject thereto for a period not exceeding three years or such further periods not exceeding three years at a time as the Authority may specify;

- b) not incur any obligation or liability by reason only of his being a director or for anything done or omitted to be done in good faith in the execution of the duties of his office or in relation thereto; and
- c) not be required to hold qualification shares of the insurer (Sec. 34C,Act1938).

Further powers of the Controller: The Controller may -

- a) caution or prohibit insurers generally or any insurer in particular against entering into any particular transaction or class of transactions, and generally give advice to any insurer;
- b) at any time, if he is satisfied that in the public interest or in the interests of the insurer or for preventing the affairs of the insurer being conducted in a manner detrimental to the interests of the insurer or his policy-holders, it is necessary so to do, by order in writing and on such terms and conditions as may be specified therein –
 - 1) require the insurer to call a meeting of his directors for the purpose of considering any matter relating to or arising out of the affairs of the insurer;
 - 2) depute one or more of his officers to watch the proceedings at any meeting of the Board of Directors of the insurer or of any committee or of any other body constituted by it; require the insurer to give an opportunity to the officers so deputed to be heard at such meetings and also require such officers to send a report of such proceedings to the Authority;
 - 3) require the Board of Directors of the insurer or any committee or any other body constituted by it to give in writing to any officer specified by the Authority in this behalf at his usual address all notices of, and other communications relating to, any meeting of the Board, committee or other body constituted by it;
 - 4) appoint one or more of his officers to observe the manner in which the affairs of the insurer or of his offices or branches are being conducted and make a report thereon;
 - 5) require the insurer to make, within such time as may be specified in the order, such changes in the management as the Authority may consider necessary (Sec. 34E,Act1938).

Power of Authority to issue directions regarding re-insurance treaties, etc

When the Authority is of the opinion that the terms or conditions of any re-insurance treaty or other re-insurance contract entered into by an insurer are not favorable to the insurer or are detrimental to the public interest, he may, by order in writing ask the insurer to make such modifications in the terms and conditions of such treaty or contract as he has specified in the order at the time when the renewal of such treaty or contract becomes next due. Further, he may, by order in writing, ask the insurer to desist from entering into any re-insurance treaties or other re-insurance contracts when he is opinion that it is not favorable to the insurer or are detrimental to the public interest. Any default in adhering to the order, by the insurer, shall be construed as failure to comply with the provisions of this Act (Sec. 34F,Act1938).

Power of Authority to order closure of foreign branches

The Controller may, after giving an opportunity to the insurer of being heard and by order in writing, ask the insurer to close down the business of any branch outside India which is, if he has reason to believe, that the working of such branch is generally resulting in a loss or that the affairs of that branch are being conducted in a manner prejudicial to the interests of the policy-holders or the public interest. The insurer shall close down such branch within one year from the date of the order or within such time as may be specified in this behalf. Any default in adhering to the order, by the insurer, shall be construed as failure to comply with the provisions of this Act

(Sec. 34G, Act 1938).

5.9 INSURANCE ASSOCIATION OF INDIA

The Insurance Association of India is a body corporate. All the insurers, including the provident societies, who are carrying on insurance business in India, are its members. It is being treated as juristic person enabling to have perpetual succession and a common seal and allowed to acquire, hold and dispose both moveable and immoveable properties and it can sue and be sued in its name. The Insurance Association of India is having two Council, namely –

- a) The Life Insurance Council consisting of all the members and associate members of the Association, who carry on life insurance business in India, and
- b) The General Insurance Council consisting of all the members and associate members of the Association who carry on general insurance business in India.

The Council may authorize any individual, whether an officer of the insurer or not, to act as the representative of such member at any meeting of the Council concerned or to contest as a candidate for any election held by that Council. The Executive Committee of these respective Councils will take care of its management. Generally the functions of the Council is –

- a) to aid, advise and assist insurers carrying on life insurance/ general insurance - business in the matter of setting up standards of conduct and sound practice and in the matter of rendering efficient service to holders of life insurance/ general insurance - policies;
- b) to render advice to the Authority in the matter of controlling the expenses of insurers in respect of their life insurance/ general insurance - business in India;
- c) to bring to the notice of the Authority the case of any insurer acting in a manner prejudicial to the interests of holders of life insurance/ general insurance - policies;

- d) to act in any matter incidental or ancillary to any of the matters specified in Clauses (a) to (c) as, with the approval of the Authority, may be notified by the Life Insurance/ General Insurance - Council in the Gazette of India

For the purpose of carrying out its functions effectively the Executive Committee of the Life Insurance/ General Insurance Council may collect such fees as may be prescribed from all insurers carrying on Life Insurance/ general insurance – business.

The Executive committee of the Life Insurance Council and the Executive Committee of the General Insurance Council may hold joint meetings for the purpose of doing with any matter of common interest to both Committee, and in such circumstances as prescribed by the Central Government.

5.10 THE POWERS OF LIFE INSURANCE COUNCIL/GENERAL INSURANCE COUNCIL

The powers and functions of the Council to discharge its duties efficiently are as under -

- a) To appoint such officers and servants as may be necessary and fix the conditions of their service;
- b) To determine the manner in which any prescribed fee may be collected;
- c) To keep and maintain up to date a copy of the list of all insurers who are members or associate members of the Insurance Association of India; with the previous approval of the Authority, make regulations for –
 - (i) Holding of elections other than the first elections;
 - (ii) Summoning and holding of meetings, the conduct of business thereat and the number of persons necessary to form a quorum;
 - (iii) Submission by insurers to the Executive Committee of the Life Insurance Council, or the General Insurance Council of such statements or information as may be required of them and the submission of copies thereof by the insurers to the Authority;
 - (iv) Levy and collection of any fees;
 - (v) Regulation of any other matter which may be necessary for the purpose of enabling it to carry out its duties under this Act.
- d) To Endow such other powers to the Executive Committee concerned (Sec.64A – 64T, Act, 1938).

5.11 TARIFF ADVISORY COMMITTEE

The Tariff Advisory Committee (for short ‘Advisory Committee’) has been established with a view to control, regulate and to balance the rates, advantages, terms and conditions that may be offered by insurers in respect of general insurance business. It is a body corporate having perpetual succession and a common seal, with power, subject to the provisions of this Act, to acquire, hold and dispose of property, both moveable and immoveable, and to contract, and

may sue and be sued in its name. The 'Advisory Committee' is consisting of a Chairman, Vice-Chairman ten representatives from the Indian insurers, four representatives from the Non - Indian insurers and a Secretary. The Authority may, by notification in the official Gazette, make regulations to carry out the purposes of 'Advisory Committee'.

Power of the Advisory Committee:

The powers of the Advisory Committee may -

- a) Control and regulate the rates, advantages, terms and conditions that may be offered by insurers in respect of any risk or any class or category of risks. However, the Authority may, permit any insurer to offer, during such period (being not more than two years but which may be extended by periods of not more than two years at a time) and subject to such conditions as may be specified by him, rates, advantages, terms or conditions different from those fixed by the Advisory Committee in respect of any particular category of risks, if he is satisfied that such insurer generally issues policies only to a restricted class of the public or under a restricted category of risks.
- b) Fix, amend or modify any rates, advantages, terms or conditions, relating to any risk. However, in doing so it shall aim to ensure, to the possible extent, that there is no unfair discrimination between risk of essentially the same hazard, and also that consideration is given to past and prospective loss experience; Provided that the Advisory Committee may, at its discretion, make suitable allowances for the degree of credibility to be assigned to the past experience including allowances for random fluctuations and may also, at its discretion, make suitable allowances for future fluctuations and unforeseen future contingencies including hazards of conflagration or catastrophe or both.
- c) Ask, by notice in writing, the insurer to furnish such information or statements, periodical or ad hoc, as it may consider necessary to enable it to discharge its functions. Copies of such information shall be certified by a principal officer of the insurer or such other officer/s, whom the Advisory Committee has agreed in advance.
- d) Inspect, either at the instance of the insurer or suo moto, the books of account, ledgers, policy registers and other books or documents of any insurer to verify the accuracy of any return or statement furnished by the insurer. However, no such inspection shall be made without the written permission of the concerned organization.
- e) Constitute Regional Committees to seek advice on any question connected with the fixation of rates, advantages, terms and conditions for risks in its region and to

perform such other functions as may be delegated to it as per the regulations made by it with the previous approval of the Central Government.

- f) Collect a reasonable fees and charges from any person to cover the cost of any specific services rendered by it.

The decision of the Advisory Committee shall become valid only after and to the extent it is ratified by the Authority. Such ratification will come into effect either from the date on which it is so ratified or from such date as specified in the order. The decision of the Advisory Committee in this regard is final and binding on all the insurers. Any act in contravention to the decision of the Authority will attract fine (Sec.64U – 64UL, Act, 1938).

5.12 RESTRICTIONS ON THE OPENING OF A NEW PLACE OF BUSINESS

An insurer cannot open a new place of business, which includes a branch, sub-branch, inspectorate, organization office and any other office, in India or change otherwise than within the same city, town or village as desires. He is required to obtain prior permission of the Authority and comply the conditions imposed thereon. Failing which the Authority, at any time, may, by order in writing and after affording reasonable opportunity to the insurer for showing cause against the action proposed to be taken against him, revoke any permission so granted (Sec.64VC, Act, 1938).

5.13 INVESTIGATION AND INSPECTION

The Authority may at any time, by order in writing, direct the “Investigating Authority” to investigate the affairs of any insurer and submit the report to the Authority. On the receipt of the order the “Investigating Authority” may avail the services of auditor or actuary or both to facilitate the investigation and inspection. During the course of investigation the investigating officer may –

- a) require the officers of the insurer to produce books of account, registers and other documents in his custody;
- b) call for any statements and information relating to the affairs of the insurer; and
- c) examine on oath, any manager, managing director, or other officer of the insurer in relation to his business;

Immediately after the completion of the investigation and inspection the “Investigating Authority” shall submit its report to the Authority. On receipt of any report the Authority may, after giving such opportunity to the insurer, 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;
- d) Publish the report submitted by the Investigating Authority either wholly or partly as it deems fit.
- e) Prescribe the minimum information to be maintained by insurers in their books, the manner in which such information should be maintained, the checks and other verifications to be adopted by insurer, necessary to enable the Investigating Authority to discharge satisfactorily his functions (Sec.33, Act, 1938).

Issue of directions:

With a view to safeguard the interest of the insurance business the Authority may issue directions from time to time, after giving a reasonable opportunity of being heard, to the insurer concerned when it forms an opinion that such direction is warranted –

- a) In the public interest; or
- b) To prevent the affairs of any insurer being conducted in a manner detrimental to the interests of the policy-holders or in a manner prejudicial to the interests of the insurer; or
- c) Generally to secure the proper management of any insurer.

However, the Authority may, on representation made by the insurer or on his own motion, modify or cancel any direction so issued (Sec.34, Act, 1938).

5.14 SEARCH AND SEIZURE

Where the Chairperson of the Authority on receipt of information has reason to believe that -

- a) any person who has been asked to produce, or cause to be produced, any books, accounts or other documents in his custody or power has mislaid or failed to produce, or cause to be produced, such books, accounts or other documents; or
- b) any person who has been asked to produce any books, accounts or other documents as aforesaid has been or might be issued will not, or would not, produce or cause to be produced, any books, accounts or other documents which will be useful for, or relevant to an investigation; or
- c) a contravention of any provision of this Act has been committed or is likely to be committed by an insurer, or

- d) any claim which is due to be settled by an insurer, has been or is likely to be settled at a figure higher than a reasonable amount, or
- e) any claim which is due to be settled by an insurer, has been or is likely to be rejected or settled at a figure lower than a reasonable amount,
- f) any illegal rebate or commission has been paid or is likely to be paid by an insurer, or
- g) any books, accounts, receipts, vouchers, survey reports or other documents, belonging to an insurer are likely to be tampered with, falsified or manufactured, he may authorize any subordinate officer of his, not lower in rank than an officer authorized by the Authority (hereafter referred to as the authorized officer) to –
 - 1) enter and search any building or place where he has reason to suspect that such books, accounts or other documents, or any books or papers relating to any claim, rebate or commission or any receipts, vouchers, reports or other documents are kept;
 - 2) break open the lock of any door, box, locker, safe, almirah or other receptacle for exercising the powers conferred by Clause (i) where the keys thereof are not available;
 - 3) seize all or any such books, accounts or other documents found as a result of such search; place marks of identification on such books, accounts or other documents or make or cause to be made extracts or copies there from.

The authorized officer may requisition the services of any police officer or of any officer of the Central Government, or of both, to assist him for all or any of the purposes mentioned above and every such officer to comply with such requisition. The authorized officer may, where it is not practicable to seize any such book, account or other document, aforementioned, serve an order on the person who is in immediate possession or control thereof that he shall not remove, part with or otherwise deal with it except with the previous permission of such officer and such officer may take such steps as may be necessary in this behalf. The authorized officer may, during the course of the search or seizure, examine on oath any person who is found to be in possession or control of any books, accounts or other documents, and any statement made by such person during such examination and the same may used as in evidence in any proceeding initiated under this Act. The books, accounts, papers, receipts, vouchers, reports, or other documents seized, in this behalf, may be retained by the authorized officer for a period exceeding one hundred and eighty days from the date of the seizure, with the approval of the Chairperson of the Authority, for the reasons recorded by him in writing. However, the Chairperson of the Authority shall not authorize the retention of the books, accounts, papers, receipts, vouchers, reports, or other documents for a period

exceeding thirty days after all the proceedings under this Act for which the books, accounts, papers, receipts, vouchers, or other documents are relevant are completed. The person from whose custody any books, accounts, papers, receipts, vouchers, reports, or other documents are seized may make copies thereof, or take extracts there from, in the presence of the authorized officer or any other person empowered by him in this behalf at such place and time as the authorized officer may appoint in this behalf. If a person legally entitled to the books, accounts, papers, receipts, vouchers, reports, or other documents seized may file an objection against the granting of approval by the Chairperson of the Authority and he may make an application to the Central Government stating therein the reasons for such objections and requesting for the return of the books, accounts, papers, receipts, vouchers, reports, or other documents. On receipt of the application the Central Government may, after giving the applicant an opportunity of being heard, pass such orders as it thinks fit. Any search seizure shall be made in accordance with the provisions of the Code of Criminal Procedure, 1973. The Central Government may, by notification in the official Gazette, make rules in relation to any search or seizure to facilitate authorized officer - for obtaining ingress into such building or place to be searched where free ingress thereto is not available; for ensuring safe custody of any books, accounts, papers, receipts, vouchers, reports, or other documents seized under this section (Sec. 34H, Act 1938).

5.15 PREVIOUS SANCTION OF ADVOCATE-GENERAL FOR INSTITUTION OF PROCEEDINGS

Any proceedings under this Act against an insurer or any director, managing agent, manager, secretary or other Officer of an insurer or any liquidator or any employee or agent of an insurer or any person who is liable under sub-section (2) of Sec. 41 or any other person may be instituted by any person obtaining previous sanction of the Advocate-General of the State or Attorney General for India, in case of Union Territory, where the principal place of business in India of such insurer is situate to the institution of such proceedings. However, the Authority or an Administrator appointed under Section 52A may initiate the proceedings under this Act, without obtaining previous sanction of the Advocate-General of the State or Attorney General for India, in case of Union Territory, against them (Sec. 107, Act 1938).

5.16 SUMMARY

The administrator is a keyman of the Authority. He is bestowed with the managerial supervisory and quasi judicial powers. The Insurance Association of India advises on the

issues relating to life and general insurance business. The Tariff Advisory Committee Control, regulate, amend or modify the rates, advantages, terms and conditions that may be offered by insurers in respect of any risk or any class or category of risks. The Authority is empowered to investigate into any matter concerning to insurance business. Any proceedings against any managerial personnel, under this Act, needs the prior approval of the Advocate-General of the State or Attorney General for India, in case of Union Territory, where the principal place of business in India of such insurer is situate to the institution of such proceedings.

5.17 KEY WORDS

1. Administrator
2. Controller
3. Insurance Association of India
4. Life Insurance Council
5. General Insurance Council Tariff Advisory Committee
6. Advocate-General

5.18 SELF ASSESSMENT QUESTIONS

1. Who shall appoint the Administrator? What are his powers and functions?
.....
.....
2. What is the significance of Tariff Advisory Committee? Who shall constitute it? what are its functions?
.....
.....
3. Write note on –
 - a. Non-Indian Insurance Companies
 - b. Sanction of Advocate-General
 - c. Search and seizure

5.19 REFERENCES

1. Insurance law: A comprehensive treatise on law of insurance covering all risks except marine insurance: Brij Nandan Singh.
2. The Law of Insurance Contracts: A. Malcolm.
3. International encyclopaedia of laws: Insurance Law: R. Blanpain.
4. Insurance law manual with IRDA circulars and notifications: Taxmann.
5. Insurance law: Relating to all risks other than marine: E.J. Macgillivray.
6. Modern insurance law: John Birds and Norma J Hird.
7. Law Relating to Marine Insurance: Mitra, B.C.
8. Law of Insurance: Jaiswal J V N
9. General Principles of Insurance Law: Hardy Ivamy E R
10. Law Relating to Insurance: Vats R M
11. Insurance Regulatory and Development Authority Act, 1999

BLOCK-II

UNIT 6: INSURANCE BROKERS

STRUCTURE

- 6.0 Objectives
- 6.1 Introduction
- 6.2 Insurance Brokers
- 6.3 Licensing of Insurance Broker
- 6.4 Qualifications of Brokers
- 6.5 Capital
- 6.6 Procedure for licensing
- 6.7 Renewal of license
- 6.8 Effect of refusal to grant license
- 6.9 Inspection
- 6.10 Suspension of license with notice
- 6.11 Cancellation or suspension of license without notice
- 6.12 Procedure for Cancellation of license
- 6.13 Functions of Direct broker / Reinsurance broker / Composite Broker
- 6.14 Summary
- 6.15 Key Words
- 6.16 Questions for Self Study
- 6.17 References

6.0 OBJECTIVES

On reading this unit the students would be able to have know acquaintance on -

1. Appointment of insurance broker
2. Functions of insurance broker
3. Accountability of insurance broker

6.1 INTRODUCTION

An insurance broker/ insurance agent are popularly known as an intermediary. He acts as conduit between the insurer and the insured. In Insurance industries, he facilitates the placement and purchase of insurance, and provide services to insurance companies and consumers that complement the insurance placement process. As a player, he is having knowledge of the insurance marketplace, including products, prices and providers.

6.2 INSURANCE BROKERS

“Insurance broker” means a person for the time-being licensed by the Authority under regulation 15, who for remuneration arranges insurance contracts with insurance companies and/ or reinsurance companies on behalf of its clients (Regulation 2(k), IRDA (Insurance Brokers) Regulations, 2013). An individual; or a firm; or a company formed under the Companies Act, 1956 (1 of 1956); or a co-operative society registered under the Co-operative Societies Act, 1912 or under any law for the registration of co-operative societies; or any other person may act as a broker by obtaining license.

6.3 LICENSING OF INSURANCE BROKER

Every Insurance Broker shall possess a valid and subsisting license to act as an Insurance Broker issued by IRDA. The framework for licensing of an Insurance Broker is similar to that of a Corporate Agent. However, a Broker differs from an Agent in the sense that a Broker represents customers interests and is required to select the best product amongst all insurance companies, while an agent represents an insurer at any point in time (one in life and one in general insurance) and will present the product of only such insurer(s) with whom the agent is attached with.

Categories of Insurance Brokers:

- (a) Direct Broker (Life)
- (b) Direct Broker (General)
- (c) Direct Broker (Life & General)
- (d) Reinsurance Broker (Reinsurance Life or General)
- (e) Composite Broker (Life and/or General + Reinsurance)

A Direct Broker is authorized to recommend the products of any of the life insurance companies or general insurance companies to their clients, as the case may be. A Reinsurance broker arranges for reinsurance contracts between direct insurers and reinsurance companies. Reinsurance is a contract under which insurance companies can pass on the risk they assume under the policies issued by them, to yet another insurance company (called reinsurer). Therefore, the insurance company which issues the policy becomes the Policyholder under the reinsurance contract entered into with a reinsurer. A broker can be an intermediary who can arrange reinsurance contracts with reinsurance companies. Except for GIC, the National Reinsurer, all the other reinsurance companies doing business in India are located abroad. Therefore the role of reinsurance brokers in getting a best deal for insurance companies cannot be undermined. A Composite Broker is one who arranges for both insurance contracts both for retail and institutional clients as a Direct Broker as well as for insurance companies as a reinsurance broker.

6.4 QUALIFICATIONS OF BROKERS

The person who wishes to become a broker shall have -

- a) Bachelors degree in Arts, Science, or Social Sciences or Commerce or its equivalent from any institution/ university recognized by any State Government or the Central Government; or
- b) Bachelor's degree in engineering or its equivalent from any institution/university recognized by any State government or the Central Government; or
- c) Bachelor's degree in law or its equivalent from any institution/University recognized by any State Government or the Central Government; or
- d) Masters in Business Administration or its equivalent from any institution/ university recognized by any State Government or the Central Government; or
- e) Associate/ Fellow of the Insurance Institute of India, Mumbai; or
- f) Associate/Fellow of the Institute of Risk Management, Mumbai; or
- g) Any post graduate qualification of the Institute of Insurance and Risk Management, Hyderabad; or
- h) Associate/ Fellow of the Institute of Chartered Accountants of India , New Delhi; or
- i) Associate/ Fellow of the Institute of Cost and Works Accountants of India, Kolkata; or
- j) Associate/ Fellow of the Institute of Company Secretaries of India, New Delhi; or
- k) Associate/ Fellow of the Institute of Actuaries of India; or
- l) Associate/Fellow of Chartered Insurance Institute, London; or
- m)Chartered Financial Analyst of Institute of Chartered Financial Analyst of India; or
- n) Certified Associate ship of the Indian Institute of Bankers, Mumbai; or
- o) any other qualification specified from time to time by the Authority under these regulations(Schedule II, IRDA (Insurance Brokers) Regulations, 2013).

Submission of Application for grant of licence:

The application for grant of a licence as an insurance broker shall be made in Form A to the Authority specifying the category of insurance broker (Regulation 3, 5, IRDA (Insurance Brokers) Regulations, 2013).

On the receipt of the application the Authority may ask the applicant to furnish any further information *and/or* clarification *and/or* may direct the applicant to comply with certain requirement/s, which he deems necessary, for the purpose of disposal of the application and the applicant shall furnish the same within thirty days from the date of requisition (Regulation 7, IRDA (Insurance Brokers) Regulations, 2013).

6.5 CAPITAL

Any applicant, who wishes to become an insurance broker, shall have a minimum paid up capital/contribution as mentioned below:

Category	Minimum Capital/Contribution (Rupees)
Direct broker	fifty lakhs
Reinsurance broker	two hundred lakhs
Composite broker	two hundred and fifty lakhs

The capital in the case of a company limited by shares and a cooperative society shall be in the form of equity shares. The contribution of partners in the case of LLP shall only be in cash. The applicant shall exclusively carry on the business of an insurance broker as licensed under these regulations. The aggregate holdings by a foreign company, either by itself or through its subsidiary companies or its nominees, shall not exceed twenty-six per cent of paid-up equity capital of such applicant at any time. For the purposes of these regulations, the calculations of foreign direct investment shall be made in the same manner as specified for an insurer in Insurance Regulatory and Development Authority (Registration of Indian Insurance Companies) Regulations, 2000, as amended from time to time. The shares of an insurance broker held as capital shall not be pledged in any form or manner to secure credit or any other facility and shall at all times be unencumbered. However, no transfer of ownership shall be allowed except with the written approval of the Authority (Regulation 9,10, IRDA (Insurance Brokers) Regulations, 2013).

Deposit: Every insurance broker shall before the commencement of their business, deposit and keep deposited with any scheduled bank a sum equivalent to 20% of the minimum capital/contribution (as defined in regulation 9 (1) above) in fixed deposit, which shall not be released to them without the prior written permission of the Authority. However, the Authority may impose a separate limit of deposit, in any case not exceeding Rupees one hundred lakhs, for a person covered by regulation 2(1) (l)(d). The deposit shall have a lien with the Authority. Such deposit shall not be pledged for taking any loan or overdraft facility by the insurance broker. Every insurance broker shall furnish to the Authority as and when called upon to do so a non-encumbrance statement from scheduled bank in which such fixed deposit is kept (Regulation 12, IRDA (Insurance Brokers) Regulations, 2013).

Requirement of Professional indemnity insurance: Every insurance broker shall take out and maintain at all times a professional indemnity insurance cover throughout the validity of the period of the licence granted to them by the Authority. However, the Authority shall in appropriate cases allow a newly licensed insurance broker to produce such a guarantee within twelve months from the date of issue of licence.

Maintenance of Professional Indemnity Insurance: The insurance cover must indemnify an insurance broker against -

- a) any error or omission or negligence on their part or on the part of their employees and directors;
- b) any loss of money or other property for which the insurance broker is legally liable in consequence of any financial or fraudulent act or omission;
- c) any loss of documents and costs and expenses incurred in replacing or restoring such documents;
- d) dishonest or fraudulent acts or omissions by insurance brokers' employees or former employees.

The indemnity cover shall -

- 1) be on a yearly basis for the entire period of license;
- 2) not contain any terms to the effect that payments of claims depend upon the insurance broker having first met the liability;
- 3) Indemnify in respect of all claims made during the period of the insurance regardless of the time at which the event giving rise to the claim may have occurred.

However, indemnity insurance cover not fully conforming to the above requirements shall be permitted by the Authority in special cases for reasons to be recorded by it in writing. The

limit of indemnity for any one claim and in the aggregate for the year in the case of insurance brokers shall be as follows:

Category of insurance broker	Limit of indemnity
(a) Direct broker	three times remuneration received at the end of every financial year subject to a minimum limit of rupees fifty lakhs.
(b) Reinsurance broker	three times remuneration received at the end of every financial year subject to a minimum limit of rupees two crores and fifty lakhs.
(c) Composite broker	three times remuneration received at the end of every financial year subject to a minimum limit of rupees five crores

(Regulation 13, Schedule III,, IRDA (Insurance Brokers) Regulations, 2013).

Payment of fees and the consequences of failure to pay fees: Every applicant eligible for the grant of a licence and renewal of licence shall pay fees prescribed from time to time within a stipulated period. If he fails to pay it the Authority may suspend the licence. Resultantly, the insurance broker shall cease to carry on business for the period during which the suspension subsists (Regulation 14, IRDA (Insurance Brokers) Regulations, 2013).

6.6 PROCEDURE FOR LICENSING

The Authority on being satisfied that the applicant fulfils all the conditions specified for the grant of licence, shall grant a licence in IX-Form B and send intimation thereof to the applicant mentioning the category for which the Authority has granted the licence. The licence shall be issued subject to the insurance broker adhering to the conditions and the code of conduct as specified by the Authority from time to time. An insurance broker licensed for a specified category may also apply for the grant of a licence by the Authority for any other category by fulfilling the requirements of these regulations. However, such application shall be made only after a completion of one year from the grant of a licence in the first instance. In case licence issued, under any of the previous regulations, is cancelled/surrendered or renewal is rejected by the Authority for the reasons specified therein, the applicant may make a fresh application for grant of licence only after lapse of one year from the effective date of such cancellation/surrender or rejection of renewal of licence, for consideration of the Authority. The Authority may consider such application on merit(Regulation 15, IRDA (Insurance Brokers) Regulations, 2013).

Validity of licence: A licence once issued shall be valid for a period of three years from the date of issue, unless the same is suspended or cancelled under these regulations. No insurance broker shall be permitted to do business without a valid and current licence(Regulation 16, IRDA (Insurance Brokers) Regulations, 2013).

Rejection of Application: The Authority may refuse to grant the license, after giving a reasonable opportunity of being heard, when the applicant does not satisfy the conditions laid down thereon. The order of refusal, in writing by recording the grounds, to grant a licence shall be communicated by the Authority within thirty days of such refusal to the applicant. The applicant, aggrieved by the decision of the Authority, may apply within a period of thirty days from the date of receipt of such intimation, to the Chairman of the Authority for reconsideration of its decision. The Chairman of the Authority shall consider such an application and communicate his decision thereon to the applicant in writing within forty five days of the receipt thereof. If the application for reconsideration of the earlier order is rejected the applicant may make fresh application for grant of licence only after one year from the date of final rejection. The Authority may consider such application on merit (Regulation 17, IRDA (Insurance Brokers) Regulations, 2013).

6.7 RENEWAL OF LICENCE

The application for renewal of licence shall be submitted to the Authority by the insurance broker in Form A at least thirty days before the expiry of the licence. However, if the application reaches the Authority belatedly but before the actual expiry of the current licence, an additional fee of rupees one hundred only shall be payable by the applicant to the Authority. The Authority may condone the delay in submission of application for renewal, when the applicant assigns valid reasons, up to 60 days from the date of the expiry of the licence on payment of an additional fee of seven hundred and fifty rupees only by the applicant. Further, the application for renewal received after 60 days of the expiry of the licence will be considered only after a lapse of 12 months from the date of submission of the late application. During the interregnum, the licence of the insurance broker shall cease to exist and they shall not solicit any new business, except servicing the existing policies till the expiry of the contract. No insurance broker shall be allowed to do any fresh insurance business after expiry of the licence, except servicing the existing policyholders.

The Authority may seek further information or clarification or data on the application submitted the insurance broker while processing the application. The broker shall submit

within 21 days of receipt of the communication from the Authority. Any delayed submission shall be entertained by the Authority on merit. The Authority, on being satisfied that the applicant fulfils all the conditions specified for renewal of the licence, shall renew the licence in Form C for a period of three years and send intimation to that effect to the applicant.

The Principal Officer and employees responsible for soliciting insurance business of an insurance broker before seeking a renewal of licence shall have completed at least twenty-five hours of theoretical and practical training, imparted by an institution recognized by the Authority(Regulation 18, IRDA (Insurance Brokers) Regulations, 2013).

Procedure where a renewal of licence is not granted: In the event of refusal the Authority shall pass an order in writing, after giving a reasonable opportunity of being heard, and communicate the same to the applicant within thirty days of such refusal. The aggrieved applicant may file an application to the Authority seeking the reconsideration of its decision. The Chairman of the Authority shall consider such request and communicate his decision thereon to the applicant in writing within forty five days of the receipt thereof(Regulation 19, IRDA (Insurance Brokers) Regulations, 2013).

6.8 EFFECT OF REFUSAL TO GRANT LICENCE

From the date of receipt of order to grant licence the insurance broker shall desist from continuing the business. However, may continue to offer services in respect of contracts already entered into through them. Such a service shall continue only upto the period of expiry of those current contracts, details of which shall be disclosed to the Authority on receipt of the communication. The Authority may initiate criminal proceeding against any person, who acts as an insurance broker without holding a valid licence(Regulation 20,24, IRDA (Insurance Brokers) Regulations, 2013).

Issue of a duplicate licence: In the event of loss or destruction or mutilation of licence the Authority may grant duplicate licence in Form R against the payment of a fee of rupees one thousand(Regulation 21, IRDA (Insurance Brokers) Regulations, 2013).

Sale of Insurance Online: The Insurance brokers may enter into an agreement with insurers for sale of insurance products on telemarketing or online by linking to the web portals of the insurers complying the procedure prescribed(Regulation 22,23, IRDA (Insurance Brokers) Regulations, 2013).

Remuneration: The insurance broker is entitled for remuneration, as specified/notified by the Authority, for promoting insurance business i.e. life and general insurance or reinsurance business. In a given financial year he may promote not more than 50 percent of the premium (quantum, receipts, etc. as the case may be) from any one client(Regulation 25,26, IRDA (Insurance Brokers) Regulations, 2013).

Code of conduct for Insurance brokers: Every insurance broker shall abide by the Code of Conduct as specified in Schedule VI-A. of these regulations. In case of a Composite Broker or a reinsurance broker, he shall abide by the additional Code of Conduct specified in Schedule VI-B of these regulations(Regulation 28, IRDA (Insurance Brokers) Regulations, 2013).

Maintenance of books of account, records, etc: Every insurance broker shall maintain books of accounts and submit the duly audited, half yearly and annual, returns to the Authority(Regulation 29, 31, IRDA (Insurance Brokers) Regulations, 2013).

Claim Consultancy: The Authority permits limited claim consultancy by insurance brokers, subject to the following conditions:

- a) for claims not exceeding Rs.1 crore provided such claim does not emanate from a policy, which has been placed by the same insurance broker or any other insurance broker.
- b) before offering the consultancy, the insurance broker shall obtain a written mandate from the client to represent the client with the insurer concerned for the claim for which consultancy has been sought by the client and offered by the insurance broker.
- c) the insurance broker may charge fee for such services as may be mutually decided between the insurance broker and the client. However, such fee shall not be expressed as a percentage of the claim.
- d) the insurance broker shall, in all their dealings with such clients, be governed by the provisions of Code of Conduct as specified in Schedules VI-A and VI-B, as applicable, of these regulations.
- e) Any dispute between two or more insurance brokers arising out of such consultancy arrangements shall, in the first instance, be considered by the Insurance Brokers Association of India (IBAI) and thereafter the IBAI shall forward the substance of such dispute together with its recommendation to the Authority for final disposal.
- f) The Authority will review and decide the norms regarding claims consultancy from time to time (Regulation 32, IRDA (Insurance Brokers) Regulations, 2013).

Co-broking: It is open to a client to appoint in writing more than one insurance broker to jointly handle the broking of its insurance requirements depending on the skills that the insurance brokers may bring to the activity and to decide the manner in which the brokerage payable on the business may be shared among them. In any case, the total of brokerage shared among the insurance brokers together shall not be more than the limits specified. Each of the direct insurance co-brokers shall be insurance brokers who are licensed to broker the class of business concerned and each co-broker shall be responsible to ensure compliance with the co-broking provisions and guidelines issued by the Authority from time to time. The manner in which the brokerage is shared among the co-brokers shall be disclosed to the insurer on request. The insurer will be guided by the instructions of the client with regard to payment of brokerage to each cobroker for their share or to the lead co-broker who will then be responsible to pay the other co-brokers. Each of the co-brokers on a reinsurance placement shall also be responsible to ensure that these regulations are complied with by themselves and any foreign brokers used by them(Regulation 25,33, Guidelines No.020/ NL/IRDA/06 dated 15th September, 2006 IRDA (Insurance Brokers) Regulations, 2013).

Reinsurance / Composite brokers sharing of Brokerage with a foreign broker for the placement of risks: In case any insurer/reinsurer licensed in India, utilizes the services of any reinsurance broker for the placement of reinsurance abroad, such placement shall be through a reinsurance or composite broker licensed by the Authority only(Regulation 34, IRDA (Insurance Brokers) Regulations, 2013).

Single broking licence to one corporate group and dealings with Group companies: The Authority shall issue only one insurance broking licence in the categories of Direct Broker (Life) and/or Direct Broker(General) and/or Reinsurance Broker or Composite Broker to a corporate group(Regulation 35, IRDA (Insurance Brokers) Regulations, 2013).

Nomenclature of Insurance Brokers: The insurance brokers shall have the word `Insurance Broker`/ `Insurance Brokers`/ `Insurance Broking` in the name of the Insurance Broker to reflect their line of activity and to enable the public to differentiate IRDA licensed insurance brokers from other non-licensed insurance related entities such as consultants, risk managers and alike. The application of the new applicants seeking the broking licence shall not be considered in the absence of the compliance of the nomenclature requirement. Every licensed insurance broker shall display, in all their correspondences with all stakeholders, their name registered with the Authority, address of the Registered and Corporate Office, IRDA licence number, the category for which the insurance broker is licensed, validity period of the licence. Insurance brokers are not permitted to use any other name in their

correspondence/literature/letter heads without the prior approval of the Authority(Regulation 36, IRDA (Insurance Brokers) Regulations, 2013).

Financial penalty for certain violations/breaches: In case a licensed insurance broker violates any of the provisions of Insurance Act, 1938, IRDA Act, 1999 and Rules and Regulations made there under, any circular/guidelines/orders issued by the Authority from time to time, the Authority may issue such order imposing appropriate penalty depending on the nature/gravity of violation. The insurance broker, if aggrieved by the decision of the Authority, may apply within a period of thirty days from the date of receipt of such intimation, to the Chairman of the Authority for a reconsideration of its decision. The Chairman of the Authority shall consider such an application and communicate his decision thereon to the applicant in writing within forty five days of the receipt thereof. In case the Chairman of the Authority, after reconsideration of the application, rejects the application, the insurance broker shall pay the penalty imposed within 15 days of the receipt of the decision of the Chairman of the Authority, failing which their licence may be suspended or cancelled(Regulation 37, IRDA (Insurance Brokers) Regulations, 2013).

Disclosures to the Authority: An insurance broker shall disclose to the Authority on their own any material change which has a bearing on their licence within 30 days of such change. An insurance broker shall disclose to the Authority, as and when required by it, in any event not later than thirty days of a requisition, the following information, namely -

- a. their responsibilities with regard to the placement of an insurance contract;
- b. any change in the information or particulars previously furnished, which have a bearing on the licence granted to them;
- c. the names of the clients whose insurance portfolio they manage or have managed;
- d. any other requirement or information specified by the Authority from time to time(Regulation 38, IRDA (Insurance Brokers) Regulations, 2013).

6.9 INSPECTION

The Authority may appoint one or more of its officers as “inspecting authority” to undertake inspection of the premises of the insurance broker to ascertain and see how the business is carried on, and to inspect the books of accounts, records and documents of the insurance broker for any of the purposes -

- a. to ensure that the books of account are being maintained in the manner required;
- b. to ensure that the provisions of the Act, rules, regulations are being complied with;

- c. to investigate the complaints received from any insured, any insurer, other insurance brokers or any other person on any matter having a bearing on the activities of the insurance broker; and
- d. to investigate the affairs of the insurance broker *suo motu* in the interest of proper development of insurance business or in policyholders' interest (Regulation 39, IRDA (Insurance Brokers) Regulations, 2013).

Appointment of investigator by the Authority: The Authority may appoint a chartered accountant or an actuary or any qualified and experienced individual in the field of insurance to investigate the books of accounts or the affairs of the insurance broker. The expenses and costs of such an investigation shall be recovered by the Authority from the insurance broker whose affairs had been caused to be investigated (Regulation 40, IRDA (Insurance Brokers) Regulations, 2013).

6.10 SUSPENSION OF LICENCE WITH NOTICE

- 1) The licence of an insurance broker may be cancelled or suspended after due notice and after giving them a reasonable opportunity of being heard if they -
 - a) violate the provisions of the Insurance Act, 1938 (4 of 1938), Insurance Regulatory and Development Authority Act, 1999 (41 of 1999) or rules or regulations, made there under as amended from time to time;
 - b) fail to furnish any information relating to their activities as an insurance broker as required by the Authority;
 - c) fail to comply with the directions issued by the Authority;
 - d) furnish wrong or false information; or conceals or fails to disclose material facts in the application submitted for obtaining a licence or during the validity of license;
 - e) do not submit periodical returns as required by the Authority;
 - f) do not co-operate with any inspection or enquiry conducted by the Authority;
 - g) fail to resolve the complaints of the policyholders or fails to give a satisfactory reply to the Authority in this behalf;
 - h) indulge in rebates or inducements in cash or kind to a client or any of the client's directors or other employees or any person acting as an introducer;
 - i) are found guilty of misconduct or their conduct is not in accordance with the Code of Conduct specified in Schedules VI-A and VI-B, whichever is applicable;
 - j) fail to maintain the capital requirements in accordance with the provisions of regulation 9;

- k) fail to pay the fees, penalties imposed or the reimbursement of expenses under these regulations;
- l) violate the conditions of licence;
- m) do not carry out their obligations as specified in the regulations;
- n) they carry on the business with a Principal Officer who does not acquire practical training and pass the examination within the stipulated period as specified in regulation 8.
- o) the Authority feels that the establishment of an insurance broker is only to divert funds within a group of companies or their associates, and the fact is established after due enquiries made by the Authority (Regulation 41, IRDA (Insurance Brokers) Regulations, 2013).

6.11 CANCELLATION OR SUSPENSION OF LICENCE WITHOUT NOTICE

The licence of an insurance broker may be cancelled or suspended without notice, after holding an enquiry, if they -

- a) violate any one or more of the requirements under the code of conduct specified in Schedules VI-A and VI-B, whichever is applicable;
- b) are found guilty of fraud, or is convicted of a criminal offence;
- c) commit such defaults, which require immediate action in the opinion of the Authority, provided that the Authority has communicated the reasons for the cancellation in writing;
- d) have not commenced the business within six months of being granted a license. (Regulation 42, IRDA (Insurance Brokers) Regulations, 2013).

Publication of order of suspension: The order of suspension of the licence made shall be displayed on website of the Authority and communicated to the insurers, so that registration of new business by the suspended insurance broker is stopped forthwith by the insurers. On and from the date of suspension or cancellation of the licence, the insurance broker, shall cease to function as an insurance broker. An insurance broker however shall continue to service the contracts already concluded through them for a period of six months within which he shall make suitable arrangements for having the contracts attended to by another licensed insurance broker (Regulation 43, IRDA (Insurance Brokers) Regulations, 2013).

Manner of holding of enquiry after suspension of licence of the insurance broker: The licence of an insurance broker shall be cancelled only after holding an enquiry in accordance with the

procedure specified in this regulation. The Authority may appoint an enquiry officer, within 15 days of the issue of the suspension order, to conduct such enquiry. The enquiry officer shall issue a notice to the insurance broker at the registered office or the principal place of business of the insurance broker, as the case may be, calling for all information / data as deemed necessary to conduct the enquiry and grant the insurance broker a time limit of 15 days from date of receipt of the notice, for submission of such information / data called for. The insurance broker may, within fifteen days from the date of receipt of such notice, furnish to the enquiry officer a reply to the notice together with copies of documentary or other evidence relied on by them or sought by the enquiry officer. The enquiry officer shall give a reasonable opportunity of hearing to the insurance broker to enable them to make submissions in support of their reply. The insurance broker may either appear in person or through any person duly authorised by them to present their case, provided however that the prior approval of the Authority is obtained for the appearance of the 'authorised person'. If it is considered necessary, the enquiry officer may require the Authority to present its case through one of its officers. If it is considered necessary, the enquiry officer may call for feedback/information from the insurer or any other related entity during the course of enquiry. If it is considered necessary, the enquiry officer may call for additional papers from the insurance broker. The enquiry officer shall make all necessary efforts to complete the proceeding at the earliest but in no case beyond 60 days of the commencement of the enquiry. However, if the enquiry cannot be completed within the prescribed time limit of 60 days, the enquiry officer may seek additional time from the chairman stating the reason thereof. The enquiry officer shall, after taking into account all relevant facts and submissions made by the insurance broker, submit a report to the Authority within 30 days of the completion of the enquiry proceedings.

Action to be taken after the receipt of the enquiry report: On receipt of the report from the enquiry officer, the Authority shall consider the report and issue a show-cause notice to the insurance broker if the contents of the report warrant a cancellation of the licence granted to them. However, no such notice is required when the licence is cancelled without notice. The insurance broker shall within twenty-one days of the date of receipt of the show cause notice send a reply to the Authority. The Authority after considering the reply to the show cause notice shall, as soon as possible, but not later than thirty days from the receipt of the reply, pass such an order as it deems fit. However, where the insurance broker on serving of the notice fails to furnish any reply within the stated period, the Authority may after the expiry of such time proceed to decide the case on merit and pass such an order as it deems fit. The

Authority shall send a ‘final order of the Authority’ to the insurance broker. Any insurance broker, if aggrieved by the decision of the Authority, may apply within a period of thirty days from the date of receipt of such intimation, to the Chairman of the Authority for a reconsideration of its decision. The Chairman of the Authority shall consider such an application and communicate his decision thereon to the insurance broker in writing within forty five days of the receipt thereof (Regulation 42, 45, IRDA (Insurance Brokers) Regulations, 2013).

6.12 PROCEDURE FOR CANCELLATION OF LICENCE

The Authority shall issue the final order for cancellation of the licence of the insurance broker and they shall cease to act as an insurance broker from the date of the final order. An insurance broker whose licence has been cancelled shall continue to service the contracts already concluded through them for a period of six months from the order of cancellation of licence within which period they shall make suitable arrangements for having the contracts attended to by another licensed insurance broker. The licensed insurance broker who agrees to take over the obligations of policy service from the insurance broker whose licence has been cancelled shall submit their request to the insurer for serving the policies / contracts through the term. The licensed insurance broker on obtaining the approval from the insurer, for takeover of the obligations of policy service, can collect brokerage on current contracts in vogue with prospective effect from the date of service of the contracts. The insurer shall pay brokerage / policy service, on current contracts in vogue with prospective effect from the date of allotment of service of the contracts to the insurance broker to whom the insurer has given the authority. The order of cancellation of the licence shall be published in one daily newspaper in the English language and one newspaper in the regional language as the Authority may consider fit, in addition to display on the website of the Authority(Regulation 45,46,47, IRDA (Insurance Brokers) Regulations, 2013).

Effect of cancellation of licence: On and from the date of suspension or cancellation of the licence, the insurance broker, shall cease to act as an insurance broker. However, an insurance broker may continue to service the contracts already concluded through them for a period of six months within which suitable arrangements shall be made by them for having the contracts attended to by another licensed insurance broker. Another licensed insurance broker who agrees to take over the obligations of policy service can collect brokerage on current contracts which were not collected earlier from insurers, provided the insurance

broker undertakes to service the policies through its term(Regulation 48, IRDA (Insurance Brokers) Regulations, 2013).

Voluntary Surrender of Licence: An Insurance Broker licensed may make an application to the Authority for surrender of their licence. The Authority may consider such application on merit. Upon acceptance of the application for surrender made by the insurance broker, the Authority may pass an order for surrender of licence. The insurance broker whose licence is surrendered and accepted by the Authority shall have to make arrangements afore mentioned (Regulation 49, IRDA (Insurance Brokers) Regulations, 2013).

6.13 FUNCTIONS OF DIRECT BROKER / REINSURANCE BROKER / COMPOSITE BROKER

1. Functions of a direct broker: The functions of a direct broker shall include the following:

- a) Obtaining detailed information of the client's business and risk management philosophy;
- b) Familiarizing himself with the client's business and underwriting information so that this can be explained to an insurer and others;
- c) Rendering advice on appropriate insurance cover and terms;
- d) Maintaining detailed knowledge of available insurance markets, as may be applicable;
- e) Submitting quotation received from insurer/s for consideration of a client;
- f) Providing requisite underwriting information as required by an insurer in assessing the risk to decide pricing terms and conditions for cover;
- g) Acting promptly on instructions from a client and providing him written acknowledgements and progress reports;
- h) Assisting clients in paying premium under section 64VB of Insurance Act, 1938 (4 of 1938);
- i) Providing services related to insurance consultancy and risk management;
- j) Assisting in the negotiation of the claims; and
- k) Maintaining proper records of claims;

2. Functions of a re-insurance broker: The functions of a re-insurance broker shall include the following -

- a) Familiarizing himself with the client's business and risk retention philosophy;
- b) Maintaining clear records of the insurer's business to assist the reinsurer(s) or others;
- c) Rendering advice based on technical data on the reinsurance covers available in the international insurance and the reinsurance markets;

- d) Maintaining a database of available reinsurance markets, including solvency ratings of individual reinsurers;
- e) Rendering consultancy and risk management services for reinsurance;
- f) Selecting and recommending a reinsurer or a group of reinsurers;
- g) Negotiating with a reinsurer on the client's behalf;
- h) Assisting in case of commutation of reinsurance contracts placed with them;
- i) Acting promptly on instructions from a client and providing it written acknowledgements and progress reports;
- j) Collecting and remitting premiums and claims within such time as agreed upon;
- k) Assisting in the negotiation and settlement of claims;
- l) Maintaining proper records of claims;
- m) Exercising due care and diligence at the time of selection of reinsurers and international insurance brokers having regard to their respective security rating and establishing respective responsibilities at the time of engaging their services;
- n) Creation of market capacity and facility for new, stressed, emerging and existing business and asset class for and from both direct insurers and reinsurers;
- o) Render preliminary loss advice (PLA) within reasonable time;
- p) Given the nature of business, separate norms need to be followed for Inward and Outward business
- q) Inward business: (i) Broker to have adequate specific knowledge of the country whose business is being offered like: political stability, economic position, local regulations, tax laws, etc. (ii) Introduce new business/ products depending on the reinsurers business plan and risk appetite
- r) Outward business: Rating and market credibility of the reinsurer
- s) To ensure prompt collection and remittance of funds, follow up for funds to be initiated sufficiently before the due dates for settlement from cedant to reinsurer and from reinsurer to cedant as relevant;

3. Functions of composite broker: A composite broker shall carry out the functions mentioned in clause 1 and 2 above. (IRDA (Insurance Brokers) Regulations, 2013).

6.14 SUMMARY

Insurance broker is a designated facilitator. He helps both the insurance industry and the consumer. A person who wishes to become an insurance broker shall meet the qualifications prescribed by the IRDA (Insurance Brokers) Regulations, 2013. An individual; or a firm; or a

company formed under the Companies Act, 1956 (1 of 1956); or a co-operative society registered under the Co-operative Societies Act, 1912 or under any law for the registration of co-operative societies; or any other person may act as a broker by obtaining license. He is required to discharge such functions as detailed in the Regulation, 2013. Failing which his license will be cancelled by the Authority.

6.15 KEY WORDS

1. Intermediary
2. Broker
3. License
4. Suspension.

6.16 SELF ASSESSMENT QUESTIONS

1. What do you mean by intermediary? What is his role? When a insurance broker may act as an Insurance intermediary?

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2. Explain the procedure for granting and cancellation of license.

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.....

3. Discuss the functions of an insurance broker.

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6.17 REFERENCES

- Commentaries on the public liabilities insurance act 1991: G.S Karkara.
- Insurance law: A comprehensive treatise on law of insurance covering all risks except marine insurance: Brij Nandan Singh.
- The Law of Insurance Contracts: A. Malcolm.
- International encyclopaedia of laws: Insurance Law: R. Blanpain.
- Insurance law manual with IRDA circulars and notifications: Taxmann.
- Insurance law: Relating to all risks other than marine: E.J. Macgillivray.
- Modern insurance law: John Birds and Norma J Hird.
- Law Relating to Marine Insurance: Mitra, B.C.
- Law of Insurance: Jaiswal J V N
- General Principles of Insurance Law: Hardy Ivamy E R
- Law Relating to Insurance: Vats R M
- Insurance Regulatory and Development Authority Act, 1999

UNIT 7 INSURANCE AGENTS

STRUCTURE

7.0 Objectives

7.1 Introduction

7.2 Qualifications of the applicant

7.3 Qualification for a corporate agent

7.4 Disqualifications

7.5 Practical Training

7.6 Licensing of insurance agents

7.7 Licensing of Corporate Agents

7.8 Renewal of License

7.9 Code of Conduct of insurance agent

7.10 Code of conduct of licensed corporate agent

7.11 Insurance Advertisements and Disclosure

7.12 Role of an insurance agent

7.13 Summary

7.14 Key Words

7.15 Self Assessment Questions

7.16 References

7.0 OBJECTIVES

On reading this unit the students would become familiar with the following –

1. Appointment of insurance agent
2. Licensing system
3. Code of conduct
4. Cancellation of license/certificate

7.1 INTRODUCTION

"Insurance agent" means an insurance agent licensed under Sec. 42 who receives or agrees to receive payment by way of commission or other remuneration in consideration of his soliciting or procuring insurance business including business relating to the continuance, renewal or revival of policies of insurance (Sec.2(10) Insurance Act,1938). The insurance agent may be either -

- a) Individual Agent; or
- b) Corporate Agent; or
- c) Micro Insurance Agent.

IRDA (Licensing of Insurance Agents) Regulations, 2000 as amended from time to time, contains provisions relating to licensing of individual Insurance Agents. The following are the different types of licenses issued within the Regulations:

- (a) Direct Life
- (b) Direct Non Life
- (c) Composite License (both Life and Non-Life)

7.2 QUALIFICATIONS OF THE APPLICANT

The applicant shall possess the minimum qualification of a pass in 12th Standard or equivalent examination conducted by any recognised Board/Institution, where the applicant resides in a place with a population of five thousand or more as per the last census, and a pass in 10th Standard or equivalent examination from a recognised Board/ Institution if the applicant resides in any other place (Regulation 4, IRDA (Licensing of Insurance Agents) Regulations, 2002).

7.3 QUALIFICATION FOR A CORPORATE AGENT

The qualification to become a corporate agent is as under –

- a) Formation or existence of an entity as required under the Regulations as above

- b) Identification of persons possessing the minimum qualifications to become a CIE or SP (a minimum of 1 CIE and 2 SPs are normally insisted by IRDA at the time of licensing). The actual number of persons will depend on the business plan of the applicant corporate agent. CIEs or SPs can also be changed or added (in addition to minimum) subsequently
- c) Document evidencing constitution of the Corporate agent entity (e.g. Memorandum and Articles of Association) shall contain “procuring or solicitation of insurance business” as one of the main objects
- d) Proof of CIE and SPs having undergone the practical training and passed the required examination
- e) Either CIE or one of the SPs must possess one of the following additional qualification:
- 1) An Associate/Fellow of the Insurance Institute of India, Mumbai.
 - 2) an Associate/Fellow of the Institute of Chartered Accountants of India, New Delhi; with diploma in Insurance and Risk Management.
 - 3) an Associate/Fellow of the Institute of Costs and Works Accountants of India, Calcutta;
 - 4) an Associate/Fellow of the Institute of Company Secretaries of India, New Delhi;
 - 5) an Associate/Fellow of the Actuarial Society of India, Mumbai;
 - 6) possessing Certified Associate ship of Indian Institute of Bankers (CAIIB)
 - 7) MBA (Two year) Course / PG Diploma (One year) course in Insurance from Amity School of Insurance & Actuarial Science, Noida
 - 8) PG Diploma (One year) course in Insurance from Institute of Insurance and Risk Management, Hyderabad
 - 9) MBA (Two year) course in Insurance from National Insurance Academy, Pune
 - 10) PG MBA (Two Year) course in Insurance from National Law University, Jodhpur
 - 11) PG MBA (Two year) course in Insurance from MET, Mumbai
 - 12) MBA (Two year) course in Insurance from Birla Institute of Management Technology, Noida
- The persons with above qualifications (except at (a)) shall undergo a “Workshop for Insurance executives” at National Insurance Academy, Pune or Insurance Institute of India, Mumbai or Institute of Insurance and Risk Management, Hyderabad as prescribed by the Authority.
- f) In the case of exclusive Corporate Agencies, proof of formation of a public company, injection of a capital of `15 lakhs and depositing the money into a Bank
- g) Fee of `250 for issue of license to the Corporate Agent and `500 for issue of Certificate for each Specified person.

7.4 DISQUALIFICATIONS

The applicant shall not suffer from any of the following disqualifications -

1. That the applicant is not minor
2. That he is not found to be of unsound mind by a Court of competent jurisdiction
3. That he has not been found guilty of criminal misappropriation or criminal breach of trust or cheating or forgery or an abetment of or an attempt to commit any offence by a Court of competent jurisdiction and five years have not elapsed from the date of conviction
4. That he has been found guilty of or has knowingly participated in or connived at any fraud, dishonesty or misrepresentation against an insurer or an insured during the course of:
 - a) Any judicial proceeding relating to any policy of insurance (or)
 - b) Winding up of an insurance company (or)
 - c) In the course of investigation of affairs of an insurer
5. That he does not violate the code of conduct prescribed under the Regulations
6. Practical Training: The applicant shall undergo a minimum of 50 hours practical training on insurance related matters in life or general insurance business, as the case may be, spreading to 1 to 2 weeks. Where the application is for a composite license, the training shall be 75 hours spread over 3 to 4 weeks covering both life and general insurance subjects. Where the applicant holds special qualifications such as membership of Institute of Chartered Accountants of India, Institute of Cost and Works Accountants of India, Institute of Company Secretaries of India, Insurance Institute of India or the Institute of Actuaries of India or a Masters degree in Business Administration of any institution recognized by Central Government or State Government, it is sufficient if the training is undergone for 25 hours (35 hours if the license is composite). The training can be undergone in any of the IRDA accredited training institutions
7. Examination: Every applicant shall undergo a pre-recruitment examination in life or general insurance business or both, as the case may be, conducted by the Insurance Institute of India or any other body authorized by IRDA.
8. AML & ULIP training: In addition to the above, the insurer with whom the agent is attached provides a special training on Anti money laundering (under the IRDA's Anti money laundering Guidelines dated 31 March 2006) for all Insurance Agents. Training in Unit Linked Insurance Products (ULIP) is compulsory for life insurance agents before they are allowed to sell ULIPs on behalf of a life insurer (under the IRDA (Linked Insurance Products) Regulations, 2013)

9. Payment of fees of Rs.250 along with the application for grant of license enclosing proof of age, qualifications, training and examination.

7.5 PRACTICAL TRAINING

The applicant shall have completed from an approved institution, at least, one hundred hours' practical training in life or general insurance business, as the case may be, which may be spread over three to four weeks, where such applicant is seeking licence for the first time to act as insurance agent. However, the applicant shall have completed from an approved institution, at least, one hundred fifty hours' practical training in life and general insurance business, which may be spread over six to eight weeks, where such applicant is seeking licence for the first time to act as a composite insurance agent. The applicant shall complete, at least, 'fifty hours' practical training from an approved institution. is –

- a. an Associate/Fellow of the Insurance Institute of India, Mumbai;
- b. an Associate/Fellow of the Institute of Chartered Accountants of India, New Delhi;
- c. an Associate/Fellow of the Institute of Costs and Works Accountants of India, Calcutta;
- d. an Associate/Fellow of the Institute of Company Secretaries of India, New Delhi;
- e. an Associate/Fellow of the Actuarial Society of India, Mumbai;
- f. a Master of Business Administration of any Institution / University recognised by any State Government or the Central Government; or
- g. possessing Certified Associateship of Indian Institute of Bankers (CAIIB); or
- h. Possessing any professional qualification in marketing from any Institution / University recognised by any State Government or the Central Government.

However, such applicant shall have completed from an approved institution, at least, seventy hours' practical training in life and general insurance business, where such applicant is seeking licence for the first time to act as a composite insurance agent.

Where an applicant, who has been granted a licence after the commencement of these regulations, before seeking renewal of licence to act as an insurance agent, shall have completed, at least twenty-five hours' practical training in life or general insurance business, as the case may be, from an approved institution.

However, such applicant before seeking renewal of licence to act as a composite insurance agent shall have completed from an approved institution, at least, fifty hours' practical

training in life and general insurance business(Regulation 5, IRDA (Licensing of Corporate Agents) Regulations, 2002)

Examination: The Applicant shall have passed the pre-recruitment examination in life or general insurance business, or both, as the case may be, conducted by the Insurance Institute of India, Mumbai, or any other examination body (Regulation 6, IRDA (Licensing of Corporate Agents) Regulations, 2002)

Register of insurance agents: The insurer and every person who acting on behalf of an insurer shall maintain the register of agents employed by him, which shall contain - the name of insurance agent, address, the date of appointment and the date of termination (Sec.43, Act, 1938).

Fees payable: The fees payable to the Authority for issue or renewal of licence to act as a corporate agent shall be rupees two hundred and fifty. Every specified person of the corporate agent shall, apply through the corporate agent to the designated person of the insurer to obtain the certificate, accompanied by a fees of rupees five hundred remitted to the Authority(Regulation 7, IRDA (Licensing of Corporate Agents) Regulations, 2002)

Non-application to existing insurance agents: A corporate agent who has been issued a corporate agent licence prior to the commencement of these regulations shall exercise the option of either continuing with the existing licence till the expiry of the licence so granted or surrender the existing licence and apply for a new licence in terms of regulation 3. A Person holding an individual insurance agent's licence who wishes to become a corporate agent shall surrender the individual licence and apply afresh as per regulation 3(Regulation 13, IRDA (Licensing of Corporate Agents) Regulations, 2002)

7.6 LICENSING OF INSURANCE AGENTS

The Authority or an officer authorized by him in this behalf may register the name of any person, who does not possess any of the disqualification mentioned herein, by designating him as a principal agent or chief agent or special agent or intermediary or an insurance intermediary or agent and grant license and their services shall be regulated as per the provisions of this Act -

- 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 all insurer it has then found that he has been guilty off or has knowingly participated in or connived at any fraud, dishonestly fir misrepresentation against an insurer or an insured.
- e) that in the case of an individual, 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 in the case of a company or firm making an application, a director or a partner or one or more of its officers or other employees so designated by it and in the case of any other person, the chief executive, by whatever name called, or one or more of his employees designated by him, do not possess the requisite qualifications and practical training and have not passed such an examination as required;
- g) that he violates the code of conduct as may be specified by the regulations made by the Authority.

In the event the principal agent or chief agent or special agent or intermediary or an insurance intermediary or agent, who is suffering from any of the disqualifications, knowingly acts in contravention of any of the provisions of this Act, the Authority may cancel the license. If such contravention is by a company or a firm, then, 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 which may extend to five thousand rupees. Any person who solicits the insurance business in the absence of license may be punished with fine which may extend to one thousand rupees. The Authority may issue a duplicate license to replace a license lost, destroyed or mutilated on the payment of fee prescribed. The Authority may issue notice to seek information from an insurer, principal agent, chief agent, or special agent for the purposes of ensuring the compliance with the provisions of this Act (Sec.40, 40A, 41, 42, 42A, 42B, 42C, 42D,44A, Act, 1938).

7.7 LICENSING OF CORPORATE AGENTS

The IRDA (Licensing of Corporate Agents) Regulations, 2002 provides the licensing framework for Corporate Agents similar to the Regulations applicable to Individual Agents. The Corporate Agents regulations recognize agents who are one of the following entities (as against individual agents who are licensed under the IRDA (Licensing of Insurance Agents) Regulations, 2002):

- (a) Firm
- (b) Company under the Companies Act, 1956
- (c) Banking company
- (d) Co-operative society
- (e) Panchayat or local authority
- (f) Non-Government organization (Regulation 2 (k) IRDA (Licensing of Corporate Agents) Regulations, 2002)

The license is issued to the entity as against the individual under licensing of individual agents. However, the persons who are authorized to sell on behalf of a Corporate Agent will have to undergo the training and examination requirements similar to that of an Individual agent. The Corporate agent shall have the following persons at the minimum as per the Regulations:

- (a) Corporate Insurance Executive ('CIE')
- (b) Specified Persons ('SP')

A Corporate Insurance Executive is the Director or Partner or one or more of its officers or employees so designated by it (where the applicant is a Company or a Firm). Where the applicant is any other person, the Chief Executive or one or more of his employees designated by him shall be the CIE. In either case, the CIE shall possess the minimum qualifications, undergo the practical training and pass the required examination (Regulation 2 (g) & (n) IRDA (Licensing of Corporate Agents) Regulations, 2002).

A Specified Person is responsible for soliciting or procuring insurance business on behalf of the Corporate Agent entity. He may be a Director or a Partner or one or more of its officers or other employees so designated by the Corporate Agent. The individual desirous of acting as a Specified Person shall also possess the requisite qualifications, undergo the practical training and pass the examination. A Certificate is issued to a Specified Person which authorizes him to solicit or procure insurance business on behalf of the Corporate Agent. There may be as

many number of Specified Persons as the Corporate Agent requires depending upon the business requirements.

The minimum qualifications, practical training and examination requirements are similar to that of an individual agent. A Corporate Agent is also allowed to act for only one life insurer (Direct-Life) or one general insurer (Direct-Non-Life) or Composite Corporate Agent (one Life and one General at a time) As per the IRDA guidelines on Corporate Agents, dated 14 July 2005, two types of Corporate Agents are recognized:

(a) Exclusive Corporate Agents: i.e. those entities whose primary activity is solicitation or procurement of insurance business. Such entities shall be Public Limited companies under the Companies Act, 1956, with a minimum paid up capital of Rs.15 lakhs deposited in a Scheduled Commercial Bank. Further entities belonging to Banking or Insurance Groups alone are allowed to form Exclusive Corporate Agencies

(b) Non-exclusive Corporate Agents: entities which are already engaged in some other business and would like to take up insurance agency as a subsidiary activity. Further a Group to which the applicant Corporate Agent belongs to, can be granted only one corporate agency licence. In other words, any proposal from an applicant, some of whose group entities are already engaged in insurance business, such as corporate agent, broker, insurer etc., shall not be normally granted a corporate agency license. IRDA does not normally grant any exception unless the entities are licensed by Reserve Bank of India with substantial client base or otherwise have assets, turnover or net worth of Rs.15 Crores.

Micro insurance Agents: Micro insurance Agents are a special category of insurance agents who support financial inclusion, i.e. the distribution of financial services at an affordable cost to the masses. Micro insurance contracts are typically low sum assured contracts which provide for the sum assured to be paid either on death – both natural and accidental, or an Endowment (which also provides a sum assured on maturity in addition to death) or a health insurance.

Only a Non-Governmental organization or a Self Help Group Microfinance Institutions or Associations not formed for Profit are entitled to become Micro Insurance Agents. Such Agents can distribute the products of one life insurer or one general insurer or both. A Micro insurance agent shall employ Specified persons with the prior approval of the Insurer to distribute the micro insurance products on its behalf. All the Micro insurance agents and their Specified persons shall be imparted a 25 hour training by the insurer in local vernacular language in the areas of insurance selling, policyholder servicing and claims administration.

A Micro insurance agent can sell only a Micro insurance product and not any other type of insurance products. However an Agent who is licensed to sell all products of an insurer can sell the Micro insurance products of such insurer, if any. An Insurance Broker, who can sell any product of any insurer, can sell Micro insurance products of any insurer as well. All Micro insurance policies may be reckoned for the purpose of fulfilment of social obligations of an insurer pursuant to the provisions of the Insurance Act and Regulations. Where a micro insurance policy is issued in a rural area and falls under the definition of social sector, such policy may be reckoned for both under rural and social sector obligations as well.

Register of insurance agents:The insurer and every person who acting on behalf of an insurer shall maintain the register of agents employed by him, which shall contain - the name of insurance agent, address, the date of appointment and the date of termination (Sec.43, Act, 1938).

7.8 RENEWAL OF LICENCE

Every licence granted by the Authority to a corporate agent or any renewal thereof, in terms of these regulations, shall remain in force for three years. A licence granted to a corporate agent may be renewed for a further period of three years on submission of the application form along-with a renewal fee of rupees two hundred and fifty, at least thirty days prior to the date of expiry of the licence. The additional fees payable to the Authority, under the circumstances mentioned in sub-section (3) of section 42 of the Act, shall be rupees one hundred. The Authority may, if it is satisfied that undue hardship would be caused otherwise, accept any application after the licence ceased to remain in force, on the payment by the applicant of a payment of rupees seven hundred and fifty as additional fee.

Every certificate granted to the specified person shall remain in force for a period of three years which can be renewed for a further period of three years on submission of an application form accompanied by fees of rupees one hundred, provided that the licence of the corporate agent continues to be valid. The application form along-with the fees shall be submitted at least thirty days prior to the date of expiry. The specified person on his ceasing to be an employee of the corporate agent shall surrender his certificate to the designated person. If he desires to become an individual insurance agent then he shall follow the procedure as laid down in Insurance Regulatory and Development Authority's (Licensing of Insurance Agents) Regulations, 2000. Such a person need not go through a further process of training and pass at the examination within the period of licence granted to them.

A specified person will also be taken care of in accordance with the above provisions. Every corporate insurance executive or the specified person of the corporate agent shall have completed at least twenty-five hours' practical training in life or general insurance business, as the case may be, from an approved institution, for the purposes of renewal of licence to the corporate agent and/or renewal of certificate to the specified person. However, such applicant before seeking renewal of licence or certificate to act as a composite insurance agent shall have completed from an approved institution, at least, fifty hours' practical training in life and general insurance business(Regulation 10, IRDA (Licensing of Corporate Agents) Regulations, 2002)

Remuneration: Every Corporate Agent shall be paid a commission as per provisions of Section 40A of the Act, 1938. (Regulation 8, IRDA (Licensing of Corporate Agents) Regulations, 2002).

7.9 CODE OF CONDUCT OF INSURANCE AGENT

Every insurance agent shall -

1. identify himself and the insurance company of whom he is an insurance agent;
2. disclose his licence to the prospect on demand;
3. disseminate the requisite information in respect of insurance products offered for sale by his insurer and take into account the needs of the prospect while recommending a specific insurance plan;
4. disclose the scales of commission in respect of the insurance product offered for sale, if asked by the prospect;
5. indicate the premium to be charged by the insurer for the insurance product offered for sale;
6. explain to the prospect the nature of information required in the proposal form by the insurer, and also the importance of disclosure of material information in the purchase of an insurance contract;
7. bring to the notice of the insurer any adverse habits or income inconsistency of the prospect, in the form of a report (called "Insurance Agent's Confidential Report") along with every proposal submitted to the insurer, and any material fact that may adversely

affect the underwriting decision of the insurer as regards acceptance of the proposal, by making all reasonable enquiries about the prospect;

8. inform promptly the prospect about the acceptance or rejection of the proposal by the insurer;
9. obtain the requisite documents at the time of filing the proposal form with the insurer; and other documents subsequently asked for by the insurer for completion of the proposal;
10. render necessary assistance to the policyholders or claimants or beneficiaries in complying with the requirements for settlement of claims by the insurer;
11. advise every individual policyholder to effect nomination or assignment or change of address or exercise of options, as the case may be, and offer necessary assistance in this behalf, wherever necessary;

However, no insurance agent shall –

- a. solicit or procure insurance business without holding a valid licence;
- b. induce the prospect to omit any material information in the proposal form;
- c. induce the prospect to submit wrong information in the proposal form or documents submitted to the insurer for acceptance of the proposal;
- d. behave in a discourteous manner with the prospect;
- e. interfere with any proposal introduced by any other insurance agent;
- f. offer different rates, advantages, terms and conditions other than those offered by his insurer;
- g. demand or receive a share of proceeds from the beneficiary under an insurance contract;
- h. force a policyholder to terminate the existing policy and to effect a new proposal from him within three years from the date of such termination;
- i. have, in case of a corporate agent, a portfolio of insurance business under which the premium is in excess of fifty percent of total premium procured, in any year, from one person (who is not an individual) or one organisation or one group of organisations;
- j. apply for fresh licence to act as an insurance agent, if his licence was earlier cancelled by the designated person, and a period of five years has not elapsed from the date of such cancellation;
- k. become or remain a director of any insurance company;

Every insurance agent shall, with a view to conserve the insurance business already procured through him, make every attempt to ensure remittance of the premiums by the policyholders within the stipulated time, by giving notice to the policyholder orally and in writing (Regulation 8, IRDA (Licensing of Insurance Agents) Regulations, 2000).

7.10 CODE OF CONDUCT OF LICENSED CORPORATE AGENT

Every Licensed Corporate Agent shall abide by the code of conduct specified herein. Every corporate agent shall –

1. be responsible for all acts of omission and commission of its corporate insurance executive and every specified person;
2. ensure that the corporate insurance executive and all specified persons are properly trained, skilled and knowledgeable in the insurance products they market;
3. ensure that the corporate insurance executive and the specified person do not make to the prospect any misrepresentation on policy benefits and returns available under the policy;
4. ensure that no prospect is forced to buy an insurance product;
5. give adequate pre-sales and post-sales advice to the insured in respect of the insurance product;
6. extend all possible help and cooperation to an insured in completion of all formalities and documentation in the event of a claim;
7. give due publicity to the fact that the corporate agent does not underwrite the risk or act as an insurer;
8. enter into service level agreements with the insurer in which the duties and responsibilities of both are defined.

Every Corporate Agent or a Corporate Insurance Executive or a Specified Person shall also follow the code of conduct specified herein. Every corporate agent/ corporate insurance executive/ specified person shall –

- a. identify himself and the insurance company of whom he is a representative;
- b. disclose his license/ certificate to the prospect on demand;
- c. disseminate the requisite information in respect of insurance products offered for sale by his insurer and take into account the needs of the prospect while recommending a specific insurance plan;
- d. disclose the scales of commission in respect of the insurance product offered for sale, if asked by the prospect;

- e. indicate the premium to be charged by the insurer for the insurance product offered for sale;
- f. explain to the prospect the nature of information required in the proposal form by the insurer, and also the importance of disclosure of material information in the purchase of an insurance contract;
- g. bring to the notice of the insurer any adverse habits or income inconsistency of the prospect, in the form of a report (called “Insurance Agent’s Confidential Report”) along with every proposal submitted to the insurer, and any material fact that may adversely affect the underwriting decision of the insurer as regards acceptance of the proposal, by making all reasonable enquiries about the prospect;
- h. inform promptly the prospect about the acceptance or rejection of the proposal by the insurer;
- i. obtain the requisite documents at the time of filing the proposal form with the insurer; and other documents subsequently asked for by the insurer for completion of the proposal;
- j. render necessary assistance to the policyholders or claimants or beneficiaries in complying with the requirements for settlement of claims by the insurer;
- k. advise every individual policyholder to effect nomination or assignment or change of address or exercise of options, as the case may be, and offer necessary assistance in this behalf, wherever necessary.

However, No corporate agent/ corporate insurance executive/ specified person shall –

- 1. solicit or procure insurance business without holding a valid license/ certificate;
- 2. induce the prospect to omit any material information in the proposal form;
- 3. induce the prospect to submit wrong information in the proposal form or documents submitted to the insurer for acceptance of the proposal;
- 4. behave in a discourteous manner with the prospect;
- 5. interfere with any proposal introduced by any other specified person or any insurance intermediary;
- 6. offer different rates, advantages, terms and conditions other than those offered by his insurer;
- 7. demand or receive a share of proceeds from the beneficiary under an insurance contract;
- 8. force a policyholder to terminate the existing policy and to effect a new proposal from him within three years from the date of such termination;

9. apply for fresh license to act as an insurance agent, if his licence was earlier cancelled by the designated person, and a period of five years has not elapsed from the date of such cancellation;
10. become or remain a director of any insurance company;

No corporate agent shall have a portfolio of insurance business from one person or one organization or one group of organizations under which the premium is in excess of fifty percent of total premium procured in any year. Every corporate agent shall, with a view to conserve the insurance business already procured through him, make every attempt to ensure remittance of the premiums by the policyholders within the stipulated time, by giving notice to the policyholder orally and in writing. No director of a company or a partner of a firm or the chief executive or a corporate insurance executive or a specified person shall hold similar position with another corporate agent of any other insurance company (Regulation 9, IRDA (Licensing of Corporate Agents) Regulations, 2002)

7.11 INSURANCE ADVERTISEMENTS AND DISCLOSURE

The insurance company, duly licensed intermediary or authorized agent, may give wide publicity through print, audio/ visual – media to educate people by publicizing particulars of its products and services. Every such advertisement shall be in consonance with the standards of professional conduct as prescribed by the Advertisement Standards Council of India (ASCI) (R-12, The Insurance Regulatory and Development Authority (Insurance Advertisements and Disclosure) Regulations, 2000). The every such advertisement shall state unequivocally that the insurance is the subject matter of solicitation and disclose the identity of the advertiser along with full registered name of the insurance company/intermediary/agent. A copy of the advertisement, including any subsequent changes made, shall be filed with the Authority immediately after its release along with the following information –

- a) An identifying number for the advertisement;
- b) The form number(s) of the policy(ies) advertised and when the product/s were approved by the Authority;
- c) A description of the advertisement and how it is used; and
- d) The method or media used for dissemination of the advertisement.

The copy of the advertisement shall be retained at least for a period of three years. The advertisement leading a proposal for an insurance product shall carry following statutory warning –

“ no person shall allow or offer to allow, either directly or indirectly, as an inducement to any person to takeout or renew or continue an insurance in respect of any kind of risk relating to lives or property in India, any rebate of the whole or part of the commission payable or any rebate of the premium shown on the policy, nor shall any person taking out or renewing or continuing a policy accept any rebate, except such rebate as may be allowed in accordance with the published prospectus or tables of the insurer.”

Any disregard to comply the norms of advertisement will entail the Authority to initiate action asking the advertiser either to correct or modify the advertisement or to discontinue its publication forthwith. Further, the Authority may impose penalty to the advertiser for his failure in adhering to the directions of the Authority (R-3 to 13, The Insurance Regulatory and Development Authority (Insurance Advertisements and Disclosure) Regulations, 2000).

7.12 ROLE OF AN INSURANCE AGENT

An insurance agent represents the insurer with whom he or she is attached. He solicits or procures insurance business only for such insurer. The responsibilities of an insurance agent broadly include the following:

- a.** Perform Need analysis for the customer – The agent is expected to sell the products of the insurance company, which suit the needs of the customer. For this purpose he has to analyse the needs of the customer, such as Insurance protection for family, Asset protection needs, Children’s marriage or education needs, Health insurance, Pension etc. Depending on the needs and the stage of the life cycle of the customer, the appropriate product of the insurer which suits the customer is recommended.
- b.** Explain the product benefits, premiums, exclusions and other terms and conditions so that the customer can take an informed decision.
- c.** Assist the customer in getting the requisite documents for the purpose of seeking an insurance cover and clarify the doubts of the customer in the proposal form filling process.
- d.** Bring to the notice of the insurer any adverse habits of the customer which will have a bearing on the insurer’s decision to accept a risk.
- e.** Inform the customer about the decision of the insurer to issue a policy or otherwise.

f. Provide assistance to customer at various stages of policy servicing and when a claim is made.

Cancellation of licence/ certificate: The designated person may cancel a licence or a certificate of a corporate agent or a specified person, if such a corporate agent or the corporate insurance executive or the specified person suffers, at any time during the currency of the licence, from any of the disqualifications mentioned in sub-section (4) of section 42D of the Act and recover from him the licence or certificate granted to him(Regulation 11, IRDA (Licensing of Corporate Agents) Regulations, 2002)

Issue of duplicate licence: The Authority may on payment of a fee of rupees fifty issue a duplicate licence to replace a licence, which is lost, destroyed, or mutilated(Regulation 12, IRDA (Licensing of Corporate Agents) Regulations, 2002)

7.13 SUMMARY

The insurance agent is acting analogous to the insurance broker. However, the norms that are made applicable to the insurance agent is marginally different. Anyone including the corporate/cooperative institution may render service to the insurance industries as an insurance agent. However, before acting as such he is required to obtain a license from the insurer concerned. His duty is facilitate both the insurer and insured to avail the benefits of insurance. In the promotion of insurance business he may take the advantage of print and audio-visual media to publicize the activities of the insurer and of him subject to the norms set thereon. Any violation result in cancellation of his license.

7.14 KEY WORDS

1. Insurance Agents
2. Corporate Agents
3. License
4. Code of Conduct
5. Insurance Advertisements
6. Disclosure

7.15 SELF ASSESSMENT QUESTIONS

1. Who can become an insurance agent? What is the qualification one shall possess to become an insurance agent?

.....
.....
2. Who is empowered to grant the license? What is the procedure for granting the license?
Can the license once granted be cancelled?

.....
.....
3. Write note on -

- a. Code of Conduct of insurance agent
- b. Code of conduct of licensed corporate agent
- c. Insurance Advertisements and Disclosure

7.16 REFERENCES

1. Principles of insurance law: Life - fire - marine - motor and accident: M.N.Srinivasan.
2. Modern Law of Insurance: KSN Murthy and KVS Sarma.
3. Life insurance corporation of India : Impact of privatization and performance: Sumninder Kaur Bawa.
4. Commentaries on the public liabilities insurance act 1991: G.S Karkara.
5. Insurance law: A comprehensive treatise on law of insurance covering all risks except marine insurance: Brij Nandan Singh.
6. The Law of Insurance Contracts: A. Malcolm.
7. International encyclopaedia of laws: Insurance Law: R. Blanpain.
8. Insurance law manual with IRDA circulars and notifications: Taxmann.
9. Insurance law: Relating to all risks other than marine: E.J. Macgillivray.
10. Modern insurance law: John Birds and Norma J Hird.
11. Law Relating to Marine Insurance: Mitra, B.C.
12. Law of Insurance: Jaiswal J V N
13. General Principles of Insurance Law: Hardy Ivamy E R
14. Law Relating to Insurance: Vats R M
15. Insurance Regulatory and Development Authority Act, 1999
16. Insurance Act,1938

UNIT 8: WEB AGGREGATORS

STRUCTURE

8.0 Objectives

- 8.1 Introduction
- 8.2 Qualification of the Web Aggregator
- 8.3 Application seeking Grant of License
- 8.4 Capital
- 8.5 Duties and Functions of web Aggregators
- 8.6 Code of Conduct for Web Aggregator
- 8.7 Obligations of Insurers
- 8.8 Remuneration
- 8.9 Cancellation or suspension of license with notice
- 8.10 Cancellation or suspension of license without notice
- 8.11 Disclosures
- 8.12 Inspection
- 8.13 Settlement of dispute
- 8.14 Summary
- 8.15 Key Words
- 8.16 Self Assessment Questions
- 8.17 References

8.0 OBJECTIVES

On reading this unit the students will become familiar with the following –

1. Qualification of web aggregator
2. Functions of web aggregator
3. Code of conduct
4. Cancellation of license

8.1 INTRODUCTION

“Web Aggregator” is a person licensed by the Authority under these Regulations (Regulations 2 (n), IRDA (Web Aggregators) Regulations, 2013). The persons who intends to seek the grant of license to act as a “Designated Website” operator on behalf of the insurer shall be -

- 1) A company formed under the Companies Act, 1956 (1 of 1956); or
- 2) A limited liability partnership formed under the Limited Liability Partnership Act, 2008 (6 of 2009) with no partner being a non-resident entity/person resident outside India as defined in clause (w) of section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999) FEMA, and not being a foreign limited liability partnership registered there under;
or
- 3) Any other person recognized by the Authority to act as a Web Aggregator (Regulations 2 (i), IRDA (Web Aggregators) Regulations, 2013).

The position of Web Aggregator is coined and recognized with a view to facilitate the insurer to promote the insurance business through the electronic medium taking the advantage of advancement in the field of science and technology. Today, it is a necessity to tap the telemarketing to expand the area of business.

8.2 QUALIFICATION OF THE WEB AGGREGATOR

The person/applicant who wishes to seek the grant of License / Renewal of license of the web aggregator shall ensure the fulfilment of the conditions including but not limited to the following:

- 1) The applicant is a person as defined under regulation 2 (i).
- 2) The Memorandum of Association of the company or such other documents of applicants shall have the business of web aggregation of Insurance Products only as its main object.

- 3) The applicant is not engaged in any other business other than the main object (Web Aggregation of Insurance Products) of the applicant;
- 4) The applicant shall not be licensed / registered as an insurance agent, corporate agent, micro-insurance agent, TPA, surveyor, Loss assessor or any other Insurance Intermediary under the relevant Regulations framed by the Authority.
- 5) The applicant shall not have a referral arrangement with an Insurer.
- 6) The applicant shall not be a related party of an insurer, insurance broker, corporate agent, micro-insurance agent, TPA, Surveyor or a loss assessor or other insurance intermediary at any time.
- 7) The Principal Officer shall possess the qualification as specified in Schedule V.
- 8) The Principal Officer of the Web Aggregator should have undergone 50 hours of training initially and 25 hours of renewal training at the end of every three years thereafter.
- 9) The Principal Officer / Directors / Promoter(s) / Shareholders / Partners / Key Management Personnel should fulfil the conditions in the FIT and PROPER criteria notified by the authority from time to time.
- 10) The web aggregator should not have violated the obligations as specified in Schedule VI and the code of conduct as specified in Schedule VII to these regulations.
- 11) The Authority is of the opinion that the grant of license will be in the interest of policyholders (Regulations 3, IRDA (Web Aggregators) Regulations, 2013).

Fitness and Propriety Criteria: Apart from the above the applicant is required to satisfy the Authority that -

- a) The Principal Officer is a fit and proper person to be licensed;
- b) The CEO and the Directors are fit and proper persons to hold the office;
- c) All of its substantial shareholders/partners are fit and proper persons;
- d) All persons having effective control on the applicant are fit and proper persons to carry out the business (Regulations 3, Schedule IX, Annexure-IB, IRDA (Web Aggregators) Regulations, 2013).

8.3 APPLICATION SEEKING GRANT OF LICENSE

An applicant, seeking grant of License as Web Aggregator shall make an application to the Authority in the application Form-A along with the required documents. The application shall be accompanied by a non-refundable fee of rupees ten thousand paid by way of a bank draft drawn in favour of 'Insurance Regulatory and Development Authority' payable at Hyderabad. Applicants seeking permission for Outsourcing and Telemarketing

functions/facility shall mention the same specifically in the application Form. The applicant seeking grant of license as Web Aggregator shall fulfil all the eligibility conditions as specified and fulfil the same. The application for grant of license as Web Aggregator shall be dealt by the Authority as per the applicable provisions and under these Regulations. On the applicant fulfilment of all the eligibility criteria and requirements mentioned in these Regulations, the authority shall grant License to the applicant to function as a Web aggregator. A license once issued shall be valid for a period of three years from the date of its issue, unless the same is suspended or cancelled by the Authority. An application, which is not complete in all respects, shall be liable to be rejected. However, before rejecting any such application, the applicant shall be given an opportunity to complete such formalities within a period of thirty days from the date of receipt of communication from the Authority. The Authority may ask the applicant to furnish such further information or clarification as may be required by it. In case the requirements are not furnished /filed/submitted within 30 days of the letter from the authority, the application shall be deemed invalid and the applicant shall be required to file a fresh application (Regulations 4, Schedule I, III, IRDA (Web Aggregators) Regulations, 2013).

Application seeking Renewal of License: The Web Aggregators interested in continuing in the business shall apply with the Authority for renewal of the License at least THIRTY DAYS before expiry of the previous License. The application for renewal of license should be accompanied by a fee of rupees ten thousand paid by way of a bank draft in favour of 'Insurance Regulatory and Development Authority' payable at Hyderabad and containing such information as specified in Form A of Schedule I of these Regulations. Applicants seeking permission for Outsourcing and Telemarketing functions / facility shall mention the same specifically in the application Form.

However, if the application reaches the Authority later than the period mentioned above but before the actual expiry of the current license, an additional fee of rupees one hundred only shall be payable by the applicant to the Authority. Further, the Authority may for sufficient reasons offered in writing by the applicant for a delay not covered by the previous proviso, accept an application for renewal after the date of the expiry of the license up to a period of 60 days of the expiry of license on payment of an additional fee of seven hundred and fifty rupees only by the applicant. If the application for renewal received after 60 days of the expiry of the license will be considered, only after a lapse of 12 months from the date of submission of belated application. However, during the interregnum period, the license of the Web Aggregator ceases to exist and shall not solicit any new business or carry out any other

functions for which the License was granted. No Web Aggregator shall be allowed to carry out the functions of the Web Aggregator, after expiry of the license. A Web Aggregator, before seeking a renewal of license, shall ensure that their Principal Officer has received at least twenty-five hours of theoretical and practical training from an institution recognized by the Authority from time to time. The Authority will deal with the application for renewal of license as Web Aggregator. On being satisfied that the applicant fulfils all the conditions specified for renewal of a license, shall renew the license as per Schedule II, Form B for a period of three years and send intimation to that effect to the applicant. However, if it is found that the Web Aggregator is not doing any amount of business during the entire/part of the previous licensed period, the Authority may refuse to renew the license (Regulations 5, IRDA (Web Aggregators) Regulations, 2013).

Employees of the Web Aggregator: The employees of the Web Aggregator involved in insurance solicitation and verification should have completed the fifty hours of theoretical and practical training on insurance from an institution recognized by the Authority from time to time and passed an examination, at the end of the period of training mentioned above, conducted by the National Insurance Academy, Pune or any other examining body recognized by the Authority. Tele-callers deployed by Web Aggregators to solicit business should be employees on the rolls of the Web aggregator and should have undergone training as prescribed. Web Aggregators shall be responsible for all acts of commission and omission of the employees deployed on their behalf (Regulations 6, Schedule X, IRDA (Web Aggregators) Regulations, 2013).

Annual Fees: Every Web Aggregator shall pay annual license fees of Rs. 5,000/-. The annual license fee shall be paid within 15 days of the finalization of annual audited accounts of the Web Aggregator or 30th of September, whichever is earlier. The fees shall be payable by an Account Payee draft in favour of “The Insurance Regulatory and Development Authority” payable at Hyderabad (Regulations 7, IRDA (Web Aggregators) Regulations, 2013)

8.4 CAPITAL

The capital of the web aggregator shall be issued and subscribed in the form of Equity Shares where the web aggregator is a company registered under Companies Act, 1956. The web aggregator shall have a net worth not less than Rupees ten lakh at all times. The Web Aggregator shall submit to the Authority a net worth certificate duly certified by a Chartered

Accountant every year after finalisation of books of accounts. The aggregate holdings of equity shares or contribution of the Web Aggregator 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 Web Aggregator at any time. For the purposes of these regulations, the calculations of foreign direct investment shall be made in the same manner as prescribed (Regulations 8, IRDA (Web Aggregators) Regulations, 2013).

Professional indemnity insurance: Every Web Aggregator shall take out and maintain and continue to maintain a professional indemnity insurance cover throughout the validity of the period of the license granted to them by the Authority. The Professional Indemnity Policy shall be obtained from the Insurer licensed by the Authority. However, the Authority shall in suitable cases allow a newly licensed Web Aggregator to produce such a guarantee within six months from the date of issue of original license. The indemnity cover shall be on a yearly basis for the entire period of license. The insurance cover must indemnify the Web Aggregator against -

- a) any error or omission or negligence on his part or on the part of their employees and directors;
- b) any loss of money or other property for which the web aggregator is legally liable in consequence of any financial or fraudulent act or omission;
- c) any loss of documents and costs and expenses incurred in replacing or restoring such documents;
- d) Dishonest or fraudulent acts or omissions by Web Aggregators' employees or former employees.

The Indemnity cover of the policy shall be three times of the remuneration received during the previous financial year subject to a minimum of rupees ten lakhs(Regulations 9, IRDA (Web Aggregators) Regulations, 2013).

Procedure where License/renewal is not granted: The Authority may reject the application made by the applicant to the Authority seeking grant of License/renewal, if it does not satisfy the eligibility criteria or if the grant of such License is not found to be in public interest. The decision of the Authority along with the reasons to be recorded in writing shall be communicated to the applicant within a period of fourteen days from the date of the decision. In case of rejection of application for web aggregator, the applicant may appeal against the decision to Chairman of the Authority within thirty days from the date of the Authority's

letter communicating such rejection (Regulations10, IRDA (Web Aggregators) Regulations, 2013).

8.5 DUTIES AND FUNCTIONS OF WEB AGGREGATORS

The Web Aggregator shall -

- a) Display Information, as per Regulation 13, pertaining to the Insurers who have signed agreement with the Web Aggregators.
- b) Carryout the activities for the purpose of Lead Generation for insurers.
- c) Ensure that the information systems, (both hardware and software) including the aggregation website(s) / portals, Lead Management System and the Data Centers hosting the website(s) / Portal(s) / Lead Management System are in compliance with the generally accepted information security standards and procedures in force in India from time to time.
- d) Ensure that the leads and other data is transmitted to the insurers and others using secured layer data encryption technologies like 128 bit encryption.
- e) Use only RBI licensed payment gateways for collection and transfer of premium to insurers when the web aggregator is authorized by the insurer to collect the premium on behalf of the insurer.
- f) Ensure to get the information systems (both hardware and software) including the aggregation website(s) / portals, Lead Management System and the Data Centers hosting the website(s) / Portal(s) / Lead Management System Audited by CERT-In empanelled Information Security Auditing organisations once in a financial year and submit a copy of the Audit Certificate/Report to IRDA and the insurers with whom the web aggregator has entered into an agreement, within 15 days from the date of receipt of the same.
- g) Display License obtained from the Authority and details of validity of license on its web site;
- h) Prominently display the names of insurers with whom it has an agreement to refer leads in the Home page of the website; register as a Telemarketer, if he is desirous of carrying out Telemarketing or Distance marketing activity;
- i) maintain an effective lead management system and ensure that leads are recorded and monitored through the LMS System;
- j) maintain the records and the reports of its activities under the agreement with Insurer, in the manner specified in the agreement entered into between the Insurer and the web aggregator; along with its employees (whatever their designation may be) comply with

all the provisions of the Act, the IRDA Act, 1999, the rules and regulations framed there under and other directions issued by the Authority from time to time;

Web aggregator, its employees or promoters shall not accept any payment from Insurer other than the remuneration specified.

In the following situation the Web Aggregators shall not -

- 1) Display any information pertaining to products or services of other Financial institutions / FMCG or any product or service on the website.
- 2) Display advertising of any sort, either pertaining to any product or service including insurance product or service, other financial products or service / or any other product or service in the Web Aggregators Website.
- 3) Operate multiple websites or tie up with other approved/unapproved/unlicensed entities/websites for lead generation / comparison of product etc. **subject to the** following exceptions –
 - a) Using multiple Domain names or same domain names with suffixes such as .com or .in or .co. in for the primary website of the Web Aggregator used for comparison of insurance products is allowed provided
 - b) the domain names of primary or secondary or product category specific websites or mobile sites are owned and registered in the name of the Web Aggregator.

The Web Aggregator should inform the Authority in writing about the date of Registration and also date of launching of domain names of such websites or mobile sites in the application for grant of license and thereafter within 15 days from the date of Domain Name Registration and Date of launching respectively in case of any change in the name(s) of the existing websites or new websites. Operate the websites of other Financial / Commercial / marketing or sales or service entities or use other Social Media sites etc. for comparison of products etc. Operate in any other manner for the purpose of transmitting leads to any entity engaged in insurance business except as provided under these Regulations (Regulations 11, Schedule VI, IRDA (Web Aggregators) Regulations, 2013).

8.6 CODE OF CONDUCT FOR WEB AGGREGATOR

The Web aggregator is required to respect the following guidelines during the course of his business -

Conduct in matters relating to clients relationship: Every Web aggregator shall:

- 1) conduct its dealings with Prospects with utmost good faith and integrity at all times;

- 2) act with care and diligence;
- 3) treat all information supplied by the prospects as completely confidential to themselves and to the insurer(s) to whom the business is being offered;
- 4) take appropriate steps to maintain the security of confidential documents in their possession;
- 5) understand the type of Prospect it is dealing with and the extent of the Prospect's awareness of risk and insurance;
- 6) Avoid conflict of interest.

Conduct in relation to complaints handling: Every Web Aggregator shall -

- a) have in place a system for recording and monitoring complaints.
- b) ensure that the websites contains details of complaints handling procedures and provides a facility to the complainant to log complaints online;
- c) ensure that communication of customers in any form, written / phone / fax / email / Messaging etc are acknowledged promptly and in no case beyond five working days from the date of receipt of such complaint
- d) ensure that the grievance is resolved to the fullest satisfaction of the customer
- e) ensure that response letters are sent to the complainant on the resolution of the grievance, and the complainant is informed of the further redressal procedure available to him;
- f) ensure that complaints are dealt with at a suitably senior level.

Conduct in matters relating to advertising: Every Web Aggregator shall ensure that the designated website contains no advertisements or any information that is prohibited under regulation 11.

Conduct in matters relating receipt of remuneration: Every Web Aggregator shall, if requested by an insured, disclose the amount of remuneration or other remuneration it receives as a result of effecting insurance for that client.

Conduct in relation to matters relating to training: Every Web Aggregator shall -

- a) Ensure that its staff are aware of and adhere to the standards expected of them by this code;
- b) ensure that staff is competent, suitable and have been given adequate training;
- c) ensure that there is a system in place to monitor the quality of advice given by its staff;
- d) ensure that members of staff are aware of legal requirements including the law of agency affecting their activities; and only handle classes of business in which they are competent;

- e) draw the attention of the client to Section 41 of the Act, which prohibits rebating and sharing of commission.
- f) Every Web Aggregator shall display in every office where it is carrying on business and to which the public have access a notice to the effect that a copy of the code of conduct is available upon request and that if a member of the public wishes to make a complaint or requires the assistance of the Authority in resolving a dispute, he may write to the Authority.
- g) Every Web Aggregator shall furnish the quarterly returns in such format to the Authority within 15 days from the end of the quarter or within such time as allowed and specified by the authority from time to time (Regulations 15, Schedule VII, IRDA (Web Aggregators) Regulations, 2013).

8.7 OBLIGATIONS OF INSURERS

The insurer shall -

- a) not pay any fee or remuneration, by whatever name called, to web aggregators other than what is prescribed in section-15 of these Regulations. They shall also refrain from reimbursing expenses incurred by web aggregators towards maintenance of data base, infrastructure, training, entertainment, development, communication, advertisements, sales, promotion and towards any other expense.
- b) not pay any fee or remuneration, by whatever name called, on any type of renewal premium / policy payable from the second year and the subsequent years, to web aggregators.
- c) not pay any fee or remuneration, by whatever name called to any person/entity who owns/maintains a website not approved by the Authority under these Regulations that is engaged in web aggregation or product/price comparison.
- d) not make any payment, by whatever name called, in the form of advance to a web aggregator.
- e) not pay any remuneration after termination of agreement with web aggregator.
- f) not pay any remuneration after the lapse of validity of License given by the Authority to the web aggregator.
- g) obtain and maintain records of leads / data obtained from each web aggregator through the lead management System of the web aggregator, the details of the policies sold out of the leads / data thus obtained and the information regarding the payments made.

- h) submit to the Authority, the records referred to in different sections of these Regulations and the reports, if any, of its activities as relevant for the purpose of these Regulations, whenever called upon to do so.
- i) share product information and premium rates with web aggregators within the time frame as specified in the agreement, and the information so shared shall match with the product approved by the Authority(Regulations 15, Schedule VIII, IRDA (Web Aggregators) Regulations, 2013).

Nomenclature of Web Aggregators: All Web Aggregators shall have the word 'Insurance Web Aggregator' or 'Insurance Web Aggregators' in the name of the Insurance Broking Company to reflect its line of activity and to enable the public to differentiate IRDA licensed insurance Web Aggregator from other non-licensed insurance related entities. The application of the new applicant companies making an application to seek the license to act as web aggregator shall not be considered in the absence of the compliance of the nomenclature requirement. Every licensed insurance Web Aggregator shall display in all its correspondences with all stakeholders its name registered with the Authority, address of the Registered and Corporate Office, IRDA license number and validity period of the license. Insurance web aggregators are not permitted to use any other name in their correspondence/literature/letter heads without the prior approval of the Authority(Regulations 11, IRDA (Web Aggregators) Regulations, 2013).

Agreement of Insurer with a Web Aggregator: An Insurer desirous of obtaining leads from web aggregator shall enter into an "agreement" with the web aggregator approved by the Authority which shall necessarily include details relating to, though not limited to, the following:

- a) Time-frame and mode of transmission of leads to be shared.
- b) Onus of complying with regulatory and other legal requirements on both the parties to the agreement.
- c) Identifying the different data elements to be shared (viz., name of prospect / client (visitor of the web site), contact details etc).
- d) The timeframe for providing the premium and feature tables of the agreed products to the Web Aggregator after concluding the agreement and keeping them up to date.

The agreement between an insurer and web aggregator shall be valid for a period of three years from its date, subject to the validity of license of web aggregator. The web aggregator shall file the agreement with the Authority within fifteen days from the date of entering the agreement(Regulations 12, IRDA (Web Aggregators) Regulations, 2013).

Display of product comparisons on the web site: Web aggregators shall disclose prominently on the home page, a notice stating that -

- a) the Prospect's / visitor's particulars could be shared with insurers.
- b) "Insurance is the subject matter of solicitation".
- c) "the information displayed on this website is of the insurers with whom our company has an agreement"

Product information displayed by web aggregators shall be authentic and be based solely on information received from insurers. Web aggregators shall not display ratings, rankings, endorsements or bestsellers of insurance products on their website. The content of the websites of the web aggregators shall be unbiased and factual in nature; they shall desist from commenting on insurers or their products in their editorials or at any other location in their websites. Products will be categorized as -

- 1) Life: Whole Life Policies; Term Insurance Products; Endowment Products; Health Insurance products; Retirement – Immediate annuities; Retirement – Deferred annuities; Children's products;
- 2) Non Life: Home Insurance; Motor Insurance; Health Insurance; Travel Insurance; Personal Accident Insurance; Rural Insurance

Products under a category as mentioned above can be compared. Basic features of products may be compared, such as:

- 1) Eligibility criteria
- 2) Plan / Policy Term / Premium term / Min and Max SA / Age / Min & Max Maturity etc.
- 3) Inbuilt Benefits / riders (Additional Riders to be compared separately)
- 4) Premiums for different age groups
- 5) Surrender benefits / Loans etc
- 6) Benefits such as Survival benefits / Maturity Benefits / Death benefits etc.
- 7) Returns as per the Benefit Illustrations as approved by IRDA from time to time
- 8) Any other additional information / special product features relating to the products

Templates can be mutually worked out between the Web Aggregators and Insurers whose products are compared. Product comparisons that are displayed shall be up to date and reflect a true picture of the products. Web aggregators shall display product information purely on the basis of the information furnished to them by insurers. Web Aggregators can use published data for "Additional Information to Customers" based on IRDA Data. Web Aggregators can integrate their websites with the insurer's website for – (i) ONLINE Sale (ii) Registration of Customer data or Proposal Form. The categories of products stated above may

be specified from time to time by IRDA (Regulations 13, IRDA (Web Aggregators) Regulations, 2013).

Transmission of leads to be shared: Web Aggregator shall use a Lead Management Systems (LMS) capable of recording the full details of the visitors to the designated website of the Web Aggregator and the Leads generated including the preference of the visitor. LMS data should be shared with the Insurance companies that have signed agreements with the Web Aggregators. LMS should ensure Transparency and Accountability. Web aggregators shall disclose prominently on the home page that the Prospect's / visitor's particulars could be shared with insurers. Web Aggregator should provide an option to select up to three insurers by the visitor, to whom the lead can be transmitted simultaneously. Web aggregator shall not transmit the data of a Prospect to Insurer(s) other than the one(s) preferred by the Prospect. Provided that, if the Prospect evinces interest in buying insurance but does not prefer any Insurer, web aggregator shall not transmit the lead to more than three Insurers in the same class of insurance business. Web aggregator shall transmit the data of Prospects to Insurer -

- Not later than three days of visit to the web site.
- Reasonably securing the information of Prospects from unauthorized access and misuse;
- With a reasonable level of suitability, reliability and correctness, and;
- In compliance with generally accepted I.T. security procedures

Web Aggregators should deploy an Audit Firm to audit the process of LMS systems at least once in 12 months. The Audit Report of the Audit Firm should be submitted to IRDA and to the Insurers who have signed contract with the Web aggregators within 15 days from the date of receipt of the report. Insurers, on conversion of lead into to a policy, must post back the policy details on the LMS of the Web Aggregator from whom the lead was received. The time limit for tracking the leads received on LMS of Web Aggregator by the insurer for passing on the credit of the sale, is to be mutually decided by the insurer and web aggregator which shall be specified in the agreement entered into (Regulations 14, IRDA (Web Aggregators) Regulations, 2013).

8.8 REMUNERATION

Remuneration in any form shall be payable to web aggregators by insurers in compliance with the following provisions:

- 1) Web aggregator will put in place a robust LMS and transmit leads to the insurers as outlined in Regulation 14 above. No charges should be paid for such leads by the Insurer.

- 2) A flat fee of not exceeding Fifty thousand per year towards each product displayed by the web aggregator in the comparison charts of its web site.
- 3) Web Aggregator can undertake Outsourcing functions to provide 'Insurance Services' as per **Schedule IX** of these regulations in respect of policies procured through them. In such instances; the insurer may pay the web aggregators, reasonable service charges at rates fixed in the service agreements with the web aggregators.
- 4) Web Aggregator can use the Telemarketing / Distance Marketing modes, as per the instructions outlined in Schedule X of these Regulations, for solicitation of Insurance based on the leads generated from its aggregation website. The Remuneration paid by the Insurer towards a policy procured through such services of the Web Aggregator, including the remuneration paid towards procuring such a policy to any other insurance intermediary deployed by the insurer, shall not exceed the limits prescribed by the Authority from time to time in terms of the Sec. 42-E of the Insurance Act, 1938. (Regulations 15, IRDA (Web Aggregators) Regulations, 2013).

Conduct of business by the Web aggregator. The Web aggregator shall conduct the business in a fair manner and shall abide by -

- a) The Obligations of the Web Aggregators as outlined in Schedule VI
- b) The Code of conduct of the Web Aggregators as outlined in Schedule VII. (Regulations 16, Schedule VI & VII, IRDA (Web Aggregators) Regulations, 2013).

8.9 CANCELLATION OR SUSPENSION OF LICENSE WITH NOTICE

The license of a Web Aggregator may be cancelled or suspended after due notice and after giving him a reasonable opportunity of being heard if he -

- a) violates the provisions of the Insurance Act, 1938 (4 of 1938), Insurance Regulatory And Development Authority Act, 1999 (41 of 1999) or rules or regulations, made there under;
- b) fails to act in accordance with the Obligations of the Web Aggregators as specified in Schedule VI and in conducting telemarketing and distance marketing activities as specified in Schedule X of these Regulations;
- c) fails to adhere to the Code of Conduct specified in Schedule VII of these Regulations;
- d) furnishes wrong or false information for obtaining a license; or conceals or fails to disclose material facts in the application submitted for obtaining a license;

- e) fails to furnish any information relating to his activities as an insurance Web Aggregator as required by the Authority or furnishes wrong or false information or conceals or fails to disclose material facts to the Authority during the validity of license;
- f) does not submit periodical returns as required by the Authority;
- g) does not co-operate with any inspection or enquiry conducted by the Authority;
- h) fails to resolve the complaints of the policy holders or fails to give a satisfactory reply to the Authority in this behalf;
- i) indulges in rebates or inducements in cash or kind to a Prospect or any of the Prospect's directors or other employees or any person acting as an introducer;
- j) fails to pay the fees required under Regulation 7 of these Regulations;
- k) fails to maintain the capital requirements in accordance with the provisions of Regulation 8 of these regulations;
- l) if the principal officer does fulfil the conditions mentioned in the regulation;
- m) If the Web Aggregator indulges in sourcing of business by themselves or through call centres by way of misleading calls or spurious calls;

In the above circumstances if the Authority feels that the establishment of a Web Aggregator is only to divert funds within a group of companies or their associates, it can after due enquiries made by it cancel the license granted to the Web Aggregator. A Web Aggregator whose license is suspended after due notice and after giving him a reasonable opportunity of being heard, shall not solicit any new business or carry out any other functions of web aggregator for which the License was granted, from the date of receipt of such Suspension Order till such time the suspension is revoked. If it is established on the examination of the facts, figures, circumstances and other substantial documentary evidence that the provisions of regulations are violated/breached by the Web Aggregator and the Authority in the interest of policyholders may consider imposing financial penalty instead of cancellation/suspension of license of the Web Aggregator for such violations/breaches (Regulations 17, IRDA (Web Aggregators) Regulations, 2013).

8.10 CANCELLATION OR SUSPENSION OF LICENSE WITHOUT NOTICE

The license of an Web Aggregator may be cancelled or suspended without notice, if it -

- is found guilty of fraud, or is convicted of a criminal offence;
- commits such defaults, which require immediate action in the opinion of the Authority, provided that the Authority has communicated the reasons for the cancellation in writing;

- has not commenced business within six months of being granted a license.
- in case the license of a Web Aggregator is suspended without notice, such license shall not be cancelled unless an enquiry has been held in accordance with the procedure specified in these Regulations.

The Web Aggregator whose license is suspended without notice shall not solicit any new business or carry out any other functions of Web Aggregator for which the License was granted, from the date of receipt of such Suspension Order till such time the suspension is revoked(Regulations 18, IRDA (Web Aggregators) Regulations, 2013).

Manner of holding enquiry before suspension or cancellation: The Authority may appoint an enquiry officer to hold an enquiry into the affairs of the Web Aggregator. The enquiry officer shall issue to the Web Aggregator a notice at the registered office or the principal place of business of the Web Aggregator, as the case may be, calling for such information as he considers necessary for the conduct of an enquiry. The Web Aggregator may, within fifteen days from the date of receipt of such a notice, furnish to the enquiry officer a reply together with copies of documentary or other evidence relied on by him or sought by the enquiry officer. The enquiry officer shall, give a reasonable opportunity of hearing to the Web Aggregator to enable him to make submissions in support of his reply made. The Web Aggregator may either appear in person or through any person duly authorized by him to present its case. If it is considered necessary, the enquiry officer may require the Authority to present its case through one of its officers. If it is considered necessary, the enquiry officer may call for feedback / information from the insurer or any other related entity during the course of enquiry. The enquiry officer shall, after taking into account all relevant facts and submissions made by the Web Aggregator, submit a report to the Authority within 30 days of the completion of the enquiry proceedings(Regulations 19, IRDA (Web Aggregators) Regulations, 2013).

Procedure to apply afresh to the Authority, in case where the Authority has cancelled or refused the renewal of license: The Web Aggregator can apply afresh for license as Web Aggregator in cases where there was a cancellation of License and / or rejection of renewal of license only after a period of twelve months from date of such decision from the Authority. Further, in case the Authority's decision is upheld in any litigation, the application shall be considered after 12 months from the date of the final judgment of the court. Application for Web Aggregator license applied afresh by the company whose license was cancelled (or

renewal rejected) either due to surrender or disciplinary action shall be accepted on successful completion of due diligence process involving one or more of the following -

- a) Gravity of previous regulatory violations.
- b) LMS model and existing infrastructure setup of Web Aggregator.
- c) Persistency of business over the years.
- d) Complaints registered against Web Aggregator through various insurance companies / customers.
- e) Due diligence and track record of existing business.
- f) Other information received with the application prescribed for the said purpose.
- g) any other matter which may be specified from time to time by an order or guideline issued by the Authority

The Authority will appoint a committee to examine the application and based on the recommendation of the said committee, the decision to cancel a renewal/license would be taken(Regulations 20, IRDA (Web Aggregators) Regulations, 2013).

Transfer of ownership: The Web Aggregator shall not register any transfer of shares or contribution, as the case may be, without the prior written approval of the Authority where after the transfer the total paid up equity holding or contribution of the transferee is likely to exceed five per cent of their paid up capital or contribution. The Shares of a Web Aggregator held as capital as per provisions of this section cannot be pledged in any form or manner to secure credit or any other facility and at all times should be an unencumbered capital. Similarly, where the nominal of the value of shares intended to be transferred by any individual, firm, group, constituents of a group or a body corporate under the same management jointly or severally exceeds five per cent of the paid-up capital or the contribution, prior written approval of the Authority shall be obtained. The beneficial ownership and control of the shares or contribution shall totally and completely rest with the entity / individual approved by the Authority.

Maintenance of books of account, records, etc: Every Web Aggregator shall maintain books of accounts and submit duly audited returns to the Authority within ninety days from the close of the accounting year along with the remarks or observations of the auditors, if any, on the conduct of the business, state of accounts, etc., and a suitable explanation on such observations shall be appended to such accounts filed with the Authority. Every Web Aggregator shall, within ninety days from the date of the Auditor's report take steps to rectify any deficiencies, made out in the auditor's report and inform the Authority accordingly. All the books of account, statements, document, etc., shall be maintained at the head office of the

Web Aggregator or such other branch office as may be designated by them and notified to the Authority, and shall be available on all working days to such officers of the Authority, authorised in this behalf by it for an inspection. All the Electronic Records, books and documents, statements, contract notes etc., referred to in these Regulations and maintained by the Web Aggregator shall be retained for a period of at least ten years from the end of the year to which they relate. However the Digital Records / documents pertaining to the cases of legal disputes reported and the disposal of the same is pending for a decision from courts the Records are required to be maintained till the disposal of the cases by the court. Every Web Aggregator shall maintain the Insurer wise records of -

- 1) Leads generated and transmitted
- 2) Leads converted into policies
- 3) complaints received and disposed
- 4) Products Displayed on the website for comparison
- 5) Remuneration received for Products displayed
- 6) Remuneration received for leads converted to policies
- 7) Remuneration received from outsourcing activities
- 8) Any other Remuneration received from Insurers (mention details) (Regulations 22, IRDA (Web Aggregators) Regulations, 2013).

8.11 DISCLOSURES

A Web Aggregator shall disclose to the Authority, as and when required by it, in any event not later than thirty days of a requisition, the following information, namely -

- any change in the information or particulars previously furnished, which have a bearing on the license granted to it;
- the names of the clients whose insurance portfolio he manages or has managed;
- Any other Information / requirement specified by the Authority from time to time.
- A Web Aggregator shall disclose to the Authority on his own any material change in the composition of the Web Aggregator within 30 days of such change.

A Web Aggregator shall take the prior approval of the Authority for the following -

- a) Change of Principal Officer;
- b) Change in Director/s or Designated Partner/s as the case may be;
- c) Change in name of the company;
- d) Change of address of registered office / Corporate Office;

- e) Engaging the services of service providers or third party vendors for the core activities of the Web Aggregator such as but not limited to - Lead Management System; Webhosting; Other core activities;
- f) Change of location of the Servers hosting the comparison website(s)

A Web Aggregator shall furnish to the Authority the following information -

- Opening/closing of branch offices ;
- list of qualified persons to solicit insurance business through Telemarketing/Distance marketing modes;
- in respect of a claim under the professional indemnity policy;
- acquiring of any property;
- Any other information as called for by the authority from time to time (Regulations 23, IRDA (Web Aggregators) Regulations, 2013).

Action against the web aggregator: The Authority may cancel the License granted to a web aggregator or take any other action as deemed appropriate under the Act, in case the web aggregator fails to exercise due diligence or comply with any of the obligations under these Regulations or act contrary to the provisions of the Act, Insurance Regulatory and Development Authority Act, 1999, the rules and regulations framed there under and such other directions as issued by the Authority from time to time. However, no such action shall be initiated by the Authority and order passed thereafter without giving an opportunity of hearing to the web aggregator(Regulations 24, IRDA (Web Aggregators) Regulations, 2013).

Penal Provision: In case a licensed Web Aggregator violates any of the provisions of Insurance Act, 1939, IRDA Act, 1999 and Rules and Regulations made there under, any circular/guidelines/orders issued by the Authority from time to time, the Authority may impose appropriate penalty depending on the nature/gravity of violation (Regulations 25, IRDA (Web Aggregators) Regulations, 2013).

Action against the Insurer: An insurer shall be liable for action by the Authority as provided under the provisions of the Act, the Insurance Regulatory and Development Act, 1999 (41 of 1999) and the relevant Regulations made there under, if -

- a) An Insurer fails to comply with the Obligations of insurers as outlined in Schedule VIII of these Regulations; or
- b) An Insurer fails to furnish any information or furnishes wrong information to the Authority relating to the agreement and transactions with web aggregator, or;

c) An Insurer fails to comply with these Regulations and such other directions issued by the Authority from time to time:

However, no such action shall be initiated by the Authority and order passed thereafter without giving an opportunity of hearing to the Insurer(Regulations 26, IRDA (Web Aggregators) Regulations, 2013).

8.12 INSPECTION

The Authority may appoint one or more of its officers or a qualified chartered accountants or Information Technology officials as inspecting authority to undertake inspection of the premises of the web aggregator to ascertain and see how activities are carried on, and also to inspect the books of account, records, and documents of the web aggregator to -

- ensure that the provisions of the Act, rules and regulations are being complied with.
- ensure that the Lead management system is managed as per the provisions of these Regulations.
- investigate the affairs of the web aggregator *suo moto* in the interest of proper development of insurance business or in policyholders' interest (Regulations 27, IRDA (Web Aggregators) Regulations, 2013).

Action against a person acting as a Web Aggregator without a valid license: No person can function as a Web Aggregator unless a license has been granted to him by the Authority under these Regulations. In the absence of which it can initiate criminal proceedings against such person(Regulations 29, IRDA (Web Aggregators) Regulations, 2013).

Certification of Compliance: The Principal Officer of each Web Aggregator shall submit to the Authority, at the end of each financial year, a certificate confirming that the Web Aggregator has complied with all the provisions of these Regulations during the financial year (Regulations 30, IRDA (Web Aggregators) Regulations, 2013).

8.13 SETTLEMENT OF DISPUTE

Any disputes arising between an Web Aggregator and an insurer may be referred to the Authority by the person so affected; and on receipt of the complaint or representation, the Authority may examine the complaint and if found necessary proceed to conduct an enquiry or an inspection or an investigation in terms of these Regulations. In case the license of a Web Aggregator has been cancelled or an applicant's application has been rejected, the Web Aggregator or the applicant is allowed to reapply after one year from the date of Authority's

order/court order whichever is later. The Authority may consider the application afresh on merits (Regulations 32, IRDA (Web Aggregators) Regulations, 2013).

8.14 SUMMARY

Web Aggregators is one of the intermediaries. He acts as such only after obtaining license from the insurer. He takes care of website and telemarketing. He is required to discharge his function as detailed in the Regulation 2013. Failing which license will be cancelled with or without notice. The Authority is empowered to settle the dispute between the Web Aggregator and an insurer.

8.15 KEY WORDS

1. Web Aggregator
2. Code of Conduct
3. License
4. Disclosures
5. Inspection
6. Settlement of dispute

8.16 SELF ASSESSMENT QUESTIONS

1. “Web Aggregator is an effective intermediary in the promotion of insurance business” elucidate.
.....
.....
2. Analyse the code of conduct prescribed to the Web Aggregator.
.....
.....
3. Write note on –
 - a. Obligations of Insurers
 - b. Inspection
 - c. Settlement of dispute

8.17 REFERENCES

1. Principles of insurance law: Life - fire - marine - motor and accident: M.N.Srinivasan.
2. Modern Law of Insurance: KSN Murthy and KVS Sarma.

3. Life insurance corporation of India : Impact of privatization and performance: Sumninder Kaur Bawa.
4. Commentaries on the public liabilities insurance act 1991: G.S Karkara.
5. Insurance law: A comprehensive treatise on law of insurance covering all risks except marine insurance: Brij Nandan Singh.
6. The Law of Insurance Contracts: A. Malcolm.
7. International encyclopaedia of laws: Insurance Law: R. Blanpain.
8. Insurance law manual with IRDA circulars and notifications: Taxmann.
9. Insurance law: Relating to all risks other than marine: E.J. Macgillivray.
10. Modern insurance law: John Birds and Norma J Hird.
11. Law Relating to Marine Insurance: Mitra, B.C.
12. Law of Insurance: Jaiswal J V N
13. General Principles of Insurance Law: Hardy Ivamy E R
14. Law Relating to Insurance: Vats R M
15. Insurance Regulatory and Development Authority Act, 1999
16. Insurance Act,1938

UNIT 9: LIAISONING AGENCIES

STRUCTURE

- 9.0 Objectives
- 9.1 Introduction
- 9.2 Appointed Actuary
- 9.3 Powers of ‘Appointed Actuary’
- 9.4 Duties and obligations of ‘Appointed Actuary’
- 9.5 Surveyor and Loss Assessor
- 9.6 Licensing of surveyors and loss assessors
- 9.7 Cancellation of License
- 9.8 Requirement for issue of a license for Insurance Surveyors and Loss Assessors
- 9.9 Role of Surveyor or Loss assessor
- 9.10 Third Party Administrator – Health
- 9.11 Requirement for becoming a TPA
- 9.12 Agreement between a TPA and an insurance company
- 9.13 Reinsurance
- 9.14 Re-insurance with Indian reinsurers
- 9.15 Life Insurance-Reinsurance
- 9.16 General Insurance – Reinsurance
- 9.17 Functions of a re-insurance broker
- 9.18 Summary
- 9.19 Key Words
- 9.20 Self Assessment Questions
- 9.21 References

9.0 OBJECTIVES

On reading this unit the students would be in a position to comprehend the following –

1. Appointed Actuary
2. surveyors and loss assessors
3. Third Party Administrator
4. Reinsurance

9.1 INTRODUCTION

The insurer cannot float his insurance business independently. He has to rely on some intermediaries like Appointed Actuary, Appointed Actuary, surveyors and loss assessors, Third Party Administrator etc. The IRDA has come with a separate Regulation prescribing the modus operandi of these intermediaries. They are remained only as a supporting agency in the promotion of insurance business. However, before acting in such capacity they are required to obtain a license. An effort is made, in this unit, to outline the provisions connected thereon. Apart from these, provisions relating to reinsurance have also been dealt with. The object of reinsurance is of twofold i.e. to save the insurers and to safeguard the interest of the insured.

9.2 APPOINTED ACTUARY

The insurer shall employ an ‘appointed actuary’, only after obtaining approval from the Authority, to meet the requirements of the statute. The person to be designated as an ‘appointed actuary’ shall be -

- a) Ordinarily resident in India;
- b) A Fellow Member of the Actuarial Society of India;
- c) An employee of the life insurer, in case of life insurance business;
- d) An employee of the insurer or a consulting actuary, in case of general insurance business;
- e) A person who has not committed any breach of professional conduct;
- f) A person against whom no disciplinary action by the Actuarial Society of India or any other actuarial professional body is pending;
- g) Not an appointed actuary of another insurer;
- h) A person who possesses a Certificate of Practice issued by the Actuarial Society of India; and
- i) Not over the age of seventy years.

9.3 POWERS OF ‘APPOINTED ACTUARY’

The powers of the ‘Appointed Actuary’ is to –

- 1) have access to all information or documents in possession, or under control, of the insurer;
- 2) seek any information from any officer or employee of the insurer;
- 3) attend all meetings of the management including the directors of the insurer, the shareholders or the policyholders of the insurer and any other meeting of members of the insurer at which the insurer's annual accounts or financial statements are to be considered or at which any matter in connection with the appointed actuary's duties is discussed;
- 4) speak and discuss on any matter, at such meeting, –
 - a) that relates to the actuarial advice given to the directors;
 - b) that may affect the solvency of the insurer;
 - c) that may affect the ability of the insurer to meet the reasonable expectations of policyholders;
 - d) on which actuarial advice is necessary;

9.4 DUTIES AND OBLIGATIONS OF ‘APPOINTED ACTUARY’

The Duties and obligations of ‘Appointed Actuary’ are –

- a) protection of interests of the insurance industry and the policyholders;
- b) rendering actuarial advice to the management of the insurer, in particular in the areas of product design and pricing, insurance contract wording, investments and reinsurance;
- c) ensuring the solvency of the insurer at all times;
- d) certification of the assets and liabilities of the insurer;
- e) maintenance of required solvency margin;
- f) advising the management of the insurer to avoid any step which are, in his opinion, in contravention of the Act or prejudice to the interests of policyholders;
- g) complying with the Authority's directions from time to time;
- h) in the case of the insurer carrying on life insurance business –
 - 1) to certify the actuarial report and abstract and other returns;

- 2) to comply with the provisions of section 21 of the Act in regard to further information required by the Authority; to comply with the provisions of section 40-B of the Act in regard to the bases of premium;
 - 3) to comply with the provisions of the section 112 of the Act in regard to recommendation of interim bonus or bonuses payable by life insurer to policyholders whose policies mature for payment by reason of death or otherwise during the inter-valuation period;
 - 4) to ensure that all the requisite records have been made available to him or her for the purpose of conducting actuarial valuation of liabilities and assets of the insurer; to ensure that the premium rates of the insurance products are fair;
 - 5) to certify that the mathematical reserves have been determined taking into account the guidance notes issued by the Actuarial Society of India and any directions given by the Authority;
 - 6) to ensure that the policyholders' reasonable expectations have been considered in the matter of valuation of liabilities and distribution of surplus to the participating policyholders who are entitled for a share of surplus;
 - 7) to submit the actuarial advice in the interests of the insurance industry and the policyholders;
- i) in the case of the insurer carrying on general insurance business to ensure - that the rates are fair in respect of those contracts that are governed by the insurer's in-house tariff; that the actuarial principles, in the determination of liabilities, have been used in the calculation of reserves for incurred but not reported claims (IBNR) and other reserves where actuarial advice is sought by the Authority;
- j) informing the Authority in writing of his or her opinion, within a reasonable time, whether –
- 1) The insurer has contravened the Act or any other Acts;
 - 2) The contravention is of such a nature that it may affect significantly the interests of the owners or beneficiaries of policies issued by the insurer;
 - 3) The directors of the insurer have failed to take such action as is reasonably necessary to enable him to exercise his or her duties and obligations under this regulation; or
 - 4) An officer or employee of the insurer has engaged in conduct calculated to prevent him or her exercising his or her duties and obligations under this regulation.

9.5 SURVEYOR AND LOSS ASSESSOR

A Surveyor or a Loss Assessor is relevant for general insurance business, where assessment of the loss of the subject matter insured is very important for deciding the claim amount. As general insurance contracts are indemnity contracts in nature, the amount paid by the insurance company cannot exceed the amount of actual loss incurred. The job of the Surveyor or a Loss Assessor is therefore to arrive at the exact amount of loss incurred and his role is critical to a general insurer.

Every person who is a student-member of the Institutes of Surveyors and Loss Assessors intending to act as a Surveyor or Loss Assessor is required to be licensed by IRDA before he starts performing his functions for any general insurer. A license issued for a Surveyor or a Loss Assessor shall be valid for a period of 5 years after which it is required to be renewed. A Surveyor and Loss Assessor shall be categorized into 3 categories, The three categories are Licentiate, Associate ship and Fellowship which is awarded by the Institute of Surveyors and Loss Assessors. The nature of surveyor or loss assessment work which can be undertaken would depend upon the categorization. Further IRDA shall also allot the department or the area work for the Surveyor and Loss Assessor from time to time.

9.6 LICENSING OF SURVEYORS AND LOSS ASSESSORS

Any person who intends to act as a surveyor or loss assessor in respect of general insurance business shall make an application to the Authority in a prescribed form and hold a valid license issued by the Authority. The license so granted will remain valid, unless it is cancelled, for a period of five years from the date on which it is granted. The license once granted may be renewed for a further period of five years at a time, on payment of prescribed fee. The application for the renewal of the license shall be made at least thirty days before the expiry of the period of validity. However, no such license shall be issued to the applicant, where he is an individual, unless he satisfies the Authority that he -

- 1) 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
- 2) holds a degree of a recognized University in any branch of engineering, or
- 3) is a fellow or associate member of the Institute of Chartered Accountants of India or the Institute of cost and Works Accountants of India, or
- 4) Possesses actuarial qualifications or holds a degree or diploma of any recognized University or institute in relation to insurance, or

- 5) holds a diploma in insurance granted or recognized by the Government, or
- 6) possesses such other technical qualifications as may be specified by the regulations made by the Authority, and
- 7) does not suffer from any of the disqualifications mentioned in sub section (4) of Section 42;

The Authority may grant license to such applicant who is a company or firm and satisfies the Authority that all his directors or partners, as the case may be, possess one or more of the qualifications afore mentioned and none of such directors or partners suffer from any of the disqualifications mentioned in sub section (4) of Section 42.

The Authority may issue a duplicate license, on payment of fee prescribed, only when it is satisfied that the license issued or renewed has been lost or destroyed. The duplicate license so issued shall remain in force for the remainder of the period of a validity of the license in lieu of which it is issued.

9.7 CANCELLATION OF LICENSE

The Authority may cancel the license, after giving a reasonable opportunity of being heard and making an order in writing, when it is satisfied that the holder -

- a) Has made a statement which is false in material particulars with regard to his eligibility for obtaining such license; or
- b) Has, after the issue or renewal of such license, acquired any of the disqualifications afore mentioned; or
- c) Fails to 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; or
- d) Has been guilty of willfully making a false statement knowing it to be false or of being knowingly a party to the settlement of a claim in a fraudulent manner.

On the cancellation of license the surveyor or loss assessor is not eligible to act as a surveyor or loss assessor for a period of three years from the date on which the cancellation as is notified in the official Gazette(Sec.64UM, Act, 1938).

9.8 REQUIREMENT FOR ISSUE OF A LICENSE FOR INSURANCE SURVEYORS AND LOSS ASSESSORS

Regulation 3 of the Insurance Surveyors and Loss Assessors (Licensing, Professional and Code of conduct) Regulations, 2000 specifies the requirements for issue of a license:

(a) He holds a degree in any branch of engineering (or) Post graduate diploma in general insurance issued by Institute of Insurance and Risk Management (or) a Degree in Agriculture (or)

(b) He is a member of the Institute of Chartered Accountants of India or the Institute of Cost and Works Accountants of India (or)

(c) He possesses actuarial qualifications or holds a degree or diploma of any recognized university or an institute in relation to insurance (or)

(d) He holds a diploma in insurance granted or recognized by the Government (or)

(e) He holds such other technical qualifications as prescribed by IRDA (and)

(f) He does not suffer from any of the disqualifications mentioned in section 42(4) Where the entity is a company or a firm, all the directors or partners shall possess one of the qualifications as prescribed above and none of the directors or partners suffer from any of the disqualifications mentioned as above (and)

(g) Payment of fees based on the categorization of the applicant (and)

(h) Has undergone practical training as a Student-member under a licensed Surveyor and Loss Assessor (who shall be a Fellow or Associate member of the Institute) for a period of 12 months as contained in Chapter VII (persons who have more than 15 years experience in risk management and general insurance are exempt from this training) (and)

(i) Has passed the Surveyor examination conducted by the Insurance Institute of India or such other institute recognized by IRDA (and)

(j) Has undergone the special training provided by the Indian Institute of Surveyors and Loss Assessors for 100 hours for Fellowship, 50 hours for Associate and 25 hours for Licentiate level

(and)

(k) He attends seminars and workshops organized by the Institute for a minimum number of seminars, viz., 10 seminars for fellowship, 8 for Associateship and 5 for Fellowship level Where the applicant is a company or firm, all the directors or partners, as the case may be, shall possess

one or more of the qualifications specified above and does not suffer from any of the disqualifications mentioned in Section 42D(4) of the Insurance Act, 1938. At least 2 Directors or partners shall be members of the institute and shall hold the license to act as a surveyor and loss assessor. The level of membership or the department to which the directors or partners belong to shall become the level of membership or the department for the company or firm. Employees of the company of the firm, who are licensed as surveyor and loss assessor shall undertake survey only in those areas allotted to them based on the level of membership and the department to which they are eligible as per their individual license. However this eligibility is subject to the level of membership or the department of the company or the firm (which is dependent on the directors/partners eligibility as above). The following are the further conditions prescribed:

- (a) Foreign equity in the Surveyor and Loss assessor entity shall not exceed 26%
- (b) Common directors or partners between two Surveyor and Loss assessor entities prohibited
- (c) One Promoter or Subscriber can have only one Surveyor and Loss assessor licence
- (d) Main objects clause of the deed of constitution shall contain the activity of “to carry our insurance survey and loss assessment”
- (e) Name of the Company or firm shall contain the words “Insurance Surveyors and Loss Assessors”

The Fees payable for issue of license are as follows:

Sl. No.	Level of membership in the Institute	Individual license	Corporate license
1	Fellowship	10,000	15,000
2	Associate ship	7,500	20,000
3	Licentiate	5,000	15,000

IRDA, on being satisfied that the applicant is eligible for issue of a license shall send an intimation to the applicant together with an identity card mentioning the particular class or category of general insurance business, namely, fire, marine cargo, marine hull, engineering, motor, miscellaneous and loss of profit, for which the Authority has granted license.

9.9 ROLE OF SURVEYOR OR LOSS ASSESSOR

The primary responsibility of a Surveyor or a Loss assessor is to estimate the liability of the loss incurred by the Policyholder who has taken an insurance cover, to enable the insurance company to arrive at the amount to be indemnified to the Policyholders under the terms of insurance contract. The following are the specific duties and responsibilities as enshrined under the Regulations:

- (a) Declaration of conflicts of interest: In case the surveyor is interested in the subject matter under loss assessment or in the policyholder whose subject matter is being assessed, he must declare the conflict to the insurer and stay away from the assessment exercise. For example, if the Surveyor is the son of the Policyholder whose car has been damaged in a fire accident, such a Surveyor cannot assess the loss of the car of his Father, in view of the conflict of interest. He must declare this relationship to the insurer concerned and not conduct the survey proceedings in such cases
- (b) Maintenance of confidentiality and neutrality in the loss assessment exercise. He has to keep the interests of both the insurer and the policyholder in mind
- (c) He must investigate the causes and circumstances of the loss in question
- (d) He must personally conduct a spot survey and comment upon excess insurance or under insurance
- (e) Advise the insurer about loss minimization or loss control efforts or security and safety measures which can be adopted to ensure that the incidence of loss is reduced or avoided in future
- (f) Pointing out discrepancy in policy wordings, if any
- (g) Satisfying the queries of the insured or the insurer in connection with the claim or loss
- (h) Recommending applicability of depreciation and its percentage and quantum
- (i) Commenting on salvage and its disposal

Either the insurance company or the insured can appoint a licensed surveyor for any loss exceeding ₹20,000, within 72 hours of knowledge of loss to the insured. Notice of such appointment shall be sent to the insurance company or the insured, as the case may be. The Surveyor and Loss Assessor shall undertake survey only in the department for which license was In case there is any dispute or difference by the insured, another licensed surveyor shall be appointed to conduct the survey at the cost of the insured. Dispute on the quantum of loss may be referred to arbitration.

A surveyor shall submit his report within 30 days of his appointment. In exceptional cases, the surveyor may seek extension of time up to 6 months from the insurer, under intimation to the insured. Where the report is incomplete, the insurer may seek additional report within 15 days of submission of the report by the Surveyor. Under such circumstances, the Surveyor shall submit the additional report within 3 weeks of request from the insurer.

9.10 THIRD PARTY ADMINISTRATOR – HEALTH

A Third Party Administrator ('TPA') is a person appointed by an insurance company to render services in connection with health insurance business or health cover, excluding the insurance business of an insurer and soliciting or procuring insurance business directly or through an intermediary or an insurance agent. TPAs are normally engaged to provide services in connection with hospitalization of an insured under a health insurance policy taken through a general insurance company or a standalone health insurance company or under health insurance rider covers offered by life insurance companies. They also offer certain other services like arranging for medical examination of the insured before a policy is issued by an insurance company etc.

9.11 REQUIREMENT FOR BECOMING A TPA

A person can act as a TPA only with a valid licence issued by IRDA to perform the functions of a TPA. The requirements for obtaining a licence are as follows:

- (a) Entity: The person applying for a licence shall be an entity which is a Company under the Companies Act, 1956
- (b) Primary object: The main object as per the Memorandum and Articles of Association shall be to carry on business in India as TPA in the health services. Further engaging in any business other than TPA is prohibited
- (c) Minimum paid up capital: Rupees One crore and maintenance of working capital of Rs.1 crore at all times.
- (d) One of the Directors to be registered with Medical Council: One of the directors of the TPA shall be a qualified medical doctor registered with Medical Council of India
- (e) Foreign equity restricted to 26%: TPA entity shall not have foreign holdings in excess of 26%

(f) Transfer of shares in excess of 5%: Prior approval of IRDA necessary before effecting any transfer of shares in excess of 5% either through direct transfer or through issue of fresh equity shares to new or existing shareholders

(g) Fee: A processing fee of Rs.20, 000 shall be payable along with the application. A further sum of `30,000 shall be payable as license fee before the license is issued.

A license granted under these Regulations shall be valid for 3 years, after which, upon payment of a renewal of `30,000, may be renewed for a further period of 3 years.

Intimation of certain changes to IRDA: Every TPA shall inform the appointment of a new Chief Executive Officer ('CEO') or Chief Administrative Officer ('CAO') or a Director on the Board of TPA to IRD within 30 days of appointment Every TPA shall inform IRDA the details of head office or branch offices closed or relocated within 15 days of such closure or relocation.

Qualification of CEO or a CAO: Every person proposed to be appointed as a CEO or a CAO of the TPA shall possess the following qualifications:

- a. He shall hold a degree in arts, science, commerce or management or health or hospital administration or medicine
- b. A pass in the Associateship examination conducted by the Insurance Institute of India or such equivalent examination as decided by IRDA
- c. Completion of 100 hours of practical training with institutions recognized by IRDA.
- d. He shall not be of unsound mind or undischarged insolvent or a person who had been subject to imprisonment for a period of 3 months by a Court on the grounds of misfeasance, misconduct or forgery etc.

Decision making on claims by TPAs prohibited: A TPA is prohibited from taking any decisions on any claims. A TPA can only assess and recommend admission of a claim or otherwise based on the guidelines provided by the insurer in terms of the agreement entered with them. Once the insurer takes a decision on the claim and communicates it to the TPA, the TPA shall clearly state as follows in their communication to the Policyholder who has registered a claim:

“As per the instructions of the insurer <Name of the Insurer>. The claim is being settled/denied for Rs. <amount> on account of <specifics of treatment/grounds of denial>. For any further clarifications, you may directly contact the insurer.”

Bar on Non- insurance health care schemes: The TPA shall offer health services only in accordance with the IRDA (Third Party Administrators) Regulations, 2001 and shall not provide any services:

- a. Directly or indirectly to non-insurance healthcare schemes or
- b. Directly to health insurance schemes promoted, sponsored or approved by entities not being insurance companies, such as Governments, PSU's etc.
- c. Directly or indirectly to the policyholder or insured, except the health services as per the agreement with the insurer.

9.12 AGREEMENT BETWEEN A TPA AND AN INSURANCE COMPANY

The insurer and the TPA shall themselves define the scope of the Agreement, the health and related services that may be provided by the TPA and the remuneration there for. Provided that there shall be a clause in the Agreement for its termination by either party on grounds of mutual consent or any fraud, misrepresentation, inadequacy of service or other non-compliance or default fraud. However, there shall be no element in the Agreement which dilutes, restricts or otherwise modifies the stipulations of the IRDA in respect of Policy Holder welfare, protection, service standards and turnaround-time parameters. The remuneration to the TPA shall be based on the services rendered to the insurer and shall not be related to the product/policy experience or the reduction of claim costs or loss ratios of the insurer. A copy of the Agreement entered into between the TPA and the Insurance Company or any modification thereof, shall be filed, within 15 days of its execution or modification, as the case may be, with the Authority. More than one TPA may be engaged by an insurance company and, similarly, a TPA can serve more than one insurance company. The Authority from time to time may prescribe minimum standard clauses to be included in the agreement between insurer and TPA.

Change of TPAs for servicing of health insurance policies:

A change in the TPA by the insurer shall be communicated to the policyholders 30 days before giving effect to the change. The contact details like helpline numbers, addresses, etc. of the new TPA shall be made immediately available to all the policyholders in case of change of TPA. The insurers shall take over all the data in respect of the policies serviced by the earlier TPA and make sure that the same is transferred seamlessly to the newly assigned TPA, if any. It shall be ensured that no inconvenience or hardship is caused to the policyholders as a result of the change. In this regard, the following aspects shall receive special attention:

- a. Status of cases where pre-authorization has already been issued by existing TPA.

- b. Status of cases where claim documents have been submitted to the existing TPA for processing.
- c. Status of claims where processing has been completed by the TPA and payment is pending with the insurer/ TPA.

Data and related issues: The TPA and the insurer shall establish a seamless flow of data transfer for all the claims. The respective files shall be handed over to the insurer within 15 days of the claim settlement or rejection.

Annual returns: Every insurer shall submit financial statements, management report and auditor's report in respect of life insurance business and /or general insurance business to the Authority in accordance with Schedule A and B respectively (Section 114A of the Insurance Act, 1938, R- 3, Insurance Regulatory and Development Authority (Preparation of Financial Statements and Auditor's Report of Insurance Companies) Regulations, 2000).

9.13 REINSURANCE

The reinsurance is the process in which a ceding company, i.e. cedant/ original insurer, cedes part of the risk to a reinsurer. In reinsurance the reinsurer assumes the role of the insurer and the ceding company becomes the policy holder (insured). Reinsurance indicates the 'insurance of insurance'. The cedant agrees to cede or give away and the reinsurer agrees to accept a certain fixed share of a risk upon the terms as set out in the reinsurance contract. Law of reinsurance goes on the lines of ordinary insurance contract. In reinsurance the insured under the original policy possess no interest in or right over the reinsurance policy and he has no privity of contract in the contract between the cedant and the reinsuring company. Thus he cannot make any claim on the latter.

The contract of reinsurance do have all the attribute of contract of insurance i.e. - insurable interest, utmost good faith, disclosure of material facts, consideration for undertaking the risk, indemnity, subrogation, contribution etc. Each cession like each insurance contract is a separate contract, unless there is a contract to the contrary.

Methods of reinsurance: The reinsurance contract may be concluded in three ways, they are –

- i. Facultative reinsurance;
- ii. Treaty reinsurance; and
- iii. Pool reinsurance.

i) **Facultative reinsurance:** In this method the risk is undertaken on an individual basis and generally used when the total death benefit in force and that applied for exceed the limits as defined in treaty reinsurance. It is also used in situation where the direct company wants to obtain the business but does not want to retain the risk. The cedant shall provide information on each case to be ceded and based on this information every case is formally approved by the reinsurer. The reinsurer independently underwrites the risk and can propose a different decision, which is different from the one recommended by the cedant. The reinsurer has the option, either to accept the risk or decline the risk that the cedant offers. If the risk is accepted by the reinsurer, it is apportioned between the cedant and the reinsurer through – (i) apportionment of the original sum assured, (ii) pre-decided losses in percentage terms and (iii) premium distribution criteria. The cedant shall forward copies of all documents to the reinsurer for the consideration and acceptance. Non-renewal of facultative business with the reinsurer can create problems for the direct insurer as regard to the liability of paying claims. Certain type risks which have been specifically excluded under the treaty arrangements may be referred to the reinsurers on facultative basis. One may wish to opt it as he is having the liberty to go for reinsurance with several reinsurers. The reinsurers would then decide whether or not to accept these risks, as a result, it is of time consuming, trouble- some and expensive. Thus, this method is not much in vogue and ‘automatic reinsurance’ is seen as an option.

ii) **Treaty reinsurance:** In treaty reinsurance the reinsurer has accept the risk of the cedant and has no option to decline the risk, as in facultative arrangement of reinsurance. The reinsurer, in this arrangement, is bound by the treaty obligations. Here, there is no requirement of referring details of each of the cases ceded to the reinsurer. The reinsurer automatically accepts certain liability, up to a limit provided in the treaty, for all risks falling within the scope of the arrangement. The cedant automatically reinsures the excess above the agreed sum in each case covered by the treaty subject to a maximum. The balance if any may be reinsured, in the absence of arrangement, by facultative cover. This is an obligatory contract in which each party forgoes certain rights, such as –

- i. The reinsurer may not decline risks within the scope of the agreements;
- ii. The insurer must allow all the risks coming within the scope to be covered.

The cover generally lasts for a year. According to the treaty provisions, this can be continued (extended) or cancelled. Automatic reinsurance arrangements permit the cedant to purchase reinsurance without the time and expense of an underwriting review by the reinsurer. The

treaty method of reinsurance is universally accepted and is an attribute of modern times. It is most convenient and speedy method of reinsurance which caters to the ever increasing demand. The procedure of treaty reinsurance is very simple and less expensive.

iii) Pool reinsurance: This method of reinsurance gives scope for covering large volume of risks. A 'pool' is created, by agreement, between different insurers. The members of the pool deposit their business earnings to the pool and claims are paid out of the resources accumulated in the pool. The profits of the pool are distributed among the members in proportion to their contribution to the pool.

Every insurer shall re insure with Indian re-insurers, certain percentage of the sum assured on each policy, as may be specified by the Authority with the previous approval of the Central Government. The Authority may, by notification in the official Gazette, specify the percentage of the sum assured on each policy to be reinsured including the proportions in which the said percentage shall be allocated among the Indian re-insurers and different percentages may be specified for different classes of insurance. However, no percentage so specified shall exceed thirty per cent of the sum assured on such policy. The Authority may, at any time, call upon an insurer to submit for his examination at the principal place of business of the insurer in India all re-insurance treaties and other re-insurance contracts entered into by it. Procedure for reinsurance arrangements has been detailed in the regulations of the Authority (Sec. 101A, 101B, 101C, Insurance Act, 1938, Sec. 14, 26, Insurance Regulatory and Development Authority Act, 1999, Insurance Regulatory and Development Authority (Life Insurance/general Insurance – Reinsurance) Regulations, 2000).

The concept of reinsurance offers certain advantages to the insured, cedant and reinsurer. The advantages are as under –

- a) Insurer may undertake larger risk than his capacity.
- b) The interest of the insured is well protected.
- c) Insurer is relieved from the burden of risk.
- d) It encourages the insurer to undertake risk against natural calamities like- flood, earthquake, famine etc, although it is heavy or unlimited.
- e) It mitigates unhealthy competition
- f) It ensures stability and makes the insurer to remain in business by reducing the volume of risk.
- g) It enables the insurer to offer premium at lower rate.

9.14 RE-INSURANCE WITH INDIAN REINSURERS

Every insurer shall re insure with Indian re-insurers such percentage of the sum assured on each policy as may be notified by the Authority with the previous approval of the Central Government. However, the percentage so specified shall not exceed thirty per cent of the sum assured on such policy and such specification shall also indicate the proportions in which the said percentage shall be allocated among the Indian re-insurers.

However, an insurer carrying on fire-insurance business in India may, in lieu of re-insuring the percentage, specified, of the sum assured on each policy in respect of such business, re-insure with Indian re-insurers such amount out of the first surplus in respect of that business as he thinks fit, so however that the aggregate amount of the premiums payable by him on such re-insurance in any year is not less than the said percentage of the premium income (without taking into account premiums on re-insurance ceded or accepted) in respect of such business during that year. A notification shall be issued specifying the terms and conditions in respect of any business of re-insurance required to be transacted and such terms and conditions binding on Indian re-insurers and other insurers only after consultation with the Advisory Committee and every notification so issued shall be laid before each House of Parliament, as soon as may be, after it is made (Sec. 101A,Act1938).

Examination of re-insurance treaties

The Authority may, at any time, call upon an insurer to submit for his examination at the principal place of business of the insurer in India all re-insurance treaties and other re-insurance contracts entered into by the insurer and may examine any officer of the insurer on oath in relation to any document or by notice in writing, require any insurer to supply him with copies of any of documents (Sec. 101C,Act1938).

Objectives of re-insurance: . The Reinsurance Programme of every insurer/reinsurer shall be guided by the following to:

- Maximize retention within the country;
- Develop adequate capacity;
- Secure the best possible protection for the reinsurance costs incurred;
- Ensure that the reinsurance policy does not lead to fronting of insurance business;
- Simplify the administration of business.

9.15 LIFE INSURANCE-REINSURANCE

Reinsurance with Indian reinsurers: Every insurer shall reinsure with Indian reinsurers such percentage of the sum assured on each policy as may be specified by the Authority. However, no percentage so specified shall exceed thirty percent of the sum assured on such policy. It may specify different percentages for different classes of insurance and the proportions in which the said percentage shall be allocated among Indian reinsurers. In this regard it shall constitute an Advisory Committee, consisting of not more than five persons having special knowledge and experience of life insurance business Regulation, Insurance Regulatory and Development Authority (Life Insurance-Reinsurance) Regulations, 2013(Sec. 10IB, Insurance Act, 1938, Regulation 3,IRDA (Life Insurance-Reinsurance) Regulations, 2013)

Procedure to be followed for reinsurance arrangements: The Reinsurance Programme of every insurer/reinsurer shall be guided by the procedure laid down herein. Every life insurer shall draw up a programme of reinsurance in respect of lives covered and the profile of such a program, duly certified by the Appointed Actuary and approved by the Board of Director, shall be filed with the Authority, at least forty five days before the commencement of each financial year, by the insurer, which shall include:

- i. For new insurers: their proposed reinsurance arrangements in relation to their capitalisation, proposed classes of business and retentions; their reinsurers and ratings for the past five years; and control systems.
- ii. For existing insurers:
 - 1) The proposed reinsurance arrangements in relation to their capitalisation, proposed classes of business and retentions; their reinsurers, shares and ratings for the past five years and
 - 2) An annual review of existing reinsurance arrangements, including:
 - a) In relation to the risk exposures for each class of insurance business written: Retention limits, comparison to the Regulatory Reporting Retention Limits in Regulation 6, and the types of cover provided by treaties;
 - b) Reinsurance control systems for monitoring exposures and making cessions and claims recoveries;
 - c) Major reinsurers, i.e. reinsurers accounting for more than 20 per cent of premiums ceded under any one reinsurance contract and reinsurers accounting for more than 5 per cent of premiums ceded in total.
 - d) The name(s) of the reinsurer(s) with whom the insurer has the reinsurance arrangements, their shares and their rating for the past five years. However, the Authority may, if it considers necessary, elicit from the insurer any additional

information, from time to time, and the insurer shall furnish the same to the Authority forthwith.

- e) The insurer shall ensure that the reinsurance arrangements in respect of catastrophe risks, using various realistic disaster scenario testing, are adequate and approved by the Board of Directors before filing the same with the Authority along-with the reinsurance program.
- f) The insurer shall determine the credit risk and concentration risk of the reinsurance arrangements and explain the measures taken to mitigate such risks, if any, in the reinsurance program.
- g) The Authority shall examine the reinsurance programme, the retention policy details as in Regulation 5 and the detailed report on regulatory reporting retention limits, if required under Regulation 6, submitted along with the reinsurance programme to ensure, amongst others, the – (i) objectives in sub-regulation 4 (a) are met; (ii) The insurer’s financial strength, the reinsurance policy, underwriting capacity, volume of the business etc are considered in arriving at the retention limits.
- h) If the reinsurance program of the insurers is found to be inconsistent with the overall objective of this Regulation, the Authority for the purposes of calculating solvency, may allow a lesser credit for reinsurance in the sum-at-risk factor.
- i) For the purpose of (e) and (f), the Authority shall examine all the necessary justifications, the technical & financial strength of the insurer, all the supporting data and the reasons why such an arrangement would be required as submitted in the reinsurance program.
- j) The Authority shall scrutinize such a programme of reinsurance as above, and may suggest changes, if it consider necessary, and the insurer shall incorporate such changes forthwith in his program(Regulation 4,IRDA (Life Insurance-Reinsurance) Regulations, 2013)

Retention Policy: Every insurer shall build the retention capacity within the company and formulate suitable retention policy for each type of product/risk on an ongoing basis and justify on an ongoing basis such retention policy in accordance with the emerging claims experience, financial standing, underwriting capacity etc. in the annual reinsurance program submitted to the Authority Such retention policy of every insurer shall – (i) aim at retaining the maximum premium earned in India, maximizing the retention across products commensurate with his financial strength & volume of business and (ii) establish the above in the reinsurance program. Insurers may be allowed to reinsure on quota share –

- a) in the initial two years of starting operations for health insurance business and group term insurance business and
- b) in the initial two years of introducing a new risks/product for health insurance business and group term insurance business. However, the minimum retentions in all such cases shall be at least up to the prescribed limit, (Table: 6 (1)), applicable to health insurance business and group term insurance business.

The Authority may require an insurer to further justify its retention policy and may give such directions as considered necessary (Regulation 4 & 5, IRDA (Life Insurance-Reinsurance) Regulations, 2013)

Regulatory Reporting Requirements: If the retention levels of such retention policy for mortality / morbidity risks is less than the regulatory reporting retention limits stated in Table: 6 or the total reinsurance premium to the total premium received under a particular product exceeds 2% for all saving products and 30% for all term insurance/health products, in all such cases, the insurers shall report to the Authority along with the reinsurance program for approval a detailed working for each product on:

- a) The underwriting processes;
- b) Claims fluctuations and claims experience;
- c) Current retention levels;
- d) Their financial strength;
- e) Volume of business;
- f) Capital requirements;
- g) Past claims payment history of the reinsurers;
- h) Capacity building measures taken in terms of building up capacity in underwriting, claims handling, risk management, pricing, valuation, etc. since introducing the risk, etc

Table: 6

Regulatory Reporting Retention Limits

S.No	Age of the insurer or year in which the risk is introduced**	Type of the products or riders	Retention limit on the sum at risk. Rs.
	0 to 3 years both inclusive	Pure protection products like term insurance, personal accident products etc	51akhs
		All kinds of savings products like	10 lakhs

		endowment, U LIPS etc	
		All kinds of group protection products	5 lakhs
		All kinds of health insurance products, except personal accident products.	5 lakhs
	4 to 7 years both inclusive	Pure protection products like term insurance, personal accident products etc	10 lakhs
		All kinds of savings products like endowment, U LIPS etc	20 lakhs
		All kinds of group protection products	10 lakhs
		All kinds of health insurance products, except personal accident products.	3 lakhs
	8 to 11 years both inclusive	Pure protection products like term insurance, personal accident products etc	15 lakhs
		All kinds of savings products like endowment, U LIPS etc	30 lakhs
		All kinds of group protection products	15 lakhs
		All kinds of health insurance products, except personal accident products.	3 lakhs
	12 to 15 years both inclusive	Pure protection products like term insurance, personal accident products etc	20 lakhs
		All kinds of savings products like endowment, U LIPS etc	30 lakhs
		All kinds of group protection products	20 lakhs
		All kinds of health insurance products, except personal accident products.	4 lakhs

	Above 15 years	The Authority may prescribe from time to time the limits for all the four types of products
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** If the insurer is introducing the risk for the first time, in such cases the limits in # 1 would apply irrespective of the age of the insurer.

Provided further that the Authority shall review the Regulatory Reporting Retention Limits every two years and if necessary, may revise these limits upwards from time to time(Regulation 6,IRDA (Life Insurance-Reinsurance) Regulations, 2013)

Submissions of Reinsurance Treaties: All reinsurance arrangements shall be documented and filed with the Authority within 30 days of commencement of the financial year. Within 30 days of the commencement of the financial year, every insurer shall also file with the Authority a copy of every reinsurance treaty contract in respect of that year together with the list of reinsurers, their ratings and their shares in the reinsurance arrangement. However, any change in the terms and conditions of the reinsurance treaty shall be filed with the Authority within 15 days of such changes(Regulation 7,IRDA (Life Insurance-Reinsurance) Regulations, 2013)

Placement of Reinsurance Business: Insurers shall place their reinsurance business outside India with only those reinsurers who have over a period of the past five years counting from the year preceding for which the business has to be placed, enjoyed a credit rating of at least BBB (with Standard & Poor) or equivalent rating of any other international rating agency. However, placement of business by the insurer with any other reinsurer shall be with the prior approval of the Authority. But, no program of reinsurance shall be on original premium basis. Further, no life insurer shall have reinsurance treaty arrangement with its promoter company or its associate/group company, except on terms which are commercially competitive in the market and with the prior approval of the Authority, which shall be final and binding. The life insurers shall, before placing the business with the reinsurers, consider past claims performance of the reinsurers, as available, while accepting their participation in the reinsurance program (Regulation 8, IRDA (Life Insurance-Reinsurance) Regulations, 2013)

Submission of Returns: Every insurer shall be required to submit to the Authority information and returns relating to its reinsurance transactions as per Annexure 1 and in such other forms as the Authority may require or specify from time to time Explanation: All the life insurers shall furnish the information and returns required as per Annexure 1 In the case of forms which are to be submitted on an annual basis, within 45 days from the close of each financial

year. In all other cases, within 15 days from the close of each quarter/half-year as the case may be (Regulation 9, IRDA (Life Insurance-Reinsurance) Regulations, 2013)

9.16 GENERAL INSURANCE - REINSURANCE

Procedure to be followed for reinsurance arrangements: Every insurer shall maintain the maximum possible retention commensurate with its financial strength and volume of business. The Authority may require an insurer to justify its retention policy and may give such directions as considered necessary in order to ensure that the Indian insurer is not merely fronting for a foreign insurer. Each insurer shall cede such percentage of the sum assured on each policy for different classes of insurance written in India to the Indian reinsurer as may be specified by the Authority in accordance with the provisions of Part IVA of the Insurance Act, 1938. Insurers shall place their reinsurance business outside India with only those reinsurers who have over a period of the past five years counting from the year preceding for which the business has to be placed, enjoyed a rating of at least BBB (with Standard & Poor) or equivalent rating of any other international rating agency. Placements with other reinsurers shall require the approval of the Authority. Insurers may also place reinsurances with Lloyd's syndicates taking care to limit placements with individual syndicates to such shares as are commensurate with the capacity of the syndicate.

The Indian Reinsurer shall organise domestic pools for reinsurance surpluses in fire, marine hull and other classes in consultation with all insurers on basis, limits and terms which are fair to all insurers and assist in maintaining the retention of business within India as close to the level achieved for the year 1999-2000 as possible. The arrangements so made shall be submitted to the Authority within three months of these regulations coming into force, for approval.

Surplus over and above the domestic reinsurance arrangements class wise can be placed by the insurer independently with any of the reinsurers complying with sub-regulation (7) subject to a limit of 10% of the total reinsurance premium ceded outside India being placed with any one reinsurer. Where it is necessary in respect of specialised insurance to cede a share exceeding such limit to any particular reinsurer, the insurer may seek the specific approval of the Authority giving reasons for such cession. Every insurer shall offer an opportunity to other Indian insurers including the Indian Reinsurer to participate in its facultative and treaty surpluses before placement of such cessions outside India. The Indian Reinsurer shall retrocede at least 50% of the obligatory cessions received by it to the ceding

insurers after protecting the portfolio by suitable excess of loss covers. Such retrocession shall be at original terms plus an over-riding commission to the Indian Reinsurer not exceeding 2.5%. The retrocession to each ceding insurer shall be in proportion to its cessions to the Indian Reinsurer. Every insurer shall commence, reinsurance program, from the beginning of every financial year and every insurer shall submit to the Authority, his reinsurance programmes for the forthcoming year, 45 days before the commencement of the financial year; Within 30 days of the commencement of the financial year, every insurer shall file with the Authority a photocopy of every reinsurance treaty slip and excess of loss cover note in respect of that year together with the list of reinsurers and their shares in the reinsurance arrangement; Every insurer shall be required to submit to the Authority statistics relating to its reinsurance transactions in such forms as the Authority may specify, together with its annual accounts. The Authority may call for further information or explanations in respect of the reinsurance programme of an insurer and may issue such direction, as it considers necessary (Regulation 3, IRDA(General Insurance - Reinsurance) Regulations, 2000)

Outstanding Loss Provisioning: Every insurer shall make outstanding claims provisions for every reinsurance arrangement accepted on the basis of loss information advices received from Brokers/ Cedants and where such advices are not received, on an actuarial estimation basis. In addition, every insurer shall make an appropriate provision for incurred but not reported (IBNR) claims on its reinsurance accepted portfolio on actuarial estimation basis(Regulation 5, IRDA(General Insurance - Reinsurance) Regulations, 2000).

Inward Reinsurance Business: a. Every insurer wanting to write inward reinsurance business shall seek specific approval of the Authority providing all the business projections and all documentation as may be required for such business. Every insurer wanting to write inward reinsurance business shall have a well-defined underwriting policy approved by its Board of Directors for underwriting inward reinsurance business. An insurer shall file with the Authority, at least forty five days before the commencement of each financial year, its underwriting policy stating the classes of business, geographical scope, underwriting limits and profit objective. An insurer shall ensure that decisions on acceptance of reinsurance business are made by persons with adequate knowledge and experience, preferably in consultation with the insurer's Appointed Actuary. An insurer shall also file with the Authority any changes to the underwriting policy as and when a change is made duly approved by its Board of Directors. An insurer shall show all the receipts and payments like premiums, claims, etc. relating to reinsurance business accepted separately from direct

insurance business. (Regulation 10, IRDA (Life Insurance-Reinsurance) Regulations, 2013, Regulation 4, IRDA (General Insurance - Reinsurance) Regulations, 2000)

9.17 FUNCTIONS OF A RE-INSURANCE BROKER

The functions of a re-insurance broker shall include any one or more of the following:

- a) familiarizing himself with the client's business and risk retention philosophy;
- b) maintaining clear records of the insurer's business to assist the reinsurer(s) or others;
- c) rendering advice based on technical data on the reinsurance covers available in the international insurance and the reinsurance markets;
- d) maintaining a database of available reinsurance markets, including solvency ratings of individual reinsurers;
- e) rendering consultancy and risk management services for reinsurance;
- f) selecting and recommending a reinsurer or a group of reinsurers;
- g) negotiating with a reinsurer on the client's behalf;
- h) assisting in case of commutation of reinsurance contracts placed with them;
- i) acting promptly on instructions from a client and providing it written acknowledgements and progress reports;
- j) collecting and remitting premiums and claims within such time as agreed upon;
- k) assisting in the negotiation and settlement of claims;
- l) maintaining proper records of claims; and
- m) exercising due care and diligence at the time of selection of reinsurers and international insurance brokers having regard to their respective security rating and establishing respective responsibilities at the time of engaging their services.

9.18 SUMMARY

Appointed Actuary', Surveyors and Loss Assessors and Third Party Administrator (TPA) are acting as intermediaries of an insurer. They shall act in tune with the programs and prescriptions ordained by the insurer. Failing which their license is susceptible for cancellation. The concept of reinsurance was introduced to promote the interest of the insurer and ultimately of the insured. The insurer may go for reinsurance pursuing either the facultative or treaty or pool method.

9.19 KEY WORDS

1. Appointed Actuary'

2. Surveyors and Loss Assessors
3. Third Party Administrator (TPA)
4. Reinsurance
5. Cedant
6. Cede
7. Reinsurer
8. Facultative
9. Retrocession
10. Retention
11. Pool
12. Treaty

9.20 SELF ASSESSMENT QUESTIONS

1. Explain the powers and functions of Surveyors and Loss Assessors.
.....
.....
2. “Third Party Administrator (TPA) are the facilitator in promoting the health insurance” elucidate.
.....
.....
3. Write note on –
 - a. Reinsurance
 - b. ‘Appointed Actuary’
 - c. Life Insurance-Reinsurance
 - d. General Insurance – Reinsurance
 - e.

9.21 REFERENCES

1. Principles of insurance law: Life - fire - marine - motor and accident: M.N.Srinivasan.
2. Modern Law of Insurance: KSN Murthy and KVS Sarma.
3. Life insurance corporation of India : Impact of privatization and performance: Sumninder Kaur Bawa.
4. Commentaries on the public liabilities insurance act 1991: G.S Karkara.
5. Insurance law: A comprehensive treatise on law of insurance covering all risks except marine insurance: Brij Nandan Singh.
6. The Law of Insurance Contracts: A. Malcolm.

7. International encyclopaedia of laws: Insurance Law: R. Blanpain.
8. Insurance law manual with IRDA circulars and notifications: Taxmann.
9. Insurance law: Relating to all risks other than marine: E.J. Macgillivray.
10. Modern insurance law: John Birds and Norma J Hird.
11. Law Relating to Marine Insurance: Mitra, B.C.
12. Law of Insurance: Jaiswal J V N
13. General Principles of Insurance Law: Hardy Ivamy E R
14. Law Relating to Insurance: Vats R M
15. Insurance Regulatory and Development Authority Act, 1999
16. Insurance Act,1938

UNIT 10: PUBLIC LIABILITY INSURANCE ACT, 1991

STRUCTURE

- 10.0 Objectives
- 10.1 Introduction
- 10.2 Nature of disability and extent of relief
- 10.3 Insurance Policy
- 10.4 Exemption
- 10.5 Invitation of claim applications
- 10.6 Powers of Collector/ Deputy Commissioner
- 10.7 Extent of Liability
- 10.8 Environment Relief Fund
- 10.9 Establishment and Administration of Fund
- 10.10 Complaint
- 10.11 Punishment
- 10.12 Summary
- 10.13 Key Words
- 10.14 Self Assessment Questions
- 10.15 References

10.0 OBJECTIVES

On reading this unit the students would be able to understand the following –

1. Coverage of public liability insurance
2. Mechanism of public liability insurance

10.1 INTRODUCTION

The public liability- insurance Act is aiming to provide immediate relief to the persons affected, other than a workman as defined in the Workmen's Compensation Act, 1923, by accident occurring while handling any hazardous substance and for matters connected or incidental thereto(Preamble, Public Liability Insurance Act, 1991).

When a person suffers death or injury to any person or damage to any property due to an accident the owner, handling any hazardous substance, shall-be liable to give such relief as is specified in Schedule for such death, injury or damage. While making claim the claimant is not required to plead and establish that the death, injury or damage in respect of which the claim has been made was due to any wrongful act, neglect or default of any person. The injury so caused may result in permanent total or permanent partial disability or sickness.

10.2 NATURE OF DISABILITY AND EXTENT OF RELIEF

Particulars	Quantum of relief
Reimbursement of medical expenses	maximum of Rs. 12,500 in each case
Fatal accidents	Rs. 25,000 per person
Permanent total disability	Rs. 25,000
Permanent partial disability	as certified by an authorized physician
Other injury or sickness	as certified by an authorized physician
Temporary partial disability which reduces the earning capacity of the victim.*	Rs. 1,000 per month up to a maximum of 3 months.
Damage to private property	Up to Rs. 6,000 depending on the actual damage.

* Note: The victim has been hospitalized for a period of exceeding 3 days and is above 16 years of age.

In addition to the aforementioned relief the victim/dependents may claim in respect of death of, or injury to, any person or damage to any property under any other law for the time being in force and the owner, in respect thereof, is liable to pay compensation by reducing prorate amount of relief paid under this Act (Sec. 3, 8 and schedule, Public Liability Insurance Act, 1991).

The Central Government may authorize any person to ascertain whether any requirements of this Act or of any rule or of any direction given under this Act have been duly complied with and require any owner to submit to such information as person so authorized may reasonably think necessary. The person authorized, in this behalf, may enter, at all reasonable times with such assistance as he considers necessary, any place, premises or vehicle, where hazardous substance is handled for the purpose of determining whether any provisions of this Act or of any rule or of any direction given under this Act is being or has been complied with and such owner is bound to render all assistance to such person (Sec. 10, Public Liability Insurance Act, 1991). When he has reason to believe that handling of any hazardous substance is taking place in any place premises or vehicle, in contravention of the provisions of the Act, he may enter into and search such place, premises or vehicle for such handling of hazardous substance. During the course of search any handling of hazardous substance has been found, he may seize such hazardous substance and other things which, in his opinion, will be useful for, or relevant to, any proceeding under this Act. When he feels that it is not practicable to seize any such substance or thing he may serve on the owner an order that the owner shall not remove, part with, or otherwise deal with, the hazardous substance and such other things without obtaining the previous permission. In the event, he has reason to believe that it is expedient to dispose of the hazardous substance seized to prevent an accident, he may act immediately in such manner as he may deem fit. All expenses incurred by him in the disposal of hazardous substances shall be recovered from the owner as arrears of land revenue or of public demand (Sec. 9, 11, Public Liability Insurance Act, 1991).

Despite of the efforts aforementioned, the owner, handling any hazardous substance, fails to respond to the call either the Central Government or person authorized, in this behalf, make an application to a Court, not inferior to that of a Metropolitan Magistrate or a Judicial Magistrate first class for restraining such owner from such handling. On hearing the parties to the application the Court may pass an order restraining any owner from handling hazardous substance and it may in that order –

- i. direct such owner to desist from such handling;
- ii. Authorize the Central Government or the person authorized, as the case may be, to implement the direction in the manner as specified when the owner, to whom such direction is issued, has failed to comply the order issued by the Court.

All expenses incurred by the Central Government, or the person authorized, as the case may be, in implementing the directions of Court shall be recoverable from the owner as arrears of land revenue or of public demand (Sec.13, Public Liability Insurance Act, 1991).

When the Government is intending to issue direction to the any owner, person, officer, authority or agency, in this behalf, it shall issue proposed direction only after giving 15 days' notice, inviting objections. On considering the objections, within 45 days' from the date of receipt of the objections, or from the date up to which an opportunity is given to the owner, person, officer, authority or agency to file objections, whichever is earlier, for reasons to be recorded in writing, confirm, modify or decide not to issue the proposed direction. However, the Government may issue direction without giving 15 days' notice, for reasons recorded in writing, when it is of the opinion that it is not expedient to provide an opportunity to file objections against the proposed direction as it likely to cause grave injury to the public (Rule 8, Public Liability Insurance Rules, 1991).

10.3 INSURANCE POLICY

Every owner shall purchase one or more insurance policies, before he starts handling any hazardous substance, to ensure that he is insured against liability to give relief to the victims of accident. Any owner who is handling any hazardous substance immediately before the commencement of this Act shall take out such insurance policy or policies at the earliest but not later than one year from such commencement. The policy so purchased shall be renewed from time to time before the expiry of the period of validity to keep the policy in force throughout the period during which such handling is continued. The sum assured in the policy shall be not less than the amount of the paid-up capital, or more but not exceeding fifty crore rupees, as may be prescribed, of the under taking handling any hazardous substance and owned or controlled by such owner. The liability of the insurer shall be equivalent to the sum stated in the policy. Apart from purchasing the insurance policy every owner owes an obligation to make contribution, not exceeding the amount of premium, as may be prescribed, towards the Relief Fund established. The insurer shall remit the amount so received, from the

owner, to the Relief Fund within the time and the manner prescribed, failing which it may be recovered as arrears of land revenue or of public demand (Sec. 4, 7A, Public Liability Insurance Act, 1991).

10.4 EXEMPTION

However, the Central Government may, by notification, exempt any owner, handling any hazardous substance, from purchasing the policy, when he has established and maintained a fund in accordance with the rules made in this behalf for meeting any liability. Such owners includes -

- a) The Central Government;
- b) Any State Government,
- c) Any corporation owned or controlled by the Central Government or a State Government;
or
- d) Any local authority (Sec. 4, 7A, Public Liability Insurance Act, 1991).

10.5 INVITATION OF CLAIM APPLICATIONS

On noticing the occurrence of accident, at any place within jurisdiction, the Collector/ Deputy Commissioner shall verify the occurrence of such accident and give wide publicity, in such manner as he deems fit, inviting claim applications from the victims of the accidents or legal representatives (Sec. 5, Public Liability Insurance Act, 1991). The claim application seeking the relief may be made by –

- a) The person who has sustained the injury;
- b) The owner of the property to which the damage has been caused;
- c) All or any of the legal representatives of the deceased, where death has resulted from the accident; or
- d) Any agent duly authorized by such person or owner of such property or all or any of the legal representatives of the deceased, as the case may be. In case all the legal representatives of the deceased have not joined in any such application for relief, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined shall be impleaded as respondents to the application.

Every claim application, in 'Form -I', shall be made to the Collector/ Deputy Commissioner along with the following documents -

- a) Certificate of an authorized physician regarding disability or injury or illness caused by the accident;
- b) Death Certificate and/or post mortem report in the case of a fatal accident;
- c) Certificate of the employer regarding loss of wages due to temporary or partial disability, with proof of hospitalization for a period exceeding three days and certificate about the date of birth or age of victim;
- d) Medical bills and receipts;
- e) Certificate of cost of repairs or replacement of private property damaged by the accident;
- f) Any other documents which may have relevance to the claim.

The claim application shall be made within five years of the occurrence of the accident (Sec. 6, Public Liability Insurance Act, 1991 Rule 4, Public Liability Insurance Rules, 1991).

10.6 POWERS OF COLLECTOR/ DEPUTY COMMISSIONER

On receipt of an application the Collector/ Deputy Commissioner shall issue notice to the owner, provide an opportunity of being heard to the parties to the application, hold an inquiry into the claim or, each of the claims, and may make an award determining the amount of relief which appears to him to be just and specifying the person or persons to whom such amount of relief shall be paid (Sec.7, Public Liability Insurance Act, 1991). The claim application shall be disposed of as expeditiously as possible and every endeavor shall be made to dispose of such claim within three months of its receipt. The copies of the award shall be given to the parties concerned at the earliest but not later than fifteen days from the date of the award. He shall conduct the inquiry in such summary procedure and exercise all the powers of a Civil Court. The insurer, who is required to pay any amount in terms of such award, shall deposit that amount, within thirty days from the date of pronouncement of award, in such manner as the Collector/ Deputy Commissioner may direct. The Collector/ Deputy Commissioner shall take step to pay from the Relief Fund, in terms of such award and in accordance with the scheme made under section 7A, to the person or persons named in the award. Further, the owner shall, within such period, deposit such amount in such manner as the Collector/ Deputy Commissioner may direct. In case the insurer or the owner, against whom the award is made, fails to deposit the amount of such award within the period specified the same shall be recoverable from the insurer or the owner, as the case may be, as

arrears of land revenue or of public demand (Sec. 7,7A, Public Liability Insurance Act, 1991; Rule 5, Public Liability Insurance Rules, 1991). No suit, prosecution or other legal proceeding shall lie against the Government or the person, officer, authority or other agency in respect of anything which is done or intended to be done in good faith in pursuance of this Act or the rules made or orders or directions issued there under (Sec. 20, Public Liability Insurance Act, 1991). The Collector/ Deputy Commissioner shall maintain a register of the application for relief or claim petitions, and, a register of awards and payment made there under. These Registers shall be kept open to Public inspection from 11.00 AM to 1 PM and 2 PM to 5 PM on every working day. On a request from a concerned person, the Collector/ Deputy Commissioner or any officer authorized in this behalf shall supply a certified copy of or extract from any particulars entered in the registers mentioned above to be true copy or extract thereof. (Rule 7, Public Liability Insurance Rules, 1991).

10.7 EXTENT OF LIABILITY

The maximum aggregate liability payable by the insurer, in respect of several claimants arising out of an accident shall not exceed rupees five crores and in case of more than one accident during the currency of the policy or one year, whichever is less, shall not exceed rupees fifteen crores in the aggregate. The Collector/ Deputy Commissioner, while awarding the relief, shall ensure that the maximum liability of insurer's under the Insurance Policy does not exceed the limits mentioned herein. Any award for relief which exceeds the amount payable under the insurance Policy shall be met from the Relief Fund and in case the award exceeds the total of the amount of insurance and the Relief Fund, the amount which falls short of such sum payable shall be by the owner (Rule 10, Public Liability Insurance Rules, 1991).

10.8 ENVIRONMENT RELIEF FUND

The Central Government may, by notification in the official Gazette, establish a fund to be known as the Environment Relief Fund. The owner, handling any hazardous substance, shall contribute to the Environmental Relief fund a sum equal to the premium payable to the insurer and pay the same to the insurer. On its receipt the insurer shall remit the contribution to the Fund. The Fund shall be utilized for paying relief under the award made by the

Collector/ Deputy Commissioner under section 7 (Sec. 7A, Public Liability Insurance Act, 1991; Rule 11, Public Liability Insurance Rules, 1991).

10.9 ESTABLISHMENT AND ADMINISTRATION OF FUND

The owner, handling any hazardous substance, shall with the prior approval of the Central Government institute a fund by depositing with the State Bank of India or any of its subsidiaries or any nationalized bank, a Public Liability Insurance Fund of that owner. The fund shall be utilized for the purpose of meeting the liability arising out of any claim awarded against such owner to discharge the amount awarded by the Collector/ Deputy Commissioner. The owner shall designate an Administrator to operate the Fund and the same shall be intimated to the Central Government (Sec.4, Public Liability Insurance Act, 1991; Rule 6, Public Liability Insurance Rules, 1991).

10.10 COMPLAINT

The court may take cognizance of an offence under this Act, only when a complaint is made by -

- a) The Central Government or any authority or officer authorized in this behalf by that Government; or
- b) Any person by giving sixty days notice of the alleged offence, in the manner prescribed, disclosing his intention to make a complaint, to the Central Government or the authority or officer authorized (Sec.18, Public Liability Insurance Act, 1991).

10.11 PUNISHMENT

Whoever acts in contravention of any of the provisions of the Act or fails to comply with any directions issued shall be punished with imprisonment for a term which shall not be less than one year and six months but which may extend to six years, or with fine which shall not be less than one lakh rupees, or with both.

Whoever, having already been convicted of an offence, is convicted for the second offence or any offence subsequent to the second offence, shall be punished with imprisonment for a term which shall not be less than two years but which may extend to seven years and with fine which shall not be less than one lakh rupees. The person who is, of is under eighteen years of age, convicted of an offence under this Act shall be treated in accordance with the Juvenile Justice (Care and Protection of Children) Act, 2000 (Sec. 4, 12, 14, Public Liability Insurance Act, 1991).

If any owner fails to comply with direction or order or obstructs any person in discharge of his functions he shall be punished with imprisonment which may extend to three months, or with fine which may extend to ten thousand rupees, or with both (Sec.9, 10, 11, 15, Public Liability Insurance Act, 1991).

When any offence under this Act is committed by a company, every person who, at the time of commission of offence, was directly 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 guilty of the offence and be punished in accordance with this Act.

Where any offence under this Act has been committed by a company or by any Department of Government, every person who, at the time the offence was committed, was directly in charge of, and was responsible to, the company/ Department for the conduct of the business of the company/ Department, as well as the company/ Department, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. However, he will be saved if he establishes that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence. (Sec.16, 17, Public Liability Insurance Act, 1991).

10.12 SUMMARY

The public liability- insurance Act,1991, has been promulgated to wipe the tears of the victims of an accident, which they met while handling any hazardous substance and for matters connected or incidental thereto. The come to their rescue only when such accident is resulted in death or injury, permanent total or permanent partial disability or sickness, to any person or damage to any property. However, the workman, as defined in the Workmen's Compensation Act, 1923, has not been allowed to avail the remedy under this Act. At the

time of registering the claim the claimant need not plead and establish that the death, injury or damage in respect of which the claim has been made was due to any wrongful act, neglect or default of any person. The Collector/ Deputy Commissioner is endowed with power to sit over the complaint and settle the claim. The liability shall be met out of the Environment Relief Fund.

10.13 KEY WORDS

1. Disability
2. Insurance
3. Claim
4. Collector/ Deputy Commissioner
5. Liability
6. Environment Relief Fund
7. Administration of Fund.

10.14 SELF ASSESSMENT QUESTIONS

1. Explain the powers and functions of Collector/ Deputy Commissioner public liability-insurance Act,1991. “The contract of life insurance may be called in question before the expiry of two years from the date of conclusion of contract” substantiate.
2. Discuss the provisions relating to the nature of disability and extent of relief
3. Write note on –
 - a. Environment Relief Fund
 - b. Complaint

10.15 REFERENCES

1. The Law of Insurance Contracts: A. Malcolm.
2. International encyclopaedia of laws: Insurance Law: R. Blanpain.
3. Insurance law manual with IRDA circulars and notifications: Taxmann.
4. Insurance law: Relating to all risks other than marine: E.J. Macgillivray.
5. Modern insurance law: John Birds and Norma J Hird.
6. Law Relating to Marine Insurance: Mitra, B.C.
7. Law of Insurance: Jaiswal J V N
8. General Principles of Insurance Law: Hardy Ivamy E R
9. Law Relating to Insurance: Vats R M
10. Insurance Regulatory and Development Authority Act, 1999
11. Insurance Act,1938

BLOCK-III

UNIT 11: THEORIES OF INSURANCE

STRUCTURE

- 11.0 Objectives
- 11.1 Introduction
- 11.2 Principle of cooperation
- 11.3 Principle of probability
- 11.4 Principle of insurable interest
- 11.5 Principle of utmost good faith
- 11.6 Principle of warranties
- 11.7 Principle of indemnity
- 11.8 Principle of subrogation
- 11.9 Principle of contribution
- 11.10 Principle of causa proxima (Nearest cause)
- 11.11 Principle of mitigation of loss
- 11.12 Principle of Risk
- 11.13 Summary
- 11.14 Key Words
- 11.15 Self Assessment Questions
- 11.16 References

11.0 OBJECTIVES

On reading this unit the students would be able to understand the following –

1. Theories of insurance
 2. Implications of theories of insurance
-

11.1 INTRODUCTION

The insurance business is promoted on certain fundamental principles which are applicable to all types of insurance viz – life insurance, fire insurance, marine insurance and other insurances. The principles are – (a) principle of cooperation, (b) principle of probability, (c) principle of insurable interest, (d) principle of utmost good faith, (e) principle of warranties, (f) principle of indemnity, (g) principle of subrogation, (h) principle of contribution, (i) principle of causa proxima and (j) principle of mitigation of loss. These theories are developed on scientific method but not on conjectures. They are being tested by time and tide. Thus, one can rely on these theories to find a solution on issues relating to insurance

11.2 PRINCIPLE OF COOPERATION

The concept of insurance has been promoted on the edifice of ‘each for all and all for each’ and mooted to drive common interest and welfare. The scheme of insurance is being operated with the, creation of a common fund, contribution of a large number of people for the cause of all by way of payment of premium. On maturity of the policy or injury or death of a fellow man of the band, who has contributed towards the common fund, he would be compensated out of this common fund. This was in practice since ages. The people, in ancient times, used to create a fund through pooling system, to indemnify each other, to face any eventualities or upheaval. We are following their footprints with little rationalization suiting to present conditions. The insurance industry, today, is working on pool basis. People who are exposed to similar risks are brought together. The members in the group agree that, if any one of them suffers a loss, the group members will share the loss and compensate the person who has suffered the loss. The compensation is expected to put him in the same position, financially, in which he was, before experiencing the loss. In the olden days the people were acting in combination, under a common understanding, for the cause of one and all. Today, the insurance companies acting as an intermediary and brings them together. The origin and development of insurance indicates that it is evolved on the principles of co-operation.

11.3 PRINCIPLE OF PROBABILITY

The business of insurance is risk oriented, featured on degree of probabilities of risk, which may or may not happen. The quantum of risk varies from case to case, such variance in some cases may be high and in certain cases it may be low. The determination of premium is always dependent on the nature and extent of risk, higher the risk higher the rate of premium. The chance of operation of risk, causing the damage to the property insured, is a mathematical assumption. The calculation is made on the basis of past experience. For example in a village there are 1000 houses, each valued at Rs. 10,000. It is expected that on an average, 10 houses may catch fire in a year. In such event the calculation of premium would be as under –

Total number of houses	1000
Value of each house	Rs. 10,000
Number of houses expected to catch fire in a year	10
Total expected loss	Rs. 10,000 X 10 = Rs. 1,00,000
Number of houses among which the is to be distributed	1000
Loss that each house has to bear	Rs. 1,00,000/1000 = Rs. 100
Premium to be charged per house	Rs. 100

All the owners can come together and contribute/share Rs 100 each and build a common fund of Rs. 1,00,000. The common fund of Rs. 1,00,000 can be used to pay Rs. 10,000 to each of the 10 owners whose houses get destroyed due to fire. In this way, the loss of the 10 owners can be equally shared by all the 1000 owners. The share of each owner comes to Rs. 100 which works out to 1% of the house value (Rs. 10,000). This is the same as the probability of risk which 1% (10 house burnt out of 1000 houses). The contribution/share of Rs.100 per house owner would be the premium and that would be fixed at 1% (probability of risk) of the insurance cover (which is equal to the value of the asset).

The probability of risk would depend upon various factors such as nature of construction of the house (concrete or thatch work), its location (residential, commercial or industrial area), goods stored, ownership of vehicles, nature of uses etc. The risk is measured in terms of percentages and the share would be equal to that same percentage.

11.4 PRINCIPLE OF INSURABLE INTEREST

Insurable interest indicates a legal bond between the parties to the contract and the subject matter of insurance. It is an indispensable feature of contract of insurance. In the absence of insurable interest the contract would be treated as wager and becomes void (Sec.30, Indian Contract Act, 1872). The person who sustains injury by the operation of the risk may be said have insurable interest in the property or person (New India Assurance Co. Ltd Vs B N Sainani AIR 1997 SC 2938). The presence of insurable interest is a mandatory requirement in all types of insurance i.e. fire, life, marine and general insurance. The insurable interest is not synonymous to legal interest. Thus, even a non-owner of the property may become a party to the contract of insurance. In the words of Riegel and Miller insurable interest signify “an interest of such a nature that the possessor would be financially injured by the occurrence of the event insured against”.

A person may be said to have insurable interest in relation to the subject matter of insurance when –

- a) Drives pecuniary benefit or advantage from its preservation; or
- b) Suffers pecuniary loss or damage from its destruction, termination or injury by the happening of the event insured against.

Prior to the introduction of Gaming Act, 1845, the contract of insurance was governed by the common law, wherein the people were allowed to enter into the contract of insurance even in the absence of legal interest in the property or person insured, it has made the people to purchase insurance policy on the life of others, which is based on speculations. With a view to prevent this attitude, in England, the Life insurance Act, 1774, was promulgated. The Act states thus –

“All such contracts or agreements either in promise or in writing are null and void, if they are made in the form of wager or speculation”.

From the afore analysis following principles may be deduce –

1. The interest must be lawful, but shall not be either illegal or unlawful or immoral or opposed to the public policy.
2. The right in the property stems either from contract or statute.
3. The interest must be pecuniary interest capable to measure in terms of money or monies worth.

4. The interest in the property need not be absolute but it may be partial or limited or defeasible or contingent or equitable interest.

The insurable interest may be originated either by virtue of contract or by statute, which are detailed as under –

Common Law	Contract	Statute
Self	Employer –Employee	Executors and trustees
Spouse	Company –Keyman	Bailees
Children	Partner	
Assets	Surety –Debtor	
	Creditor – Debtor	
	Bank – Mortgage	
	Owner – Tenant	

a) **Common Law**

1. Own life: An individual is having unlimited insurable interest in his/her own life. He/she may purchase a life insurance policy, on his/her own life, to any amount as he/she pleases, no ceiling limit is put to determine the sum insured on the life an individual. The value of a person is not amenable to measure in terms of money. Thus, a person can insure his/her life to any sum depending upon his/her paying capacity.

2. Spouse: On entering the matrimonial home the male and female, their status in the society gets changed into as husband and the wife, tied with a familial/legal bond. They are being treated as one unit. The concern and care between them are reciprocal in the promotion of their welfare and wellbeing. The benefit they derive is also mutual. Any harm to either would disturb on the other. With a view to safeguard their interest they may purchase a policy on the life of their other-half. It is kind of social security provided to protect the interest of the spouse.

3. Children Parentage signifies a legal relationship between the parents and children. Being a natural guardian, either the father or mother or both, owes a duty to take care of their children to better their future. Thus, the parents may gofor insurance on the life of their children.

4. Assets: An individual possess insurable interest on the property he owns. He derives benefits from it and may sustain loss when the property gets damaged. He may purchase the policy, to save the property from danger, against the risk/s anticipated.

b) **Contract:**

1. Employer – Employee: Generally, the employer possesses insurable interest, in his employees, to the extent of value of their services. If any employee falls sick or facing any like situation, the business of employer will be affected to the extent of value of is/her service. In order to bail-out his establishment, he may gofor group insurance in favour of his employees.

2. Company – Keyman: The Company used to depend on the official who held crucial position in administration of the company. Their absence, owing to injury or indisposition etc, adversely affects the day-to-day functions of the company. Thus, the company may gofor insuring the life of its keyman to save the company from such eventualities.

3. Partners: Partners of the partnership firm, ordinarily, possess insurable interest on the life of the fellow partner/s to the extent of capital they invested in the common stock.

4. Surety – Debtor: A surety enjoys insurable interest in the life of the principal debtor and co-surety to the extent of debt.

5. Creditor – Debtor: A creditor holds insurable interest in the life of the debtor to the extent of debt.

6. Banker – Mortgagor: The banker possess insurable interest in the property mortgaged against the loan

7. Executors and Trustees: An Executor and a Trustee do have an insurable interest in respect of the interest of which he is an executor or a trustee.

8. Bailees: The bailees which include garage owners, warehouse owners etc. have insurable interest in the goods held by them on behalf of others, for payment or otherwise.

Time to establish insurable interest: The time or duration of insurable interest is depending upon the nature of insurance contract. The burden to establish the existence of insurable interest is on the insured. The time to prove its existence is as under –

Kinds of insurance	Time to establish the existence of insurable interest
Life insurance	Insurable interest must be in existence at the time of purchasing the policy and its presence is not needed thereafter.
Property/fire/motor insurance	Insurable interest must be in existence both at the time of taking the policy and also at the time of making the claim.
Marine insurance	Insurable interest must be in existence at the time of loss/claim.

11.5 PRINCIPLE OF UTMOST GOOD FAITH

The concept of insurance is evolved on the edifice of good faith. Parties to the contract shall act in good faith, reposing trust with each other, by disclosing all the facts, both known or unknown i.e. ought to be known, material to the contract and desist from concealment and misrepresentation of facts. Both the insurer and the insured stand on equal footing in respect of obligation of disclosure and representation. The duty of disclosure continues till the conclusion of contract.

The significance of utmost good faith (*uberrimae fidei*) is underlined by Lord Mansfield thus

–

“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 representation and proceeds upon confidence that he does not keep back any circumstance in his knowledge to mislead the underwriter into a belief that the circumstance does not exist, and to induce him to estimate the risk as if it did not exist. The keeping back of such circumstance is a fraud and therefore the policy is void. Although the suppression should happen through mistake without any fraudulent intention, yet the underwriter is deceived and the policy is void, because the risk run is really different from the risk understood and intended to be run at the time of agreement.” (*Carter Vs Boehm* (1766)3Bur 1905).

The duty of disclosure is limiting only to material facts. The parties shall disclose which are known or ought to be known. Failing which, either willful or inadvertence or even due to the erroneous belief that the fact not disclosed is not material, the contract may be avoided by the other party. Whether the fact is material or not is, a question of fact, depending upon whether it would influence the prudent and experienced insurer/insured to arrive at a decision in respect of insurance contract if he knows it. This question shall be finally decided by the Court and not by the parties. While deciding this question the Court examine –

- i. Whether it would influence the prudent insurer in the determination of premium; or
- ii. Whether it would increase the quantum of risk; or
- iii. Whether it would influence the terms and conditions of the policy, if the facts have been disclosed; or

iv. Whether it would influence the prudent insurer in determining whether he can undertake the risk or not.

The duty of disclosure of material fact, cast on both the party to the insurance contract i.e. both the insurer and the insured, is of statutory obligation. Any failure would be treated as concealment of facts. Thus, the parties shall disclose material facts which they have known or have a reason to believe. Any failure, in this behalf, of either party makes the contract voidable at the option of the other party. Whether the fact disclosed is material or not shall be adjudged on the basis of prudent insurer test (Sec.20 (2) Marine Insurance Act, 1963). The same test ordinarily applies in case of other insurances. The proposer owes a duty to disclose voluntarily the facts and circumstances which –

- a) Tends to be greater than normal;
- b) Indicates the motive of taking the insurance policy; and
- c) May suggest the existence of moral hazard or moral integrity of the proposer.

Exception to the duty to disclose:

However, no disclosure of facts be made when it –

- a) Diminishes the risk;
- b) Is known or presumed to be known to the insurer in the ordinary course of his business
- c) Is waived by the insurer;
- d) Is superfluous to disclose by reason of any express or implied warranty;
- e) Is not disclosed, be material or not is, in each case, a question of fact;
- f) Is originated with insurer himself;
- g) Is refused by the insurer himself;
- h) Is of public in nature;
- i) Is irrelevant or immaterial.

Time of disclosure:

The duty of disclosure begins the moment the proposal to conclude the contract is set into motion and ends on the conclusion of the contract. However, the duty to disclose revives - when the term of policy comes to an end and set for its renewal or in case of revival of lapsed policy.

Effect of non-disclosure under life insurance: The principle of good faith is uniformly applied to all types of insurance except the life insurance. This principle has been employed with little modifications in case of life insurance under Section 45, Insurance Act, 1938. Any contract of life insurance shall not be called in question on the ground of mis statement after

two years when the premium is paid regularly except for proof of age. This section contains two parts.

The first part says that no policy shall be called in question, after two years from the date on which it is effected, on –

- a) the ground that statement made in the proposal or
- b) any report of a medical officer, or referee, or friend of the insured,
- c) any other document leading to the issue of the policy
– leading to the issue of policy which was inaccurate or false.

The second part states that the policy may be called in question even after two years, from the date of issue of policy, when the insurer shows that the statement was -

- a) On a material matter or suppressed facts which it was material to disclose;
- b) Fraudulently made by the policy-holder; and
- c) False or that it suppressed facts which it was material to disclose although the policy-holder knew at the time of making it as false or suppressed.

However, this limitation does not prevent the insurer from calling for proof of age, at any time, when he has reason to believe that the age of the life insured was incorrectly stated in the proposal.

The facts to be disclosed in life insurance:

The proposer, besides the questions raised in the proposal form, shall disclose the following information –

- a) The proposal made with any other insurer, if any, and its remarks/results.
- b) In the event of - refusal of proposal reasons of refusal or acceptance with additional premium reasons for extra premium.
- c) Reasons for waiver of medical examination, when the policy is issued on the same life, although the term of insurance is long term.
- d) When the life span is likely to fall short of average duration, reasons therefor.
- e) The occupation or avocation or pursued, if hazardous or developing of intemperate habits or if there is a threat of murder and any other unusual circumstances which may pose threat to the life or limb causing death or permanent or temporary, partial or total disablement.
- f) Pen name or nick name, if any.

11.6 PRINCIPLE OF CAUSA PROXIMA (NEAREST CAUSE)

The principle of insurance aims to compensate the loss caused by the peril insured against. The cause of loss becomes more significant in fixing the liability on the insurer. There shall be apparent and clear nexus between the causes of loss and the peril insured against. The principle of “causa proxima non remota spectator” (it means proximate and not the remote cause shall be taken as the cause of loss) facilitate us to determine whether the insurer is liable to make good the loss in pursuance of the policy. While measuring the damages one shall consider the immediate cause and not the distant cause. This principle is akin to the principle of remoteness of damage of law of contract and torts and draws a line of demarcation between the consequences of loss and the conduct of the parties. When the damage is too remote to the consequences of the wrongful act, the insurer is not liable to compensate the loss to the insured. Thus, there shall be a causal connection between the act and the consequences. In this back ground one has to examine, before fixing the liability on the insurer, whether the loss is caused by the peril insured against directly or remotely or whether the peril was brought into operation by an expected cause. Thus, when a loss is caused by more than one causes, the proximate or the nearest or the closest cause should be taken into consideration to decide the liability of the insurer. The principle states that to find out whether the insurer is liable for the loss or not, the proximate (closest) and not the remote (farrest) must be looked into. At the time of examining the application of principle of causa proxima one shall look into the following aspects –

- Whether the loss to the property is caused by more than one cause in succession to another.
- Whether the property is insured against some perils or against all perils.
- Whether the peril insured against is the direct dominant, efficient and operative agent in causing the loss/damage.

If the answer derived is positive then insurer is bound to pay the compensation. Otherwise he will be absolved from the liability.

Life Insurance: The life of a person may come to an end by death which may be of natural or unnatural death. If death is natural the insurer does not raise any objections to settle the claim in accordance with the policy. However, if the death is unnatural like suicide or intentional murder then the insurer will have recourse to the principle of causa proxima to ascertain his liability.

Fire Insurance: In fire insurance the principle of causa proxima is applied very liberally. The insurer is answerable to the losses which occur either directly or indirectly during the course of extinguishing fire.

Accident insurance and General Insurance: In accident insurance one has to establish that the loss is caused directly and proximately by an accident/the peril insured against.

Marine Insurance: The principle of causa proxima although is recognized in marine insurance but its application is very difficult owing to varied kinds of maritime perils. At the time of holding the insurer liable the following aspects shall be examined –

- Whether the perils of the sea is the cause of loss.
- Whether the peril identified is having insurance cover in the policy.
- Whether the peril insured against is the proximate cause of loss.

11.7 PRINCIPLE OF WARRANTIES

The warranty is stipulation collateral to the main purposes of the contract, breaching of which entails the aggrieved party only to claim damages and but cannot avoid the contract. However, in law of insurance, the term warranty has not been used to signify the condition. It is a combination of both condition and warranty (Sec.12 Sale of Goods Act). The representations made by the parties to the contract, when accepted, take the shape of warranty. The parties to the contract of insurance shall oblige to act in consonance with the warranty, failing which it results in avoidance of contract, as it forms the part of the contract. It acts as a limitation on the general terms used in the policy. In Law of insurance warranty indicates as –

- a) An undertaking, accepted by the parties, to do something or abstain from doing something.
- b) A promise to fulfill the conditions undertaken.
- c) An affirmation or negation of existence of a particular state of facts.
- d) An edifice to the contract.

There is no prescribed prescription for warranty, it may be express or implied or promissory.

Express warranty: The express warranty may be either in writing or oral. However, it is desirable to have it in writing since it emerges as primary documentary evidence, which is easy to prove. The warranty may be incorporated at any place of the policy or a separate document or instrument, independent of the policy, may be executed in this behalf.

Implied warranty : implied warranty is also forming as a necessary part of the contract. Its existence may be established either by virtue of a law or custom of trade or from the circumstances prevailing thereon. The implied warranty is recognized only in marine insurance. Seaworthiness of ship, legality of voyage, non-deviation etc., speaks about implied warranty. Promissory warranty: Promissory warranty signifies any condition which is to be operated in future. Section 35 to 43, Marine Insurance Act, 1963 is dealing with promissory warranty. The breach of promissory warranty enables the insurer to disclaim the liability.

The warranty place both the insured and the insurer in an advantageous position, they are -

- The insured may get most favorable rate of premium.
- It fixes accountability both on the insured and the insurer.
- It enables the aggrieved party to repudiate the contract although the warranty is not material to the contract.

11.8 PRINCIPLE OF INDEMNITY

The concept of insurance is analogous to the principle of indemnity. Section 124, Contract Act, 1872, defines contract of indemnity as –

“a contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself or by the conduct of any other person is called as a contract of indemnity”.

On the close analysis of the above definition one may deduce an inference that it encompasses only such loss which arises out of human conduct. The principle of indemnity applies to all other insurance, except life and health insurance. Because, the policy is not reflecting as a true estimation of the value of life as the value of human life is not amenable to any measure. Thus, fire insurance; marine insurance and general insurance are termed, interchangeably, as contract of indemnity.

The motto of indemnity is to reparate the loss when it is caused by the promisor himself or by the conduct of any other person. Even in insurance the insurer undertakes to compensate the loss caused to the unfortunate people on the happening of a specified event. However, it does not allow him to make profit. The risk of bearing loss will be shifted from an individual to the risk bearing institution i.e. the insurer/ insurance company in lieu of payment of consideration called premium. In insurance the insurer undertakes to bear the loss which may arise due to the operation of risk resulting in death or disability or damage or deterioration or destruction or loss property. The insured shall prove that the claim made is commensurate with the loss

sustained. However, he is entitled to recover the amount of loss only to the extent of sum assured. If he is in receipt of any amount in excess of the sum assured he is required to repay the same to the insurer. Correspondingly, on payment of the sum insured the insurer will step in to the shoes of the insured and enjoys all the rights, which the insured had, against the third party, if any.

Advantages of principle of indemnity: The advantages of principle of indemnity is as under –

- It helps to promote socio – economic development of the economy.
- It not only aids to save the property from loss but also prevents damage to the property.
- It discourages over or under insurance.
- It plugs the element of speculation or wager from the ambit of contract of insurance and renders it as lawful.

11.9 PRINCIPLE OF SUBROGATION

The concept of subrogation is originated from Roman law, which literally mean substitution. The subrogation is a process substitution of one person to another i.e. it is a means to step into the shoes of another the moment a person satisfy the debt or obligation of the former and enjoys, thereafter, all those rights which the former possesses against the third party in respect of subject matter of contract. Accordingly, all the rights of the insured will get transferred in favor of the insurer immediately after the payment of the sum assured in connection with the property insured. Consequently, the insurer may receive all the benefits and also enforce all the rights in respect of the property insured. The principle of subrogation is applicable in case of fire, marine, general insurances and reinsurance. The right of subrogation will be bestowed on a person either through contract or tort or statute. However, the right of subrogation is not an absolute right but certain limitations, they are –

- The right of subrogation will be vested on the insurer the moment he makes full settlement of the sum assured.
- The right of subrogation does not come into picture unless the insured himself has no cause of action.
- The claim under the right of subrogation shall always be on par with the rights enjoyed by the insured. It cannot be improved or enhanced under any circumstances.
- The right of subrogation is not applicable to life, health and personal accident insurances. However, it applies only to the marine, fire and other non life insurances.

11.10 PRINCIPLE OF CONTRIBUTION

The term contribution means give something to meet some specific purposes. In contract of insurance the principle of contribution signifies sharing of losses by the insurer when the insured purchased two or more policy on the same subject matter, against the same risk and at the same time. This principle is an incidence of subrogation. In turn the doctrine of subrogation is having its root in contract of indemnity.

The insurance gives liberty to the insured to insure the same interest with two or more insurer. In exercise of this liberty if he purchases more than one policy on a specific property simultaneously against the same peril, it gives way for double insurance. Further, it leads the question of contribution the moment the loss is compensated, in pursuance of the policy, by the insurer.

Calculation of ratio of contribution: The formula mentioned below will help us to calculate the ratio of contribution. It runs thus –

$$\frac{\text{sum insured with each insurer}}{\text{value of the property}} \times \text{loss} = \text{Amount to be contributed by the insurer}$$

Example: Trinity incorporation has purchased insurance policies from Atria, Carlo and Caspio Insurance Corporations for Rs.80,00,000, Rs. 90,00,000 and Rs. 70,00,000 respectively to secure its building located in Bangalore from fire. The building got damaged due to the fire causing loss to the extent of Rs.1,50,00,000. What shall be the ratio of contribution between the insurers?

Policy of Atria Insurance Corporation:

$$\frac{80,00,000}{2,40,00,000} \times 1,50,00,000 = 50,00,000$$

Policy of Carlo Insurance Corporation:

$$\frac{90,00,000}{2,40,00,000} \times 1,50,00,000 = 56,25,000$$

Policy of Caspio Insurance Corporation:

$$\frac{70,00,000}{2,40,00,000} \times 1,50,00,000 = 43,75,000$$

Conditions of contribution:

Before invoking the principle of contribution following conditions need be fulfilled. They are

–

- Two or more insurance policies shall be purchased on the same subject matter.
- The insured must be one and the same person.
- The insurance shall carry the same interest.
- The peril identified and the risk covered must be one and the same.
- All the policies shall be in force at the time of loss.
- The policies shall be connected to the marine, fire and other non life insurances but not to the life, accident and health insurance.
- Contribution shall be equitable sharing of liabilities between the insurers.

11.11 PRINCIPLE OF MITIGATION OF LOSS

Once the contract of insurance is concluded the insured cannot take a sigh of relief and never totally relieved from taking care of the property insured against. On purchasing of policy he has to take all possible care, as the ordinary prudent man acts in similar situations, to save the property from all perils insured against including other perils, if any. In the event of fire, explosion, flood etc, he has to take needful step to avert and minimize the loss or damage. Failing which the insurer may disown the liability. Indeed, the insurer undertakes to afford protection against losses caused by fortuitous or accidental occurrences. Correspondingly, the insured shall, by implication, owe a duty to desist from exposing the property insured to any kind of risk through willful act or conduct. Thus, he is required to do his best, in good faith, to reduce the extent of loss to the property insured and protect it from all kind of risks.

11.12 PRINCIPLE OF RISK

The word risk does not mean the danger but the circumstances which give rise to it. All facts which minimize or improve the chance of the event insured against the happening or not happening are elements of the risk to be undertaken by the insurer. Description of the subject matter including its character and construction, and its loyalty are two important elements of risk, besides others. The risk differs according to the place where the subject matter of insurance is. Any special facts relating to the neighborhood which tends to increase the risk must be told. The description of the subject matter of insurance is the second important

element of the risk. The description must be correct so that the insurers may be in a position to determine the risk.

Both the parties to the contract are expected to know the nature, degree and exact extent of coverage of risk which is likely to be enveloped the subject matter of contract of insurance. This will help them not for determining the appropriate rate of premium and to avoid double insurance or over insurance.

Willful mis-conduct: The contract of insurance is concluded only to cover fortuitous event and it never allow the insured to expose the property or person willfully to any injury. Every such attempt will, lead to fraud or dolus, not enable him make good the loss in the absence of express words. This principle is widely applied to life insurance only in cases of suicide.

Implied limitations: Apart from willful mis-conduct the insured will be precluded from recovering the loss when it is sustained due to normal wear and tear, inherent vice i.e. inherent or natural defect or failing or weakness of the insured property and risk which is not lawful to cover.

Extent of risk covered: The risk must be, known to both the parties, defined precisely to enable the insurer to charge the appropriate premium and also to facilitate the insured to go for additional coverage, if need be, to cover the gap. The parties are at liberty to extend or limit the liability of the insurer, by agreement, in respect of the operation of the risk. In the absence agreement the risk does not include -

- a) Loss caused by the willful misconduct of the insured or caused with his connivance, whether it amounts to crime or not;
- b) Loss due to ordinary wear and tear and inherent vice of the subject matter insured, as insurance is against risks that may happen and not those that must happen.

Commencement and duration of risk: The commencement of risk is depending upon the intention of the parties which may be inferred from the language of the policy or general usage or the circumstances of the case. For the purposes of commencement of risk two factors must be borne in mind, i.e. (a) the issue of policy by the insurers and (b) the payment of premium. The issue of policy, unless contrary intention appears and proved, marks the commencement of risk and the payment of premium is irrelevant in such cases. Where the insurer issues cover note, on the receipt of proposal, the fact by itself constitute a contract of insurance for a certain time and the risk commences from the date of the issue of the note. However, if the policy speaks that the policy begins to run from the date of payment of premium then the risk commences only on the payment of premium. Any payment of premium to the agent will never make the risk set-off unless he has been duly authorized to

receive it. The time and date of commencement of risk is subject to the agreement. Thus, it has to be ascertained from the language of the agreement or the policy.

Termination of risk: The risk comes to an end on the following circumstances –

- a) By termination of contract, by either party or novation of contract.
- b) On refusal to accept the premium or returning of premium in proportion to the uncovered period.
- c) On payment of full payment of sum insured.
- d) By operation of law, e.g. on liquidation or winding up of insurance company.

Period of risk and time of loss: The right to indemnity could be exercised by the insured only when the policy is in force and not otherwise.

Elements of risk: The determination of rate of premium and forming a decision to undertake the risk is always depends upon the nature and degrees of risk, which may bank upon various factors. Thus, the insured and the insurer are obligated to disclose it while concluding the contract. The factors hangs around the risk are -

Life insurance	Property insurance	Marine insurance
Habits in life or mode of living	Nature of property e.g. movable/immovable/perishable/durables etc.,	Voyage and its nature
occupation	Character and constitution	The route of the voyage
Environment	area	The winds and storms in the locality
Position and status in life	Situation and locality	The danger of war, capture and seizure
character	Exposure to outside dangers	Pirates
heredity	Inherent defects	Mutiny of crew
Previous illness	Use and habits of the assured	Insurrection of natives and dangerous coasts.
Opportunities for exposure to special dangers	The title to the property.	- -

Alteration of risk: The liability of the insurer will be confined to the risk specified in the contract/policy. No change in the nature and extent of risk be made, during the currency of the policy, except with the consent of both the parties. Any alteration of risk may amount

substitution of one risk to another and may leads to destruction of identity of the subject matter of insurance. Thus, in the absence of prior notice of change or concurrence the insurer will be absolved from making the payment of sum insured.

Duty of the insured: On the conclusion of contract of insurance the insured shall –

- a) Desist from causing loss or damage to the property insured;
- b) Refrain from accelerating the risk;
- c) Try to Prevent the happening to the extent possible;
- d) Strive to mitigate the loss or damage;
- e) Aim to save the property from the risk;
- f) Bring to the notice of the insurer immediately after the property get damaged or lost.

Burden of proof: In the event of damage or loss to the property or person, insured against, the insured shall prove that the loss is caused by the risk defined in the policy. If he succeeds in proving it or if it is admitted by the other party, the burden will be shifted to the insurer to show that, although the loss was caused by the event insured against, the claim made by the insured falls under the exceptions underlined in the policy.

11.13 SUMMARY

The theories of insurance have not been developed by overnight. They are proven and it may be applied to a given situation to find remedy.

11.14 KEY WORDS

1. Cooperation
2. Probability
3. Insurable interest
4. Utmost good faith
5. Warranty
6. Indemnity
7. Subrogation
8. Contribution
9. Causa proxima (Nearest cause)
10. Mitigation
11. Risk.

11.15 SELF ASSESSMENT QUESTIONS

1. “The determination of liability shall be on the basis of proximate cause and not the remote cause” substantiate.

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2. Define insurable interest. Who may possess insurable interest? At what time the insurable interest shall be in existence to avail the benefit of insurance.

.....
.....

3. Write note on –

- a. Utmost good faith

- b. Subrogation

- c. Contribution

11.16 REFERENCES

1. Principles of insurance law: Life - fire - marine - motor and accident: M.N.Srinivasan.
2. Modern Law of Insurance: KSN Murthy and KVS Sarma.
3. Life insurance corporation of India : Impact of privatization and performance: Sumninder Kaur Bawa.
4. Commentaries on the public liabilities insurance act 1991: G.S Karkara.
5. Insurance law: A comprehensive treatise on law of insurance covering all risks except marine insurance: Brij Nandan Singh.
6. The Law of Insurance Contracts: A. Malcolm.
7. International encyclopaedia of laws: Insurance Law: R. Blanpain.
8. Insurance law manual with IRDA circulars and notifications: Taxmann.
9. Insurance law: Relating to all risks other than marine: E.J. Macgillivray.
10. Modern insurance law: John Birds and Norma J Hird.
11. Law Relating to Marine Insurance: Mitra, B.C.
12. Law of Insurance: Jaiswal J V N
13. General Principles of Insurance Law: Hardy Ivamy E R
14. Law Relating to Insurance: Vats R M

UNIT 12: PRINCIPLES OF INSURANCE CONTRACT

STRUCTURE

- 12.0 Objectives
- 12.1 Introduction
- 12.2 Parties to the insurance contract
- 12.3 Competency of the parties
- 12.4 Offer/Proposal
- 12.5 Acceptance/Promise
- 12.6 Consideration
- 12.7 Consensus ad idem
- 12.8 Lawful object
- 12.9 Agreement must not be in restraint of trade or legal proceedings
- 12.10 Agreement must be certain and not be a wagering contract
- 12.11 Features of insurance contract
- 12.12 Contract of Insurance and Guarantee
- 12.13 Distinction between contract of Insurance and Guarantee
- 12.14 Contract of Insurance and wager
- 12.15 Distinction between contract of Insurance and wager
- 12.16 Summary
- 12.17 Key Words
- 12.18 Self Assessment Questions
- 12.19 References

12.0 OBJECTIVES

On reading this unit the students would be able to understand the following –

1. Essentials of contract
2. Implications of contract

12.1 INTRODUCTION

The bond between the insurer and the insured will come into being only after the conclusion of contract. Vinculum juris nurtures this legal bond between the parties to the contract. In the absence of this element none of the party is answerable to the other. This union will continue unabatedly till it is determined. Thus, the conclusion of contract between the insurer and the insured is a condition precedent to claim benefits of insurance. At the time of entering into a contract the parties are required to fulfill certain conditions which are narrated in this unit.

12.2 PARTIES TO THE INSURANCE CONTRACT

The contract of insurance shall be concluded between the two parties viz the insurer and the insured or assured. The person who undertakes to compensate the loss in the event of loss to the life or property is called as the insurer and the beneficiary of the insurance is called as insured or assured. The insurer may be –

- a) any individual or unincorporated body of individuals or body corporate incorporated under the law of any country other than India, carrying on insurance business not being a person specified in sub-clause (c) of this clause which-
 - 1) carries on that business in India, or
 - 2) has his or its principal place of business or is domiciled in India, or
 - 3) with the object of obtaining insurance business, employs a representative, or maintains a place of business, in India;
- b) anybody corporate [not being a person specified in sub-clause (c) of this clause] carrying on the business of insurance, which is a body corporate incorporated under any law for the time being in force in India; or stands to any such body corporate in the relation of a subsidiary company within the meaning of the Indian Companies Act, 1913 (7 of 1913), as defined by sub-section (2) of section 2 of that Act, and
- c) any person who in India has a standing contract with underwriters who are members of the Society of Lloyd's whereby such person is authorized within the terms of such

contract to issue protection notes, cover notes, or other documents granting insurance cover to others on behalf of the underwriters.

But does not include a principal agent' chief agent, special agent' or an insurance agent or a provident society as defined in Part III Sec2 (9), Insurance Act, 1938).

The other party to the insurance is the insurer or the assured. In case of general and property insurance he may be either artificial or natural person. However, in case of life insurance natural person alone can become a party to the contract of insurance as the juristic person i.e. corporations or companies do not have life.

12.3 COMPETENCY OF THE PARTIES

The parties to the contract of insurance shall be competent to conclude the contract. In other words they shall be major, of sound mind and shall not be disqualified from contracting by any law to which he is subject. However, an insane may become a party to the contract during lucid interval period and in case of minor his parents or guardian may enter into contract for his benefit and to meet his necessities (Sec.11 &12, Contract Act, 1872). The alien enemy, person of unsound mind and un-discharged insolvent are debarred from concluding the contract.

The insurance companies have made special provisions for children to enable the parents or guardian of minor to go for insurance on their behalf. This provision has been made to, safeguard interest, rights and estate of a child. Thus, in life insurance companies comes with various plans like education policy, endowment policy, marriage policy etc. these schemes/plans are called as children's deferred assurance. In these plans the parents or guardian purchase the policy on the life a child till it attain certain age. Generally, the obligation to pay the premium ceases the moment said parent or guardian dies and no further premium need be paid. Usually the premium will be returned if the child dies during the period of deferment.

In the case of Insurance the person with whom the Contract is entered into is called "Policyholder" or "Policy Owner" who could be different from the subject matter which is insured. In Life insurance contracts, for example, the person whose life is insured could be different. For example, the Policyholder could be the Father and the Life assured could be the son. In the case of Fire insurance, the Policy owner could be the Owner of a building and the subject matter of insurance would be the building itself. The Policyholder must have attained

the age of majority at the time of signing the proposal and should be of sound mind and not disqualified under any law. However, the life assured could suffer from the above infirmities.

12.4 OFFER/PROPOSAL

The offer or proposal signifies willingness of a person to do or to abstain from doing something, with a view to obtain the consent of another to do such act or abstinence. The person who makes the offer is called as offeror or proposer and the person who accepts such proposal is called as offeree or promisee. The moment the offer is accepted it becomes a promise. In insurance the insurer is proposer and the insured is the promisee. The insured shall submit the duly filled in proposal form i.e. application for insurance furnishing all the required information to the insurer. The offer thus, made is considered as invitation to offer. In response to it the insurer assesses the risk (also called underwriting), and conveys the decision – if accepted, at what premium and on what terms and conditions. This is also called as “counter offer” by the insurer to the insured/customer. In life insurance a medical examination is also conducted, where necessary, before making the counter offer. Where the insurance company cannot accept the risk, the proposal is declined. Where the insurance company conveys its decision to accept the risk quoting a premium, a proposal is made.

Except in cases of a marine insurance cover, where current market practices do not insist on a written proposal form, in all cases, a proposal for grant of a cover, either for life business or for general business, must be evidenced by a written document. It is the duty of an insurer to furnish to the insured free of charge, within 30 days of the acceptance of a proposal, a copy of the proposal form. The Forms and documents used in the grant of cover may, depending upon the circumstances of each case, be made available in languages recognised under the Constitution of India. In filling the form of proposal, the prospect is to be guided by the provisions of Section 45 of the Act. Any proposal form seeking information for grant of life cover may prominently state therein the requirements of Section 45 of the Act. Where a proposal form is not used, the insurer shall record the information obtained orally or in writing, and confirm it within a period of 15 days thereof with the proposer and incorporate the information in its cover note or policy. The onus of proof shall rest with the insurer in respect of any information not so recorded, where the insurer claims that the proposer suppressed any material information or provided misleading or false information on any matter material to the grant of a cover. Wherever the benefit of nomination is available to the proposer, in terms of the Act or the conditions of policy, the insurer shall draw the attention of the proposer to it and encourage the prospect to avail the facility. Proposals shall be

processed by the insurer with speed and efficiency and all decisions thereof shall be communicated by it in writing within a reasonable period not exceeding 15 days from receipt of proposals by the insurer (Regulation 4, Insurance Regulatory and Development Authority (Protection of Policyholders' Interests) Regulations, 2002.

12.5 ACCEPTANCE/PROMISE

When a person to whom the proposal is made, signifies his assent thereto, the proposal is said to be accepted ("Promise"). A proposal, when accepted, becomes a promise; When the Customer accepts the terms of the offer and signifies his assent by paying the First Premium (the amount payable as the consideration), the proposal is accepted by the Customer. A proposal of the insurer (terms of offer), when accepted by the Customer, becomes a promise.

12.6 CONSIDERATION

When, at the desire of the promisor and the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise. The premium is considered as consideration in insurance. It may be paid in lump sum or in equal installments i.e. either first annual, quarterly, half yearly or monthly premium. Every promise and every set of promises, forming the consideration for each other, is an agreement.

12.7 CONSENSUS AD IDEM

Two or more person are said to consent when they agree upon the same thing in the same sense. Both the insurer and the Policyholder must agree on the same thing in the same sense. The Policy document issued to the Policyholder ("Customer") clearly defines the obligations of the insurer and the terms and conditions upon which the Insurance contract is issued.

Free consent: The parties to the contract shall arrive at an agreement independently and on their own volition but not by coercion or undue influence or fraud or misrepresentation or mistake. Both the insurer and the insured have the liberty to act freely, either to opt for the policy or to grant the policy. It is left to their voluntary decision. However, while concluding the contract both the parties shall disclose the material facts, with each other, to enable them to arrive at a decision whether to go for a contract or not. Here the principle of caveat emptor do not have any say as the contract of insurance is built on the edifice of utmost good faith i.e. uberrimae fidei. It is presumed that one party is having the advantage of access to the all the information, regarding the subject matter of contract, than the other. Thus, such a party is

bound to disclose all the facts which materially affect the contract and facilitate the other party to arrive at decision about the identification of nature and extent of risk, determination of rate of premium, terms of the contract etc. any dereliction or failure in disclosing the material facts then the aggrieved party may avoid the contract.

Matters to be stated in life insurance policy: A life insurance policy shall clearly state:

- (a) the name of the plan governing the policy, its terms and conditions;
- (b) whether it is participating in profits or not;
- (c) the basis of participation in profits such as cash bonus, deferred bonus, simple or compound reversionary bonus;
- (d) the benefits payable and the contingencies upon which these are payable and the other terms and conditions of the insurance contract;
- (e) the details of the riders attaching to the main policy;
- (f) the date of commencement of risk and the date of maturity or date(s) on which the benefits are payable;
- (g) the premiums payable, periodicity of payment, grace period allowed for payment of the premium, the date the last installment of premium, the implication of discontinuing the payment of an installment(s) of premium and also the provisions of a guaranteed surrender value.
- (h) the age at entry and whether the same has been admitted;
- (i) the policy requirements for (a) conversion of the policy into paid up policy, (b) surrender (c) non-forfeiture and (d) revival of lapsed policies;
- (j) contingencies excluded from the scope of the cover, both in respect of the main policy and the riders;
- (k) the provisions for nomination, assignment, and loans on security of the policy and a statement that the rate of interest payable on such loan amount shall be as prescribed by the insurer at the time of taking the loan;
- (l) any special clauses or conditions, such as, first pregnancy clause, suicide clause etc.;
and
- (m) the address of the insurer to which all communications in respect of the policy shall be sent.
- (n) the documents that are normally required to be submitted by a claimant in support of a claim under the policy.

After satisfying himself with the information furnished by the insured the insurer shall forward the copy of the policy to the insured for his/her consideration. While forwarding such policy to the insured, the insurer shall inform by the letter forwarding the policy that he has a period of 15 days from the date of receipt of the policy document to review the terms and conditions of the policy and where the insured disagrees to any of those terms or conditions, he has the option to return the policy stating the reasons for his objection, when he shall be entitled to a refund of the premium paid, subject only to a deduction of a proportionate risk premium for the period on cover and the expenses incurred by the insurer on medical examination of the proposer and stamp duty charges. In respect of a unit linked policy, in addition to the deductions, as stated herein, the insurer shall also be entitled to repurchase the unit at the price of the units on the date of cancellation.

In respect of a cover, where premium charged is dependent on age, the insurer shall ensure that the age is admitted as far as possible before issuance of the policy document. In case where age has not been admitted by the time the policy is issued, the insurer shall make efforts to obtain proof of age and admit the same as soon as possible (Regulation 6, Insurance Regulatory and Development Authority (Protection of Policyholders' Interests) Regulations, 2002).

Matters to be stated in general insurance policy: A general insurance policy shall clearly state:

- (a) the name(s) and address(es) of the insured and of any bank(s) or any other person having financial interest in the subject matter of insurance;
- (b) full description of the property or interest insured;
- (c) the location or locations of the property or interest insured under the policy and, where appropriate, with respective insured values;
- (d) period of Insurance;
- (e) sums insured;
- (f) perils covered and not covered;
- (h) any franchise or deductible applicable;
- (i) premium payable and where the premium is provisional subject to adjustment, the basis of adjustment of premium be stated;
- (j) policy terms, conditions and warranties;
- (k) action to be taken by the insured upon occurrence of a contingency likely to give rise to a claim under the policy;

- (l) the obligations of the insured in relation to the subject matter of insurance upon occurrence of an event giving rise to a claim and the rights of the insurer in the circumstances;
- (m) any special conditions attaching to the policy;
- (n) provision for cancellation of the policy on grounds of mis-representation, fraud, non-disclosure of material facts or non-cooperation of the insured;
- (o) the address of the insurer to which all communications in respect of the insurance contract should be sent;
- (p) the details of the riders attaching to the main policy;
- (q) proforma of any communication the insurer may seek from the policyholders to service the policy.

Every insurer shall inform and keep informed periodically the insured on the requirements to be fulfilled by the insured regarding lodging of a claim arising in terms of the policy and the procedures to be followed by him to enable the insurer to settle a claim early (Regulation 7, Insurance Regulatory and Development Authority (Protection of Policyholders' Interests) Regulations, 2002).

The duty to furnish material information, as required in respect of a proposal or policy, is both on the insurer and the insured. The policyholder shall furnish all information that is sought from him by the insurer and also any other information which the insurer considers as having a bearing on the risk to enable the latter to assess properly the risk sought to be covered by a policy (Regulation 11, Insurance Regulatory and Development Authority (Protection of Policyholders' Interests) Regulations, 2002).

12.8 LAWFUL OBJECT

The consideration or object of a contract must be lawful and in consonance to the public policy. The consideration or object of a contract is said to be unlawful, thus, becomes void, when the -

- a) Contract is forbidden by law or
- b) Contract is of such nature that, if permitted, it would defeat the provisions of any law or is fraudulent;
- c) Contract involves or implies, injury to the person or property of another; or
- d) Court regards it as immoral, or opposed to public policy.

The object of an insurance contract, i.e. to cover the risk by taking out an insurance policy, shall be lawful, failing which the contract may be termed as void.

12.9 AGREEMENT MUST NOT BE IN RESTRAINT OF TRADE OR LEGAL PROCEEDINGS

Every agreement by which anyone is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void. Every agreement, by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights, is void to the extent

12.10 AGREEMENT MUST BE CERTAIN AND NOT BE A WAGERING CONTRACT

Agreements, the meaning of which is not certain, or capable of being made certain, are void. Agreements by way of wager are void; and no suit shall be brought for recovering anything alleged to be won on any wager, or entrusted to any person to abide the result of any game or other uncertain event on which may wager is made. Anson defined wager as “a promise to give money or money’s worth upon the determination or ascertainment of an uncertain event”. For example, if A agrees to pay B `1,000, if it rains tomorrow, it becomes a gambling, since there is no certainty that it will rain tomorrow. A wagering contract is void, it is not illegal. Further a contingent contract is defined under Section 31 of the Act as “a contract to do or not to do something, if some event collateral to such contract, does or does not happen”. For example, A contracts to pay B `10,000 if B’s house is burnt. This is a contingent contract. An insurance contract is a contingent contract and the example given above is nothing but Fire insurance. While all Wagering contracts are Contingent contracts, Section 30 of the Act has declared all Wagering contracts to be void.

12.11 FEATURES OF INSURANCE CONTRACT

Though all contracts share fundamental concepts and basic elements, insurance contracts typically possess a number of characteristics not widely found in other types of contractual agreements. The most common of these features are listed here:

- a) Aleatory: If one party to a contract might receive considerably more in value than he or she gives up under the terms of the agreement, the contract is said to be aleatory.

Insurance contracts are of this type because, depending upon chance or any number of uncertain outcomes, the insured (or his or her beneficiaries) may receive substantially more in claim proceeds than was paid to the insurer by way of premium. On the other hand, the insurer could ultimately receive significantly more money than the insured party if a claim is never filed.

- b) Adhesion: In a contract of adhesion, one party draws up the contract in its entirety and presents it to the other party on a 'take it or leave it' basis; the receiving party does not have the option of negotiating, revising, or deleting any part or provision of the document. Insurance contracts are of this type, because the insurer writes the contract and the insured either 'adheres' to it or is denied coverage. In a court of law, when legal determinations must be made because of ambiguity in a contract of adhesion, the court will render its interpretation against the party that wrote the contract. Typically, the court will grant any reasonable expectation on the part of the insured (or his or her beneficiaries) arising from an insurer-prepared contract.
- c) Executory: An executory contract is one in which the covenants of one or more parties to the contract remain partially or completely unfulfilled. Insurance contracts necessarily fall under this strict definition; of course, it is stated in the insurance and agreement that the insurer will only perform its obligation after certain events take place (in other words, losses occur).
- d) Unilateral: A contract may either be bilateral or unilateral. In a bilateral contract, each party exchanges a promise for a promise. However, in a unilateral contract, the promise of one party is exchanged for a specific act of the other party. Insurance contracts are unilateral; the insured performs the act of paying the policy premium, and the insurer promises to reimburse the insured for any covered losses that may occur. It must be noted that once the insured has paid the policy premium, nothing else is required on his or her part; no other promises of performance were made. Only the insurer has covenanted any further action, and only the insurer can be held liable for breach of contract.
- e) Conditional: A condition is a provision of a contract which limits the rights provided by the contract. In addition to being executory, aleatory, adhesive, and of the utmost good faith, insurance contracts are also conditional. Even when a loss is suffered, certain conditions must be met before the contract can be legally enforced. For example, the insured individual or beneficiary must satisfy the condition of submitting to the insurer sufficient proof of loss, or prove that he or she has an insurable interest in the person insured. There are two basic types of conditions: conditions precedent and conditions

subsequent. A condition precedent is any event or act that must take place or be performed before the contractual right will be granted. For instance, before an insured individual can collect medical benefits, he or she must become sick or injured. Further, before a beneficiary will be paid a death benefit, the insured must actually become deceased. A condition subsequent is an event or act that serves to cancel a contractual right. A suicide clause is an example of such a condition. Typical suicide clauses cancel the right of payment of the death benefit if the insured individual takes his or her own life within two years of a life insurance policy's effective date.

- f) *Personal contract*: Insurance contracts are usually personal agreements between the insurer and the insured individual, and are not transferable to another person without the insurer's consent. (Life insurance and some maritime insurance policies are notable exceptions to this standard.) As an illustration, if the owner of a car sells the vehicle and no provision is made for the buyer to continue the existing car insurance (which, in actuality, would simply be the writing of the new policy), then coverage will cease with the transfer of title to the new owner.

12.12 CONTRACT OF INSURANCE AND GUARANTEE

Insurance is a contract of indemnity whereby Insurer agrees to indemnify, or pay, the insured for certain types of loss while in a contract of guarantee, one party agrees to act on behalf of another should that second party default. In plain terms, this means that if an individual fails to pay her guaranteed debt or to perform some other duty or obligation, the guarantor - the party who has agreed to act on behalf of another - will step in to pay or perform the obligation.

The guarantee insurance is of recent origin and gaining momentum very rapidly as it will facilitate credit transaction in business. Today, the insurance companies are coming forward to offer varied types of insurance plans in the field of guarantee insurance like – insurance for performance of contract, insurance of debts and insurance of fidelity. These types of insurance are knitted on the edifice of contract of guarantee and indemnity. In these types of insurances the insurer undertakes to indemnify the losses caused as a result of the breach of contract or infidelity.

12.13 DISTINCTION BETWEEN CONTRACT OF INSURANCE AND GUARANTEE

Insurance	Guarantee
In a contract of insurance, there are two parties i.e. insurer and insured	In a contract of Guarantee there are three parties i.e. Principal Debtor, Creditor & Surety.
It is a direct agreement between the insurance provider and the policyholder	It an indirect agreement between a beneficiary and a third party.
insurance policy calculations are based on underwriting and possible loss	a guarantee is focused strictly on performance or nonperformance.
Insurance contract may be cancelled with notice to the other party.	Contract of Guarantee cannot be cancelled quite often.
In insurance the consideration is in the form of premium which is based on probability and quantum of losses.	In guarantee the consideration may be in the form of fee for the service rendered.
In insurance one may transfer the risk to another with consent of the insurer.	No risk could be transferred from one party to another.

12.14 CONTRACT OF INSURANCE AND WAGER

The contract of insurance and the wagering contract, albeit appears alike as the performance of contract is based on contingencies, have altogether different basis. In contract of insurance the parties are directly possesses interest in the subject matter of the contract but in wager the parties are keeping their eye only on stake money and least bothered about the subject matter of the contract. The contract of insurance operates on the basis of principles of indemnity except in case of life and health care policies.

A wager is an agreement between two parties by which one promises to pay money or money's worth on the happening of some uncertain event in consideration of the other party's promise to pay if the event does not happen. The event may be uncertain either because it is to happen in future or if already happened the parties are uncertain and express opposite views.

A contract of Insurance, i.e. life, accident, fire, marine, etc. is not a wager though it is performable upon an uncertain event. It is so because; the principle of insurable interest distinguishes insurance from a wagering contract. Insurable interest is the interest which one

has in the safety or preservation of the subject matter of insurance. Where insurable interest is not present in insurance contracts, it becomes a wagering contract and is therefore void. The following are the points of distinction between wagering agreements and insurance contracts.

12.15 DISTINCTION BETWEEN CONTRACT OF INSURANCE AND WAGER

Insurance Contract	Wagering Agreement
The contract of insurance, except the life insurance, is analogous to the contract of indemnity.	The wagering agreement is not akin to the principle of indemnity.
The contract of insurance is structured on scientific and actuarial calculations.	The wagering agreement has not been built on such sound analysis but only on conjectures.
In insurance the insured shall have insurable interest to conclude the contract	The parties are not required to possess such interest in wagering agreement.
In insurance both the parties are interested in the protection of the subject matter of the contract.	In wagering agreement either party do not possess any interest in the happening or non happening of the event except the stake money, whether he wins or loses.
In insurance the consideration is in the form of premium.	In wagering agreement the consideration is in the form of stake money.
In insurance the insurer is obligated to pay the sum assured or to the extent of loss caused, as the case may be. It never encourages the insured to make profit out of the contract of insurance.	In wagering agreement the promisor is owes a duty to pay stake money on the happening or non happening of a specified event.
The contract of insurance aims to, although primarily to protect interest of the insured, serves the public at large. Thus, it acts as a facilitator to promote welfare and	In wagering agreement the parties are very keen to achieve their self centered interest.

wellbeing of the society.	
The contract of insurance is recognized by law. Hence valid.	Generally, barring a few exceptions, the wagering agreement is not lawful. Thus, it is void.

12.16 SUMMARY

The contract of insurance is analogous to any other types of contract. The parties to the contract need to fulfill all the conditions stipulated in section 10 and 11 of the Indian contract Act. When the object of the contract is opposed to the prevailing legislation or public policy or immoral or if it becomes impossible to perform then the contract becomes void. Correspondingly, if the contract is concluded keeping the other party in dark, either by non disclosure or by misrepresentation, on material facts then the aggrieved party may avoid the contract. The contract on behalf of and in favor of minor children is permissible so long as it is beneficial to them. The contract of insurance is akin to contract of indemnity and guarantee. However, it keeps a distance from contract of wager.

12.17 KEY WORDS

1. Offer/proposal
2. acceptance/promise
3. consideration
4. Consensus ad idem
5. agreement
6. Wagering contract
7. insurance
8. guarantee

12.18 SELF ASSESSMENT QUESTIONS

1. Explain the salient features of contract of insurance.
.....
.....
2. “The consent of the parties to the contract must be free and independent” justify.

-
.....
3. Write note on –
- a. Distinction between contract of Insurance and wager
 - b. Consideration
 - c. Object of the contract

12.19 REFERENCES

1. Principles of insurance law: Life - fire - marine - motor and accident: M.N.Srinivasan.
2. Modern Law of Insurance: KSN Murthy and KVS Sarma.
3. Life insurance corporation of India : Impact of privatization and performance: Sumninder Kaur Bawa.
4. Commentaries on the public liabilities insurance act 1991: G.S Karkara.
5. Insurance law: A comprehensive treatise on law of insurance covering all risks except marine insurance: Brij Nandan Singh.
6. The Law of Insurance Contracts: A. Malcolm.
7. International encyclopaedia of laws: Insurance Law: R. Blanpain.
8. Insurance law manual with IRDA circulars and notifications: Taxmann.
9. Insurance law: Relating to all risks other than marine: E.J. Macgillivray.
10. Modern insurance law: John Birds and Norma J Hird.
11. Law Relating to Marine Insurance: Mitra, B.C.
12. Law of Insurance: Jaiswal J V N
13. General Principles of Insurance Law: Hardy Ivamy E R
14. Law Relating to Insurance: Vats R M
15. Afore cited Acts and IRDA Regulations

UNIT 3: LIFE INSURANCE

STRUCTURE

13.0 Objectives

13.1 Introduction

13.2 Features of Life Insurance Contract

13.3 Distinction between Life insurance and other insurance

13.4 Parties to the contract

13.5 Events to be insured

13.6 suicide/murder

13.7 Insurable interest

13.8 Assignment of policies

13.9 Nomination

13.10 Distinction between Nomination and Assignment

13.11 Utmost good faith (uberrima fide)

13.12 Representation

13.13 Warranty

13.14 Misrepresentation

13.15 Proximate cause

13.16 Lapse of Policy

13.17 Paid up value

13.18 Surrender value

13.19 Premium

13.20 Age

13.21 Proof of death

13.22 The policy

13.23 Summary

13.24 Key Words

13.25 Self Assessment Questions

13.26 References

13.0 OBJECTIVES

To make the reader conversant with law and practice concerning to -

1. Essentials of Life insurance contract ;
2. Doctrine of disclosure;
3. Persons entitled for making claim under the policy;
4. Mode of settlement of claim;

13.1 INTRODUCTION

The human life is mysterious, uncertain and most unpredictable as his life is exposed to many risks which may cause him an injury or premature death. No one can either shield or seal against such threats but look for a means to avert it in the interest of his own and dependents. The life insurance is an ideal means to kindle a ray of hope to better the life of a bread-winner and to his dependents. Main attributes of life insurance are as under –

1. It aims to protect the dependents against the impairment of status and psychological insecurity;
2. It eliminates worry and tension;
3. It makes the savings possible;
4. It provides a safe and profitable investment;
5. It intensify and encourages thrift;
6. It guards the claims of the unsecured creditors;
7. It endows assured income in the form of annuities; and
8. It offers a favourable tax treatment.

Precisely the life insurance is aiming to – (i) save the dependents of the insured from financial discomfiture, in the event of premature death of the policy holder; and (ii) Aids the insured, when his earning capacity ceases, to make his life comfortable on his evenings.

No legislation has, sofar, defined the term ‘Life Insurance’. Albeit, it may be defined as a contract of insurance whereby the insured agrees to pay certain sums, called premium, at specified times, and in consideration thereof the insurer agrees to pay certain sum of money on certain conditions and in specified way, upon happening of a particular event contingent upon the duration of human life (LIC of India v. Vishwanathan Verma, AIR 1995SC189). However, it is true, that the Insurance Act,1938, defined the term ‘Life Insurance Business’ as the business of effecting contracts of insurance upon human life, including any contract whereby the payment of money is assured on death (except death by accident only) or the

happening of any contingency dependent on human life, and any contract which subject to payment of premiums for a term dependent on human life including those enumerated in clauses (a) to (c) thereof.(Sec.2(11) Insurance Act,1938).

13.2 FEATURES OF LIFE INSURANCE CONTRACT

The life insurance contract, on the perusal of the structure of the policy, it enveloped the features of (i) Aleatory Contract, (ii) Unilateral Contract, (iii) Conditional Contract and (iv) Contract of Adhesion. Sometimes it is also portray as aleatory, executory, synallagmatic, conditional and personal contract. (Aleatory Contract - The life insurance contract is aleatory in nature because its performance is depending upon the happening of a chance or uncertain event. (ii) Unilateral Contract - The life insurance contract is unilateral in nature since the insurer alone makes an enforceable promise. (iii) Conditional Contract - The life insurance contract is conditional as the insurer is required to pay the sum assured only when the contract is continuing by payment of premium. (iv) Contract of Adhesion - The life insurance contract is a contract of adhesion because the terms of the contract are not arrived by mutual negotiation between the parties but tailored by the insurer.

Life insurance contract is not a contract of indemnity: The life of a person is invaluable. It cannot be evaluated in terms of money or monies worth. Human life is precious nobody could own it nor transfer it like a property. On the loss of human life none can quantify the extent of loss as it is not susceptible to any assessment. Thus, the question of indemnifying the loss does not arise. Resultantly, either the doctrine of subrogation or the contribution has no say herein. The life insurance contract covers probable duration of life of an insured to a sum assured. The amount payable by the insurer could be predicted at the time of contract. He is obligated to make the payment, so assured, either on maturity or on the death of the insured.

13.3 DISTINCTION BETWEEN LIFE INSURANCE AND OTHER INSURANCE

Life insurance	Other insurance
Life insurance indicate insurance on human life	Other insurance indicate insurance on property.
The event insured is bound to happen sooner or later	The event insured may or may not happen at all.
On the loss of life of the insured, the	On destruction or loss of property the

insurer shall pay the sum assured.	insurer shall make good the actual amount of loss.
The insured shall possess insurable interest at the time of conclusion of contract.	In fire insurance, the insurable interest shall be in existence both at the time of contract and at the time of loss and in marine insurance the insurable interest shall be present at the time of loss.
The life insurance contract is a continuing contract.	The contract fire insurance run from year to year and marine insurance contract either restricted to a particular voyage or for a particular period.

Conclusion of Life Insurance Contract: The contract of life insurance contract is said to have completed with the payment of first premium and its acceptance by the authorized agent/ representative of the insurer. On the acceptance of the premium the contract will come into existence, the insurer shall settle the claims of legal representatives of the insured, in the event of his death, although the policy was issued subsequent to the death of the insured (LIC of India v. Bindulal AIR 2002 J&K 61).

13.4 PARTIES TO THE CONTRACT

The contract of life insurance shall be concluded between two parties i.e. insurer and the insured. Ordinarily, the life of a person, who takes the policy, constitutes the subject matter of the insurance contract. However, a person may be desirous to go for insurance on the life of another. In such a case the person whose life is insured will not become a party to the contract, but he is entitled to stand as a beneficiary by virtue of privity of contract.

Competency of parties: Parties to the contract shall be competent to enter into a contract. A person would be treated as competent when he –

- a) Has attained the age of majority;
- b) Is of sound mind; and
- c) Is not disqualified from contracting by any legislation to which he is subjected.

Person includes both natural and juristic person. Thus, the corporate entity may become a party to the insurance contract.

13.5 EVENTS TO BE INSURED

Generally, the insurance policy will be purchased, on the life of an individual, against the risk of death which may be caused either by natural or accidental - causes or even due to the criminal act of a third party. On the death of an insured, either natural or accidental, the claimant does not have any problem in claiming the sum assured.

Commencement of risk: The risk commences on the date of receipt of the first premium or on the date of acceptance of policy whichever is later.

13.6 SUICIDE/MURDER

The commission of suicide, while of sound mind, is a crime and is known as *felo de se*. However, committing of suicide during the period of insanity does not amount to crime. No one, including the legal representatives of the insured, shall be allowed to take advantage of his own wrong/criminal act. Suicide clause in the policy would discourage the commission of suicide, while sane or insane, within one year from the date of effecting the policy. The liability to pay the sum assured does arise only when the death is caused either by accident or by naturally or by disease. Additional sum equivalent to the sum assured under the policy may be paid on the payment of extra premium to cover accident benefit. When it appears and proved that the death or injury is the result of an intentional act, suicide, attempted suicide, insanity, immorality or intoxicating drinks, drugs or narcotics, the insurer may avoid the liability on the ground that such event is not an accident and of wilful misconduct. Thus, the proximate cause for the death shall be either natural or accidental but not resulting from intentional self-injury. In order to ascertain the cause of the death the insurer may ask the claimant to submit – (i) post – mortem report. (ii) Police inquest report. (iii) Panchanama. (iv) Magistrate’s report/Coroner’s verdict. (v) Forensic report. (vi) a certificate of cremation or burial. And a certified extracts from the register of death maintained by the registrar of births and deaths or any other authority.

Alteration in policies: Subsequent to the conclusion of life insurance contract the terms of the policy may be altered, by mutual consent, at the instance of either party to the contract during the currency of the policy. Such alteration may be in respect of - the plan of insurance, mode of payment of premium, reduction in premium, payment period, settlement options etc.

13.7 INSURABLE INTEREST

The term 'Insurable interest' is not defined under the Insurance Act, 1938. However, the one may have insurable interest either by contractual relationship between parties or by the operation of law. A circumstance leading a person to possess insurable interest may be by virtue of common law or contract or a statute. The person who may have insurable interest in life insurance includes - a) Common Law: 1. Own life i.e. an individual 2. Spouse i.e. either the wife or husband or both. 3. Children. 4. Assets. b) Contract: 1. Employer – Employee. 2. Company – Keyman. 3. Partners. 4. Surety – Debtor. 5. Creditor – Debtor. 6. Banker – Mortgagor. 7. Executors and Trustees. 8. Bailees. The insured is required to establish the existence of insurable interest at the time of purchasing the policy

13.8 ASSIGNMENT OF POLICIES

Assignment signifies transfer of property by one person to another with or without consideration. The policy holder may transfer his title, rights, interest in the policy to any person he desires (sec.3, Transfer of Property Act, 1882). The policy holder may assign or transfer any kind of insurance plan except pension plan and plans under the Married Women's Property Act. However, the assignor shall be competent to contract. The assignee does have the right to receive benefits, stated in the life insurance policy, from the Policyholder. It may accrue by way of survival benefits and death benefits. Invariably death benefits accrue in every insurance policy, whereas survival benefits typically relate to maturity benefits under an insurance policy with an underlying investment component, e.g. Endowment Policy, Money-back Policy, Unit Linked Insurance Policy etc.

Assignment and transfer of insurance policies: The insured convey his life insurance policy to any other person at any time during his life time through assignment or transfer, which shall be -

- a) Made by himself or through his authorized agent;
- b) In writing;
- c) With or without consideration;
- d) Made only by an endorsement upon the policy itself or by a separate instrument;
- e) Signed in either case by the transferor or by the assignor or his duly authorized agent;
- f) Duly attested by at least one witness, specifically setting forth the fact of transfer or assignment;
- g) Completed with the service of notice in writing, regarding such assignment or transfer, to the insurer at the place in India mentioned in the policy for the purpose or

at his principal place of business in India on the receipt of the notice the insurer shall

—

- i. record the fact of such transfer or assignment together with the date thereof and the name of the transferee or the assignee;
- ii. grant a written acknowledgment of the receipt of such notice on payment of fee prescribed and it shall be conclusive evidence against the insurer;
- iii. disburse the benefit under the policy only to the transferee or assignee named in the notice giving priority to all claims under a transfer or assignment as between persons interested in the policy and such priority shall be governed by the order in which the notices are delivered. Further, such person shall be subject to all liabilities and equities to which the transferor or assignor (Sec.38, Act, 1938).

In practice, a 'space for endorsements' is provided in the insurance policy contract where the Policyholder (Assignor) affixes the statement of assignment along with reasons therefor. Generally, the life insurance policy is assigned to the immediate family members out of love and affection. Many a times the life insurance policy is assigned as a collateral security towards loans. In these cases, a condition is added to the endorsement stating that on the repayment of the loan, the policy shall stand automatically re-assigned to the policyholder and the future benefits shall become payable to the policyholder. Assignment of an insurance policy to a stranger without any valid reasons, consideration is viewed as a possible route for money laundering, thereby attracting enhanced scrutiny. An assignment becomes effective from the date of receipt of notice of assignment along with relevant papers. When the documents are in proper order the Insurer shall register the same. On registration of the assignment with the Insurer, the assignee becomes the absolute owner of the benefits under the policy. Any nominations made by the Assignor (Policyholder) stands cancelled. However some insurance policies enable granting of a loan by the Insurer, in which case the Policy gets assigned to the Insurer. Under such assignments, if the policy is reassigned or if the assignment is cancelled, the nomination made earlier by the policyholder survives and the policyholder is not required to make a fresh nomination after reassignment.

13.9 NOMINATION

Nomination means to name or appoint. The insured, in case, of life insurance policy, may nominate any person or persons as his nominee to receive money, secured by the policy, in the event of his death (Sec. 39, Insurance Act, 1938). Where any nominee is a minor, a major should be appointed to receive the money secured by the policy in the event of death of the policyholder during the minority of the nominee.

The policy holder of life insurance, on his own life, may at any time but before the policy gets matured designate any person or persons as his nominee/s. However, the nomination so made gets cancelled immediately after the policy is transferred or assigned. Such nomination

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- a) Shall be made in writing by incorporating the name of the nominee in the text of the policy itself;
- b) May be cancelled or changed by an endorsement or a further endorsement or a will, as the case may be, at any time but before the policy gets matured;
- c) Shall be duly communicated to the insurer;
- d) entitles the policy holder to get acknowledgement, against the registration of nomination, from the insurer against payment of fee prescribed;
- e) Enables the nominee to receive the money secured by the policy in the event of death of the policy holder;
- f) Allows the person designated, by the policy holder, to receive the money secured by the policy during the minority of the nominee;
- g) Allows the surviving nominee/s to receive the money, secured by the policy, if any other nominee/s dies before the policy-holder or his heirs or legal representatives or the holder of a succession certificate, as the case may be.
- h) Make the nominee to bear the liability only to the extent of the insurer's interest in the policy (Sec.39, Act, 1938).

The nomination enables the nominee to receive the sum insured, on behalf of the insured and secure it as a trustee, without producing any document in support of legal representation to the estate of the deceased insured. Where the policy matures for payment during the lifetime of the Policyholder or where the nominee(s) die before the policy matures for payment, the amount secured by the policy shall be payable to the policyholder or his heirs or legal representatives or the holder of a succession certificate, as the case may be. 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. The nomination only indicates the hand which is authorised to receive the amount, to which he is liable to account, on the payment of which the insurer gets a valid discharge of its liability under the policy. Even in the presence of nominee nothing prevents the heirs of the insured to claim the amount in accordance with the law of succession governing them.

13.10 DISTINCTION BETWEEN NOMINATION AND ASSIGNMENT

Nomination	Assignment
Nomination is a process to designate a person to receive money in the event of death of the insured.	Assignment is a process of transfer of interest or title of the insurance policy by the insured to another person/s.
Nomination may be made either at the time of the proposal or subsequent to the commencement of policy.	Assignment shall be made only after the commencement of policy.
Nomination shall be made by endorsement on the policy.	Assignment shall be made either by an endorsement or by separate instrument.
Nomination shall be made by the policy holder	Assignment may be made by the policy holder or the assignee.
Nomination may be availed subject to the Insurance Act, 1938.	Assignment shall be made in accordance with the Transfer of property Act.
In case of nomination the nominee does not hold any interest in the policy except to receive money on behalf of the insured.	In case of Assignment the assignee enjoys the title on the policy. Thus. He can dispose it off to anybody he desires.
Nominee do not possesses any interest in the policy except receiving the sum insured on the death of the insured.	Assignee acquires interest on the policy the moment the process of assignment is completed.
No witness is required for designating the nominee.	Assignment shall be completed in the presence of at least one witness.
Nomination once made is not absolute. It may be cancelled at any time but before the death of the insured.	On the completion of the process of assignment it becomes absolute, which cannot be revoked except in accordance

	with law.
In the event of death of a nominee, the right to receive the sum insured will revert to the policy holder or to his legal heirs in the order of succession.	In case of death of the assignee the interest on the policy will return to the, subject to the terms of assignment, reverts to the insured.
On the death of the nominee, the sum insured shall be paid to the legal heirs of the insured.	On the demise of the assignee, the sum insured, shall be paid to the legal heirs of the insured.
On the death of the nominee, before the claim is settled their legal heirs are entitled to receive the sum insured,	In the event of death of the assignee, before the settlement of claim, his legal heirs are entitled to receive the sum assured.
Even in the presence of nomination, the creditor/s may seek an order of attachment to attaché the insurance policy.	The creditor/s cannot attach the policy unless they establish that the assignment is made to defraud the creditor.

13.11 UTMOST GOOD FAITH (UBERRIMA FIDE)

The principle of caveat emptor i.e. ‘let the buyer beware’ do, generally, have application in commercial contracts. However, the contract of insurance is based on the principle of Utmost good faith (uberrime fedai). The insured shall disclose all the facts which are material to the contract, as he is in an advantageous position than the insurer. He is well acquainted with facts - in respect of his health, habits, personal history, family history – which forms a basis to the life insurance contract. The duty of disclosure comes to an end when the proposal form has been fully and correctly fulfilled. Non disclosure of any of these facts, relevant to the contract makes the contract as void ab initio (from the beginning). His duty to make full and complete disclosure commences from the moment negotiations set-in and continues, during its course, unto the date of conclusion of contract and acceptance of first premium. The duty of disclosure do arise in the following situation as well –

- a) At the time of altering the terms of policy;
- b) At the time of revival of policy;
- c) At the time of reinstatement of policy.

The insured owes an inherent duty to disclose information which he knows or ought to know is material to risk, although no specific question is placed in the proposal form. It may include –

- a) Facts as to whether any proposal on the life has been made to other insurers and with what result i.e. is he accepted the proposal with extra premium or declined to accept the proposal;
- b) Any fact which tends to shorten the span of his life;
- c) Hazardous occupations, intemperate habits, threats of murder and any other unusual circumstances in the life of the insured/proposer;
- d) Another name by which the insured/proposer is popularly known;
- e) Moral hazard – any risk which reflects on the image and moral integrity of the insured shall be disclosed e.g. change of – name/nationality/domicile/race; previous conviction etc.,

The contract of life insurance may be avoided by the insurer within two years, from the date of its conclusion, on the ground of mis-statement or untrue answers when he successful in establishing that –

- a) The statement was inaccurate or false;
- b) The statement was on a material matter or that the statement suppressed facts which it was material to disclose;
- c) The statement was fraudulently made; and
- d) The policyholder knew at the time of making the statement that it was false or that fact which ought to be disclosed has been suppressed (New India Insurance Co. v Raghava Reddi AIR1961AP295).

The two years limitation period shall begins to run from the date on which the policy was effected or the date on which first premium was accepted. The insurer may be called in question the policy even after the expiry of two years only when he successfully establish that

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- (i) The mis-statement or concealment was of a material matter; and
 - (ii) It was fraudulently made by the policyholder (Lakshmi Ins.Co v Bibi Padmavathi AIR 1961Punj253).

In the event, the insurer or his agent is found guilty of false or fraudulent misrepresentation in inducing the insured to effect a policy or continue to it, the insured can rescind the policy and

claim the return of premium. The burden of proof is on the, insurer most often, person he who alleges about the suppression of material facts.

13.12 REPRESENTATION

A representation is a statement made by one party to another, at or before the conclusion of contract, in respect of the existence of some fact or set of facts, with a view to solicit the other to enter into a contract. All disclosures relating to an insurance policy must be made at the time of entering into the insurance contract. The insurer hand over the application proforma to the person, who is willing to purchase the policy, seeking complete details like - profession, income, age, family, history of family, general health, ailments suffered, medical reports, matters relating to conduct and character, any criminal record, etc. The details, sofurnished by the proposer known as representation, shall be correct and complete. Of course, it may not be possible in the proforma to ask all the required questions as the particulars vary from person to person. The insurer examines and determines the materiality of the information furnished. It may seek further clarifications, if need be. In corollary, the application proform also contains stipulations and conditions which shall be fulfilled by the insurer. It is the duty of the insurer to inform and explain the insured about the working of those stipulations and conditions. This helps in dispelling any misunderstanding or ignorance. However, certain information, in respect of the following, need not be disclosed -

1. Facts related to law
2. Facts of common knowledge to all
3. Facts which can reasonably be discovered by the insurer
4. Facts which could have been revealed by a survey
5. Facts which have been covered by policy conditions
6. Facts which reduce the risk

13.13 WARRANTY

Warranties are an integral part of the contract, i.e. these are the bases of the contract between the proposer and the insurer and if any statement, whether material or non-material, is untrue the contract shall be null and void and the premium paid by him may be forfeited by the insurer. The policy issued will contain that the proposal and personal statement shall form the part of the policy and be the basis of the contract. So the representation will be warranty. The warranty may be – (i) informative and (ii) promissory.

(i) Informative warranties: in life insurance the informative warranties are more important. The proposer is expected to disclose all the material facts best to the knowledge and belief.

(ii) Promissory warranties: warranties relating to the future may only be statements about his expectations or intentions for instance, the proposer promises that he will not take up any hazardous occupation and will inform the insurer if he takes the hazardous occupation.

Breach of warranty: if there is a breach of warranty, the insurer is not bound to perform his part of the contract unless he chooses to ignore the breach. The effect of breach of warranty is to render the contract voidable at the option of the other party, provided there is no element of fraud, and entitles the aggrieved party to repudiate contract and disclaim the liability. In case of fraudulent representation or promise, the contract will be void ab initio.

Representation	Warranty
Representation is a statement of fact/s made in respect of subject matter of contract.	Warranty is a stipulation which is collateral to the contract.
The statement shall be made in good faith and substantially correct.	The condition shall be complied with true to its spirit.
Representations do not form the part of the contract. Thus, it will not be incorporated in the terms of the contract.	Warranty is a necessary part of the contract. Thus, it finds a place in the policy.
The party to the contract may avoid the contract on the ground of misstatement or mis description when it is material to the contract.	Any breach of warranty, whether material or not to the contract, would entail the aggrieved to avoid the contract.

13.14 MISREPRESENTATION

A statement made in the proposal for insurance or in any report of a medical officer or referee or friend of the insured or in any document leading to the issue of the policy may be called in question before the expiry of two years from the date of conclusion of contract. The insurer may avoid the contract by establishing that –

- a) The statement was inaccurate or false;
- b) Such statement - was material to the subject matter of contract or suppressed the facts which was material to disclose;

- c) The statement was fraudulently made by the policy holder; and
- d) The policy holder knew that facts which it was material to disclose had been suppressed.

Implications of concealment, non-disclosure or mis-representation by the insured: In the event, the representation made by the insured is incomplete or concealed or misleading, the insurer may opt to:

1. Incorporate the required changes in the contract and charge a different premium.
2. Accept the policy and pay compensation especially if the facts have negligible importance.
3. Avoid any obligation on its part as per the policy.

If the insurer wishes to avoid the policy, on the ground of inaccurate or false statement, he shall exercise this option within two years from the date of conclusion of contract. Non-disclosure may be intentional or unintentional on the part of the insured, in either case such a contract is rendered voidable at the insurer's option and it can refuse any compensation. However, the insurer may question the proof of age even after the expiry of two years (Sec. 45, Insurance Act, 1938).

Implication of non-disclosure by the insurer: It is true that in a contract of insurance the insured has to furnish more information about him. But there are certain covenants in a contract, which have to be thoroughly elaborated to the insured. These relate to the conditions in which the insurance company may or may not perform its promises. It has to be noted that it is the duty of both the insurance agent and the company authorities that this particular aspect is looked into. Any laxity at this point may tilt the judgments in favour of the insured in case of a dispute.

13.15 PROXIMATE CAUSE

The efficient or effective cause which causes the loss is called proximate cause. It is real and actual cause of loss. If the cause of loss (peril) is insured, the insurer will pay, otherwise the insurer will not compensate. In life insurance the doctrine causa proxima (proximate cause) is not applied because the insurer is bound to pay the amount of insurance whatever may be the reason of death. It may be natural or unnatural. So, this principle is not much practical importance in connection with the life assurance, but in the following cases the proximate causes are observed in the life insurance too.

War-risk: where policy is issued on the exclusion of war and aviation risks, the proximate cause of death is significant because the insurer waives its liability if death occurred, in case,

while the insured was in the field or engaged in operation of war and aviation. Only premium paid or surrender value whichever is higher is payable and the total policy amount is not payable.

Suicide: If suicide occurs within one year of the policy, or there was an intention to commit suicide and payment of policy would be restricted, only up to the interest of the third party in the policy provided the interest was expressed at least one month before the suicide.

Accident benefit: A problem arises when an insured under an accident policy is killed or suffered an injury which has an immediate cause and also remote cause. In accident benefit policy, double of the policy amount is paid. So the cause of death in this policy is of paramount importance.

13.16 LAPSE OF POLICY

In case the insured fails or neglects or refuses to pay the premium either on the due date or within the grace period, the insurer may terminate the policy treating it as lapsed.

Options on lapsing of policy: In the event of non-payment of premium, the policy will be lapsed, the insurer may avail any of the option mentioned herein –

- i. Payment of surrender value or cash value.
- ii. Reduced paid-up value for the remaining term of the policy.
- iii. Automatic advance of future premium until the surrender value is exhausted.
- iv. Extended term insurance cover available on the basis of the net surrender value.

Revival of policy: On lapsing of policy neither the insurer nor the insured will get benefited. The insured do not derive any benefits in lieu of premium paid till the date of lapsing of policy. Correspondingly, the insured not only lose the customer but also lose the anticipated revenue. In corollary, the agent loses his future earnings. Thus, to avert adverse effect on the insurer, insured and the agent, the insurer facilitates the reversal of lapsed policies. Such reversal is called as ‘revival’. The word ‘revival’ means ‘to restore’. The policy may be revived subject to the privileges contained in the policy. Generally, the lapsed policy is revived –

1. Within six months, from the due date of the first premium unpaid without any evidence of health, on payment of premiums in arrears with interest; or
2. Before the expiry of five years from the due date of the first unpaid premium, on payment of premiums in arrears with interest, subject to -

- a) The production of evidence health and habits of the insured to the satisfaction of the insurer; and
- b) The evidence to show that there has been no adverse change in the personal or family history or occupation of the insured.

There are various schemes for revival of lapsed policies and the procedure to revive the policy varies between the insurers. The schemes being pursued, since many years, by the Life Insurance Corporation of India is as under –

1. Ordinary Revival Scheme;
2. Special Revival Scheme;
3. Instalment Revival Scheme;
4. Loan-Cum-Revival Scheme;

Duplicate policy: The policy is a document. It represents property. He may require it to assign or mortgage or pledge or to dispose. In the event of its loss or damage or mutilation or misplacement at the request of the policyholder the insurer may issue duplicate policy. Before issuing the duplicate policy the insurer shall make necessary enquiries to ensure, that it shall not fall in the wrong hands, genuineness of the insured. Thus, the insurer may insist the insured to –

- a) Execute indemnity bond;
- b) Lodge complaint with the police Authority;
- c) Produce First Information Report(FIR) copy;
- d) Submit final investigation report;
- e) Give advertisement in the news paper which is having wide circulation in the area;

Only after observing these ordeals the insurer may issue the duplicate policy, which will confer the same rights and privileges, on the policyholder, as the original policy.

13.17 PAID UP VALUE

If the insured is unable to pay the premium owing to facing financial crunch he may ask the insurer to convert the policy into a paid up policy or he can surrender the policy, instead of allowing the policy to lapse. Under this option the policy remain in force, with a reduced paid up value, by lowering the figure of sum assured.

13.18 SURRENDER VALUE

Every policy holder is expected to pay the premium, at least for three consecutive years, within the grace period failing which the policy will be lapsed and the insurer may forfeit the premium paid unto, on strict reading of the terms of the policy. However, in such circumstances, the insurers do have the practice of allowing the insured to, give-up the policy before maturity by claiming, surrender value or cash value. The insurer is required to set forth this condition in the policy (Sec. 50, 113, Insurance Act, 1938). The person, who is desirous to submit the policy, shall make an application for surrendering the policy. The application so submitted shall be treated as an offer to the insurer. Thus, the insured will have an option to reconsider his decision, to continue the policy, before it is being accepted by the insurer. The process of submitting the policy is called as surrender of policy and the amount payable to the policy holder is called surrender value or cash value. The features of surrender is as under –

- a) The surrender value is generally a percentage of premiums paid or a percentage of paid up value.
- b) The higher the policy term, the lower is the Surrender Value Factor (SVF). It does not depend on the actual premium or the mode of premium.
- c) The percentage called the SVF increases as the duration of the policy since commencement increases.

The policy holder may get the may get the surrender value either in the form of - cash surrender value or reduced paid up insurance or extended term insurance or automatic premium loan or purchase annuity.

13.19 PREMIUM

The premium is a consideration payable by the insured to the insurer, in lieu of purchasing of insurance product, at the time of initiation of contract and thereafter at a defined periodical interval (Sec.37, Insurance Act, 1938). The criterion for the determination of premium is depending upon various factors various factors e.g. age, sex, profession, habits, hobbies, health conditions, family history etc. The manual or guidelines specify the parameters to determine to reckon the rate of premium. The insurer is expected to pay the premium. Owing to his inability or unwillingness his friends or a stranger may pay the premium and keep the policy alive to ensure that the insured shall get the sum assured. However, the insured may rescind the policy and claim for the return of premium if the insurer or his agent

falsely or by fraudulent misrepresentation induced the insured to effect a policy or continue to it.

Days of grace: Although, the insured is expected to pay each premium on or before the due date, the insurer relaxes this condition offering him some more time. The time so extended, to facilitate the insured to ensure the payment of premium, is called as days of grace. Ordinarily, the grace period will be not less than 30 days, where the frequency for the payment of premium is quarterly or half yearly or annual; if it is monthly, the grace period would be 15 days. During the days of grace, but before the payment of premium, if the insured dies the insurer shall pay the sum assured. However, he cannot disclaim the liability on the ground of non-payment of premium.

Method of Payment of premium: The proposer or the policyholder may pay the premium to an insurer in any one or more of the following manner(s) i.e. by -

- a) Cash;
- b) Any recognized banking negotiable instrument such as cheques, including demand drafts, pay orders, banker's cheques drawn on any scheduled bank in India;
- c) Postal money orders;
- d) Credit or Debit Cards held in his name;
- e) Bank Guarantee or Cash Deposit;
- f) Internet;
- g) E-transfer;
- h) Direct credits via standing instructions of proposer or the policyholder or the life insured through bank transfers; and
- i) Any other method of payment as may be approved by the Authority from time to time.

Generally the risk, on the part of the insurer, will begin to run from the date of receipt of premium by the insurer. In case of general insurance policy, where the payment is made in any other mode than cash, non-realization of premium renders the policy void ab initio and in case of life insurance policy, the continuance of the risk or otherwise will depend on the terms and conditions of the policy already entered into. The insurer may at its option recover the collection charges of the instrument from the proposer or policy holder. (R 3 -5, Insurance Regulatory and Development Authority (Manner of Receipt of Premium) Regulations, 2002).

13.20 AGE

The age of insured is a decisive factor in assessing the risk and determining premium. Further it helps to make the insurer accountable to the sum insured. Thus, the admission of right age would influence decision of the insurer in respect of undertaking of risk and settlement of claim. The insurer, generally, consider only the number of years completed and ignores month and days. However, there are three methods to determine right age of a person i.e. (i) Age next birth, (ii) Age last birth, and (iii) Age nearest birth. In respect of a cover, where premium is charged is dependent on age, the insurer shall ensure that the age is admitted as far as possible before the issuance of the policy document. In case where age has not been admitted by the time the policy is issued, the insurer shall make efforts to obtain proof of age and admit the same as soon as possible (Regulation 6, IRDA (Protection of Policyholders' Interests) Regulations, 2002).

Proof of age: Generally, the insurer will accept the following documents as proof of age –

- a) Birth certificate extract from, the Municipal Authorities or such other Authorities, the register of births;
- b) Horoscope prepared at the time of birth of certificate of baptism or extract from family bible if it contains date of birth;
- c) Certified extracts from school or college records or from service registers in case of employees of Government or other recognised institutions;
- d) Such other documents like – domicile certificate, passport, declaration sworn before the Magistrate by elderly person who is aware of date of birth, marriage certificate, entry in the electoral roll, deed of sale of property etc.,

13.21 PROOF OF DEATH

The policy gets matured either on the death of the insured or on the expiry of insured period, whichever is earlier and the insurer is liable to pay the sum assured. In the event of death of the insured the claimant is required to submit a document, i.e. Proof of death, to establish the death of the insured. The insurer will, ordinarily, accept the following documents as proof of age –

- a) Death certificate extract from, the Municipal Authorities or such other Authorities, the register of deaths;
- b) Certification from a Doctor who attends the post-mortem;
- c) In case of unnatural death, and where the Doctor service was not availed, certified copy of the Police inquest report or the coroner's report;
- d) Certificate of cremation or burial from a respectable person who has seen or attended the funeral or cremation;
- e) A certificate of identity of dead body from a respectable person who saw the dead body;
- f) A certificate from the employer, if the insured is an employee;
- g) A report by the agent who introduced the insured.

No need to pay the premium: On the conclusion of contract of insurance the insured is obligated to pay the premium, periodically, as agreed failing which the policy gets lapsed. However, in the following circumstances the insured need not pay the premium in the following circumstances –

- a) When the insurer do not accept the premium offered by the insured(Sec,38, Contract Act,1872);
- b) In the event the policy becomes voidable at the option of the insurer and the insurer rescinds it(Sec,64, Contract Act,1872);
- c) When the party to the policy alters or rescind the policy (Sec, 62, Contract Act, 1872).

13.22 THE POLICY

The insurance policy is being treated as a movable property vis-à-vis actionable claim (Sec.3, 38, Transfer of Property Act, 1882; Sec.27A, Insurance Act, 1938). Thus, the insured may transfer his/her interest in the policy, to anyone he pleases, by way of - gift, will, mortgage, assignment etc.

13.23 SUMMARY

Men are mortal, but have the desire to make his footings long last. He not only wishing to make his life more secured but also of his kith and kins. Thus, he has introduced the concept of life insurance to safeguard his evenings and kindle a ray of hope to his dependants in case of his premature death or accident resulting in disablement. Today, the concept of life insurance is being treated as a social welfare measure, having the patronage of the

Government. The policy of life insurance is designed and monitored by the IRDA under the aegis of the Government.

13.24 KEY WORDS

1. Life Insurance Contract
2. Parties to the contract
3. Insurable interest
4. Assignment
5. Nomination
6. Representation
7. Warranty
8. Misrepresentation
9. Proximate cause
10. Lapse of Policy
11. Paid up value
12. Surrender value
13. Premium
14. Utmost good faith (uberrima fide)
15. Foreclosure
16. Garnishee order

13.25 SELF ASSESSMENT QUESTIONS

1. What is life insurance business? Who can conclude contract of life insurance?
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2. “The contract of life insurance may be called in question before the expiry of two years from the date of conclusion of contract” substantiate.
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3. Distinguish between life insurance contract and other insurance contract.

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13.26 REFERENCES

1. Principles of insurance law: Life - fire - marine - motor and accident: M.N.Srinivasan.
2. Modern Law of Insurance: KSN Murthy and KVS Sarma.
3. Life insurance corporation of India : Impact of privatization and performance: Sumninder Kaur Bawa.
4. Commentaries on the public liabilities insurance act 1991: G.S Karkara.
5. Insurance law: A comprehensive treatise on law of insurance covering all risks except marine insurance: Brij Nandan Singh.
6. The Law of Insurance Contracts: A. Malcolm.
7. International encyclopaedia of laws: Insurance Law: R. Blanpain.
8. Insurance law manual with IRDA circulars and notifications: Taxmann.
9. Insurance law: Relating to all risks other than marine: E.J. Macgillivray.
10. Modern insurance law: John Birds and Norma J Hird.
11. Law Relating to Marine Insurance: Mitra, B.C.
12. Law of Insurance: Jaiswal J V N
13. General Principles of Insurance Law: Hardy Ivamy E R
14. Law Relating to Insurance: Vats R M

UNIT 14: LIFE INSURANCE CLAIMS

STRUCTURE

- 14.0 Objectives
- 14.1 Introduction
- 14.2 Person entitled for payment
- 14.3 Settlement of claim
- 14.4 Claim on small life insurance policies
- 14.5 Questioning of Life Insurance policy
- 14.6 Claims procedures
- 14.7 Evidence for settlement of claim
- 14.8 Disputed claims
- 14.9 Loan
- 14.10 Foreclosure
- 14.11 Garnishee order
- 14.12 Tax exemption and deduction
- 14.13 Summary
- 14.14 Key Words
- 14.15 Self Assessment Questions
- 14.16 References

14.0 OBJECTIVES

On reading this unit the students would be able to comprehend the following –

1. Method of placing the claim
2. Documents to be produced in support of the claim

14.1 INTRODUCTION

The life is uncertain. Nobody knows when the shadow of death appears and snatch the life, placing the family members in lurch. None of us wishes to push our life to such an unsecured situation. Every one is eager to look for some safety net. People felt, since the ages, life insurance is a panacea to stripe off such fear by assuring financial security. Of course everything is fine when it is offered. However, one will feel tiresome and tedious at the time of making the claim when it is disputed. This unit unravels the procedures to make claim application and remove such apprehensions from the clamant.

14.2 PERSON ENTITLED FOR PAYMENT

The sum assured in the insurance policy becomes payable on its maturity or on the death of the insured or on the happening of a specified event. The persons entitled to receive the sum assured, under the policy, are as under –

- a) *The insured*: The insured himself may claim the sum assured, subject to the fulfilment of terms and conditions, in the policy.
- b) *The payee*: The payee is a person whose name is enlisted in the schedule of the policy, entitled to receive the sum assured in the policy as a beneficiary, on maturity, to the exclusion of other heirs of the insured.
- c) *Nominee*: The nomination empowers the nominee to receive the sum assured, in the policy, to duly discharge the insurer from liability (Sec.39, Insurance Act, 1938). However, the legal heirs of the insured are entitled to claim the amount from the

nominee in, the order of succession, accordance with the law of succession governing them.

- d) *Executor and administrators:* The executor and Administrators, being a legal representative of the insured, are entitled to receive the sum assured. They shall apportion the sum so received among the legal heirs of the insured (Sec.211, Indian Succession Act, 1925).
- e) *Joint family members:* Generally, unless contrary intention appears and proved, the sum assured in the policy being treated as a separate property of the insured. Although, it may be received by the Kartha or manager of the family, the same shall be shared only among the wife and children of the insured and the coparceners possesses no interest in it. However, where the policy is effected for the benefit of the joint family, or out of the joint family fund, all the coparceners are entitled to the benefit of the policy.
- f) *Assignee:* The assignment, validly made, becomes absolute on its conclusion. It cannot be revoked except in accordance with law. Thus, on transfer of interest, through assignment, assignee is entitled to receive the sum assured in the policy.
- g) *Official receiver:* The Official Receiver/ Assignee, on adjudging the insured as insolvent, are entitled to receive the sum assured. However, the insurer shall be treated as duly discharged when he pays the sum assured before adjudging him as insolvent or before such notice.
- h) *Lien holder:* When a policy was taken on the life of another to secure one's interest he is entitled, in exercise of lien on the policy, to receive the sum insured e.g. creditor, trustee, indemnifier, mortgagee etc. However, they are required to establish that –
 - 1) There is a contract with the beneficial owner of the policy.
 - 2) A right of trustees to an indemnity out of their trust property for the money incurred by them.
 - 3) Subrogations to this right or trustee of some person who may at their request have advanced money for the preservation of the policy.
 - 4) Right vested in mortgagees or other persons having a charge upon the policy, to add to their original debt (Leslie v. French (1883)23 ch.D552).

Vesting of sum assured: The sum assured in the policy shall be vested as under –

Particulars	Person on whom the sum assured shall be vested
On maturity of the policy	Insured himself
	Assignee, subject to the terms of assignment (Sec.38, Insurance Act, 1938).
	Guardian, if the policy holder is a minor/lunatic.
On death of the insured	Nominee
	Legal representatives who includes executor, administrator and coparceners of the Joint Hindu Family.
Policy effected under the Married Women's Property Act,1874	Either on maturity of the policy or death of the insured it shall vests on the special trustee, if appointed, otherwise the Official Trustee appointed under the Official Trust Act, 1913.
Where the policy is effected for the benefit of the joint family or out of the joint family fund	Either on maturity of the policy or death of the insured it shall vests on the coparceners of the Joint Hindu Family.
On insolvency of the insured	The sum assured shall be vested on the Official Receiver/ Assignee.

14.3 SETTLEMENT OF CLAIM

Claims under a life insurance contract do arise on the happening of one or more of the events covered under the insurance contract, it may be survival claims or death claim. The death claim arises only upon the death of the life insured, whereas survival claims can be caused by one or more events like -

- a) Maturity of the policy;
- b) Surrender of the policy either by the policyholder or Assignee;
- c) An instalment payable upon reaching the milestone under a money-back policy;
- d) Critical illnesses covered under the policy as a rider benefit;

While settling the payment of a survival claim, the insurer is required to ascertain whether the events occurred has satisfied the conditions stipulated in the policy. Maturity claims, money-back instalment claims and surrender claims could be established with ease as they are based

on dates and positive action by the policyholder. Critical illness claims are ascertained based on the medical and other records provided by the policyholder in support of his claim. One would be in problem in making a claim in respect of a policy, which has been assigned, that has a critical illness claim rider. Generally, a critical illness benefit should be paid to the policyholder so as to enable him defray his expenses. Although, on assignment of this type of policy all benefits are payable to the assignee, it may not meet the intended purpose. The policyholder could be saved from this kind of situation by suggesting him to assign the policy, if necessity warrants, by way of a conditional assignment. A maturity or death claim, payment is settled or not, results in termination of insurance contract. No further insurance coverage is available. Quite often, the insurer is constrained to dispute the claim either because of not meeting the policy conditions or due to conflicting claims or insufficiency of proof of title of the rightful claimant. It occurs in the following situations -

- a) Absence of nomination by the policyholder;
- b) Registration of an assignment;
- c) Multiple claimants with conflicting claims with insufficient proof of title;
- d) Where the claimant has approached the Court for settlement of property disputes including insurance claims;
- e) Circumstances where it is impossible for the Insurer to obtain a satisfactory discharge from the claimant.

When the insurer is of the opinion, in respect of any policy of life insurance maturing for payment, that by reason of conflicting claims to or insufficiency of proof of title to the amount secured thereby or for any other adequate reason it is impossible otherwise for him to obtain a satisfactory discharge for the payment of such amount, he may make application to, seek permission to deposit the amount with, the Court of competent jurisdiction which is situated at the place in which the said amount is payable under the terms of the policy or otherwise. Any such application shall be made before the expiry of six months from the maturing of the policy by survival, or from the date of receipt of notice by the insurer of the death of the insured, as the case may be. The application, for permission to deposit the said amount with the Court, shall be duly verified by an affidavit signed by a principal officer of the insurer setting forth the following particulars -

1. Name of the insured and his address;
2. If the insured is dead, the date and place of his death;
3. Nature of the policy and the amount secured by it;

4. Name and address of each claimant so far as is known to the insurer with details of every notice of claim received;
5. Reasons why in the opinion of the insurer satisfactory discharge cannot be obtained for the payment of the amount; and
6. Address at which the insurer may be served with notice of any proceeding relating to disposal of the amount paid into Court.

The insurer shall transmit to the Court every notice of claim received after the making of the application and bear the costs towards the proceedings or otherwise in connection with the disposal of the amount paid into Court.

The Court shall cause notice to be given to every ascertained claimant of the fact that the amount has been paid into Court, and shall cause notice at the cost of any claimant applying to withdraw the amount to be given to every other ascertained claimant. The Court shall decide all questions relating to the disposal of claims to the amount paid into Court.

If it appears to the Court that a satisfactory discharge for the payment of the amount cannot otherwise be obtained by the insurer it shall allow the amount to be deposited with the Court and shall invest such amount in Government securities pending its disposal. Such permission shall be deemed as a satisfactory discharge to the insurer for the payment of such amount. (Section 47, Insurance Act, 1938)

The term 'claim' means a formal request by the insured to the insurer asking him to make payment, subject to the terms and conditions of the policy. It may also be called as 'policy claim'. By virtue of contract of insurance the insured may ask the insurer to perform his part of the contract to ensure the realization of promise made at the time of concluding the contract. The contractual obligation, which the insurer is required to discharge, may vary from one policy to another and the risks or contingencies covered are diverse. Thus, it may include –

- a) Payment of the sum assured with or without bonus;
- b) Return of premium with or without interest;
- c) Periodical payments;
- d) Waiver of future premiums etc.

At the time of settlement of claim the insurer shall take care of the following –

- 1) Whether the premium has been paid as stipulated; and

- 2) Whether the age, of the life assured, admitted has been proved with aid of proper evidentiary document/s.

The settlement of claim under the life policy shall be made in accordance with the Regulations 8 & 11, Insurance Regulatory and Development Authority (Protection of policyholders' Interests) Regulations, 2002.

Types of claim: The claims under the policy have been classified into three categories they are: (i) Maturity claim; (ii) Death claim; and (iii) Rider benefit.

(i) *Maturity claim:* The amount payable on maturity i.e. at the end of the tenure of the plan, provided the insured survives, is called as maturity benefit amount or the maturity claim amount.

(ii) *Claim at periodic intervals/Survival benefit:* It indicates an amount payable by the insurer, at specified periodic intervals during the tenure of the plan, to the insured e.g. money back policy.

(iii) *Death claim:* The amount payable by the insurer, on the death of insured during the tenure of the plan, to the nominee or beneficiary or legal heirs/legal representatives is called as death claim. A person may presumed to be dead when he has not been heard of for 7 years (Sec.108, Indian Evidence Act, 1872) In case of death claim an 'intimation of death' in writing shall be sent to the branch office of the insurer - from where the policy was issued, nominee/s, assignee/s, relatives of the deceased policy holder, employer and the agent or the development officer. The letter of intimation shall contain the information like – the name of the life assured, a statement that the life assured is dead, date of death, cause of death, place of death, nature of relationship of the claimant with the insured, policy number and certificate of death from the Municipal Authority or such other Authority. The Life Insurance Corporation (LIC) of India is holding a lenient view in respect of -

- a) A policy where the insured has paid the premium at least three full years and if, failed to pay the subsequent premiums, the death claim arises within six months of the first unpaid premium, the LIC settles the claim treating as if the policy had remained in full force.
- b) A policy where the insured has paid the premium at least five full years and if, failed to pay the subsequent premiums, the death claim arises within twelve months of the

first unpaid premium, the LIC settles the claim treating as if the policy had remained in full force.

(iv) *Early claims*: Any claim made within two years from the date of commencement of policy or revival of policy is called as 'early death claims'. It may also term as 'premature death claims'.

(v) *Non - early claims*: A claim made after the commencement of policy or revival or reinstatement of policy is called as 'Non - early claims'.

(iv) *Rider benefit*: The rider benefit indicates the payment of specified amount, subject to the terms and conditions of the rider on the happening of a specified event during the tenure of the plan, by the insurer to the insured called as rider benefit. A rider is an additional optional benefit with a basic insurance policy. The insured may avail this rider on his own, no compulsion, on the payment of additional amount of premium to cover certain untoward events. The insurers offer various types of riders which includes -

- a) **Accidental Death Benefit (ADB) Rider**: In this category the insurer pays the amount to the nominee/beneficiary, subject to the terms and conditions of the rider, on the death of the insured due to an accident.
- b) **Critical Illness (CI) Rider**: In this case the insurer pays specified amount to the insured, subject to the terms and conditions of the rider provided the illness is covered under the rider, in the event of diagnosis of a critical illness.
- c) **Hospitalization Benefit Rider**: In this group the insurer pays the treatment cost, subject to the terms and conditions of the rider, in the event of hospitalization of the insured.
- d) **Permanent Disability Benefit (PDB) Rider**: In this type the insurer pays an additional sum equal to the sum assured by waiving the future premiums, payable in instalments over a period of years, subject to the terms and conditions of the rider.

14.4 CLAIM ON SMALL LIFE INSURANCE POLICIES

In the event of any dispute relating to the settlement of a claim, on a life insurance policy, for a sum, insured, not exceeding two thousand rupees (exclusive of any profit or bonus not being a guaranteed profit or bonus) issued by an insurer in respect of insurance business

transacted in India, arising between a claimant under the policy and the insurer who issued the policy or has otherwise assumed liability in respect thereof, the dispute may at the option of the claimant be referred to the Authority for decision and the Authority may, after giving an opportunity to the parties to be heard and after making such further inquiries as he may think fit, decide the matter.

The decision of the Authority is final and shall not be called in question in any Court, and may be executed by the Court which would have been competent to decide the dispute if it had not been referred to the Authority as if it were a decree passed by that Court.(Section 47A, Insurance Act, 1938)

14.5 QUESTIONING OF LIFE INSURANCE POLICY

The insurer is prevented from withdrawing the life insurance policy, after the expiry of two years from the date on which it is effected, on the ground that statement made, was inaccurate or false, in the proposal or in any report of -

- a) A medical officer; or
- b) A referee; or
- c) A friend of the insured; or
- d) In any other document - which lead to the issue of the policy.

However, the insurer may question the probity of the insured even after the expiry of two years from the date of its effectuation when he demonstrate that such statement was -

- i. Fraudulently made by the policy-holder; or
- ii. Made by the policy-holder knowing very well, at the time of making it, that the statement was false or that it suppressed facts which it was material to disclose.

Two years limitation will not stop the insurer from asking, at any time, the insured to submit the documentary evidence to corroborate proof of age. Further, 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 (Sec.45, Act, 1938).

14.6 CLAIMS PROCEDURES

The procedures prescribed under the IRDA (Protection of Policyholders Interests) Regulations, 2002, are thus -

- a) The life insurance policy shall state the primary documents which are normally required to be submitted by a claimant in support of a claim.
- b) Insurer, on receiving a claim, shall process the claim without delay. Any queries or requirement of additional documents, to the extent possible, shall be raised all at once and not in a piecemeal manner, within a period of 15 days of the receipt of the claim.
- c) A claim under a life policy shall be paid or be disputed giving all the relevant reasons, within 30 days from the date of receipt of all relevant papers and clarifications required. However, where the circumstances of a claim warrant an investigation in the opinion of the insurer, it shall initiate and complete such investigation at the earliest. Where in the opinion of the insurer the circumstances of a claim warrant an investigation, it shall initiate and complete such investigation at the earliest, in any case not later than 6 months from the time of lodging the claim.
- d) Where a claim is ready for payment, subject to the provisions of section 47, Insurance Act, but the payment cannot be made due to any reasons of a proper identification of the payee, the insurer shall hold the amount for the benefit of the payee and such an amount shall earn interest at the rate applicable to a savings bank account with a scheduled bank (effective from 30 days following the submission of all papers and information).
- e) Where there is a delay on the part of the insurer in processing a claim for a reason other than the one covered by sub-regulation (4), the life insurance company shall pay interest on the claim amount at a rate which is 2% above the bank rate prevalent at the beginning of the financial year in which the claim is reviewed by it (Regulation 8, IRDA (Protection of Policyholders Interests) Regulations, 2002).

14.7 EVIDENCE FOR SETTLEMENT OF CLAIM

While making the claim the claimant shall produce the following document in support of his claim –

Nature of claim	Types of Evidence Required
Maturity claim	<ol style="list-style-type: none"> 1. Original insurance policy. 2. Discharge form, duly stamped, signed and witnessed. 3. Proof of age, if not admitted at the time of issue of policy. 4. Deed of assignment, if any.
Periodic survival benefits	<ol style="list-style-type: none"> 1. Original insurance policy. 2. Discharge form, duly stamped, signed and witnessed.
Death claim	<ol style="list-style-type: none"> 1. Proof of natural death – (i) A statement by the Doctor who last treated the deceased. (ii) A certificate by the hospital where the policyholder died. (iii) A certificate from the employer where the policyholder last worked. And (iv) a certificate of cremation or burial (it is generally called in ‘early claim’ cases). 2. proof of accidental or unnatural death – (i) post – mortem report. (ii) Police inquest report. (iii) Panchanama.(iv) Magistrate’s report/Coroner’s verdict. (v) Forensic report. 3. Proof of age – detailed above. 4. Proof of title of the claimant – (i) a succession certificate; or (ii) Letters of administration; or (iii) Letters of probate; or (iv) a registered will.
Early claims	<ol style="list-style-type: none"> 1. Original insurance policy. 2. Discharge form, duly stamped, signed and witnessed. 3. Proof of age, if not admitted at the time of issue of policy. 4. Deed of assignment, if any. 5. Proof of title of the claimant 6. A statement by the Doctor who last treated the deceased. 7. A certificate by the hospital where the policyholder died. 8. A certificate from the employer about the leave, if any, taken by the insured on the ground of sickness. 9. A certificate of cremation or burial.
Non - early claims	<ol style="list-style-type: none"> 1. Original insurance policy. 2. Discharge form, duly stamped, signed and witnessed. 3. Proof of age, if not admitted at the time of issue of policy.

	<p>4. Deed of assignment, if any.</p> <p>5. Proof of title of the claimant</p> <p>6. Claimant's statement in respect of cause of death, nature of illness suffered, treatment, cremation etc.</p> <p>7. Original death certificate.</p>
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Period of limitation: The claim on, the policy, maturity or death shall be made within three years from the date on which the sum assured becomes payable by the insurer or from the date on which the insurer has disclaimed the liability either partly or wholly (Art.44 (a) Limitation Act, 1963).

14.8 DISPUTED CLAIMS

The insurer may seeking the permission of the Court to deposit the sum secured by the life insurance policy when he is of the opinion that the claim, in respect of any policy of life insurance, is of contentious owing to –

- a) conflicting claims; or
- b) insufficiency of proof of title to the amount secured by the life insurance policy; or
- c) any other adequate reason rendering it impossible otherwise for the insurer to obtain a satisfactory discharge for the payment of such amount.

However, the Authority may settle the claim, although it is contentious, where the sum secured by the life insurance policy does not exceeding two thousand rupees (exclusive of any profit or bonus not being a guaranteed profit or bonus).The decision of the Authority is final and shall not be called in question in any Court (Sec.47, 47A, Act, 1938).

Litigation on insurance claims: The insurer owes a duty to settle the claims made in respect of sum secured by the policy, as per the terms of the agreement/policy, on time. Failing which, the aggrieved person may sue the insurer seeking relief in respect of the policy. If any such suit is brought in the Indian soil it shall be determined according to the Indian law. However, the provision of this will not be applicable to a policy of marine insurance (Sec.46, Act, 1938).

14.9 LOAN

The insured may avail loan from the insurer against the policy. The loan will be granted taking into account the surrender value of the policy. At the time of granting the loan the insurance policy shall be, taken as collateral security, assigned in favour of the insurer. Although, the nomination continues unabatedly as before, the insurer holds the interest on the policy to the extent of the loan amount. The loan facility will be available only on specified insurance products. When the insured avails the loan he will have two options, i.e.

–

- a) Repaying the loan amount with interest during the term of the policy; or
- b) Accumulating the loan debt over the policy term, and adjusting it at the time when claim arises.

The second option will come to his rescue when he makes the payment of premium regularly failing which one has to examine whether the surrender value of the policy is sufficient to meet the arrears of loan and interest. If the loan amount is in excess of the surrender value of the policy foreclosure becomes inevitable.

14.10 FORECLOSURE

The process of closing the insurance policy or writing it off before its maturity date by an insurer is called as foreclosure. Before initiating a step to foreclose the policy the insurer shall give a notice of foreclosure advising him to pay the arrears within the time stipulated, in default the policy will be foreclosed. In case the loanee fails to repay the loan as stipulated, the insurer may foreclose the policy. The balance, if any, remains after the foreclosure, the balance shall be paid to the policyholder/nominee. The receipt of balance amount signifies that the foreclosure has been duly accepted by the policyholder. However, the foreclosed policy can be reinstated when the –

- a) Policyholder is medically fit; and
- b) Outstanding loan along with the interest accumulated thereon is paid till date.

14.11 GARNISHEE ORDER

It is an order passed directing the garnishee to attach the debt in his hands. The moment the garnishee pays the amount as directed he will be duly discharged from the debt. The creditor, who obtains a decree against the debt, may pray the Court to issue garnishee order for issuing direction to the insurer to pay money due to the policy holder to the Court. The Court in turn may direct that the money may be paid to the creditor/decreed holder in satisfaction of the decree and cost of the execution. Any payment by the garnishee constitutes a valid discharge as against the judgment debtor. (A Garnishee is a person/debtor, in whose hands a debt is attached. (Rule 46A-46I of Order XXI, Code of Civil Procedure, 1908).

14.12 TAX EXEMPTION AND DEDUCTION

While computing the total income of the assessee to assess the tax liability, one may avail the benefit of various exemptions and deductions allowed, under the income tax Act, 1961, in respect of the proceeds derived from the insurance policies and contributions made towards premium. The exemptions and deductions permitted may be enlisted as under –

Exemptions	Provisions
Payment, including bonus, received from the insurance policy.	Section 10(10D), 80DD(3), Income Tax Act, 1961
Payment by way of commutation of pension out of annuity plan.	Section 10(10A)(iii), Income Tax Act, 1961
Payment from approved superannuation fund.	Section 10(13), Income Tax Act, 1961
Deductions	Provisions
Contribution of premium towards specified insurance plan e.g. EPF, PPF, pension plan etc.	Section 80C, Income Tax Act, 1961
Contribution of premium towards annuity plan.	Section 80CCC, Income Tax Act, 1961
Contribution of premium towards	Section 80DD, Income Tax Act, 1961

maintenance and medical treatment of disabled dependent	
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14.13 SUMMARY

The sum assured in life insurance becomes due either on the death of the insured or on the expiry of stipulated period whichever is earlier. Once the policy becomes due the insured or his nominee/legal heirs shall approach the insurer within three years from the date on which it fell due. At the time of registering the claim with the insurer several questions do arise to the claimant. This unit answer those questions to erase doubts, if any.

14.14 KEY WORDS

1. Life insurance
2. Policy
3. Settlement
4. Claim
5. Evidence
6. Disputed claims
7. Loan
8. Foreclosure
9. Garnishee order
10. Tax
11. Exemption
12. Deduction.

14.15 SELF ASSESSMENT QUESTIONS

1. Who are entitled for payment of the sum assured? When the claim application shall be made and where it shall be submitted?
.....
.....

2. State the procedure to make a claim for payment on the life insurance policy.

.....
.....

3. Write note on –

- a. Tax exemption and deduction
- b. Foreclosure
- c. Garnishee order

14.16 REFERENCES

1. Principles of insurance law: Life - fire - marine - motor and accident: M.N.Srinivasan.
2. Modern Law of Insurance: KSN Murthy and KVS Sarma.
3. Life insurance corporation of India : Impact of privatization and performance: Sumninder Kaur Bawa.
4. Commentaries on the public liabilities insurance act 1991: G.S Karkara.
5. Insurance law: A comprehensive treatise on law of insurance covering all risks except marine insurance: Brij Nandan Singh.
6. The Law of Insurance Contracts: A. Malcolm.
7. International encyclopaedia of laws: Insurance Law: R. Blanpain.
8. Insurance law manual with IRDA circulars and notifications: Taxmann.
9. Insurance law: Relating to all risks other than marine: E.J. Macgillivray.
10. Modern insurance law: John Birds and Norma J Hird.
11. Law Relating to Marine Insurance: Mitra, B.C.
12. Law of Insurance: Jaiswal J V N
13. General Principles of Insurance Law: Hardy Ivamy E R
14. Law Relating to Insurance: Vats R M

UNIT 15: LEGAL REMEDIES

STRUCTURE

- 15.0 Objectives
- 15.1 Introduction
- 15.2 Procedure before the sale of product
- 15.3 Proposal for insurance
- 15.4 Statutory warning
- 15.5 Claims procedure in respect of a life insurance policy
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- 15.11 Complaint
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- 15.13 Nature of Relief
- 15.14 Insurance Ombudsman
- 15.15 Complaints
- 15.16 Powers of Ombudsman
- 15.17 Admission of complaint
- 15.18 Mediation
- 15.19 Award
- 15.20 Summary
- 15.21 Key Words
- 15.22 Self Assessment Questions
- 15.23 References

15.0 OBJECTIVES

On reading this unit the students would become familiar with the following –

1. Protection of Policyholders' Interests
2. Remedy under the Consumer Protection Act, 1986
3. Nature of relief available at the Insurance Ombudsman

15.1 INTRODUCTION

The insurance claim is not hassle free. Trouble may start, sometimes for no fault of the insured, from any corner and at any time. How to shoot it out? What is the modus operandi? Who shall act upon? These questions amongst others have been answered in this unit.

15.2 PROCEDURE BEFORE THE SALE OF PRODUCT

At the time of promoting any insurance product and issue of policy the insurer shall clearly state in its prospectus of any insurance product shall clearly state the scope of benefits, the extent of insurance cover and in an explicit manner explain the warranties, exceptions and conditions of the insurance cover and, in case of life insurance, whether the product is participating (with-profits) or non-participating (without-profits). The allowable rider or riders on the product shall be clearly spelt out with regard to their scope of benefits, and in no case, the premium relatable to health related or critical illness riders in case of term or group products shall exceed 100% of premium under the basic product. All other riders put together shall be subject to a ceiling of 30% of the premium of the basic product. Any benefit arising under each of the riders shall not exceed the sum assured under the basic product. The benefit amount under riders shall be subject to section 2(11) of the Insurance Act, 1938. The rider or riders attached to a life policy shall bear the nature and character of the main policy, viz. participating or non-participating and accordingly the life insurer shall make provisions, etc., in its books. (Regulation 8, IRDA (Protection of Policyholders' Interests) Regulations, 2002).

15.3 PROPOSAL FOR INSURANCE

Every proposal must be in writing, while granting coverage, either for life business or for general business. However, this condition shall not be put in cases of a marine insurance cover as the current market practices do not insist on a written proposal form. The insurer shall furnish, within 30 days of acceptance of a proposal, a copy of the proposal form to the

insured at free of cost. The insurer may supply the proposal forms and documents used in the grant of cover, depending upon the circumstances of each case, in languages recognized under the Constitution of India (Regulation 8, IRDA (Protection of Policyholders' Interests) Regulations, 2002).

15.4 STATUTORY WARNING

Every proposal for an insurance product shall carry the following stipulation -

"No person shall allow or offer to allow, either directly or indirectly, as an inducement to any person to take out or renew or continue an insurance in respect of any kind of risk relating to lives or property in India, any rebate of the whole or part of the commission payable or any rebate of the premium shown on the policy, nor shall any person taking out or renewing or continuing a policy accept any rebate, except such rebate as may be allowed in accordance with the published prospectus or tables of the insurer."

If any person fails to comply with sub regulation (1) above, he shall be liable to payment of a fine which may extend to rupees five hundred. (Sec. 41 of the Insurance Act, 1938, Regulation 13, Insurance Regulatory and Development Authority (Insurance Advertisements and Disclosure) Regulations, 2000).

15.5 CLAIMS PROCEDURE IN RESPECT OF A LIFE INSURANCE POLICY

The insurer shall state in the life insurance policy, the primary documents which are normally required to be submitted by a claimant in support of a claim. On the receipt of a claim application the insurer shall process the claim without delay. Any queries or requirement of additional documents, to the extent possible, shall be raised all at once and not in a piecemeal manner, within a period of 15 days of the receipt of the claim. A claim under a life policy shall be paid or be disputed giving all the relevant reasons, within 30 days from the date of receipt of all relevant papers and clarifications required. However, where the circumstances of a claim warrant an investigation in the opinion of the insurer, it shall initiate and complete such investigation at the earliest. Where in the opinion of the insurer the circumstances of a claim warrant an investigation, it shall initiate and complete such investigation at the earliest, in any case not later than 6 months from the time of lodging the claim. Subject to the provisions of section 47 of the Act, where a claim is ready for payment but the payment cannot be made due to any reasons of a proper identification of the payee,

the life insurer shall hold the amount for the benefit of the payee and such an amount shall earn interest at the rate applicable to a savings bank account with a scheduled bank (effective from 30 days following the submission of all papers and information). Where there is a delay on the part of the insurer in processing a claim for a reason other than the one, aforementioned, the insurer shall pay interest on the claim amount at a rate which is 2% above the bank rate prevalent at the beginning of the financial year in which the claim is reviewed by it (Regulation 8, IRDA (Protection of Policyholders' Interests) Regulations, 2002).

15.6 CLAIM PROCEDURE IN RESPECT OF A GENERAL INSURANCE POLICY

In case of loss or damage to the property the insured or the claimant shall give preliminary notice, within a stipulated time or extended time as may be allowed, to the insurer. On the receipt of such a communication the insurer shall inform the procedure to be complied with and the documents to be furnished in support of the claim. When the insurer is desirous to appoint an assessor or surveyor to assess and ascertain the extent of loss, he shall see that the appointment and receipt of report, in this behalf is done within the time mentioned as under –

Particulars	Time prescribed	Remarks
Appointment of assessor or surveyor	Within 72 hours	From the date of receipt of intimation from the insured.
Submission of report	Within 30 days	From the date of his appointment and a copy of the report shall be furnished to the insured, on demand.
Extension of time, on the basis of non- cooperation of the insured, for submission of report on written request of the assessor or surveyor.	Not more than 6 months	From the date of his appointment to furnish his report.
Requisition of Additional report, if the original report found incomplete in any respect.	within 15 days	From the date of receipt of the original survey report.
Submission of additional report.	within three	From the date of receipt of

	weeks	communication to submit additional report from the insurer.
offer a settlement of the claim	Within 30 days	From the receipt of the survey report or the additional survey report, as the case may be.
Rejection a claim by the insurer, for any reasons to be recorded in writing and communicated to the insured.	Within 30 days	From the receipt of the survey report or the additional survey report, as the case may be.
payment of claim amount	within 7 days	from the date of acceptance of the offer by the insured

Any delay, if caused by the insurer, in making payment he shall pay interest, on the claim amount, at a rate which is 2% above the bank rate in force at the beginning of the financial year in which the claim is received (Regulation 9, IRDA (Protection of Policyholders' Interests) Regulations, 2002).

15.7 POLICYHOLDERS' SERVICING:

An insurer carrying on life or general business, as the case may be, shall at all times, respond within 10 days of the receipt of any communication from its policyholders in all matters, such as:

- a) recording change of address;
 - b) noting a new nomination or change of nomination under a policy;
 - c) noting an assignment on the policy;
 - d) providing information on the current status of a policy indicating matters, such as, accrued bonus, surrender value and entitlement to a loan;
 - e) processing papers and disbursement of a loan on security of policy;
 - f) issuance of duplicate policy;
 - g) issuance of an endorsement under the policy; noting a change of interest or sum assured or perils insured, financial interest of a bank and other interests; and
 - h) guidance on the procedure for registering a claim and early settlement thereof.
- (Regulation 10, IRDA (Protection of Policyholders' Interests) Regulations, 2002).

15.8 GRIEVANCE REDRESSAL PROCEDURE

Every insurer shall take step to set up a forum, unveiling proper procedures, to redress complaints and grievances of policyholders efficiently, and the same, including the information in respect of Insurance Ombudsman, shall be made known to the policyholders'(Regulation 5, IRDA (Protection of Policyholders' Interests) Regulations, 2002).

On the breach of any of the provisions afore mentioned the Authority to initiate action against the insurer or insurance agent or insurance intermediary jointly or severally under the Act and/or the Insurance Regulatory and Development Authority Act, 1999. The policyholder shall assist the insurer, if the latter so requires, in the prosecution of a proceeding or in the matter of recovery of claims which the insurer has against third parties(Regulation 11, IRDA (Protection of Policyholders' Interests) Regulations, 2002).

15.9 CONSUMER PROTECTION ACT 1986

Today everyone is, a consumer, availing one or the other products or service for consideration trusting that it is defect and deficiency free. When the trust so reposed is belied the Consumer Protection Act, 1986 will come to his rescue. The aggrieved consumer may initiate action, either independently or through consumer associations, to remedy his grievances. The remedy contemplated in the Act, 1986, is simple, speedy, inexpensive, popular & effective. The Act, 1986, is aiming to protect the interests of consumers and made provisions for the establishment of consumer councils and other authorities for the settlement of consumer's disputes and for matters connected therewith. This Act is applicable to – (i) all types of goods and services; and (ii) cover private, public and cooperative sectors.

15.10 RIGHTS OF THE CONSUMERS

The purposes of the Act are to promote and protect the interest of the consumers in respect of

- a) Marketing of goods which are hazardous to life and property.
- b) Information as to the quality, quantity, potency, purity, standard and price of goods to protect the consumer against unfair trade practices.
- c) Hearing and assuring that the consumer's interests will receive due consideration at appropriate forums.

- d) Seeking redressal against unfair trade practices or unscrupulous exploitation of consumers.
- e) Consumer education.

Consumer: The “consumer” means any person who -

- a) Buys any goods for consideration which has been paid or promised or partly paid and partly promised; or under any system of deferred payment and includes any user of goods...
- b) One who hires or avails any services for a consideration, which has been paid or promised or partly paid or partly promised or under any system of deferred payments; and
- c) Includes any beneficiary of such service other than the person who hires or avails the service for consideration and when such services are availed with the approval of the first mentioned person, however, does not include a person who avails the service for any commercial purpose (Sec. 2(d) Act, 1986).

Service: When the service is availed by the consumer for consideration it shall be free from any defect or deficiency - i.e. it shall be free from any fault, imperfection, shortcoming, inadequacy, quality, nature - manner of performance which is required to be maintained by or under any law in pursuance of a contract undertaking in relation to that service (Sec. 2(o) Act, 1986). The insurer’s organization is basically offering service to the insuring public. Thus, the service offered shall be free from any kind defect or deficiency.

15.11 COMPLAINT

When the insuring public is not happy with the service offered by the insurer he may lodge the complaint, within 2 years from the date on which cause of action has arisen, at such place where the cause of action has arose or where party resides. The party may include -

- a) Consumer.
- b) Any voluntary organization representing consumers registered under Companies Act/Societies Act.
- c) Central Government.
- d) State Government or Union Territory.
- e) A group of consumers having common dispute.

15.12 CONSUMER DISPUTES REDRESSAL MECHANISM

The Act, 1986, provides three-tier quasi-judicial machinery at the national, state and district level, they are –

Adjudicatory agency	Pecuniary jurisdiction	Appeal
National Consumer Disputes Redressal Commission (National Commission)	Value of goods or services and compensation asked for exceeds Rs. 1 Crore	State Commission Within 30 days from the date of receipt of the order
State Consumer Disputes Redressal Commission (State Commission).	Value of goods or services and compensation asked for is more than Rs. 20 lakhs but less than 1 Crore.	National Commission, Within 30 days from the date of receipt of the order
District Consumer Disputes Redressal Forum (District Forum).	Value of goods or services and compensation asked for does not exceed Rs.20 lakhs	Supreme Court, Within 30 days from the date of receipt of the order

15.13 NATURE OF RELIEF

Depending on the nature of relief, sought by the consumer, and facts the redressal forum may order one or more of the following relief -

1. Removal of defects or deficiency from the goods or service.
2. Replacement of goods or service.
3. Refund of consideration paid.
4. Award of compensation for the loss or injury suffered.

The redressal forum being treated as a Civil Court, for the purpose of the Act, 1986, and endowed with the powers of a Civil Court. It may punish the culprit with imprisonment for a term of minimum one month to maximum 3 years or impose fine of minimum Rs. 2,000 to maximum of Rs. 10,000.

15.14 INSURANCE OMBUDSMAN

The Central Government has notified the rules, on 11th November, 1998, called as Redressal of Public Grievances Rule 1998, to resolve all complaints relating to claims against insurers

in cost effective, efficient and impartial manner. The governing body of Insurance Council may appoint one or more ombudsman for a term of three years and eligible for reappointment. A person may hold the office of ombudsman until the attainment of 65 years or three years, whichever is less. The Insurance Regulatory and Development Authority may remove the ombudsman from the office, on the ground of gross misconduct, after providing him due opportunity. The office of ombudsman may be located at such places as decided by the Insurance Council from time to time.

15.15 COMPLAINTS

The aggrieved person, either by himself or through his legal heirs may lodge the complaint to the ombudsman within whose jurisdiction the branch or office of the insurer complained against is located. The complaint shall –

- a) Be in writing, duly signed by the complainant or by his legal heirs;
- b) Contain name and address of the complainant;
- c) Contain the name and address of the office or branch of the insurer;
- d) Contain the facts which give rise to the complaint;
- e) Contain the nature and extent of loss sustained;
- f) Contain the relief sought; and
- g) Enclose the documents in support of the complaint.

15.16 POWERS OF OMBUDSMAN

The Ombudsman is empowered to receive and consider –

1. Any partial or total repudiation of claim by an insurer.
2. Any dispute in regard to premium paid or payable in terms of the policy.
3. Any dispute in regard to the legal construction of the policies insofar as such disputes relate to the claims.
4. Delay in settlement of claims.
5. Non-issue of an insurance document to customers after receipt of premium.
6. The Ombudsman shall act as counselor and mediator in matters which are within his terms of reference and, if requested to do so in writing by mutual agreement by the insured person and insurance company.
7. The Ombudsman's decision whether the complaint is fit and proper for being considered by it or not shall be final.

15.17 ADMISSION OF COMPLAINT

The Ombudsman is empowered to receive and consider the complaint only when –

- i. The insured or his legal heirs makes representation to the insurer concerned before lodging the complaint;
- ii. The insurer refuses or neglects or fails to attend the representation within one month from the receipt of the representation;
- iii. The insured or his legal heirs is not satisfied with the reply given to him by the insurer;
- iv. The complaint is made within 1 year from the date on which the insurer had rejected the representation or sent his final reply on the representation of the Complainant.
- v. No complaint on the same subject matter is already under pending consideration before any Court or Consumer Forum or Arbitration.

15.18 MEDIATION

The ombudsman may settle the grievance of the complainant through mediation on the receipt of a request which is made in writing, through mutual agreement, by the complainant and the insurer. On considering the contentions of both parties the ombudsman shall –

- a) Make ‘recommendation’ which he considers fair in the circumstances of the case.
- b) Make ‘recommendation’ within one month from the date of the receipt of the complaint.
- c) Supply copies of the ‘recommendation’ to the complainant and the insurer.

On receiving the recommendation, from the ombudsman, the complainant shall communicate his letter of acceptance or rejection within 15 days of its receipt. The letter of acceptance letter shall clearly state that the settlement reached is acceptable to him in totality in full and final settlement of his claim. Thereafter, the Ombudsman will send a copy of the recommendation along with complainant’s acceptance letter to the insurer. Within 15 days from the date of receipt of such recommendations the insurer shall comply with the terms and conditions of the recommendation and submit the compliance report to the Ombudsman.

15.19 AWARD

Where complaint is not settled through mediation the Ombudsman shall pass an award –

- a) Within a period of three months from the date of receipt of the complaint.
- b) In writing.
- c) Which he considers fair in the facts of the case.

- d) Specifying the amount awarded to the complainant.
- e) Without awarding any compensation in excess of the loss suffered by the complainant or 20 lakh, whichever is less.

On the pronouncement of award the Ombudsman shall supply the copies of the award to the insurer and the complainant. In turn the complainant shall send a letter of acceptance, within one month from the date of receipt of the copy, to the insurer, stating that the award is in full and final settlement of his claim. The insurer shall comply with the award within 15 days from the receipt of the acceptance letter and submit the compliance report to the Ombudsman.

Consequences of non-acceptance of award: If the complainant does not intimate acceptance within one month from the date of receipt of the award, the insurer may not implement the award.

Ex-gratia payment: If the Ombudsman deems fit, he may award an Ex-gratia payment. The decision of the ombudsman is binding on the insurers, but the complainant still feels aggrieved by the decision can approach the civil courts for relief.

15.20 SUMMARY

The Protection of Policyholders' Interests is the prime concern of IRDA. It aims to save the Policyholders from maltreatment of the insurer/ intermediaries and to ensure deficient free service. In this regard IRDA has introduced Insurance Regulatory and Development Authority(Protection of Policyholders' Interests) Regulations,2002 and also introduced Ombudsman to take care of all complaints relating to claims against insurers in cost effective, efficient and impartial manner. If the policyholder is not happy with the service of the insurer he may find remedy at the consumer redressal forum under the consumer protection Act, 1986.

15.21 KEY WORDS

1. Product
2. Proposal
3. Statutory warning
4. Claims
5. Policy
6. Policyholder Servicing
7. Grievance

8. Consumer
9. Disputes Redressal mechanism
10. Insurance Ombudsman
11. Complaint
12. Mediation
13. Award.

15.22 SELF ASSESSMENT QUESTIONS

1. State the mechanism adopted by the IRDA for the protection of policy holders' interest.
.....
2. "Consumer redressal forum is a place to remedy the grievances of insured" elucidate.
.....
.....
3. Write note on -
 - a. Ombudsman
 - b. Award
 - c. Mediation

15.23 REFERENCES

1. Principles of insurance law: Life - fire - marine - motor and accident: M.N.Srinivasan.
2. Modern Law of Insurance: KSN Murthy and KVS Sarma.
3. Life insurance corporation of India : Impact of privatization and performance: Sumninder Kaur Bawa.
4. Commentaries on the public liabilities insurance act 1991: G.S Karkara.
5. Insurance law: A comprehensive treatise on law of insurance covering all risks except marine insurance: Brij Nandan Singh.
6. The Law of Insurance Contracts: A. Malcolm.
7. International encyclopaedia of laws: Insurance Law: R. Blanpain.
8. Insurance law manual with IRDA circulars and notifications: Taxmann.
9. Insurance law: Relating to all risks other than marine: E.J. Macgillivray.
10. Modern insurance law: John Birds and Norma J Hird.
11. Law Relating to Marine Insurance: Mitra, B.C.
12. Law of Insurance: Jaiswal J V N
13. General Principles of Insurance Law: Hardy Ivamy E R
14. Law Relating to Insurance: Vats

BLOCK-IV

UNIT 16: FIRE INSURANCE

STRUCTURE

- 16.0 Objectives
- 16.1 Introduction
- 16.2** Features of Contract of Fire Insurance
- 16.3** Fire insurance policy
- 16.4** Parties to fire insurance contract
- 16.5** Utmost good faith (Uberrima fides)
- 16.6** Fire perils;
- 16.7** Proximate cause
- 16.8** Average clause
- 16.9** Assignment of fire insurance policy
- 16.10** Fire claims
- 16.11** Warranty
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- 16.13** Rights of insurer
- 16.14** Settlement of dispute
- 16.15** Summary
- 16.16** Key Words
- 16.17 Self Assessment Questions
- 16.18 References

16.0 OBJECTIVES

On reading this unit the students would be able to comprehend on the following –

1. Scope of fire insurance
2. features of fire insurance policy
3. settlement of claim

16.1 INTRODUCTION

The Church called-on the people, in 1601 A D, to help the victims of fire by liberal donation. The great fire of London, in 1666 a historic disaster, enveloped 436 acres of land and destroyed 80% of the city, more than 13,000 buildings, made the people to flee from their place of habitation against their will. Everyone clamoring for protection of their life and properties. People started pondering over the ways and means to come out of such calamities with the expansion of horizon of trade and commerce. This has sowed the seed of fire insurance. Initially only buildings were insured. Nicholas Barbon, a builder, was the root cause for the establishment of fire office, in 1680. Charles Povey put the concept of insurance into action, in 1708, by establishing ‘Traders Exchange’ to save movable goods, merchandise and stocks from loss or damage. This was the first move to insure both the building and its contents.

The concept of fire:

Fire means actual ignition accompanied by heat and/ or flame and /or smokes, no ignition means no fire. Fire produces heat and light but either of them alone is not fire. It may be domestic or wild fire. However, no such distinction is made in the legal dialect. To have the coverage of insurance the damage or loss must be occasioned by fire provided firstly, it is due to the actual fire or ignition, and secondly, the fire must be fortuitous in its nature. Fire insurance business indicates a business initiated by concluding a contract of insurance against loss by or incidental to fire or other occurrence customarily included among the risks insured against in fire insurance policies (section 2(6A) Insurance Act 1938). The property which may be easily susceptible to fire may include -

- Buildings;
- Electrical installation in buildings;
- Contents of buildings such as machinery, plant and equipments, accessories, etc.;
- Goods (raw materials, in-process, semi-finished, finished, packing materials, etc.) in factories, godowns etc.;

- Goods in the open;
- Furniture, fixture and fittings;
- Pipelines (including contents) located inside or outside the compound, etc.

The people who possess insurable interest may insure such properties against fire risk to save him from any loss or damage which may be caused by fire accident.

16.2 FEATURES OF CONTRACT OF FIRE INSURANCE

The contract of insurance is a contract of indemnity provided to the insured by the insurer to indemnify him against the loss of property by or incidental to fire and/or lightning, explosion etc. the contract of fire insurance has three features they are –

- a) It is personal in nature: the contract of fire insurance is personal in spirit. It is aiming to save the insured from the loss which is caused by fire. His interest on the property insured shall continue unabatedly until the contract of insurance is in force. The moment he loses his interest, on the property insured, indemnification on such property also ceases. In the event of transfer of property, by sale or otherwise, the interest on the policy never automatically pass unless it is specifically assigned with the consent of the insurer. The contract of insurance does not ensure the safety of the property insured but aspire to see that the insured does not suffer loss by reason of his interest in the property insured.
- b) Cause of fire is immaterial: The cause of fire is not significant, even if it is caused by the negligence of the servant or the insured himself, however, no fraud or misconduct shall be played by the insured.
- c) Indivisibility: The fire insurance contract generally covers the fire losses in totality unless the contract specifically provides for divisibility of losses, for e.g. if a person concludes a contract enveloping his building and stock, thereafter, he cannot split the building and stock to suit to his convenience except with the consent of the insurer.

16.3 FIRE INSURANCE POLICY

Standard Fire and Special Perils Policy: In India, under fire insurance policy, in addition to fire, other perils are also included and the policy is known as “**Standard Fire and Special Perils Policy**”. The perils specified in the fire policy are:

- A. **Fire:** It has been explained as above.
- B. **Lightning:** Any lightning due to cloud burst may damage the property and the same will be covered under the fire policy.
- C. **Explosion / Implosion:** Sudden change in the temperature in any plant & machinery or exposure to atmospheric pressure may result into loss and the same will be covered under fire policy.
- D. **Aircraft Damage:** Any damage to the property due to any droppings by aircraft or by itself will also be covered under the fire policy.
- E. **Riot, Strike and Malicious Damage (RSMD):** Any damage to the property due to public or strike by employees or malicious damage (intentional damage) by any person will be covered under this policy.
- F. **Storm, Cyclone, Typhoon, Tempest, Hurricane, Tornado, Flood and Inundation (STFI):** The property damage due to any of these storms and flood will also be covered under this policy. The meaning of these perils lies in different intensity of the storms. Flood not only means the leakage of water through river but also accumulation of water due to heavy rains in the premises.
- G. **Impact Damage:** Damage to the property due to impact by any Rail / Road vehicle or animal by direct contact, but not belonging to or owned by the Insured or any occupier of the premises or their employees while acting in the course of their employment.
- H. **Subsidence and Landslide including Rock Slide:** Destruction or damage caused by Subsidence of part of the site on which the property stands or Land slide / Rock slide.
- I. **Bursting and/or overflowing of Water Tanks, Apparatus and Pipes:** If due to bursting or overflowing of water from the water tanks installed in the premises of the policyholder any damage or loss to the property of the policyholder is caused, it will be covered under this policy.
- J. **Missile Testing Operations:** Any loss or damage due to missile testing by the Govt. or otherwise will be covered under this policy.
- K. **Leakage from Automatic Sprinkler Installations:** In most of the organizations as a fire protection measure, automatic sprinkler system is installed. If due to non-usage of the sprinkler system or otherwise it starts leaking and damages the property, then it will be covered under the Fire insurance policy.
- L. **Bush Fire:** It means fire spread from the bushes (small fire) but will not include forest fire.

Exclusion:

This policy does not cover -

1. 5% of each and every claim resulting from lightening/ storm/ tempest/ flood/ inundation/ subsidence and landslide including rockslide covered under the policy;
2. Loss destruction or damage caused by war, invasion, act of foreign enemy hostilities or war like operations (whether war is declared or not), civil war, mutiny, civil commotion assuming the proportions of or amounting to a popular rising, military rising, rebellion, revolution, insurrection or military or usurped power.
3. Loss, destruction or damage directly or indirectly caused to the property insured by –
 1. Ionizing radiations or contamination by radio activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel.
 2. Radioactive toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.
4. Loss, destruction or damage caused to the insured property by pollution or contamination excluding -
 1. Pollution or contamination which itself results from a peril hereby insured against.
 2. Any peril hereby insured against which itself results from pollution or contamination.
5. Loss, destruction or damage directly to solution or unset precious stones curios, works of arts for an amount exceeding Rs 10,000, manuscripts plans, drawings, securities, obligations or documents of any kind stamps, coins or paper money, cheques, books of accounts or other business books, computer systems, records, explosives unless otherwise expressly stated in the policy.
6. Loss, destruction or damage to the stocks in cold storage premises caused by change of temperature.
7. Loss, destruction or damage to any electrical and/or electronic machine, apparatus, fixture or fitting (excluding fans and electrical wiring in dwellings) arising from or occasioned by overrunning, excessive pressure, short circuiting, arcing, self – heating, or leakage of electricity, from whatever cause (lightning included)
8. Expenses necessarily incurred on – (i) Architect's, surveyor's and consulting engineer's fees and (ii) Debris removal by the insured following a loss, destruction or damage to the property insured by an insured peril in excess of 3% and 1% of the claim amount, respectively.
9. Loss of earnings, loss by delay, loss of market or other consequential or indirect loss or damage or any kind or description whatsoever.

The clauses covered above are subject to the normal general conditions of the insurance company.

Add-on covers: The insurers can issue the standard fire policy as per the New Fire Tariff along with added benefits at the option of the policy holders by charging additional premium.

These added benefits of add-on covers are as under –

- Architect's, surveyor's and consulting engineer's fees (in excess of 3% of the claim amount)
- Debris removal(in excess of 1% of the claim amount)
- Deterioration of stocks in cold storage premises due to power failure following damage due to an insured peril.
- Forest fire.
- Impact damage due to insured's own vehicles, forklifts and the like and articles dropped there from.
- Spontaneous combustion.
- Omission to insure additions, alterations or extensions.
- Earthquake (fire and shock) as per minimum rates and excess applicable as specified in the tariff.

In respect the above add-on covers, the insurer will compulsorily deduct 5% of each claim before paying the claim proceeds to the insured.

The standard policies exclude certain perils from the scope of the cover. The reasons for the exclusions are –

- a) To restrict the cover to normal coverage required by the typical or average insured. Personal accident policy which provides for the agreed benefits to be paid under certain specified contingencies, does not cover medical expenses, which can be included on payment of an additional premium. Similarly, Workmen's Compensation Policy indemnifies the insured against his liability at law to his direct employees, and provides for the insured's legal liability to the employees of sub-contractor to be included by payment of premium at a tariff rate on the wages payable to workmen of sub-contractor. Similarly, policy can be extended to cover medical expenses, and the diseases specified in Part III of the Schedule-C on payment of additional premium.
- b) To exclude losses which are of an extraordinary or catastrophic nature e.g. the earthquake perils locations involving storage of materials, and industrial/manufacturing risks. In view of concentration of material, property

involving huge sum insured, perils of earthquake, and/or flood etc. could cause losses which might assume proportion of a catastrophe. While for residences, offices, shops and for tiny sector etc. these perils (of earthquake and flood etc.) are offered as in-built perils, as for these risks, perils of earthquake and flood may not cause catastrophic losses.

- c) To precisely define and clarify the scope of cover, for example, to prevent disputes in the event of loss which is akin to fire but is not within the meaning of the policy, spontaneous combustion is excluded under fire policy.
- d) To exclude risks which may be accepted after obtaining more underwriting information or arranging inspection e.g. flood risk in fire insurance, pollution cover under public liability policy, and cover for exports under Product's Liability Policy.
- e) To exclude losses which are convertible under other policies. This eliminates duplication of coverage. For example, the general public liability policy excludes liability arising out of the use of Motor Vehicle, because a Motor Third Party Policy is available. Similarly, Plate Glass policy does not cover loss of or damage by fire, which can be covered separately under a Fire Insurance policy.
- f) To exclude risks which cause losses of high degree of frequency e.g. the risks of larceny under Burglary (Business Premises) Policy, and Shortages, which are discovered at periodic stock taking.
- g) To exclude losses which are caused intentionally, e.g. suicide under personal accident policies.
- h) To exclude losses, which are inevitable, e.g. wear and tear and depreciation under motor policies and 'inherent vice' under marine cargo policies.
- i) To exclude losses which are commercially uninsurable, e.g. war and nuclear risks.
- j) The standard policies may also exclude certain classes of property from the coverage. For example, the fire policy excludes certain classes of property, e.g. documents, coins, paper money, books of accounts, unless expressly stated in the policy. The intention is to ascertain the existence of such property and, if necessary to include certain classes of property in the coverage subject to special terms and conditions. Similarly, curios, works of arts, paintings can be covered after obtaining valuation report, from the Director of Museum and stamp collections can be covered on the production of valuation certificate from the Philatelic Society.

Standard policy coverage: The Tariff Advisory Committee has prescribed three types of coverage namely: Policy A, Policy B and Policy C.

Policy A: The risks covered under this policy are – fire; lightning; explosion/implosion; impact damage; aircraft damage; riot, strike and malicious and terrorist damage; storm, cyclone, tempest, hurricane, tornado, flood, and inundation; earthquake; subsidence and landslide (including rockslide).

Only Policy A can be issued to cover artisans' workshops, biogas plants, village and cottage industries, tiny sector or small scale industries.

Policy B: the perils covered in this policy are – fire; lighting; explosion/implosion; impact damage; aircraft damage; riot, strike, and malicious and terrorist damage (The cover is similar to Policy C)

The Tariff permits exclusion of riot, strike and malicious and terrorist damage perils with specified reduction in the premium rate under the policy.

Policy C: This Policy is issued to cover – industrial/manufacturing risks and storage risk and includes fire; lighting; explosion/implosion; impact damage; aircraft damage; riot, strike, and malicious and terrorist damage

The riot, strike, and malicious and terrorist damage perils can be excluded on specific request with an agreed reduction in premium rate.

The Policy C may be extended to cover special perils on payment of extra premium. These perils are – spontaneous combustion; earthquake (shock and fire); storm, tempest, flood and inundation; subsidence and landslide; accident leakage or contamination of oil;

Spoilage of stock and machinery due to interruption of process of manufacture by insured perils; deterioration of stock due to power failure following damage to premises of public power stations; bursting/overflowing of water tanks, apparatus and pipes; sprinkler leakage; bush and forest fire; subterranean fire; missile testing fire operations

Fire Policy A and B (simple risks): Fire Policy A and B. are issued in respect of dwellings, offices, hotels and shops, educational institutions etc.

Special Coverage available in Indian market: The features of Standard Fire Policy vary from one client to another. Its attributes will be modified, to meet the individual needs, by an endorsement. Some of these are -

- (i) Reinstatement value policies;
- (ii) Floater Policies;
- (iii) Declaration Policies;
- (iv) Floater Declaration Policies

Reinstatement value policies: This Policy is aiming to avoid conflict of indemnity. The insurer undertakes to bear the cost of rebuilding the premises or, in case of plant and

machinery, replace the machinery of similar type or restore the damaged portion of the property unto the condition as it was before, but not better or more extensive than it was. Any settlement of claim is made on “New for Old” basis without deduction for depreciation, wear and tear for use etc. Inclusion of Local Authorities Clause, on insertion of such additional costs but without any extra premium, would enable the insurer to take-care of adherence of building or other regulations under any Act of Parliament or with the Bye – Laws of any Municipal or Local Authority. The subject matter of the Policy may envelop building, plant and machinery, furniture, fixtures and fittings, but not stocks.

Floater Policies: This Policy is aiming to take-care of one or more types of goods or stocks at a time, with one sum assured for one premium, belonging to same owner. The goods or stocks may be stored in different locations in the same village, town, city, State or other States. The Policy never covers immovable properties. In this Policy determination of rate of premium is very difficult as the quantity of goods or stocks, in different localities, used to fluctuate every day. Thus, the insurer will go for an average rate of premium by having regard to, physical hazard and moral hazard, total premium payable had the property been insured by specific policies. Generally this Policy will be purchased by the big manufacturers, traders, etc as they used to keep their goods or stocks in warehouse, godown, port or railway stations etc. The principles underlined in this Policy are –

- a) The policy can be granted only on stock-in-trade. The policy cannot be issued in respect of immovable property;
- b) The location of each warehouse, godown, port or railway stations etc shall be declared by the insured;
- c) The insured shall have internal audit mechanism and accounting procedure to ascertain total amount/volume of goods or stocks at risks on each location and its consolidated picture at a particular point of time.;
- d) Unspecified locations shall be excluded from the ambit of the policy.

Declaration Policies: Many a time the trader/businessmen find hard to maintain uniform level of stocks throughout the year. In the peak season he may have highest stocks and in the remaining period he may have relatively much lower stocks. This tendency makes it difficult to find a base for the determination of rate of premium, whether one shall take the higher value or lower value of stocks to ascertain the rate of premium. To relieve him from this dilemma and to offer him an optimum rate of premium the Stock Declaration Policy has been introduced. In this policy the insured is required to insure the goods or stocks to the highest value envisaged during the year and shall declare, periodically, the actual value of goods or

stocks at risks. The value, thus, declared are averaged and the premium is computed on the average amount at the end of the policy year. The difference between the initial premium and the final premium is calculated and the premium paid in surplus will be refunded subject to the maximum limit of 50% of the initial premium. This policy is available only to stocks and sole property of the insured.

Floater Declaration Policies: It is combination of the above mentioned policies i.e. stock lying at different locations and the value of stock fluctuating.

16.4 PARTIES TO FIRE INSURANCE CONTRACT

A person who is having insurable interest, i.e. possesses interest in the property, entitled to reap the benefit and prejudiced by its destruction is deemed to have insurable interest, may become a party to the contract of fire insurance. Following persons may enter into a contract to insure their property against fire -

- a) Owners of the property i.e. sole owner or joint owner or partner in the firm etc.
- b) Vendor and purchaser of the property.
- c) Mortgager and mortgagee of the property.
- d) Trustees and beneficiaries of a trust.
- e) Bailees such as carrier, pawnbrokers, warehousemen etc.

16.5 UTMOST GOOD FAITH (UBERRIMA FIDES)

The fire insurance contract, like any other insurance contract, is based on utmost good faith. Both the insurer and the insured owe a positive duty to make full disclosure of all the material facts in respect of subject matter of contract. They are required to observe throughout the existence of contract. Any kind of mis-descriptions or incorrect or false statements enables the aggrieved party to avoid the liability. This duty applies equally to the insurer and the insured LIC of India v, G M Channabasamma AIR 1991 SC 392)

Material fact: The insured needs to disclose all the information to the insurer, in respect of the subject matter, which are material to assess the nature and extent of risk and quantify the premium. The facts to be disclosed includes - the name and address of the insured, nature of property, description of the locality where the property is located, how the said property is being used i.e. whether it is used to carry on any manufacturing process or hazardous trade etc., personal insurance history including previous claim if any. In addition to these facts the is required to furnish –

- a) Any information which may enhance the degree of risk above normal;
- b) Every fact which may increase the extent of insurer's liability more than normal e.g. existence of antiques, precious materials, significant documents ;
- c) All particulars which may bank upon moral hazard.

The insured need not disclose such information which -

- a) The insurer may be presumed to know in the ordinary course of his business as an insurer;
- b) Tends to show that the degree of risk is lesser than otherwise;
- c) Is waived by the insurer; and
- d) Need not be disclosed in view of a policy condition.

Assumption of risk: The contract of insurance will begins to run from the date of receipt of premium. Thus, the date of payment of premium is more crucial than the date of conclusion of contract or issuance of policy for determining the date of assumption of risk (Sec.64VB, Insurance Act,1938, Rule 58, Insurance Rules,1939,Deokar Export Pvt Ltd v. New India Assurance Ltd AIR 2001 Bom327).

Alteration in risk: The insured shall disclose all the material facts and changes in risk until the conclusion of contract. Any subsequent change in the nature of risk need not be revealed in the absence of any express stipulation in the policy.

16.6 FIRE PERILS

The tangible property is vulnerable to several risks e.g. fire, lightening, floods, storm, cyclone, explosion, earthquake, landslide, strike, riot, war etc. the insurance protection is available against any of these risks either severally or in combination. The nature of policy may be tailored, in express terms, to suit to the individual needs on additional payment of premium. Thus, the policy specifically incorporates the inclusion and exclusion clause to make known precisely the type of risk that has been undertaken by the insurer. Such extra risks called as special perils and are included by placing an endorsement on the policy or by issuing a separate policy.

16.7 PROXIMATE CAUSE

The perils may act simultaneously or in succession. It will be very difficult to identify the peril which is really responsible for causing loss or damage to the property insured. The doctrine of proximate cause (causa proxima) helps to determine the actual cause of the loss.

The insurer is answerable to the liability when the loss or damage is caused by way of fire unless specifically provided for. The fire may be broken due to riot, strike or owing to any malicious act. However, these factors ultimately lead to fire and the fire must be the proximate cause of loss or damage. The loss or damage is said to be proximately caused by fire when it is –

- i. Necessary consequence of fire;
- ii. The reasonable consequence of fire.

The insurer is not liable to make good the loss when the fire is only a remote cause but not proximate cause for the occurrence of the loss or damage, for example –

- a) Anticipated profit: the percentage of profit the insured is looking for from the property insured had that property not damaged by fire.
- b) Loss of earnings: Withering the source of earning of the insured including prospective profits or other consequential and indirect losses, e.g. Destruction of place of business, wholly or partly, by fire preventing the insured from carrying on the business.
- c) Continuing expenditure: consequential expenditure, incurred by the insured, to set the business on rail.
- d) Increased expenditure: incurring of additional or extra expenditure owing to the mishap.
- e) Depreciation: reduction in value of remains of the property insured owing to fire accident.
- f) Liability: answering the third person, by the insured, for the personal injuries or for the damage to the property other than the insured property.

In the aforementioned instances the insurer is not accountable as the cause for such loss is not proximate, although logically consequential, to the fire accident.

16.8 AVERAGE CLAUSE

At the time of conclusion of contract of insure, the insured may insure the property either more or lower than its real or intrinsic or market value. When the property is insured more than its value it is said to be over insurance and when it is insured for lesser value then it is treated as under insurance. ‘Pay less, premium, gain more’ is the general behavior in the insurance sector. This tendency needs to be weeded out. However, the principle of insurance

never allows the insured to make profit through contract of insurance. Thus, average clause, commonly, finds a place in the policy to -

- (i) Discourage the habit of under-insurance; and
- (ii) Limit the liability of the insurer to the extent of actual loss.

Example: Mahesh has insured his property, with Bajaj Allianz, worth Rs.20,000,00 for 15,000,00. The policy contains an average clause. If the three-fourth of the property is burnt down, he can recover only Rs. 11,25,000.

$$\frac{\text{value of the policy}}{\text{full value of the subject matter}} \times \text{actual loss} = \text{sum to be recovered}$$

$$\frac{15,00,000}{20,00,000} \times 15,00,000 = 11,25,000$$

In the absence of average clause Mahesh could recover the full amount i.e. Rs.15,00,000.

16.9 ASSIGNMENT OF FIRE INSURANCE POLICY

Mere transfer of property does not automatically leads to transfer or assignment of fire insurance policy. A fire insurance policy shall be assigned like a chose-in-action under the Transfer of Property Act, 1882. Assignment of fire insurance policy shall be made subject to the fulfillment of following conditions -

- a) The property insured shall be absolutely vested with the insured/assignee as on the date of assignment;
- ii) The assignment shall be made at the time of transfer of property;
- iii) The assignment shall be made by an endorsement on the policy or by a separate deed of assignment; and
- iv) Notice of assignment shall be delivered to the insurer (Sec.135, Transfer of Property Act, 1882).

On the transfer of immovable property, insured against loss or damage by fire, for consideration the transferee is entitled to call upon the transferor, in the event of such loss or damage, to apply any money received by him under the fire insurance policy, to reinstate the property (Sec.49, Transfer of Property Act, 1882).

16.10 FIRE CLAIMS

The insured shall register his notice of loss/claim within 15 days or within the extended time, as the insurer decides, from the date of occurrence of loss or damage to the property insured.

However, while making claim the insured shall see that -

- a) The damage shall be caused due to the operation of an insured peril. In the event of successive action of both the insured and other perils, the happening of loss or damage shall be due to dominant or efficient role of the insured peril;
- b) The operation of peril shall not fall under the exclusion/ exception clause of the policy;
- c) The event shall be responsible for causing loss or damage to the insured property;
- d) The loss or damage shall be caused, to the insured property, when the policy is in force;
- e) The conditions of the policy are duly complied with before and after the claim are made.

On the receipt of the notice of loss/claim the insurer shall examine whether –

- i) The policy is in force;
- ii) The loss is caused due to the operation of insured risk/peril;
- iii) The property damaged or lost is the insured property.

With a view to put the notice of loss/claim to strict proof the insurer may ask the insured to furnish the following information –

- 1) Circumstances and cause of fire;
- 2) Occupancy and situation of the premises in which the fire occurred;
- 3) Insured's, including any other persons' interest in the insured property;
- 4) Other insurance policy on the property;
- 5) Value of property, item wise, at the time of loss including the value of the salvage, if any and documentary proof thereof;
- 6) The amount claimed.

Generally, the insurer pay the insured amount where the amount claimed is not in excess of Rs. 20,000 and non – contentious. However, the insurer settle the claim only after getting the report from the licensed surveyor or assessor where the amount claimed is in excess of Rs.20,000 (64UM, Insurance Act,1938).

Amount recoverable: The policy indicates two things, namely - (i) determine the rate of premium payable and (ii) fixation of upper limit of insurer's liability. The insured, as a

general rule, is not entitled to recover more than the value of his interest in the property insured. Thus, the insurer is required to make good the loss only to the extent of actual loss but subject to the kind of policy purchased i.e. whether it is valued or unvalued policy.

- 1) Valued policy: when the insured purchased the valued policy he need not adduce proof of evidence to establish the value of the subject matter but entitled to recover the full amount although, practically, it is more than the true indemnity. In the event of partial loss to the property insured the insurer is accountable to bear the loss only to the extent of loss sustained. However, the valued policy is not much in vogue in fire insurance.
- 2) Unvalued policy or open policy: While quantifying the extent of loss, sustained to the property insured, value at the time of loss or value at the place of loss or the intrinsic value or real value or market value on the date of fire will generally be considered. However, the value of the property shall be ascertained by having regard to the nature of property e.g. private building, school, factory, temple, stock in trade, machinery, raw material etc. In the presence of a provision to restore the property insured to the original position the insurer is obligated to bear the cost of purchase of an equivalent or reinstatement of property destroyed.

16.11 WARRANTY

A stipulation incorporated in the proposal form/policy is called as express warranty. Any other conditions which are not specifically stated in the policy be treated as implied warranty for example -

- a) The structure of the property insured shall not be inferior i.e. the kachha house shall not be made of wooden roof of thatched leaves grass, hay or bamboo cloths etc.;
- b) Fire extinguishing appliances shall be affixed with the property insured;
- c) Property insured shall be maintained periodically;

The warranty, either express or implied, needs to be complied with very scrupulously although it is not material to the risk, failing which it amounts to breach of condition and the insurer will be duly discharged from liability as from the date of the breach of warranty (State Bank of India v. Agents & Manufacturers, AIR 1998 Del 84). The policy ordinarily contains fifteen conditions they are -

- 1) Misrepresentation: A misrepresentation, mis-description or non-disclosure, on any material facts, by the insured either at the time of conclusion of contract or during the

currency of the policy makes the contract voidable and provides an option to the insurer to rescind the contract.

- 2) **Material change:** No change or displacement of any building or structure, either partly or wholly, shall be made without drawing the attention of the insurer within 7 days from the date of effecting such change or displacement and provide him an opportunity to decide whether to continue to bear the risk undertaken or not. Failure to comply with this condition enables the insurer to rescind the contract.
- 3) **Material alteration of subject matter:** Any alteration in the subject matter of insurance i.e. trade or manufacture or occupation of or other circumstances affecting the building insured or containing the insured property without obtaining the sanction, through an endorsement, of the insurer before the occurrence of any loss or damage results in cessation of contract.
- 4) **Absolution of liability:** In the presence of marine insurance policy or policies the insurer, under fire insurance policy, shall pay only the excess over the amount payable under the marine policy in the event of any loss or damage to the property insured.
- 5) **Termination of contract:** Either party to the contract of insurance may terminate the contract, at any time, by issuing 15 clear days notice to the other party, disclosing his intention to withdraw. In such a case the other party is liable to pay the premium amount, on demand, ratably in proportion to the premium for the unexpired term from the date of such withdrawal.
- 6) **Insurance claim:** Any insurance claim, in writing, shall be made within 15 days from the date of occurrence of loss or damage to the property insured or within such further time as the insurer may in writing allow in this behalf. The enclosure to the notice of claim shall include – particulars of the property damaged or destroyed, item wise; the amount of loss or damage; market/ intrinsic/ real value of the property at the time of loss or damage excluding the profit of any kind; copies of plans, specification books, vouchers invoices and documents; investigation report (internal/external);
- 7) **Limitation period:** Any claim shall be made within 12 months from the date of occurrence of loss or damage to the property insured unless the claim is subject of pending action or arbitration or from the date of denial of liability by the insurer. Non compliance of this condition renders the claim time barred and absolves the insurer from meeting the liability.
- 8) **Rights of the insurer:** in the event of any loss or damage to the property insured the insurer may at any time –

- a) Enter and take and keep the possession of the building or premises where the loss or damage has occurred.
- b) Take possession of or require to be delivered to it any property of the insured in the building or on the premises at the time of loss or damage.
- c) Keep the possession of any such property and examine, sort, arrange, remove or otherwise deal with the same.
- d) Sell any such property or dispose of the same for account of whom it may concern

However, the insurer may enforce this right at any time before the receipt of notice, in writing, from the insured stating that he has waived his claim or until the claim is finally determined or withdrawn, if any claim is made. No liability will be attracted to the insurer when he does something in exercise of any above mentioned act. Neither the insured nor any other person shall prevent or obstruct or hinder the insurer from exercising any of these rights. Any such venture results in forfeiture of all benefits under this policy.

9) Fraudulent claim: The insurer may forfeit all the benefits where -

- a) The claim is supported by false declaration; or
- b) The claim is fraudulent; or
- c) The claim is made through fraudulent means or devices by the insured or by any other person on his behalf; or
- d) The loss or damage is caused by the willful act of the insured or with his /her connivance.

10) Reinstatement or replacement: The insurer, at his option, may reinstate or replace the property damaged or destroyed or any part thereof, instead of paying the amount of the loss or damage either on his own or jointly, as the case may be. The features of this condition are as under –

- a) Reinstatement or replacement is at the option of the insurer. The insured has no right to claim it;
- b) Reinstatement or replacement shall not be exact or complete but shall be reasonably sufficient manner;
- c) Expenditure shall be limited to the cost of Reinstating or replacing the property to its pre-loss condition and to the sum insured;
- d) The insured shall submit, at his expense, all plans and such other particular, as may be required, to the insurer;

- e) Any act done by the insurer in furtherance of reinstatement or replacement is without prejudice to the final decision in respect of reinstatement or replacement;
- f) Owing to the Municipal or other regulations in respect of building construction etc. the insurer is unable to reinstate or replace or repair, the insurer's liability is limited to such sum as would be essential to reinstate or replace or repair such property if the same could lawfully be reinstated or replaced or repaired to its former condition.

11) Average clause: While concluding the contract of insurance the property shall be insured to its full value, neither less nor more. At the time of settling the claim if it is found that the property has not been insured to its full value, then the insured has to bear the loss, proportionately, as being his own insurer for the difference. In other words, the amount payable is determined on comparing the sum insured and the value of the property. For example, Krishnan concludes a contract insuring his property for 15,00,000. The said property was damaged by fire causing loss to the tune of Rs. 6,00,000. When he made a claim it was found that its real value, at the time of fire, is of Rs 20,00,000. In view of the above cited principle the insured is required to bear the loss proportionately i.e. Rs. 4,50,000.

$$\frac{\text{sum insured}}{\text{value of the property}} \times \text{loss} = \text{Amount to be shared by the insured}$$

$$\frac{15,00,00}{20,00,000} \times 6,00,000 = 4,50,000$$

Contribution: If the insured purchase policies from two or more insurers on the same property against the same peril, then the insurer is obligated to pay or contribute in proportion to the loss or damage vis-a-vis their interest in the policies. This condition prevents the insured from making profit by receiving more than the total amount of loss. For example, Rama purchased two policies i.e. 'A' for Rs.10,00,000 and 'B' for Rs.20,00,000 from United Insurance Co. Ltd. and National Insurance Co. Ltd respectively by insuring a warehouse, at Delhi, against fire risk. Total sum insured is of Rs.30,00,000. The property insured was damaged by fire resulting in loss to the extent of Rs. 18,00,000. In pursuance to the above condition the United Insurance Co.

Ltd and National Insurance Co. Ltd shall contribute Rs. 6,00,000 and 12,00,000, respectively. $\frac{\text{sum insured}}{\text{value of the property}} \times \text{loss} = \text{Amount to be contributed by the insurer}$

Policy 'A':

$$\frac{10,00,00}{30,00,000} \times 18,00,000 = 6,00,000$$

Policy 'B':

$$\frac{20,00,00}{30,00,000} \times 18,00,000 = 12,00,000$$

- 12) Subrogation: The insurer shall be allowed to enjoy all the rights and privileges which the insured is entitled in respect of the property insured in furtherance of contract. Thus, the insurer is entitled to do all such acts as may be necessary or reasonably required for the purposes of enforcing any rights and remedies or of obtaining relief or indemnity from other parties to which the insurer is or would be entitled or subrogated, on paying for or making good any loss or damage under the policy.
- 13) Settlement of claim through Arbitration: In the absence of non-acceptance of claim or dispute as to the liability, the dispute or difference in respect of the quantum to be paid shall be determined by the sole arbitrator, to be appointed in writing by the parties or if they cannot agree upon a single arbitrator within 30 days of any party invoking arbitration, the same shall be referred to a panel of three arbitrators, comprising of two arbitrators, one to be appointed by each of the parties to the dispute/difference and the third arbitrator to be appointed by such two arbitrators and the arbitration shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996.
- 14) Notice: every notice and all correspondence, between the insurer and the insured, in respect of fire insurance coverage and claim shall be in writing or in printed version.
- 15) Reinstatement of the sum insured: Generally, the payment of premium shall be commensurate to period of insurance coverage and the real value of the property. Thus, insurance coverage will be maintained to the full extent of the respective sum insured. While settling the loss under the fire policy, reinstatement of the sum insured is automatically done by the insurer. The premium required to reinstate the sum insured is deducted from the claim amount payable. This premium is computed on pro-rata basis and is collected from the date of loss up to the expiry of the affected fire

policy. However, if the insured informs the insurer, immediately after a loss, of his intention not to reinstate the sum insured then the sum insured will not be reinstated. The sum insured is reduced by the amount of loss paid and for any subsequent fire claim under the policy if this property is already reinstated before the second loss – the situation will lead to automatic under insurance- hence this condition is automatically applicable.

16.12 MEASURE OF INDEMNITY

Value of the property damaged or destroyed by fire, for the purposes of indemnity, shall be estimated on the basis of market value of the property before and after the loss. However, the cost of reinstatement shall be taken into account, to quantify the indemnity, where the market value does not represent the real value of the property.

Consequences of Indemnity: The outcome of the principle of indemnity is as under -

- a) The insured may claim only the amount of loss incurred.
- b) In the event of partial damage, the insured may claim compensation only to the extent of damage caused.
- c) The insured shall transfer all the rights and privileges, which he may possess against the third party in respect of the property insured, to the insurer.
- d) In case the insured has purchased more than one policy in respect of same subject matter and against the same risk, then he is precluded from obtaining more than one complete indemnity.

Assumption of risk: The date of receipt of premium is more significant than the date of conclusion of contract or issuance of policy for determining the date of assumption of risk (Sec.64VB, Insurance Act,1938, Rule 58, Insurance Rules,1939,Deokar Export Pvt Ltd v. New India Assurance Ltd AIR 2001 Bom327).

16.13 RIGHTS OF INSURER

By virtue of conclusion of contract of insurance the insurer is empowered to –

- a) Take all reasonable measures to extinguish the fire and to mitigate the loss to the property insured;
- b) Enter the premises and take possession of the property insured.
- c) Step into the shoes of insured to enforce all the rights, which the insured has, against the third persons after the settlement of claim to the insured.

- d) Take possession of the salvage i.e. the property or things saved after fire.
- e) Claim contribution from other co-insurer/s if the insured has purchased policy, from two or more insurer, in respect of the same subject matter and against the same peril.
- f) Pay before making the final settlement. It is called as ex gratia payment, an act of grace. This gesture will be shown to save the insured from hardship and to safeguard its reputation.
- g) Replace the property, in specie, of the same kind or type by new property i.e. “New for Old,” instead indemnifying the loss in terms of money. The insurer may insist on the right to reinstate if he –
 - 1) Has reserved express power to do so; or
 - 2) Has any suspicion of fraud or arson; or
 - 3) Is requested to do so by any person, other than the insured, who is interested in or entitled to the property insured.

The insurer is liable to indemnify the loss for the damage, if any, sustained as natural and direct consequence of afore mentioned steps.

Burden of proof: The burden to establish that the loss is suffered, owing to the operation of the perils insured against, is on the insured. It may be substantiated with the help of direct/circumstantial evidence. Any failure to prove, on the part of the insured, makes the claim to frustrate (S G Nayak v. National Insurance Co. Ltd. (1996) 85 Comp.cas 531 (540) Ker.).

Cessation of insurance: The fire insurance policy ceases to operate owing to –

- a) Misrepresentation, misdescription or non disclosure of material facts.
- b) Fall or displacement of any property insured without drawing the attention of the insurer.
- c) Termination of insurance contract, at the option of insurer or the insured.

16.14 SETTLEMENT OF DISPUTE

The dispute in respect of insurance claim, if any, may be settled either by negotiation or arbitration or adjudication. The suit in this behalf shall be filed by the aggrieved party within three years from the date of occurrence of loss or from the date on which the insurer denies the claim (Article 44(b), Limitation Act).

16.15 SUMMARY

In fire insurance the insurer is aiming to undertake such losses caused to, by fire or incidental thereto, Buildings, Electrical installation in buildings, Contents of buildings such as machinery, plant and equipments, accessories, etc. Goods (raw materials, in-process, semi-finished, finished, packing materials, etc.) in factories, godowns etc. Goods in the open, Furniture, fixture and fittings, Pipelines (including contents) located inside or outside the compound, etc. the person he who wishes to purchase any of the policy, afore mentioned, he shall have an insurable interest both at the time of entering into contract and at the time of loss. The insured or his legal heirs shall draw the attention of the insurer within 15 days from the date of occurrence of loss. However, he may register his claim within three years from the date of loss in pursuance of the policy. The claim may be settled either through negotiation or arbitration or adjudication.

16.16 KEY WORDS

1. Fire
2. Utmost good faith (Uberrima fides)
3. Fire perils
4. Proximate cause
5. Average clause
6. Assignment
7. Warranty
8. Indemnity

16.17 SELF ASSESSMENT QUESTIONS

1. What is fire? Who can conclude contract of fire insurance?

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.....

2. State the procedures to register the claim application.

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.....

3. Write note on –

- a. Add on cover
- b. Average clause

c. Contribution

16.18 REFERENCES

1. Principles of insurance law: Life - fire - marine - motor and accident: M.N.Srinivasan.
2. Modern Law of Insurance: KSN Murthy and KVS Sarma.
3. Life insurance corporation of India : Impact of privatization and performance: Sumninder Kaur Bawa.
4. Commentaries on the public liabilities insurance act 1991: G.S Karkara.
5. Insurance law: A comprehensive treatise on law of insurance covering all risks except marine insurance: Brij Nandan Singh.
6. The Law of Insurance Contracts: A. Malcolm.
7. International encyclopaedia of laws: Insurance Law: R. Blanpain.
8. Insurance law manual with IRDA circulars and notifications: Taxmann.
9. Insurance law: Relating to all risks other than marine: E.J. Macgillivray.
10. Modern insurance law: John Birds and Norma J Hird.
11. Law Relating to Marine Insurance: Mitra, B.C.
12. Law of Insurance: Jaiswal J V N
13. General Principles of Insurance Law: Hardy Ivamy E R
14. Law Relating to Insurance: Vats R M

UNIT 17: MARINE INSURANCE

STRUCTURE

17.0 Objectives

17.1 Introduction

17.2 Marine adventure

17.3 Maritime perils

17.4 Essentials requisite of a valid marine insurance policy

17.5 Insurable interest

17.6 Insurable value

17.7 Disclosure

17.8 Representation

17.9 Warranty

17.10 Express warranties

17.11 Implied warranty

17.12 Distinction between warranty and representation

17.13 Assignment of Policy

17.14 Marine policies

17.15 Premium

17.16 Double insurance

17.17 Summary

17.18 Key Words

17.19 Self Assessment Questions

17.20 References

17.0 OBJECTIVES

On reading this unit the students would be in a position to understand the following –

1. Genesis of marine insurance
2. Features of marine insurance policies
3. warranty

17.1 INTRODUCTION

This is the oldest branch of Insurance and is closely linked to the practice of Bottomry which has been referred to in the ancient records of Babylonians and the code of Hammurabi way back in B.C.2250. Manufacturers of goods advanced their material to traders who gave them receipts for the materials and a rate of interest was agreed upon. If the trader was robbed during the journey, he would be freed from the debt but if he came back, he would pay both the value of the materials and the interest. The first known Marine Insurance agreement was executed in Genoa on 13/10/1347 and marine Insurance was legally regulated in 1369 there. Marine Insurance Cargo Hull

Meaning of Marine Insurance: Marine insurance consists in insurance of property against losses due to maritime perils, that is perils consequent on or incidental to the navigation of the sea. A ship which is engaged in the earning or acquisition of any freight, commission or other pecuniary benefit or a ship and cargo which have been offered as security for a loan are endangered by maritime perils in the course of navigation of the sea and such property is ‘insurable property’ by marine insurance.

Marine insurance has been an indispensable aid to overseas trade and shipping since early times. In modern times it has assumed more importance as the wealth in the shape of ship and cargo exposed to risk in each maritime adventure is immensely greater and the perils of the sea in no way less than in the past in spite of improvements in navigation. Marine insurance or any insurance does not prevent the ship or cargo or other movable property insured, from being totally or partially lost. But it protects the pecuniary interest of the insured in the insured property by indemnifying him financially if it is lost by insured perils. Marine insurance is not compulsory in law. But a modern method of financing trade has made it indispensable both providing protection against loss by maritime perils and by enabling a large volume of trade to be carried on more freely.

Marine insurance indicates an agreement, it may be express or implied, wherein the insurer undertakes to indemnify the assured, in the manner and to the extent thereby agreed, against

marine losses which may be incidental to marine adventure (Sec.3, Insurance Act, 1938). The contract may, by its express terms, or by usage of trade, envelop the protection to cover the risks which are incidental to any sea voyage i.e. road, rail, air or inland waters or on any land. (Sec.4, Act, 1938). However, such voyage shall be lawful (Sec.5, Act, 1938). The insurance coverage to the property may be whole or partial (Sec.10, Act, 1938). The hope, any contingency, to acquire insurable interest on the subject matter while concluding the marine insurance contract, though at the outset appears like wager, renders the contract valid (Sec.6,9, Act, 1938). The person who is interested in a marine adventure, where he stands in any legal or equitable relation to the adventure or to any insurable property at risk therein, would be entitled to make good the loss in the event of any loss or damage to the property insured. Where the subject-matter is insured "lost or not lost", the assured may recover although he may not have acquired his interest until after the loss, unless at the time of effecting the contract of insurance the assured was aware of the loss, and the insurer was not. However, any failure in acquiring the insurable interest, at the time of loss, makes the contract void (Sec.7, 8, Act, 1938).

17.2 MARINE ADVENTURE

Maritime adventure indicates, when –

- a) Any insurable property is exposed to maritime perils;
- b) The earnings or acquisition of any freight, passage money, commission, profit or other pecuniary benefit or the security for any advances, loans or disbursements is endangered by the exposure of insurable property to maritime perils; and
- c) Any liability to a third party may be incurred by the owner of, or other person interested in, insurable property by reason of maritime perils (Sec.2(d));

Insurable property means any ship, goods or other movables which are exposed to maritime perils (Sec. 2 (c)).

17.3 MARITIME PERILS

Maritime perils means the perils consequent on, or incidental to, the navigation of the sea. In other words, they mean perils of the sea, fire, war perils, pirates, rovers, thieves, captures, seizures, restraints and detainments of princes and people, jettisons (throwing of goods overboard with a view to saving the residue of the ship and cargo) and barratry (fraudulent

practices of master of a ship to the prejudice or the owners) and any other perils which are either of the like kind or may be designated by the policy. (Sec.2 (e)).

‘perils of the sea’ means all perils and misfortunes of a marine character or incidental to a ship which the underwriter in a marine insurance takes upon himself. They include fortuitous accidents or casualties of sea beyond the ordinary action of wind and waves and which even reasonable skill, diligence and care cannot guard against. They cannot be foreseen as the necessary or ordinary incidents of voyage. They include damage caused by violence of the winds or waves, storms, fog, rough weather, lightening, stranding, icebergs, rocs, collision, etc. but ordinary wear and tear caused by normal action of the wind or waves is not included in the ‘perils of the sea’.

A peril of the sea covers following losses –

- a) A loss by a vessel striking upon a sunken rock;
- b) A loss by foundering, owing to a ship coming into collision with another ship, even when the collision results from the negligence of that other ship;
- c) A loss brought about by negligent navigation. It is covered, if that which immediately caused the loss was a peril of the sea, even if the negligence is that of the insured himself so long as it does not amount to willful misconduct;
- d) Damage caused to rice insured against fire and perils of the sea by heating due to the closing of ventilators to prevent the incursion of sea water in rough weather;
- e) Damage caused to cargo by rats making hole in the bottom of a ship and sea water entering the ship through the hole. Likewise, if an engineer opens the sea cock with the intention of filling the ballast tank and accidentally opens the wrong valve and thus sea water enters the ship and damages the cargo, the loss is caused by the perils of the sea;

The following do not fall within the purview of perils of the sea -

- a) Loss occasioned by natural chemical action of salt water;
- b) Damage by rats;
- c) Action of worms on timber;
- d) Death of cattle due to want of fodder, voyage having been lengthened by the captain of the ship.

17.4 ESSENTIALS REQUISITE OF A VALID MARINE INSURANCE POLICY

1. It must satisfy all the essentials of a valid contract, namely, agreement, free consent, consideration, legal object and competent parties.
2. A marine insurance policy must be in writing and duly stamped.
3. It must provide cover for not more than 12 months at a time.
4. Insured must have an insurable interest in the subject matter insured at the time of when the loss occurs.
5. Insured must observe utmost good faith in the contract of marine insurance. He must disclose all those relevant facts to the insurer which are likely to affect his willingness to undertake the risk.

Marine insurance policy is prepared to suit each individual case. It may contain some general and special clauses.

Content of the policy: The marine insurance policy shall contain -

- a) name of the assured, or of some person who effects the insurance on his behalf;
- b) subject-matter insured and the risk insured against;
- c) voyage, or period of time, or both, as the case may be, covered by the insurance;
- d) sum or sums insured;
- e) name or names of insurer or insurers.

The marine insurance policy shall be signed by or on behalf of the insurer. Where a policy is subscribed by or on behalf of two or more insurers, each subscription, unless the contrary be expressed, constitutes a distinct contract with the assured (Sec.25, 26, Act, 1938).

Certainty of subject matter: The subject-matter insured must be described in a marine insurance policy with reasonable certainty. The nature and extent of the interest of the assured in the subject-matter insured need not be specified in the policy. The policy described the subject-matter insured in general terms shall be construed by keeping in mind the interest intended by the assured to be covered. In this regard one may have recourse to the usage regulating the description of the subject-matter insured to facilitate the construction (Sec.28, Act, 1938).

Slip: The slip denotes a brief memorandum of risk, to be covered, containing information regarding the name of the ship, date, description of the risk, sum insured and the rate of

premium. It completely and conclusively describes the terms of insurance and premium. No party shall deviate from the terms of the contract without the consent of the other party.

17.5 INSURABLE INTEREST

A person has an insurable interest if he interested in a marine adventure in consequence of which he may benefit by the safe arrival of insurable property, or be prejudiced, by its loss, damage or detention. (Sec.7). The insured must be interested in the subject matter insured at the time of the loss, though he need not be interested when the insurance is effected. However, one may enter into a contract of insurance, although he is not aware of the existence of ship. In such circumstances the subject matter of the contract will be titled as 'lost or not lost'. However, he is required to act in good faith. Failing which the insurer can avoid the contract. The word 'lost or not lost' aims to makes the policy retrospective to cover the past loss or the loss that has already occurred. In this type of policy the insured can recover loss although he has not acquired his interest at the time of loss.

Insurable interest is a special requirement of a contract of insurance. A valid contract of insurance can be entered into by person only if he has insurable interest in the subject matter of insurance, that is, if he is interested in the marine adventure. [(Sec.7(1). A person is interested in marine adventure where he stands in any legal or equitable relation to the adventure or to any insurable property at risk therein in consequence of which he may benefit by the safety or due arrival of insurable property or may be prejudiced by its loss or by damage thereto or by detention thereof or may incur liability thereof. [(Sec.7(2). Thus, the ship-owner, the cargo owner, the person who has advanced loan on the security of the ship, or on any goods arriving by the ship and even the insurer of the ship, or cargo have insurable interest to the extent of their several interest.

What is important for insurable interest is that (1) there should be a physical object which is exposed to maritime perils, and (2) the insured must have some legally recognized relationship with that object in consequence of which he benefits by its preservation and is prejudiced by its loss or damage.

Time when one shall possess insurable interest: In marine insurance insurable interest need not exist at the time of inception of the contract. It is enough if at that time insured has an expectation of acquiring such interest. Otherwise, it will be a wagering contract.(Sec.6(2). Thus, a person may take a policy on his ship in respect of a voyage to commence in due

course. In any case he must have interest in the subject matter of insurance at the time of the loss(Sec8(1). Otherwise he will have no claim for indemnity.

Person possessing insurable interest: Following persons is deemed to have insurable interest in the property insured –

1. reinsurer;
2. The lender of money on bottomry or respondentia has an insurable interest in respect of the loan.
3. The Masters or seamen or any member of the crew of a ship has an insurable interest in respect of his wages.
4. The person advancing the freight has an insurable interest, insofar as such freight is not repayable in case of loss.
5. The assured has an insurable interest in the charges of any insurance which he may effect(Sec.11-15,Act,1938).
6. The mortgagor, consignee, owner of the insurable property has an insurable interest in the full value of the property mortgaged/ consigned.
7. The mortgagee has an insurable interest in respect of any sum due or to become due under the mortgage.
8. Consignee has an insurable interest in respect of the goods consigned. (Sec.11-16,Act,1938).

Interest which are insurable: The marine insurance Act treats the following interest as insurable –

- a) A defeasible (capable of being annulled) interest as also a contingent interest is insurable (Sec.9(1)). In particular, where the buyer of goods has insured them, he has an insurable interest even though he might, at this election, have rejected the goods.
- b) A partial interest of any nature is insurable Sec.10).
- c) The insurer under contract of marine insurance has an insurable interest in his risk and may re-insure in respect of it (Sec.11 (1)).
- d) The lender of money on bottomry (contract by which money is borrowed on the security of a ship) or respondent (contract by which money is borrowed on the security of the cargo) has an insurable interest in respect of the loan (Sec.12).
- e) The master and crew of the ship have an insurable interest in respect of their wages (Sec.13).
- f) In case of advance freight, the person advancing the freight has an insurable interest in so long as such freight is not repayable in case of loss (Sec.14).

- g) The insured has an insurable interest in the charges of any insurance which he may effect (Sec.15).
- h) Where the subject matter insured is mortgaged, the mortgagor has an insurable interest to the extent of full value of the property. The mortgagee has also an insurable interest in respect of any sum due or to become due under the mortgage. A mortgagee, consignee, or other person having interest in the subject matter may insure on behalf and for the benefit of other persons' interest as well as for his own benefit. Where he recovers the amount in excess of his share, he shall hold the excess amount in trust for the others whose interest have been protected (Sec.16 (1- 2)).
- i) The owner of insurable property has an insurable interest to the extent of the full value of the property, even though some third person may have agreed to indemnify him in case of loss (Sec.16 (3)).

It is not the owner alone but every person having insurable interest in the marine adventure who may insure.

17.6 INSURABLE VALUE

Insurable value is quite distinct from insurable interest. It indicates an amount of the valuation of insurable interest for the purposes of insurance. In the absence of any express provision for the valuation in the policy, it is ascertained as under –

Subject matter of insurance	Items to measures insurable value
Ship	The value, at the commencement of the risk, of the ship, including her outfit, provisions, and stores for the officers and crew, money advanced for seamen's wages, and other disbursements (if any) incurred to make the ship fit for the voyage or adventure contemplated by the policy, plus the charges of insurance upon the whole
Steamship	The machinery, boilers, and coals and engine stores if owned by the assured.
Ship driven by power other than steam	The machinery and fuels and engine stores, if owned by the assured
Ship engaged in a special trade	Ordinary fittings requisite for that trade
Freight, whether paid in advance	Gross amount, whether paid in advance or otherwise, of

or otherwise.	the freight at the risk of the assured, plus the charges of insurance.
Goods or merchandise	Prime cost of the property insured, plus the expenses of and incidental to shipping the charges of insurance upon the whole.
Any other subject-matter	The amount at the risk of the assured when the policy attaches, plus the charges of insurance.

17.7 DISCLOSURE

The contract of marine insurance is based on utmost good faith i.e. uberrimae fidei. Every party/his agent owes a duty to, act in good faith, disclose to the other party before the contract is concluded, every material circumstance which i.e. any communication made to, or information received, is known to him and he is deemed to know every circumstance which, in the ordinary course of business, ought to be known to him. He/his agent is required to communicate/disclose every material circumstance which would influence the judgment of a prudent insurer in fixing the premium, or determining whether he will take the risk. Whether any particular circumstance, which is not disclosed, material or not in each case, is a question of fact. However, no disclosure of information need be communicated/disclosed which comes to his knowledge too late. If he fails to make such disclosure, the other party may avoid the contract. (Sec.19 - 21, Act, 1938).

17.8 REPRESENTATION

Every material representation made by the insured or his agent to the insurer during the negotiations for the contract, and before the contract is concluded, must be true. If it is untrue the insurer may avoid the contract. A representation is material which would influence the judgment of a prudent insurer in fixing the premium or determining whether he will take the risk or not. Whether particular representation is material or not is, in each case, a question of fact. A representation as to matter of fact is true, if it is substantially correct, that is to say, if the difference between what is represented and what is actually correct would not be considered material by the prudent insurer. A representation as to a matter of expectation or belief is true if it is made in good faith. A representation may be withdrawn or corrected before the contract is concluded (Sec.22, Act, 1938).

When the insurer comes to know that there is nondisclosure or false representation by the insured, the insurer may repudiate the contract or if he so desires, affirm the contract. That is, waive the breach of utmost good faith committed by the insured. He must make the choice within a reasonable time after he comes to know about the breach. Otherwise he will be deemed to have waived the breach.

Exception to Disclosure and Representations: In the absence of inquiry the following circumstances need not be disclosed, namely -

- a) Any circumstance which diminishes the risk;
- b) Any circumstance which is known or presumed to be known to the insurer. The insurer is presumed to know matters of common notoriety or knowledge, and matters which an insurer in the ordinary course of his business as such, ought to know;
- c) Any circumstance as to which information is waived by the insurer;
- d) Any circumstance which it is superfluous to disclose by reason of any express or implied warranty.

A contract of marine insurance is deemed to be concluded when the proposal of the assured is accepted by the insurer, whether the policy shall be issued or not, and for the purpose of showing when the proposal was accepted, reference may be made to the slip, covering note or other customary memorandum of the contract, although it be unstamped. However, the contract will be admitted in evidence only when it is embodied in a marine policy in accordance with this Act. The policy may be executed and issued either at the time when the contract is concluded, or thereafter (Sec.23, 24, Act, 1938).

17.9 WARRANTY

A warranty means, a promissory warranty, a stipulation through which the assured undertakes that some particular thing shall or shall not be done, or that some condition shall be fulfilled, or whereby he affirms or negatives the existence of a particular state of facts. It may be express or implied. The assured is obligated to comply it scrupulously, whether it be material with the risk or not. Any failure to adhere warranty amounts to breach of contract and it discharges the insurer, subject to any express provision in the policy, from liability as from the date of the breach of warranty, but without prejudice to any liability incurred by him before that date (Sec.35, Act, 1938).

Excusing of breach of warranty: The failure to comply the warranty may be excused when –

- a) Reason of a change of circumstances, the warranty ceases to be applicable to the circumstances of the contract, or

- b) When compliance with the warranty is rendered unlawful by any subsequent law.
- c) A breach of warranty is waived by the insurer (Sec.36, Act, 1938).

17.10 EXPRESS WARRANTIES

Express warranty means a stipulation included in, or written upon the policy, or contained in some document incorporated with reference to the policy. Even it may comprise intention which could be gathered from any form of words in the policy. However, it does not exclude implied warranty unless it is inconsistent thereon (Sec.37, Act, 1938).

Warranty of neutrality: A condition to remain dispassionate during the course of voyage may be included in respect of insured property, whether ship or goods, in the policy. In the presence of such a stipulation, it is implied, that the property shall have a neutral character at the commencement of the risk, and so long as the assured can control the matter. Further, she shall maintain its neutral character during continuation of the risk. In addition to this she is also required to carry the necessary papers to establish her neutrality and not to falsify or suppress her papers, or use simulated papers. Any breach of this condition, causing loss, would entail the insurer to avoid the contract (Sec.38, Act, 1938).

17.11 IMPLIED WARRANTY

Implied warranties are conditions which are not specifically incorporated in a policy but which are assumed to have been included in the policy by the operation of law, custom or general agreement. The warranty may be implied in reference to the subject matter insured indicating that the ship is –

- a) "well" or "in good safety" on a particular day i.e. day of voyage (Sec.40, Act, 1938);
- b) Seaworthy, for the purpose of the particular adventure insured, at the commencement of the voyage.
- c) At the commencement of the risk, be reasonably fit to encounter the ordinary perils of the port, when the ship is anchored in the port.
- d) At the commencement of each stage the ship is seaworthy in respect of such preparation or equipment for the purposes of that stage, where the policy relates to a voyage which is performed in different stages.
- e) Deemed to be seaworthy when she is reasonably fit in all respect to encounter the ordinary perils of the seas of the adventure insured.

- f) Pursuing the adventure insured is a lawful and the adventure carried out in a lawful manner to the extent the assured can control the matter, (Sec.43, Act, 1938).
- g) Deemed to be present at a designated place at the time of conclusion of contract, although in fact it is not present in the place prescribed when the policy effected is voyage policy i.e. "at and from" or "from" a particular place, the ship need not be present at the place designated when the contract is concluded. However, the adventure shall be commenced within a reasonable time. Any failure, to commence the adventure, would entail the insurer to avoid the contract (Sec.44, Act, 1938).

The condition may be negated by implication showing that the delay was caused by circumstances known to the insurer before the contract was concluded, or by showing that he waived the condition (Sec.44, Act, 1938).

No warranty by implication: In the following situations the law do not allow us to infer warranty by implication -

1. In a time policy no warranty could be inferred by implication to mean that the ship shall be seaworthy at any stage of the adventure. However, by virtue of privity of the assured, if the ship is sent to sea in an unseaworthy state, the insurer is not liable for any loss attributable to unseaworthiness (Sec.41, Act, 1938).
2. In a policy on goods or other movables, no warranty could be inferred by implication to mean that the goods or movables are seaworthy.
3. In a voyage policy on goods or other movables no warranty could be inferred to mean that at the commencement of the voyage the ship is not only seaworthy as a ship, but also that she is reasonably fit to carry the goods or other movables to the destination contemplated by the policy(Sec.42, Act, 1938).
4. No warranty could be inferred by implication regarding the nationality of a ship and no change of nationality is permitted during the period of risk (Sec.39, Act, 1938).

17.12 DISTINCTION BETWEEN WARRANTY AND REPRESENTATION

Warranty	Representation
Warranty forms part of the written contract	Representation can be oral or in writing
A warranty needs to be strictly	A representation needs no substantial

complied with	compliance
A warranty comes into existence only after the completion of contract	A representation should precede the formation of contract
A warranty ceases to be applicable by reason of change of circumstances	A representation can be taken because of various reasons namely – connivance, fraud, willful suppression of facts etc.(Sec.17,18,19,. The Indian Contract Act) contract becomes voidable in case the consent was obtained by fraud, coercion etc.,

17.13 ASSIGNMENT OF POLICY

A marine policy may be transferred by assignment at any time i.e. either before or after the occurrence of loss, through an endorsement or by executing an instrument. However, no policy shall be assigned when the terms of the policy expressly prohibits it. But a policy on goods is generally freely assignable. Merchandise like tea, jute, wheat etc., change hands many times before they reach their destination and policies on them must be freely transferable. Both policies on ship or freight are subject to restrictions on assignment. A hull policy can be assigned to the new owner of the hull only if the insurer agreeable to the assignment, as provided in clause 6 of the Institute time clauses (Hulls).

As assignment by the insured for his interest in the subject matter insured does not transfer his rights in the policy of insurance thereon to the assignee, unless there is an express or implied agreement to that effect. But a transmission of interest in the subject matter insured by operation of law – such as by death or insolvency- will operate as a transfer of the policy also (Sec. (Sec.17, Act, 1938).

When the policy is assigned with an intention to pass on beneficial interest the assignee is entitled to file a suit in his own name and the defendant is entitled to make any defense arising out of the contract which he would have been entitled to make if the suit had been brought in the name of the person by or on behalf of whom the policy was effected (Sec.52, Act, 1938).

The right to assign the policy will ceases the moment the assured parts or lost his interest in the subject-matter insured. Thus, any subsequent assignment of the policy becomes inoperative. However, nothing prevents him from assigning the policy after the sustenance of loss provided he retains his interest in the subject matter insured (Sec.53, Act, 1938).

17.14 MARINE POLICIES

Voyage policy: Where the contract is to insure the subject-matter at and from, or from one place to another or others, the policy is called a "voyage policy".

Time policy: Where the contract is to insure the subject-matter for a definite period of time, the policy is called a "time policy".

A marine insurance contract may contain both voyage and time in the same policy. However, any coverage in excess of twelve months renders time policy invalid (Sec.27, Act, 1938).

Valued policy: policy which specifies, as between the insurer and assured, the agreed value of the subject-matter insured. The value fixed by the policy, in the absence of fraud, is conclusive of the insurable value of the subject intended to be insured, whether the loss be total or partial. However, the value fixed by the policy is not conclusive, unless the policy otherwise provides, for the purpose of determining whether there has been a constructive total loss (Sec.29, Act, 1938).

Unvalued Policy: An unvalued policy is a policy which does not specify the value of the subject matter insured, but subject to the limit of the sum insured, leaves the insurable value to be subsequently ascertained, in the manner aforementioned (Sec.30, Act, 1938).

Floating policy: Floating policy describes the insurance, in general terms, leaving the name or names of the ship or ships and other particulars which is to be defined by subsequent declaration. The subsequent declaration/s may be made by endorsement on the policy, or in other customary manner. The declarations must be made, unless the policy otherwise provides, in the order of dispatch or shipment. It shall, in the case of goods, deal with all consignments within the terms of the policy, and the value of the goods or other property must be honestly stated. Any omission or erroneous declaration may be rectified even after loss or arrival, provided the omission or declaration was made in good faith. If the declaration of value is not made, unless the policy otherwise provides, until after notice of loss or arrival, the policy must be treated as an unvalued policy as regards the subject-matter of that declaration (Sec.31, Act, 1938).

Bottomry bond: An instrument which the captain is required to write when he borrows money on the security of the ship and freight is called as 'Bottomry Bond'. Ship and freight in this case is pledged as security for the repayment of money borrowed. Loan so borrowed is, however, payable only on the safe arrival of the ship at the port of destination.

Respondentia Bond: It is a written document by which the master of the ship on voyage makes hypothecation only of cargo as a security for debt money, thus raised, shall be repaid when the ship reaches safely to its destination.

Master of the ship shall be justified in executing the respondentia bond only in those cases when overriding necessity arises, e.g. to avoid an imminent danger facing the ship or to make the ship sea worthy. Captain of the ship can exercise his implied authority as an agent of necessity in the following circumstances –

- a) Where assistance required is so necessary that unless obtained, it would cause the frustration of voyage.
- b) When no communication is possible with the owner of the goods and his consent cannot be obtained.
- c) Where there is no way out for the master, i.e. no other resources are available to him.

17.15 PREMIUM

Payment of Premium: The premium as determined, including additional premium if any, need be paid immediately after the contract of insurance is initiated. In the absence of determination of premium a reasonable premium shall be paid (Sec.33, Act, 1938). On receipt of premium amount from the insured or his agent the insurer shall, forthwith, issue the policy to him or to his agent. Payment of premium and issuance of policy are the reciprocal obligation of the insured and the insurer respectively (Sec.54, Act, 1938).

Return of Premium: The insurer shall return the premium on declaration or agreement or failure of consideration, i.e.

Enforcement of return: Where the premium or a proportionate part thereof, is, by this Act, declared to be returnable-

- (a) If already paid, it may be recovered by the assured from the insurer, and,
- (b) If unpaid, it may be retained by the assured or his agent (Sec.82, Act, 1963).

Return by agreement: Where the policy contains a stipulation for the return of the premium, or a proportionate part thereof, on the happening of a certain event, and that event happens, the premium, or, as the case may be, the proportionate part thereof, is thereupon returnable to the assured (Sec.83, Act, 1963).

Return for failure of consideration: (1) Where the consideration for the payment of the premium totally fails, and there has been no fraud or illegality on the part of the assured or his agents, the premium is thereupon returnable to the assured.

(2) Where the consideration for the payment of the premium is apportionable and there is a total failure of any apportionable part of the consideration, a proportionate part of the premium is, under the like conditions, thereupon returnable to the assured.

(3) In particular-

(a) where the policy is void, or is avoided by the insurer as from the commencement of the risk, the premium is returnable, provided there has been no fraud or illegality on the part of the assured; but if the risk is not apportionable, and has once attached, the premium is not returnable;

(b) Where the subject-matter insured, or part thereof, has never been imperiled the premium, or, as the case may be, a proportionate part thereof, is returnable:

Provided that where the subject-matter has been insured "lost or not lost", and has arrived in safety at the time when the contract is concluded, the premium is not returnable unless, at such time, the insurer knew of the safe arrival;

(c) Where the assured has no insurable interest throughout the currency of the risk of premium is returnable, provided that this rule does not apply to a policy effected by way of wagering;

(d) Where the assured has a defeasible interest which is terminated during the currency of the risk, the premium is not returnable;

(e) Where the assured has over-insured under an unvalued policy, a proportionate part of the premium is returnable;

(f) Subject to the foregoing provisions, where the assured has over-insured by double insurance, a proportionate part of the several premiums is returnable:

Provided that, if the policies are effected at different times, and any earlier policy has at any time borne the entire risk, or if a claim has been paid on the policy in respect of the full sum insured thereby, no premium is returnable in respect of that policy, and when the double insurance is effected knowingly by the assured no premium is returnable (Sec.84, Act, 1963).

17.16 DOUBLE INSURANCE

Double insurance is over insurance of an interest by two or more policies. As marine insurance is a contract of indemnity, there is no scope to take advantage by insuring for an amount in excess of the value of the subject matter of insurance in one or more policies. In any case, the insured cannot recover more than an indemnity provided by the Act. Double insurance, therefore, occurs sometimes inadvertently, as when the consignor and the

consignee both insure on behalf of the consignee. In practice when double insurance has occurred, the insurers proportionately reduce the sum insured by their policies and return the excess premium so that there will be no over-insurance, even though there may be more than one policy. In any case two or more policies are effected by or on behalf of the assured on the same adventure and interest or any part thereof, and the sums insured in excess of the indemnity allowed by this Act, indicates over-insurance by double insurance. In the event of over-insurance by double insurance the assured –

- a) May claim payment, unless the policy otherwise provides, from the insurers in such order as he may think fit. However, he is not entitled to receive any sum in excess of the indemnity allowed by this Act;
- b) claims under a valued policy, the assured must give credit as against the valuation, for any sum received by him under any other policy, without regard to the actual value of the subject-matter insured;
- c) claims under unvalued policy he must give credit, as against the full insurable value, for any sum received by him under any other policy;
- d) receives any sum in excess of the indemnity permitted under this Act, he is deemed to hold such sum in trust for the insurers, according to their right of contribution among themselves (Sec.34, Act, 1938).

17.17 SUMMARY

Marine insurance deals with insurance of property against losses due to maritime perils which is consequent on or incidental to the navigation of the sea. The person who aspires to go for marine insurance shall possess insurable interest at the time of loss/claim. The insured is entitled to make a claim, provided he pursued the voyage subject to the warranty stipulated in pursuance of the policy, only to the extent of loss caused and he is not allowed to make gain out of it. Although, the concept of double insurance is recognized it is subjected to contribution at the time of settlement of claim.

17.18 KEY WORDS

1. Marine adventure
2. Maritime perils
3. Insurable interest
4. Insurable value

5. Disclosure
6. Representation
7. Warranty
8. Assignment
9. Premium
10. Double insurance

17.19 SELF ASSESSMENT QUESTIONS

1. Define warranty. Explain the features of warranty.

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2. Distinguish between warranty and representation.

.....

3. Write note on -

- a. Marine adventure
- b. Maritime perils
- c. Double insurance

17.20 REFERENCES

1. Principles of insurance law: Life - fire - marine - motor and accident: M.N.Srinivasan.
2. Modern Law of Insurance: KSN Murthy and KVS Sarma.
3. Life insurance corporation of India : Impact of privatization and performance: Sumninder Kaur Bawa.
4. Commentaries on the public liabilities insurance act 1991: G.S Karkara.
5. Insurance law: A comprehensive treatise on law of insurance covering all risks except marine insurance: Brij Nandan Singh.
6. The Law of Insurance Contracts: A. Malcolm.
7. International encyclopaedia of laws: Insurance Law: R. Blanpain.
8. Insurance law manual with IRDA circulars and notifications: Taxmann.
9. Insurance law: Relating to all risks other than marine: E.J. Macgillivray.
10. Modern insurance law: John Birds and Norma J Hird.
11. Law Relating to Marine Insurance: Mitra, B.C.
12. Law of Insurance: Jaiswal J V N
13. General Principles of Insurance Law: Hardy Ivamy E R
14. Law Relating to Insurance: Vats R M

UNIT 18: VOYAGE

STRUCTURE

18.0 Objectives

- 18.1 Introduction
- 18.2 Deviation of voyage
- 18.3 Excuse for deviation or delay
- 18.4 Causa Proxima
- 18.5 Loss and Abandonment
- 18.6 Partial and total loss
- 18.7 Actual total loss
- 18.8 Constructive total loss
- 18.9 Notice of abandonment
- 18.10 Particular average loss
- 18.11 General average loss
- 18.12 Measure of Indemnity
- 18.13 Rights of Insurer on Payments
- 18.14 Summary
- 18.15 Key Words
- 18.16 Self Assessment Questions
- 18.17 References

18.0 OBJECTIVES

On reading this unit the students would be able to understand the following –

1. Manner of voyage
2. Nature of loss
3. Assessment of loss
4. Claim

18.1 INTRODUCTION

On purchasing the marine insurance policy the responsibility of the insured is to see that the ship shall commence and pursue the adventure insured, in a lawful manner, from a designated port on the date/time prescribed and the route defined. When no date/time of commencement of voyage is prescribed and the route is not defined the adventure shall be commenced within a reasonable time and in a conventional route. No change of voyage is allowed except with the consent of the insurer. Any failure, to commence and pursue the adventure, would absolve the insurer from bearing the liability. Change of voyage means a voluntary change of destination, after the commencement of the risk, from the destination contemplated in the policy. Any change of voyage or delay in commencing the voyage will duly discharge the insurer from liability as from the time of such change is manifested, although the ship may not in fact have left the course of voyage contemplated by the policy when the loss occurs (Sec.47, 48,49, 50, Act, 1938).

18.2 DEVIATION OF VOYAGE

The insurer will be duly discharged, as from the time of deviation, from liability on taking deviation, without any lawful excuse, from the voyage contemplated in the policy although the ship has regained her route before any loss occurs. The fact of deviation is material, than the intention to deviate, to discharge the insurer from the liability.

The ship is said to have deviated from the voyage contemplated in the policy when –

- a) She departed from the specifically designated, in the policy, course of the voyage; or
- (b) She departed from the usual and customary course of the voyage in the absence of specific designation in the policy (Sec.48, Act, 1938).

Several ports of discharge: In the event of specification, in the policy, of several ports of discharge, the ship may proceed to all or any of them in the order specified. In the absence of

such specification or sufficient cause to the contrary she shall proceed as per the usage established. If the policy speaks on "ports of discharge", within a given area without naming it, then she shall, in the absence of any usage or sufficient cause to the contrary, proceed to them or such of them as she goes to, in their geographical order (Sec.49, Act, 1938).

Delay in voyage: In the case of a voyage policy, the adventure insured must be prosecuted throughout its course with reasonable dispatch failing which, without lawful excuse, the insurer will be discharged from liability as from the time when the delay became unreasonable (Sec.50, Act, 1938).

18.3 EXCUSES FOR DEVIATION OR DELAY

The deviation or delay in prosecuting the voyage contemplated by the policy shall be excused when -

- a) Any special term in the policy authorizes; or
- b) It is caused by such circumstances which is beyond the control of the master and his employer; or
- c) It is reasonably necessary in order to comply with an express or implied warranty; or
- d) It is reasonably necessary for the safety of the ship or subject-matter insured; or
- e) Its aim is to save the human life or aiding a ship in distress where human life may be in danger; or
- f) It is reasonably necessary for the purpose of obtaining medical or surgical aid for any person on board the ship; or
- g) It is caused by the barratrous conduct of the master or crew, if barratry be one of the perils insured against.

However, the moment the cause for excusing the deviation or delay ceases to operate, the ship must resume her course, and prosecute her voyage, with reasonable dispatch. (Sec.51, Act, 1938).

18.4 CAUSA PROXIMA

There shall be causal connection between the cause and effect to make the insurer liable to make good the loss. Thus, (a) the insurer will be liable (i) where the loss is caused by a single peril and it is an insured peril and (ii) where two or more causes are in operation and the final cause or the dominant and paramount cause is an insured peril.(b) the insurer is not liable if

the proximate cause of loss is (i) an expected peril or (ii) an insured peril but the fear of an insured peril.

Proximate cause

18.5 LOSS AND ABANDONMENT

The insurer on ship or goods is not liable, unless the policy otherwise provides, for any loss –

- a) which is not proximately caused by a peril insured against;
- b) which is attributable to the willful misconduct of the assured;
- c) which is proximately caused by delay, although the delay be caused by a peril insured against;
- d) Including ordinary wear and tear, ordinary leakage and breakage, inherent vice or nature of the subject-matter insured, or for any loss proximately caused by rats or vermin, or for any injury to machinery not proximately caused by maritime perils (Sec.55, Act, 1938).

18.6 PARTIAL AND TOTAL LOSS

A loss may be either total or partial. Any loss other than a total loss is defined as partial loss. A total loss may be either an actual total loss, or a constructive total loss. In the absence of a different intention in the terms of the policy, an insurance against total loss includes a constructive, as well as an actual, total loss. In case the assured brings a suit for a total loss and the evidence proves only a partial loss, he may, unless the policy otherwise provides, recover for a partial loss. When goods reach their destination in specie, but by reason of obliteration of marks, or otherwise, they are incapable of identification, the losses, if any, is partial and not total (Sec.56, Act, 1938).

18.7 ACTUAL TOTAL LOSS

The actual total loss indicates causing destruction or damage to the subject matter insured either making it to be a thing of the kind insured, or to deprive it forever. In such an event no notice of abandonment need be given (Sec.57, Act, 1963).

Presumption of Actual total loss: The actual total loss may be presumed when the ship concerned in the adventure is slipped away from the scene and its whereabouts is unheard even after the lapse of a reasonable time. (Sec.58, Act, 1963).

Effect of transshipment: In case of interruption of voyage at intermediate port or place, by a peril insured against, the liability of the insurer continues, in spite of the landing or transshipment, provided the master justify the landing and reshipping the goods or other movables, or in transshipping them, and sending them on to their destination (Sec.59, Act, 1963).

18.8 CONSTRUCTIVE TOTAL LOSS

A constructive total loss signifies, Subject to the terms of the policy, an abandonment of the subject-matter insured, reasonably, owing to its actual total loss appearing to be unavoidable, or because it could not be protected from actual total loss without an expenditure which would exceed its value when the expenditure had been incurred. In other words a constructive total loss means –

- a) depriving the insured from the possession of his ship or goods by a peril insured against, and
- b) rendering chance of recovery of the ship or goods, as the case may be, is remote to him; or
- c) the cost of recovering the ship or goods, as the case may be, would exceed their value when recovered; or
- d) in the case of damage to a ship, where she is so damaged by a peril insured against that the cost of repairing the damage would exceed the value of the ship when repaired. In estimating the cost of repairs, no deduction is to be made in respect of general average contributions to those repairs payable by other interests, but account is to be taken of the expense of future salvage operations and of any future general average contributions to which the ship would be liable if repaired; or
- e) in the case of damage to goods, where the cost of repairing the damage and forwarding the goods to their destination would exceed their value on arrival(Sec.60, Act, 1963).

Effect of constructive total loss: On the occurrence of constructive total loss the insured have the option either treat the loss as a partial loss, or abandon the subject-matter insured to the insurer and treat the loss as if it were an actual total loss (Sec.61, Act, 1963).

18.9 NOTICE OF ABANDONMENT

In case the insured opts to abandon the subject-matter insured to the insurer, he shall give a proper notice of abandonment to the insurer, either in writing or orally or partly in writing and partly orally, disclosing his intention to abandon his interest in the subject-matter insured, failing which the loss can only be treated as a partial loss. The notice of abandonment shall be served to the insurer only after the receipt of reliable information of the loss. However, he is entitled to a reasonable time to make enquiry when the information so received is of doubtful character. The insurer may accept the abandonment, either expressly or impliedly. A mere silence of the insurer after notice is not an acceptance. Any denial to accept the abandonment, by the insurer, does not affect the rights of the insured. Acceptance of notice, indicates sufficiency of the notice, makes the abandonment and liability for the loss as absolute and irrevocable. However, no service of notice of abandonment is needed when –

- a. It does not benefit the insurer;
- b. The service of notice of abandonment is waived by the insurer;
- c. Where an insurer has reinsured his risk (Sec.62, Act, 1963).

Effect of abandonment: on acceptance of abandonment, of a ship, the insurer is entitled to –

- a) Take over the interest of the insured in whatever may remain of the subject-matter insured and all proprietary rights incidental thereto.
- b) Any freight in course of being earned, and which is earned by her subsequent to the casualty causing the loss, less the expenses of earning it incurred after the casualty; and
- c) A reasonable remuneration for the carriage of owner's goods subsequent to the casualty causing the loss provided it is carried by the ship concerned (Sec.63, Act, 1963).

18.10 PARTICULAR AVERAGE LOSS

A particular average loss indicates a partial loss of the subject-matter insured, caused by a peril insured against. It is not a general average loss.

Particular charges are the expenses, other than general average and salvage charges, incurred by or on behalf of the insured for the safety or protection of the subject matter insured. However, particular charges are not included in particular average (Sec.64, Act, 1963).

Salvage charges: A Salvage charge means the charges recoverable under maritime law by a **salvor** independently to contract. They do not include the expenses of services in the nature of salvage rendered by the insured or his agents, or any person employed for hire by them, for the purpose of averting a peril insured against. Such expenses, where properly incurred, may be recovered as particular charges or as a general average loss, according to the circumstances under which they were incurred. Salvage charges incurred while preventing a loss by perils insured against may be recovered, subject to the terms of the policy, as a loss by those perils (Sec.65, Act, 1963).

18.11 GENERAL AVERAGE LOSS

A general average loss signifies -

1. A loss caused by or directly consequential on a general average act. It includes a general average expenditure as well as a general average sacrifice.
2. Any extraordinary sacrifice or expenditure is voluntarily and reasonably made or incurred in time of peril for the purpose of preserving the property imperiled in the common adventure is considered as a general average act.
3. Any contribution made rateably, subject to the conditions imposed by maritime law, towards meeting a general average loss by the third parties is called as a general average contribution (Sec.66, Act, 1963).

Recovery of general average of expenditure or contribution: The insured, subject to the terms of the policy, may recover -

- a) A general average of expenditure incurred, from the insurer, in respect of the proportion of the loss which falls upon him;
- b) A sum incurred as a general average sacrifice, from the insurer, in respect of the whole lost without having enforced his right of contribution from the other parties liable to contribute;
- c) A sum paid or is liable to pay as a general average contribution, from the insurer, in respect of the interest insured.

However, the insurer is not liable, in the absence of express stipulation, for any general average loss or contribution where the loss was not incurred for the purpose of avoiding, or in connection with the avoidance of a peril insured against. While determining the liability of the insurer in respect of general average losses or contributions the interest on ship, freight,

and cargo, or any two, although is vested with the same insured, shall be treated as it is owned by two different persons (Sec.66, Act, 1963).

18.12 MEASURE OF INDEMNITY

Extent of liability of insurer for loss.- The insurer is liable to indemnify the loss to the extent of such sum which the assured can recover in respect of a loss on a policy by which he is insured, i.e.-

- i. In the case of an unvalued policy to the full extent of the insurable value;
- ii. In the case of a valued policy to the full extent of the value fixed by the policy.

In the event the loss is to be recovered from more than one insurer, under the policy, each insurer is liable to indemnify the loss, in such proportion, to the extent of –

- a) The value fixed by the policy in the case of a valued policy.
- b) The insurable value in the case of an unvalued policy (Sec.67, Act, 1963).

Total loss: In case of total loss of the subject-matter insured the measure to indemnify the loss, subject to the provisions of this Act, and terms of the policy, is -

- a) The sum fixed by the policy if the policy is a valued policy;
- b) The insurable value of the subject matter insured if the policy is an unvalued policy (Sec.68, Act, 1963).

Partial loss of ship: Where a ship is damaged, but is not totally lost, the measure to indemnify the loss, subject to terms of the policy, is as under -

- a) Where the ship has been repaired, the insured is entitled to the reasonable cost of the repairs, less the customary deductions, but not exceeding the sum insured in respect of any one casualty;
- b) Where the ship has been only partially repaired, the insured is entitled to the reasonable cost of such repairs, computed as above, and also to be indemnified for the reasonable depreciation, if any, arising from the unrepaired damage, provided that the aggregate amount shall not exceed the cost of repairing the whole damage, computed as above;
- c) Where the ship has not been repaired, and has not been sold in her damaged state during the risk, the insured is entitled to be indemnified for the reasonable depreciation arising from the unrepaired damage, but not exceeding the reasonable cost of repairing such damage, computed as above;

- d) Where the ship has not been repaired, and has been sold in her damaged state during the risk, the insured is entitled to be indemnified for the reasonable cost of repairing the damage, computed as above, but not exceeding the depreciation in value as ascertained by the sale (Sec.69, Act, 1963).

Partial loss of freight: In the event of partial loss of freight the measure to indemnify the loss, subject to terms of the policy, is such proportion of the sum fixed by the policy in the case of a valued policy or of the insurable value in the case of an unvalued policy. Because, the proportion of freight lost by the assured bears to the whole freight at the risk of the assured under the policy (Sec.70, Act, 1963). .

Partial loss of goods, merchandise, etc: When the goods, merchandise, or other movables put to partial loss the measure to indemnify the loss, subject to terms of the policy, is as under -

- a) where part of the goods, merchandise, or other movables, insured by a valued policy is totally lost, the measure of indemnity is such proportion of the sum fixed by the policy as the insurable value of the part lost bears to the insurable value of the whole, ascertained as in the case of an unvalued policy;
- b) where part of the goods, merchandise or other movables insured by an unvalued policy is totally lost, the measure of the indemnity is the insurable value of the part lost, ascertained as in case of total loss;
- c) where the whole or any part of the goods or merchandise insured has been delivered damaged at its destination, the measure of indemnity is such proportion of the sum fixed by the policy in the case of a valued policy, or of the insurable value in the case of an unvalued policy, as the difference between the gross sound and damaged values at the place of arrival bears to the gross sound value;

"Gross value" means the wholesale price, or, if there be no such price, the estimated value, within, in either case, freight, landing charges, and duty paid beforehand; provided that, in the case of goods or merchandise customarily sold in bond, the bonded price is deemed to be the gross value."Gross proceeds" means the actual price obtained at a sale where all charges on sale are paid by the sellers (Sec.71, Act, 1963). .

Apportionment of valuation:

The question of apportioning of valuation does arise when different species of property are insured under a single valuation. The valuation must be apportioned over the different species in proportion to their respective insurable values, as in the case an unvalued policy. The insured value of any part of a species is such proportion of the total insured value of any part of a species is such proportion of the total insured value of the same as the insurable value of

the part bears to the insurable value of the whole, ascertained in both cases as provided by this Act. While apportioning the valuation, if particulars of the prime cost of each separate species, quality, or description of goods cannot be ascertained, the division of the valuation may be made over the net arrived sound values of the different species, qualities, or descriptions of goods (Sec.72, Act, 1963).

General average contributions and salvage charges: In case the assured has paid, or is liable for, subject to the terms of the policy, any general average contribution, the measure of indemnity is the full amount of such contribution if the subject-matter liable to contribution is insured for its full contributory value; but, if such subject-matter be not insured for its full contributory value, or if only part of it be insured, the indemnity payable by the insurer must be reduced in proportion of the under-insurance, and where there has been a particular average loss which constitutes a deduction from the contributory value, and for which the insurer is liable, that amount must be deducted from the insured value in order to ascertain what the insurer is liable to contribute. The extent of liability of the insurer for salvage charges, if any, must be determined on the like principle (Sec.73, Act, 1963). .

Liabilities to third parties: Where the assured has effected an insurance in express terms against any liability to a third party, the measure of indemnity, subject to any express provision in the policy, is the amount paid or payable by him to such their party in respect of such liability (Sec.74, Act, 1963).

General provisions as to measure of indemnity: In the event of loss to a subject matter, which are not specifically covered in the afore mentioned provisions of this Act, measure to indemnify the loss shall be ascertained as nearly as may be, in accordance with those provisions, insofar as applicable to the particular case.

However, the provisions, in respect of measure of indemnity, of this Act will not disturb the rules relating to double insurance, or prohibit the insurer from disproving interest wholly or in part, or from showing that at the time of the loss the whole or any part of the subject-matter insured was not a risk under the policy (Sec.75, Act, 1963). .

Particular average warranties: (1) Where the subject-matter insured is warranted free from particular average, the assured cannot recover for a loss of part, other than a loss incurred by a general average sacrifice, unless the contract contained in the policy be apportionable; but, if the contract be apportionable, the assured may recover for a total loss of any apportionable part.

(2) where the subject-matter insured is warranted free from particular average, either wholly or under a certain percentage, the insurer is nevertheless liable for salvage charges, and for

particular charges and other expenses properly incurred pursuant to the provisions of the suing and labouring clause in order to avert a loss insured against.

(3) Unless the policy otherwise provides, where the subject-matter insured is warranted free from particular average under a specified percentage, a general average loss cannot be added to a particular average loss to make up the specified percentage.

(4) For the purpose of ascertaining whether the specified percentage has been reached, regard shall be had only to the actual loss suffered by the subject-matter insured. Particular charges and the expenses of and incidental to ascertaining and proving the loss must be excluded. (Sec.76, Act, 1963).

Successive losses: (1) Unless the policy otherwise provides, and subject to the provisions of this Act, the insurer is liable for successive losses, even though the total amount of such losses may exceed the sum insured.

(2) Where, under the same policy, a partial loss, which has not been repaired or otherwise made good, is followed by a total loss, the assured can only recover in respect of the total loss:

Provided that nothing in this section shall affect the liability of the insurer under the suing and labouring clause (Sec.77, Act, 1963).

Suing and labouring clause: (1) Where the policy contains a suing and labouring clause, the engagement thereby entered into is deemed to be supplementary to the contract of insurance, and the assured may recover from insurer any expenses properly incurred pursuant to the clause, notwithstanding that the insurer may have paid for a total loss, or that the subject-matter may have been warranted free from particular average, either wholly or under a certain percentage.

(2) General average losses and contributions and salvage charges as defined by this Act, are not recoverable under the suing and labouring clause.

(3) Expenses incurred for the purpose of averting or diminishing any loss not covered by the policy is not recoverable under the suing and labouring clause.

(4) It is the duty of the assured and his agents, in all cases to take such measures as may be reasonable for the purpose of averting or minimising a loss (Sec.78, Act, 1963).

18.13 RIGHTS OF INSURER ON PAYMENTS

Right of subrogation: (1) Where the insurer pays for a total loss, either of the whole, or in the case of goods of any apportionable part, of the subject-matter insured, he thereupon becomes entitled to take over the interest of the assured in whatever may remain of the subject-matter so paid for, and he is thereby subrogated to all the rights and remedies of the assured in and in respect of that subject matter as from the time of the casualty causing the loss.

(2) Subject to the foregoing provisions, where the insurer pays for a partial loss, he acquires no title to the subject-matter insured, or such part of it as may remain, but he is thereupon subrogated to all rights and remedies of the assured in and in respect of the subject-matter insured as from the time of the casualty causing the loss, insofar as the assured has been indemnified, according to this Act, by such payment for the loss(Sec.79, Act, 1963)..

Right of Contribution: (1) Where the assured is over-insured by double insurance, each insurer is bound, as between himself and the other insurers, to contribute rateably to the loss in proportion to the amount for which he is liable under his contract.

(2) If any insurer pays more than his proportion of the loss, he is entitled to maintain a suit for contribution against the other insurers, and is entitled to the like remedies as a surety who has paid more than this proportion of the debt(Sec.80, Act, 1963)..

Effect of under-insurance: Where the assured is insured for an amount less than the insurable value, or, in the case of a valued policy, for an amount less than the policy valuation, he is deemed to be his own insurer in respect of the uninsured balance(Sec.81, Act, 1963).

Ratification by assured: Where a contract of marine insurance is in good faith effected by one person on behalf of another, the person on whose behalf it is effected may ratify the contract even after he is aware of a loss(Sec.85, Act, 1963).

Implied obligation varied by agreement or usage: Where any right, duty, or liability would arise under a contract of marine insurance by implication of law, it may be negated or varied by express agreement, or by usage, if the usage be such as to bind both parties to the contract. This provision envelops any right, duty, or liability declared by this Act which may be lawfully modified by agreement(Sec.86, Act, 1963).

Reasonable time, etc., a question of fact: Where by this Act any reference is made to reasonable time, reasonable premium, or reasonable diligence, the question what is reasonable is a question of fact(Sec.87, Act, 1963).

Covering note as evidence: Where there is a duly stamped policy, reference may be made, as heretofore, to the slip or covering note, in any legal proceeding (Sec.88, Act, 1963).

Discharge from liability: The insurers will be duly discharged from the liability -

- a) When the ship is set on sail from any other place than the designated place (Sec.45, Act, 1938).
- b) When the ship set for a different destination than the specified destination (Sec.46, Act, 1938).
- c) When the insured fails to adhere to the terms of the warranty.

18.14 SUMMARY

In overseas trade and shipping voyage occupies significant position. The liability of the insurer will be determined how and the manner in which the ship is set on sail. If the ship pursue the voyage in conformity with the warranty no legal entanglement do arise. If any deviation is made then one has to examine whether it falls under the exception. In any event cargo on the board is to be abandoned nature and extent of abandonment shall be looked into. In assessment of quantum of loss shall be made keeping in mind the provisions relating to measure of indemnity.

18.15 KEY WORDS

1. Voyage
2. Deviation
3. Causa Proxima
4. Abandonment
5. Partial and total loss
6. Actual total loss
7. Constructive total loss
8. Particular average loss
9. General average loss
10. Indemnity.

18.16 SELF ASSESSMENT QUESTIONS

1. State the circumstance under which the deviation of voyage may be excused.

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.....
2. Outline the provisions relating to measure of indemnity.

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.....
3. Write note on –

- a. Voyage
- b. Notice of abandonment
- c. General average loss

18.17 REFERENCES

1. Principles of insurance law: Life - fire - marine - motor and accident: M.N.Srinivasan.
2. Modern Law of Insurance: KSN Murthy and KVS Sarma.
3. Life insurance corporation of India : Impact of privatization and performance: Sumninder Kaur Bawa.
4. Commentaries on the public liabilities insurance act 1991: G.S Karkara.
5. Insurance law: A comprehensive treatise on law of insurance covering all risks except marine insurance: Brij Nandan Singh.
6. The Law of Insurance Contracts: A. Malcolm.
7. International encyclopaedia of laws: Insurance Law: R. Blanpain.
8. Insurance law manual with IRDA circulars and notifications: Taxmann.
9. Insurance law: Relating to all risks other than marine: E.J. Macgillivray.
10. Modern insurance law: John Birds and Norma J Hird.
11. Law Relating to Marine Insurance: Mitra, B.C.
12. Law of Insurance: Jaiswal J V N
13. General Principles of Insurance Law: Hardy Ivamy E R
14. Law Relating to Insurance: Vats R M

UNIT 19: MOTOR VEHICLE INSURANCE

STRUCTURE

19.0 Objectives

19.1 Introduction

19.2 Motor Insurance Policy

19.3 Certificate of insurance

19.4 Knock for knock agreement

19.5 Vehicle

19.6 Public places

19.7 Accident

19.8 Driving license

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19.14 Production of Documents

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19.16 Settlement of claim by compromise

19.17 Persons liable to pay compensation

19.18 Powers of the MACT

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19.20 Summary

19.21 Key Words

19.22 Self Assessment Questions

19.23 References

19.0 OBJECTIVES

On reading this unit the students would become familiar with the following –

1. Incidents of motor vehicle
2. Nature of insurance policy
3. Settlement of claim.

19.1 INTRODUCTION

The motor cars were introduced in, 1894, United Kingdom. Within no time it became people friendly. Swelling of number of users of motor vehicle, road accidents, and untold tales of the injured, the dead and his legal heirs has made the policy makers to introduce insurance scheme, to wipe out their tears kindling a ray of hope, by mitigating the loss caused in road accidents. The first motor insurance policy was introduced in, 1894, England to cover third party liabilities. Further, in 1899, accidental damage to the car was added to the policy, thus introducing, the ‘comprehensive’ policy along the lines of the policy issued today. The Car and General Insurance Corporation Ltd., established in 1903, became the prime mover in the field of motor insurance.

The introduction of compulsory third party insurance, through the Road Tariff Act, 1930 and 1934, is a significant step. These Acts, subsequently, have been consolidated by the Road Tariff Act, 1960. In India, the Motor Vehicle Act, 1939 – which was replaced by the Act No.59 of, 1988 and enforce from 1st July 1989 - deals with the compulsory third party insurance. The practice of Indian insurance market is akin to the U.K. market. The business was governed by a tariff till March, 2008, and now like the UK market it is non - tariff. However, the Insurance Regulatory and Development Authority have directed the insurers in India to continue to follow the tariff policy wording.

The policy of motor vehicle insurance is, in the ordinary course, a combined insurance. It insures the damage to property, death of, or injury to, the assured himself or spouse and it also insures the motor vehicle against the risk liability for injury to, or the death of third parties caused by the driver’s negligence. The Motor Vehicle Act, 1988, made it compulsory for every owner of a vehicle to insure the vehicle against the third-party risks. Non-insurance of under the Act results in penalty to the owner and the vehicles tax will not be accepted if

the vehicle is not insured and the premium paid. This statutory compulsion is made with a view to benefit for the large number of persons who lose their lives in automobile accidents or who are injured and disabled as a result of such accidents. At the same time it aims to save the owner of motor vehicle who find hard to meet the claims of the victims of the accidents. It is with this object that the compulsory insurance is made under the Motor Vehicle Act. The coverage of automobile insurance policy includes accessories, loss or damage to his property or life and the third party coverage.

The business of insurance is based on tariff. Thus, the premium shall be on par with the tariff prescribed from time to time. No insurer can neither levy lower rates than the tariff rates nor grant benefits in excess of the tariff prescribed.

For the purpose of insurance the motor vehicles have been classified as under -

- (i) Private cars (not used for carrying passengers for hire or reward).
- (ii) Commercial vehicles such as goods carrying vehicles, passenger vehicles, tractors and others. And
- (iii) Motorized two wheelers.

The major sources of loss that may be caused by the motor vehicle are - (i) legal liability for harm caused to others as a result of negligence. (ii) Bodily injury and (iii) property damages and/ or theft of vehicles.

19.2 MOTOR INSURANCE POLICY

These losses may be made good with the purchase insurance policy, which is of two types - Form A and Form B. Form A, widely known as Act policy, covers Act liability, which is a compulsory requirement of Motor Vehicle Act, 1939. Playing of vehicle on public road in the absence of insurance will amount to penal offence. Form A covers –

- (1) Third party property damages/bodily injury (fatal or non fatal) when an insured vehicle is used in public place;
- (2) Insured's legal liability, as per the Motor Vehicle Act, 1939, arising out of accident caused by or arising out of the use of vehicle anywhere in India.; and
- (3) Such liability, as afore mentioned in relation to injury (fatal or non fatal) to any third party and damage to any third parties' property.

The owner of vehicle, having insurable interest, shall purchase this policy. It begins to run from the date of inception and will be in force for 12 months or such shorter period as agreed upon. The insurer is required to pay the legal liability in the event of death/disability for third party, loss or damage to third party property including the liability for claimant's costs and expenses, up to Rs. 6,000/- unless additional premium is paid to opt unlimited coverage, with the written consent of the insurer. On the death or /and bodily injury of insured/ third party, his/her legal heir will be indemnified and entitled to make good the liability provided the vehicle is played when the, accident is caused at public place, driver is holding a valid and effective driving license.

Form B, popularly called as Comprehensive Policy / Package Policies and Commercial Vehicle Motor Trade Policies, is an optional coverage, which takes care of Own Damage (OD) including additional losses and liabilities which are as under –

- (1) Loss or damage to the vehicle and its accessories and extra fittings, protection and removal costs, and towing disabled vehicle (only for commercial vehicle);
- (2) Liability towards third party damage in excess of Rs.6,000/-;
- (3) Liability towards employees under common law and fatal accidents Act, over and above the liability under the workmen's compensation Act; and
- (4) Personal accident benefit for the owner, passengers and employees.

Comprehensive policy is consisting of four sections i.e. -

Section I: Own Damage (OD) - The insurer will indemnify the insured against the loss or damage to the insured motor car and /or its accessories when it is caused –

- a) By fire, explosion, self ignition or lightening;
- b) By burglary, house breaking or theft;
- c) By riot and strike;
- d) By earthquake (fire and shock damage);
- e) By flood, typhoon, hurricane, storm, tempest, inundation, cyclone, hailstorm, frost;
- f) By accidental external means;
- g) By malicious act;
- h) By terrorist activity;
- i) In transit by road, rail, inland waterway, lift, elevator or air;
- j) By landslide/ rockslide.

Section II: Liability to third parties i.e. liabilities of bodily injuries and property damage.

Section III: Towing of disabled vehicles.

Section IV: Personal accidents cover for the owner/driver.

19.3 CERTIFICATE OF INSURANCE

The policy of insurance will come into force only on the issuance of “Certificate of Insurance”, which shall be issued by the authorized insurer. In the absence of it the owner of a vehicle will not get the license for his vehicle. The certificate includes cover note. It will be delivered on the provisional acceptance of the proposal but before the issuance of the certificate. The cover note is a provisional certificate. It will be in force for 60 days. Before the expiry of this period the insurer shall issue the certificate which affirms the final acceptance of the policy. Thus, the insurer is obligated to inform the registering authority of the vehicles within seven days of the expiry of the cover note regarding the acceptance or non acceptance of the proposal. In the event of cancellation or suspension of the policy the insured is required to surrender the certificate/ cover note to the insurer. Failing which he may be punished with fine of Rs.15 per day until the default continues but subject to the maximum of Rs.500. In case of loss or destruction of the certificate he must make an affidavit to that effect. The contents of the cover note are – registration mark and number of description of the vehicle insured; name and address of the insured; effective date and time of commencement of insurance for the purpose of this Motor Vehicle Act, 1939; date of expiry of insurance; persons or classes of persons entitled to drive; any limitation to use of the motor vehicle; the period of validity of this cover note will expire on. (Sec.145, 104, The Motor Vehicle Act, 1939; Rule 141,142 The Central Motor Vehicle Rules, 1989). The certificate of insurance shall be produced to the traffic police / Road Transport Authority on demand.

The certificate is a prima facie evidence of vehicle’s ownership and custody. It states that the vehicle is insured and creates liability on the insurer. No matter whether the policy reaches the insured or not. The insurer cannot refute to honor the liability except on the ground that the insured has obtained the policy making false statement or concealing the material fact. The insured may transfer the certificate to another person with the consent of the insurer. On the transfer of ownership of motor vehicle the transferee shall make an application within 14 days to the insurer with a request to effect necessary changes in the certificate of insurance. The insurer shall make needful changes in favor of new owner from the date of transfer of

ownership of motor vehicle. It is an automatic process. [(Sec.103A,157, The Motor Vehicle Act, 1939; Rajamani v Oriental Insurance Co. Ltd Coimbatore (1998)8SCC641].

19.4 KNOCK FOR KNOCK AGREEMENT

when the two motorists, insured under comprehensive policies, are involved in a motor accident, both may be liable. Both cases involve doctrine of subrogation and contribution involving costs and multifarious litigation. To avoid this complication, the insurers enter into an agreement known as “Knock for knock agreement”. It is an agreement between both the insurers without considering who is responsible for the accident, provided the liability is covered the policy, each insurer will indemnify his insured in respect of the damage to the vehicle insured by it and will not enforce subrogation rights against the party involved in the accident. In other words, each insurer will indemnify his own insured. This agreement, however, does not apply to the goods vehicles policies and public service vehicles (i.e. taxies, buses) used for hire or reward, and technically the insurers are free to enter into litigation to recover losses caused by such vehicles. This type of agreement is meant for simplifying the settlement of such claims.

19.5 VEHICLE

The term motor vehicles indicate only mechanically propelled vehicle, including chassis to which body has not been attached and a trailer, adopted for the use on the public roads. The source of power of propulsion is not relevant. Thus, any vehicle run with human or animal power is not a motor vehicle. (Sec. 2(8) The Motor Vehicle Act, 1939). The Act, 1939 envelops many types of motor vehicles within its ambit, they are – goods vehicles, heavy transport vehicles, invalid carriages, light transport vehicles, locomotives, motor cabs, motor cars, motor cycles, public service vehicles, state carriage tractors, trailers and transport vehicles. The Motor Vehicle Act, 1939 expressly excludes only two types of vehicles i.e. (i) vehicles run on the fixed rails e.g. a train or railway trolley and (ii) vehicles adapted for use only in a factory or in any other enclosed premises.

19.6 PUBLIC PLACES

The public place indicates a road, street, way or such other place, whether a thoroughfare or not, to which the public have a right of access. It includes any place or stand at which passengers are picked up or set – down by a stage carriage. (Sec. 2(24) The Motor Vehicle

Act, 1939). To enable the victim claim compensation he shall met with an accident when the motor vehicle is in use at public place and the policy is in force(Sec. 64 – VB Insurance Act, 1938; Sec. 147, The Motor Vehicle Act, 1939).

19.7 ACCIDENT

The damage must be caused due to an accident which must have arisen when the vehicle is in use at the public place. Thus, the insurer is not liable to make good the loss when the damage is caused due to the non user of vehicle.(ShivajiDhyanu Patil v Smt. Vatschala Uttam More Air 1991 Bom 436). Further, the motor vehicle in use indicates deployment of vehicle which includes driving, parking, keeping stationary, repairing or leaving it unattended on the road or for any other purpose. [Pushparani Chopra v Anokha Singh (1975) ACJ 396 (Dle);Babu v Remesan AIR 1996 Ker 95].

19.8 DRIVING LICENSE

In the absence of driving license at the time of motor vehicle accident the insurer will be absolved from making the payment of compensation. However, the burden of proof is on the insurer to prove that the driver did not possess valid driving license at the time of accident.[Sonaram v Jaiprakash AIR 1986 MP 21; New India Assurance Co. Ltd v Suraj Prakash AIR 2000 HP 91]. A person is said to have held valid license only when he/she obtains the Driving License (DL) under the Motor Vehicle Act, 1939. Thus, a person who possesses temporary license to enable him to learn driving cannot be regarded that he has been duly licensed. The driver shall drive only such motor vehicle which answers the description given in the Driving License.

19.9 NOFAULT LIABILITY

The concept of ‘nofault liability’ is a measure initiated at the instance of principles of social justice. No matter whether the accident is caused due to default or negligence of the claimant resulting in his/her death or permanent disablement, the owners of the motor vehicles/insurers shall pay the statutory compensation forthwith. The claimant need not plead and establish that the death or disablement, in respect of which the claim is made, was due to any wrongful act, neglect or default of the owner of the motor vehicle or vehicles concerned or of any persons. Resultantly, the claim made will not be defeated or affected in any way, by any wrongful act, neglect or default on the part of the claimant or the quantum of compensation be reduced on

the basis of the claimant's share of responsibility for the accident. In other words, legal defense of 'contributory negligence' is not available to the motorist and his insurer. The liability inflicted herewith is absolute, whether the owner of motor vehicle is 'at fault or nofault', he is bound to pay the same apart from paying compensation under any other law for the time being in force. The amount of statutory compensation payable in this behalf is of Rs. 50,000/- in respect of death and Rs. 25,000/- with regard to permanent disablement. It is a clear departure from the common law principle i.e. 'the claimant shall establish negligence on the part of the owner or driver of the motor vehicle before claiming compensation for death or permanent disablement arising out of a motor vehicle accident. Thus, the liability ensued herein is construed as strict liability.

The owner or the driver of the motor vehicle is liable to pay compensation not only on the basis of 'nofault' but also on the basis of 'fault' or 'negligence'. First he is obligated to pay on 'nofault' basis i.e. Rs. 50,000/- or Rs. 25,000/- as the case may be, for death or permanent disablement there after he is required to pay the compensation, if need be, on 'fault' basis under any other provision of the Motor Vehicle Act, 1939 or of any other law for the time being in force. If such compensation paid is less than the compensation awarded on the principle of 'fault' or 'negligence', the owner or the driver of the motor vehicle is liable to pay the balance. In other words, if the compensation on the principle of 'fault' liability is less than the amount awarded under 'nofault' liability, then the insurer are not entitled to recover the excess payment from the insured made under 'nofault' liability. However, if the compensation so awarded is more, then the difference between the two compensation amounts will be required to be paid by the insurer. (Sec. 140,141,163A The Motor Vehicle Act, 1939). The relief contemplated hereunder is of interim in nature. Consequently, the MACT is required to dispose the application expeditiously.

19.10 'HIT AND RUN' MOTOR ACCIDENT

'Hit and run' cases are self evident. Collusion between two vehicles is not necessary. No matter if the identity of vehicle or vehicles involved in the accident is not ascertainable in spite of reasonable effort. Nofurther elaboration is needed when once it is established that the accident has arisen out of the use of motor vehicle and the motor vehicle is not traceable despite of reasonable effort. However, the accident should result in injury causing hurt or grievous hurt or death. Subject to the provisions of Motor Vehicle Act, 1939 and Solatium Scheme Rs. 25,000/- shall be paid as compensation to the dependents of the deceased in

respect of his/her death and Rs. 12,500/- shall be paid to the injured or his/her dependents in respect of bodily injury. In the event of 'hit and run' cases the claim application shall be made to the Claims Enquiry Officer of the Sub-Division or Taluka in which the accident took place. On the receipt of the claim application the Claim Enquiry Officer shall take step to obtain a copy of FIR, inquest report, postmortem report or certificate of injury, as the case may be, from the authority concerned and hold enquiry, in respect of claims, and decide who is the rightful claimants where there are more than one claimants and submit a report, by underlining recommendation, within one month from the date of receipt of application to the Claims Settlement Commissioner. He may hold an additional enquiry in pursuance of the instruction of the Commissioner and resubmit the report within 15 days for final order. The Commissioner shall pass final order within 15 days from the date of receipt of the report and copy of the same shall be served to the Claims Enquiry Officer, MACT concerned, Transport Commissioner concerned and General Insurance Corporation headquarters. Compensation shall be paid within 15 days from the date of receipt of the sanction order together with discharge receipt (Sec. 161,162,163, The Motor Vehicle Act, 1939, Solatium Scheme, 1989).

19.11 SETTLEMENT OF CLAIM

The settlement of claims is of three types i.e. – (1) own damage claim (2) third party liability claim and (3) other claims – which could occur under motor policies in respect of workmen's compensation and personal accident. The settlement of claims involves three phases they are – (i) preliminary scrutiny (ii) assessment of loss and (iii) settlement. The preliminary scrutiny generally arranged by, the insurer, designating an official or engineer or an independent automobile surveyor to take the stock of the situation at the spot of the accident to know the genuineness of the accident and for the mitigation of any aggravation of damages and enhanced claim settlement. In pursuance to the survey report the insurer will settle the claim by making the payment either to the insured or his/her legal heir or to the garage.

19.12 MOTOR ACCIDENTS CLAIMS TRIBUNAL (MACT)

The Motor Accidents Claims Tribunal (MACT) is a forum to redress accidents claim disputes. It aims to deal with the claim application expeditiously and inexpensively to enforce the liability of the persons who caused motor accidents. The MACT exercise its jurisdiction to the exclusion of civil court. Generally it is headed by a person who is or has been a District Judge or of equivalent rank. The MACT is empowered to adjudicate the claims made, in

connection with accidents, by the injured or aggrieved for compensation which may involve (i) fatal injury (ii) bodily injury and (iii) loss or damage to the property of third party – arising in the course of the use of the motor vehicles. The injured or the aggrieved includes pedestrians, fare-paying passengers, non- fare paying passengers, persons of other vehicles and the children.

The claim application may be made -

- a) By the person who has sustained injury; or
- b) By the owner of the property; or
- c) By all or any legal representatives of the deceased including the widow. Her remarriage do not prevents her from making application; or
- d) By any agent duly authorized by the person injured or all or any of the legal representatives of the deceased.

The application shall be made, in a prescribed statutory form, on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives, who have not joined, shall be impleaded as respondents to the application. The claim application may be made either under the Motor Vehicles Act, 1988 or the Workmen’s Compensation Act, 1947 but not under both.

The place of filing application: the application shall be filed in such area where accident is occurred or within the local limits of the MACT wherein the claimant resides or carries on business or the defendant resides. No period of limitation is applicable for making claim before the MACT in respect of any accident.

19.13 NATURE OF THE PROCEEDINGS

The proceedings before the MACT are neither a civil case nor a criminal case. In a criminal case, in order to have conviction, the matter is to be established beyond reasonable doubt and in civil case the matter is to be decided on the basis of preponderance of evidence, but in a claim before the MACT the standard of proof is much below than what is required in criminal and civil case.

19.14 PRODUCTION OF DOCUMENTS

The documents required to be submitted, by the claimant, for settlement of claims are – duly filled in claim form as prescribed, Registration Certificate (RC book), Driving License(DL), load challan/trip sheet, Fitness Certificate (FC), police report it includes First Information Report (FIR) and inspection report/panchanama/mahajar, survey report, site plan, photographs, permit, final bill from the repairers, satisfaction note from the insured, receipted bill from the repairer, if paid by the insured, medical certificate regarding injury suffered and extent of disability arising out of injury, medical expenditure involved supported vouchers and monthly income to calculate loss of income due to the injured for having been confined to bed or hospital, status of the deceased, composition and contribution to the family, relationship with claimant and the status of the clamant.

The proceedings before the MACT are summary in nature subject to the rules made in this behalf. Strict compliance with the rules of evidence and pleadings are not required. However, the MACT shall pass its award in accordance with the principles of natural justice, i.e. –

- a) The parties shall be given with an opportunity of being heard;
- b) Evidence shall be taken on oath;
- c) An opportunity shall be given to cross examine the adversaries; and
- d) Awarding of compensation on the establishment of negligence on the part of the driver.

At the time of awarding compensation, in the event of fatal accidents, the MACT may consider the following –

- a) Loss of love and affection of spouse/children/parents.
- b) Consortium.
- c) Loss of future happy life of the deceased.
- d) Mental shock.
- e) Mental and physical agony, pain and suffering. [Rajasthan SRTC V/s Smt.Kistoori Devi AIR 1986 Raj 192 (FB)]

The copies of the award shall be furnished, within fifteen days from the date of the award, to the parties concerned. And the amount figured in the award shall be deposited by the

judgment debtor, in the manner defined in the award, within 30 days of the pronouncement of the award. The MACT is empowered to grant just compensation which may be less or more than the claim made but not lower than the amount prescribed under the statute.

19.15 CALCULATION OF COMPENSATION

Computation of loss of earnings may be made thro' – (a) Interest method, (b) Lump sum method and (c) Multiplier method, in which the either traditional multiplier method or the actuary's multiplier method may be followed while computing the future loss of earnings. The first two methods are now replaced by the multiplier method. No uniform or absolute rule will fit in. every case shall be treated by having regard to its facts and circumstances. However, by and large the multiplier of 15 has been applied. (Union Cooperative Insurance Society Ltd V Bharatiben AIR 1979 Guj 121)At the time of selecting the multiplier the age of the victim, the age of the dependents and the normal life expectancy in the family, extent of loss of earnings and discounting factors shall be kept in mind. (A C Gupta V New India Assurance Co. Ltd. (2000)87 Del LT779). The application of multiplier method will never give any scope to grant any further amount towards the head of consortium, funeral etc since it includes all sorts of compensation under every head Oriental Insurance Co. Ltd V Geeta Devi 2000 AIHC 2511 (Pat).

19.16 SETTLEMENT OF CLAIM BY COMPROMISE

No claim shall be settled thro' compromise by the parties to the application except with the leave of the MACT. However, the matter could be settled under the aegis of Lok Adalat keeping in mind the best interest of the parties specially the claims of the minors and persons of unsound mind.

Incorrect description in the proposal form: The insurer is having the right to avoid the liability on the ground of misstatement

19.17 PERSONS LIABLE TO PAY COMPENSATION

The compensation shall be payable either by the owner of the vehicle or the driver of the vehicle or the insurer or any other person as the case may be (Union of India V. Satish Kumar Patel AIR 2001 MP 41). In the event of failure to pay compensation by any person the MACT may issue a certificate for the amount directing the to the Deputy

Commissioner/Collector to recover it from the person concerned in the same manner as an arrear of land revenue.

19.18 POWERS OF THE MACT

The Tribunal is empowered –

- a) To enforce attendance of witnesses;
- b) To examine witness on commission;
- c) To admit documents return claim petition;
- d) To allow amendment;
- e) To dismiss claim petition for default;
- f) To restore petition dismissed for default;
- g) To add/substitute a party;
- h) To permit to sue as indigent person;
- i) To order attachment before judgment;
- j) To award interest;
- k) To award compensatory costs;
- l) To review; and
- m) To exercise such other powers on par with civil court.

19.19 APPEAL

No appeal lies against the award of the MACT when the amount in dispute in the appeal is less than Rs.2000/-. In other cases an appeal lies before the High Court which shall be filed within 90 days from the date of pronouncement of award. While reckoning the 90 days the time spared for obtaining the copy of the award shall be excluded. However, the High Court may condone the delay. The appeal shall be admitted only when the appellant deposit, Rs.25,000/- or 50% of the amount so awarded, whichever is lesser, in the manner directed by the High Court. The award may be executed by the District Collector/Deputy Commissioner on the receipt of the certificate issued by the MACT and the amount awarded may be recovered him in the form of arrears of land revenue (Sec.173, The Motor Vehicle Act, 1939).

19.20 SUMMARY

The motor vehicle insurance encompasses private cars (not used for carrying passengers for hire or reward), commercial vehicles such as goods carrying vehicles, passenger vehicles, tractors and others and motorized two wheelers. It is obligatory on the part of the owner of a vehicle not only to purchase the insurance policy and also to ensure that the vehicle is driven with proper driving license failing which he will not be allowed to play the vehicle. While playing the vehicle if he met with an accident resulting in bodily injury and/or property damages and/ or theft of vehicles he is entitled to ask the insurer to make good the loss. The claim may be settled, in the event of dispute, either through Lok Adalat or Motor Accidents Claims Tribunal (MACT).

19.21 KEY WORDS

1. Motor vehicle
2. Certificate of insurance
3. Knock for knock agreement
4. Public places
5. Accident
6. Nofault liability
7. 'Hit and Run' motor accident
8. Lok Adalat
9. Motor Accidents Claims Tribunal (MACT)
10. Appeal.

19.22 SELF ASSESSMENT QUESTIONS

1. Define motor vehicle. Outline the features of different kinds of policies available to the owner of a motor vehicle.
.....
.....
2. State the powers and functions of Motor Accidents Claims Tribunal (MACT).
.....
.....
3. Write note on –
 - a. Knock for knock agreement

- b. Certificate of insurance
- c. Nofault liability

19.23 REFERENCES

1. Principles of insurance law: Life - fire - marine - motor and accident: M.N.Srinivasan.
2. Modern Law of Insurance: KSN Murthy and KVS Sarma.
3. Life insurance corporation of India : Impact of privatization and performance: Sumninder Kaur Bawa.
4. Commentaries on the public liabilities insurance act 1991: G.S Karkara.
5. Insurance law: A comprehensive treatise on law of insurance covering all risks except marine insurance: Brij Nandan Singh.
6. The Law of Insurance Contracts: A. Malcolm.
7. International encyclopaedia of laws: Insurance Law: R. Blanpain.
8. Insurance law manual with IRDA circulars and notifications: Taxmann.
9. Insurance law: Relating to all risks other than marine: E.J. Macgillivray.
10. Modern insurance law: John Birds and Norma J Hird.
11. Law Relating to Marine Insurance: Mitra, B.C.
12. Law of Insurance: Jaiswal J V N
13. General Principles of Insurance Law: Hardy Ivamy E R
14. Law Relating to Insurance: Vats R M

UNIT 20: MISCELLANEOUS INSURANCE

STRUCTURE

20.0 Objectives

20.1 Introduction

20.2 Personal Accident Insurance (PAI)

20.3 Health Insurance;

20.4 Burglary Insurance

20.5 Baggage Insurance Policy

20.6 Money Insurance Policy

20.7 Fidelity Insurance

20.8 Bankers' Blanket Indemnity Insurance

20.9 Jewelers' Block Insurance

20.10 Pedal Cycle Insurance

20.11 Plate Glass Insurance

20.12 Missing document Insurance

20.13 Sports Insurance;

20.14 Television Insurance

20.15 Shopkeepers Insurance

20.16 Special Contingency Insurance

20.17 Agricultural Insurance

20.18 Summary

20.19 Key Words

20.20 Self Assessment Questions

20.21 References

20.0 OBJECTIVES

On reading this unit the students would be in a position to appraise the following –

1. Different categories of insurance floated by the insurer
2. Scenario of agricultural insurance

20.1 INTRODUCTION

The market trend is not static. It changes in tune with expectation and requirements of the people. With the on-set of Liberalization, Privatization and Globalization the attitude of production, supply and distribution was revolutionized in the global market, the structure of commercial establishment/industries was refashioned exposing to exceptional risk in the matter of health, accident, burglary, transportation, mobility in employment etc. The kind of threat to which the man is exposed at a global level has warranted a modification in the strategy of insurance to envelop health, sports, agriculture, fidelity, guarantee and other sectors.

20.2 PERSONAL ACCIDENT INSURANCE (PAI)

This insurance is aiming to provide insurance coverage, i.e. fixed compensation, to the insured on accident resulting in his death or bodily injury. The accident shall be the proximate, direct and sole, cause in sustaining the death or bodily injury. Generally, the compensation becomes payable on –

- a) Death;
- b) Permanent total disablement;
- c) Partial total disablement;
- d) Temporary total disablement; and
- e) Medical expenses resulting from accident. It will be reimbursed on actual basis, if covered as an extension.

This insurance is based on utmost good faith. Although it appears like a contract of indemnity, no one shall be allowed to make profit out of it. The insured is entitled to get the actual loss caused to his life or limb. The principles of contribution and subrogation do not

have any say in this regard. However, the insured is not entitled to get the compensation if the accident is occurred –

- a) From intentional self-injury, suicide or attempted to suicide;
- b) While under the influence of intoxicating drinks or drugs;
- c) While engaging in paragliding, aviation or ballooning, other than as a passenger;
- d) Directly or indirectly caused venereal diseases or insanity;
- e) While committing any act in violation law with criminal intent;
- f) From service in the armed force;
- g) Directly or indirectly from child birth or pregnancy;
- h) From war and kindred peril and nuclear risk.

On death or bodily injury, the insured, shall give notice to the insurer within one month from the date of occurrence of accident along with supporting documents like – postmortem report, percentage of disablement, hospitalization etc, from the certifying surgeon. In the event of any difference in respect of amount of loss, it will be settled through arbitration and any dispute, in this behalf, may be redressed in a court of law by filing a suit within one year from the date of disclaim of liability.

The premium will be determined considering the occupation pursued by the insured. The policy will be in force, for a period of one year, around the clock and around the world. A person who is between the age group of 5 years – 70 years are eligible to purchase this policy. However, it may be renewed from time to time. However, the policy may be cancelled by issuing a notice in writing. In such event the insurer shall return a pro-rata part of the premium. The insured can assign the policy amount and not the policy. Group Personal Accident Insurance coverage may be availed by the employer, associations, societies clubs etc.

20.3 HEALTH INSURANCE

Health insurance was in vogue even before the nationalization of insurance business. Originally it was extended to large corporate clients. There were no schemes for individuals and families. The scheme, with limited coverage, was offered in 1981, which was replaced in 1986 by introducing medi-claim policy with sub-limits like room and boarding, doctor's fees, medicine etc. This scheme further modified in 1996 and removed the sub-limits. In 2006, on the advice of the medical fraternity and the public, the scheme further rationalized, suiting to

present conditions and introduced sub-limits under different sections. Today, the advantage of this scheme is available on the basis of family and group.

The health insurance policy is aiming to provide reimbursement of hospitalization/domiciliary expenses for illness/disease suffered or accidental injury sustained during the currency of the policy. People between the age group of 5 years to 75 years are eligible to go for this policy. However, children between the ages of 3 years to 5 years may avail this facility provided one or both parents are covered under this policy concurrently. The group health insurance may be availed by any group/association/institution/corporate body provided it has central administration point and subject to a minimum number of persons to be covered. However, unnamed cover is not allowed.

Today, health insurance scheme is being promoted through Third Party Administrators (TPA), who acts as a conduit between the insurer/s and the insured/s. On entering into Memorandum of Understanding (MoU) with the hospitals or health service providers TPA's ensures that the health care is available on cashless basis. They offer insurance service, as intermediaries, by coordinating with the hospitals and finalize the health claims. TPA's undertake health insurance business promotion, obtaining license, for a fee or remuneration. Health insurance coverage encompasses around the clock and worldwide service.

20.4 BURGLARY INSURANCE

This policy is designed to save the commercial establishments, factories, warehouses, shops etc, from the loss or damage caused by burglary. The term burglary means and includes house breaking, theft, robbery and dacoity. However, a separate scheme is launched for residential premises. The policy will be in force for a period of one year, but it may be renewed from time to time. The premium will be determined on percentage basis i.e. percent of sum assured and the rate of premium varies according to the types of goods, location and construction of premises, security measures etc. the insured owes a duty to take reasonable care of property insured. In the event of loss or damage, due to burglary, the insured shall give immediate notice to the police and a notice of claim, within 7 days from the date of commission of burglary, to the insurer indicating the circumstances of loss or damage which made the insured to make the claim, estimate of intrinsic value of each article lost and the amount of damage sustained. The insured shall extend all cooperation to the insurer in apprehending the culprit and mitigating the loss to the property insured. Further, he shall

desist from making any fraudulent claim. On the receipt of notice, the insurer shall take needful step to apprehend the guilt and to recover the property from such person apart from reinstating, replacing or repairing the property or premises. The insurer is obligated to make good the loss either to the extent of loss or damage sustained or the intrinsic value of the property. On the settlement of claim the insurer entitled for subrogation and salvages. In the presence of more than one policy on the same property the insurer can ask for contribution ratably. The burglary insurance policy may be assigned only with the assent of the insurer.

20.5 BAGGAGE INSURANCE POLICY

A person, on tour, may take the advantage of this policy to save his bag and baggage from fire, riot, strike, terrorist activity, theft, accident etc. The insurance coverage under this policy is extended, limiting only, to the items specified in the schedule of the policy and to the extent of sum insured on each item. Nonetheless, the insurer is not liable to the loss or damage –

- a) Occurred during the routine travel;
- b) To articles which do not form part of the baggage when the journey commenced, unless declared and accepted by the insurer;
- c) To articles of consumable and perishable nature;
- d) Loss of articles like sticks, umbrella etc.
- e) Property in use on the voyage or journey;
- f) Articles or clothes while being worn or carried about;
- g) Arising from leakage, spilling of liquid, oils etc;
- h) Such other item which are specifically detailed in the policy.

20.6 MONEY INSURANCE POLICY

It is just a modified version of burglary insurance. This policy is introduced to save the money in transit, i.e. between the insured's premises and the bank or post office or any other place specified, or money in safe from the hands of burglars. The premium will be determined on the basis of distance from the source point to delivery point, subject to the

adjustment on expiry of the policy or on the percentage of sum assured. Procedures of claim are just on par with the burglary insurance.

20.7 FIDELITY INSURANCE

It is a contract wherein the insurer agrees to indemnify the insured against loss arising from the want of honesty, integrity or fidelity of an employee or other person holding the position of trust. Generally, the insured and the person whose fidelity is insured stand to each other in relation of employer and employee. The policy of fidelity is intending to protect the insured against the contingency of breach of fidelity on the part of a person in whom the confidence is reposed. The employer shall take all the necessary measures to control and to supervise the activities of the employee concerned including securing of proper accounts. He shall intimate, forthwith, any change in the nature of employment/duty of the employee concerned. On the discovery of commission of any act in-derogation of the subject matter of the policy, the employer shall issue preliminary notice, in this behalf, to the insurer. Within three months of initial notice the insured shall lodge the notice of claim along with full particulars and evidence to the satisfaction of the insurer. The insurer may reserve the right to initiate criminal prosecution against the defaulting employee. The loss to be made good in respect of the defaulting employee shall not exceed the amount of indemnity stated in the schedule of the policy. This insurance may be subjected to subrogation and contribution. The insurer may withdraw the policy at any time by returning the premium, on demand, in correspondence to the unexpired period of the policy. The period of policy shall be one year or less than one year. However, the tenure of the policy may be renewed. The factors affecting the determination of premium are –

- a) The amount of guarantee;
- b) Type of occupation; and
- c) The system of check and method of supervision.

Generally, the premium under this policy is levied as a rate percent of the sum guaranteed.

On the settlement of the claim the insurer may at the end -

1. Cancel the policy;
2. Delete the defaulting employee, in case of collective policy;

3. Put an end to the insurance coverage in respect of defaulting employee, in case of floating policy; and
4. Initiate criminal prosecution against the defaulting employee.

20.8 BANKERS' BLANKET INDEMNITY INSURANCE

The policy is aiming to secure any direct loss of money or securities in the premises/transit - either by virtue of forgery/alteration/dishonesty of any employee in respect of hypothecated goods, registered postal sending or of an appraiser etc, - sustained by the insured. The policy period is of twelve months, which begins and ends with the financial year of the insured bank. The premium will be determined by having regard to - (i) sum insured; (ii) total number of employees employed in the bank insured; (iii) Number of branches brought under the policy; and (iv) nature and method of supervision and control. Generally, the investigation and assessment of claim will be entrusted to a qualified chartered accountant who have obtained license to assess the insurance claims. On discovery of loss to the money or securities the insured shall give immediate preliminary notice to the insured within 24 hours, followed by the notice of claim - within 14 days - along with the particulars to the satisfaction of the insurer, and lodge the complaint in the nearest police station including a step to apprehend the guilt and recovery of the property lost. On purchase of the policy, the insured bank shall take step to secure the chest and strong room by deploying adequate security.

20.9 JEWELERS' BLOCK INSURANCE

This policy is designed to bailout the diamontaires i.e. such establishments dealing with exclusively in diamond. Retailers and wholesalers may take the advantage of this policy. However, pawn broking establishments, cutters, goldsmiths' etc. jewellery gold, silver ornaments, plates, pearls, precious stones etc. and office furniture and fixtures used in the business premises may be insured under this policy. The premium will be determined depending upon the nature and value of property. Any occurrence of loss shall be brought to the notice of the insured within 24 hours and the notice of claim along with the particulars to the satisfaction of the insurer shall be filed in the office the insurer within 14 days, apart from lodging a complaint at the nearest police station including a step to apprehend the guilt and recovery of the property lost.

20.10 PEDAL CYCLE INSURANCE

The loss or damage caused to the pedal cycle will be made good under this policy. However, the loss or damage shall be sustained either by accident or by theft. Natural wear and tear, mechanical breakdown and the like is not covered under this policy. Personal Accident Benefit will be extended on the payment of extra premium.

20.11 PLATE GLASS INSURANCE

The plate glasses affixed in the show room, business premises, commercial establishments etc, are covered under this policy. Any breakage caused to plate glass due to fire or explosion or earthquake etc is not covered under this policy in the absence of specific provision in the policy. The rate of premium depends upon the type of glass, situation, previous experience and neighborhood. The insurer shall have the option to bear the intrinsic value of the broken glass up to the amount specified in the policy against the relevant item or to make replacement by glass of similar manufacture and quality.

20.12 MISSING DOCUMENT INSURANCE

In the event of damage or fading or misplacement or mutilation of original share certificates, bank deposit receipts, insurance policy bond etc. the holder need not be under fear of loss or fallen into wrong hands, the document insurance will take care of it. The authorities concerned will issue the duplicate documents without any hesitation if such certificates /papers are having the insurance coverage.

20.13 SPORTS INSURANCE

This insurance offers coverage to amateur sportsmen in respect of their equipments, accessories, sporting apparels, personal accident risks etc. Any loss caused by fire, burglary, housebreaking or theft to any of these items would be made good, if it is brought under the

policy. However, it does not cover watches, jewellery, money, securities, documents and the like. Person who is under the age group of 17 to 70 years may avail the benefit of this insurance.

20.14 TELEVISION INSURANCE

The television is now having insurance coverage. The perils, prone to television, like - fire, lightening, short circuiting, flood, hurricane, bursting etc, will be undertaken in this insurance.

20.15 SHOPKEEPERS INSURANCE

This insurance is devised to meet the needs of small shopkeepers. The sum insured in this policy generally shall not exceed Rs.1 crore. The items covered under this policy spread to eleven sections, which includes loss or damage - to building/contents (excluding money and valuables); pedal cycle; neon sign/glow; personal baggage; personal accident; fidelity guarantee; business interruption - caused by fire, lightening, earthquake, gas explosion, burglary etc. The premium will be determined on the basis of the sum insured, the type and number of sections covered under the policy. The insured is required to take reasonable care to protect the property insured. In case of any loss or damage the insured shall give immediate notice to the insurer, complaint to the police and submit full particulars, within 14 days from the date of occurrence, to the satisfaction of the insurer. The principles of subrogation and contribution will have its say in this regard. Householders Insurance also runs on the similar lines.

20.16 SPECIAL CONTINGENCY INSURANCE

Today, commercial world is witnessing new set of business lines, demanding completely different insurance requirement. It appears just as a deviation from the traditional approach. The insurers are expected to structure the policies suiting to their individual needs to facilitate them to undertake the new challenges. Thus, 'one solution fit all' attitude is gradually taking back seat. Keeping in mind the market trends and customer's expectations the insurers came out with special perils/ special contingency covers. Quite a few of them are as under –

- a) Machinery / equipment Insurance;
- b) Total abandonment of an arranged cricket match;
- c) Identity theft cover;

- d) Money policy to individuals for withdrawals from ATMs;
- e) Kidnap and ransom insurance;
- f) Intellectual property insurance like patents, trademark, copy right;
- g) E- Commerce insurance/web business insurance e.g. protection against crime, hacking, or compromised data in an e-commerce insurance policy;

20.17 AGRICULTURAL INSURANCE

India is a land of villages, farmers are its backbone and nearly 60% of people are finding their bread in agriculture. Pursuing agriculture, with perseverance, in climatic adversaries is an upheaval task as he has to gamble with monsoon and the market every time. A good harvest needs reliable monsoon i.e. adequate rain/water, serene air and better sunshine. In the midst the pest, diseases, weeds, wild animal and the market decide the fate of a farmer. If all these agents acts farmer friendly not only he but also agro based industries, consumer and ultimately the Indian economy is saved. In view of this and in discharge of constitutional obligation the Government comes with National Agricultural Insurance Scheme (NAIS) (Rastriya Krishi Bima Yojana – RKBY),1999.

Objectives: The objectives of the Scheme is to –

- a) Provide insurance coverage and financial support to farmers in the event of failure of any notified crop as a result of natural calamities, pests and diseases.
- b) Encourage the farmers to adopt progressive farming practices, high value in-puts and higher technology in agriculture.
- c) Help to stabilize farm incomes, particularly in disaster years.

Salient features of the scheme: The scheme is aiming to cover such crops in respect of which

–

- 1) The past data based on Crop Cutting Experiments (CCEs) is available for adequate number of years.
- 2) Requisite numbers of CCEs are conducted for estimating the yield during the proposed season –
 - Food crops – cereals, millets and pulses.
 - Oil seeds.

- Sugar cane, cotton and potato (annual commercial/ annual horticultural crops)

Other annual commercial/ annual horticultural crops subject to availability of past data will be covered in a period of three years. However, the crops which will be covered next year will have to be spelt before the close of preceding year.

Beneficiaries of the scheme: The benefit of the scheme is optional. Any States/ Union Territories of India may opt it. Once the option is exercised it shall, continue with the scheme at least for a minimum period of three years, undertake all the crops identified for coverage in a given year. Any farmer including share croppers, tenant farmers, who is growing the crop notified in a notified area alone is entitled to stand as a beneficiary of the scheme. The scheme classified the farmers, for the purposes of coverage, on a –

- a) Compulsory basis – all farmers growing notified crops and availing Seasonal Agricultural Operations (SAO) loans from the financial institutions i.e. loanee farmer; and
- b) Voluntary basis – all other farmers growing notified crops (i.e. Non-loanee farmers), who opt for the scheme.

The insurers are held responsible to compensate the loss when it is occurred due to – natural fire and lightening; storm, hailstorm, cyclone, typhoon, tempest, hurricane, tornado; flood, inundation and landslide; drought, dry spells; and pests/diseases. However, the insurers are absolved from making good the loss when such loss is arising out of war and nuclear risks, malicious damage and such other preventable risks.

Limitation on the sum insured: The sum insured may either be equivalent to the value of threshold yield of the crop insured or beyond the value of threshold yield level up to 150% of the average yield of notified area on the payment of premium at commercial rates.

In case of loanee farmers the sum insured shall be at least to the amount of crop loan advanced.

Further, in case of loanee farmers, insurance charges shall be an additional to the scale of finance for the purpose of obtaining loan.

In matters of crop loan disbursement procedures, guidelines of Reserve Bank of India/ NABARD shall be binding.

The rate of premium is dependent on the nature of crop and the seasons. The small and marginal farmers are entitled to avail 50% subsidy in premium.

Agricultural insurance is very wide in its scope. It encompasses good number of insurance, such as – Crop insurance; horticulture insurance /plantation insurance; sheep/goat insurance; pig insurance; poultry insurance; sericulture insurance; apiculture insurance; fresh water fish insurance; aquaculture(Shrimp/prawn) insurance; farmers' package insurance; agriculture pump - set insurance.

The determination of premium rating is generally based on various factors like reserve for unexpected heavy loss; administrative cost; moral hazard; anti-selection; escalation in scale finance/sum insured; inconsistency in yield data; profit margin. The insurance claims will be settled by the implementing authority after the receipt of yield data from the State/Union Territory Government. General Insurance Corporation is act as Implementing Authority.

Modified National Agricultural Insurance Scheme (MNAIS): The ongoing NAIS has been reviewed and modified to make it more farmers friendly. It has been launched as a pilot in selected States/UTs. In addition to payment of claims for yield loss on area approach basis (as under NAIS), its other features include:

1. Unit area of insurance reduced to village/village panchayat level for major crops
2. Minimum number of CCEs required to be conducted at village/village Panchayat level reduced to four (except groundnut crop)
3. Threshold yield based on average yield of the preceding 7 years excluding upto 2 calamity years declared by concerned government/authority
4. Indemnity payment for Prevented sowing/planting risk
5. Coverage of Post harvest losses due to coastal cyclone
6. On-account payment upto 25% advance of likely claims as immediate relief
7. Minimum Indemnity Level (IL) is raised to 70%
8. Uniform seasonality disciplines both for loanee & non-loanee farmers
9. Private sector insurers apart from Agriculture Insurance Company (AIC) of India, are also permitted to implement the scheme with the aim of creating a competitive market for crop insurance to enable the farmers to insure their crops at reasonable premium rates.

Crop insurance and weather based crop insurance: Crop insurance is a means of protecting the agriculturist against financial losses due to uncertainties that may arise from crop failures/losses arising from named or all unforeseen perils beyond their control. Weather

Based Crop Insurance aims to mitigate the hardship of the insured farmers against the likelihood of financial loss on account of anticipated crop loss resulting from incidence of adverse conditions of weather parameters like rainfall, temperature, frost, humidity etc

Micro insurance: Micro insurance is the protection of low -income people against specific perils in exchange for regular premium payments proportionate to the likelihood and cost of the risk involved. Low-income people can use micro insurance, where it is available, as one of several tools (specifically designed for this market in terms of premiums, terms, coverage, and delivery) to manage their risks.³ In India, it is often assumed that a micro insurance policy is simply a low -premium insurance policy. This is not so. There are a number of other important factors. Low-income clients often:

- a. Live in remote rural areas, requiring a different distribution channel to urban insurance products;
- b. Are often illiterate and unfamiliar with the concept of insurance, requiring new approaches to both marketing and contracting
- c. Tend to face more risks than wealthier people do because they cannot afford the same defenses. So, for example, on average they are more prone to illness because they do not eat as well, work under hazardous conditions and do not have regular medical check -ups;
- d. Have little experience of dealing with formal financial institutions, with the exception of the National Bank of Agriculture and Rural Development (NABARD) Linkage Banking program;
- e. Often have higher policyholder transaction costs. Thus middle-class, urban, policyholder can send a completed claims form to an insurance company with relative ease: a quick call to the insurance company, receipt of the claims form by post, and then return of the form by post. For a low-income policy holder, submitting a claims form may require an expensive trip lasting a day to the nearest insurance office (thereby losing a day of work), obtaining a form and paying a typist to type up the claim, sending in the claim, followed by a long trip back home. Aside from the real costs of doing this, the low –income policyholder may be uncomfortable with the process; clerks and the other officials are often haughty with such low-income clients and can make clients feel ill at ease.
- f. Designing micro insurance policies requires intensive work and is not simply a question of reducing the price of existing insurance policies.

20.18 SUMMARY

Hitherto, the scenario of insurance market was confined to conventional insurance business. Today, the features of insurance business have been changed altogether. The insurers have laid their hand on health, sports, agriculture, fidelity, guarantee and other sectors. Although it was being treated as sundry business when compared to other insurance sector, nowadays it is forming as a major chunk of the insurance industry. This unit outlines the attributes of various insurance plans available in these sectors.

20.19 KEY WORDS

1. Burglary
2. Fidelity
3. Bankers' Blanket Indemnity
4. Pedal Cycle
5. Plate Glass
6. National Agricultural Insurance Scheme (NAIS) (Rastriya Krishi Bima Yojana – RKBY)
7. National Bank of Agriculture and Rural Development (NABARD)
8. Modified National Agricultural Insurance Scheme (MNAIS)
9. Seasonal Agricultural Operations (SAO)
10. Crop Cutting Experiments (CCEs).

20.20 SELF ASSESSMENT QUESTIONS

1. Outline the features of National Agricultural Insurance Scheme (NAIS).
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2. How a person can find security against the treat of deception and burglary? Discuss
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.....
3. Write note on –
 - a. Sports Insurance
 - b. Personal Accident Insurance (PAI)
 - c. Health Insurance

20.21 REFERENCES

1. Principles of insurance law: Life - fire - marine - motor and accident: M.N.Srinivasan.
2. Modern Law of Insurance: KSN Murthy and KVS Sarma.
3. Life insurance corporation of India : Impact of privatization and performance: Sumninder Kaur Bawa.
4. Commentaries on the public liabilities insurance act 1991: G.S Karkara.
5. Insurance law: A comprehensive treatise on law of insurance covering all risks except marine insurance: Brij Nandan Singh.
6. The Law of Insurance Contracts: A. Malcolm.
7. International encyclopaedia of laws: Insurance Law: R. Blanpain.
8. Insurance law manual with IRDA circulars and notifications: Taxmann.
9. Insurance law: Relating to all risks other than marine: E.J. Macgillivray.
10. Modern insurance law: John Birds and Norma J Hird.
11. Law Relating to Marine Insurance: Mitra, B.C.
12. Law of Insurance: Jaiswal J V N
13. General Principles of Insurance Law: Hardy Ivamy E R
14. Law Relating to Insurance: Vats R M