ASI Submission to the Law Commission of India

By - S P Subhedar

1. Background

1.1 The Law Commission of India has undertaken the work of comprehensive review of insurance law for preparing a consultation paper and, in this regard, has invited the views of the public. The Actuarial Society of India (ASI) being a body of professionals closely involved in the insurance business has considered it necessary to place its views before the Law Commission of India. The submission herein is made in this perspective.

1.2 Currently the principal insurance legislation consists of:

i) Insurance Act 1938;
ii) IRDA Act, 1999;
iii) LIC Act 1956;
iv) General Insurance Business Nationalisation Act 1971;
vi) Insurance Rules 1939; and
vii) Ombudsman Rules 1998

1.3 The comprehensive review will cover this principal insurance legislation.

2. Suggested Approach

2.1 The insurance legislation in India did not keep pace with the developments in regulatory and insurance business environment in the other jurisdictions because of the state monopoly in the insurance business. The liberalisation has changed this situation and it has become necessary to review the insurance legislation in its entirety. In this respect
it has been the experience in the other jurisdictions that it is beneficial to include only the general principles and regulatory powers in the principal legislation leaving the details to sub-ordinate legislation framed by the regulatory authority. This facilitates much faster response to the emerging issues and market conditions.

3. **Structure of the Principal Legislation**

3.1 **Objective**

i) The following could be put as the regulatory objectives:

- Create an environment of trust for the public in general and the stakeholders in insurance business in particular;
- Promote development of insurance industry on sound lines;
- Protect policyholders’ interests; and
- Ensure financial viability of insurance industry and of the entities engaged in insurance business on long term basis.

The principal legislation shall lay down principles that shall ensure that these objectives are achieved. The principal legislation may have to be a single legislation to provide convenience and ensure that ambiguity is avoided.

3.2 **Definitions**

i) The definitions of insurance business were framed when the Insurance Act 1938 was enacted and need review in the context of the current environment. The definitions suggested are on the premises that the insurance business is divided into two categories, viz.:

- Long Term Business; and
- General Business

ii) These businesses could be divided into classes as follows:

Classes of Long Term Business
<table>
<thead>
<tr>
<th>Number</th>
<th>Description</th>
<th>Nature of Business</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Life</td>
<td>Effecting and carrying out contracts of insurance on human life but excluding contracts within Class 2 herein.</td>
</tr>
<tr>
<td>2.</td>
<td>Linked Long Term</td>
<td>Effecting and carrying out contracts of insurance on human life where the benefits are wholly or partly to be determined by reference to a specified index or value of the underlying assets.</td>
</tr>
<tr>
<td>3.</td>
<td>Health</td>
<td>Effecting and carrying out contracts of insurance providing specified benefits against risks of morbidity or of persons becoming incapacitated in consequence of sickness or accident, being contracts that are expressed to be effected for a period of not less than three years or until age of 60 years.</td>
</tr>
<tr>
<td>4.</td>
<td>Capital Redemption</td>
<td>Effecting and carrying out capital redemption contracts.</td>
</tr>
<tr>
<td>5.</td>
<td>Pension, Gratuity and Annuity</td>
<td>Effecting and carrying out contracts of funding superannuation schemes and gratuity schemes and contracts of annuities on human life.</td>
</tr>
<tr>
<td>6.</td>
<td>Accident</td>
<td>Effecting and carrying out contracts of insurance for a period of not less than three years or until age of 60 years providing fixed pecuniary benefits against risks of the person insured-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>a) Dying as the result of accident; or</td>
</tr>
<tr>
<td></td>
<td></td>
<td>b) Becoming incapacitated in consequence of accident.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>c) Sustaining injury as a result of an accident.</td>
</tr>
</tbody>
</table>
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#### Classes of General Business

<table>
<thead>
<tr>
<th>Number</th>
<th>Description</th>
<th>Nature of Business</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Fire Insurance</td>
<td>Effecting and carrying out contracts of insurance against loss of or damage to property – other than covered under classes B to E below – due to fire, explosion, storm, other natural forces, nuclear energy or land subsidence or due to any other event.</td>
</tr>
<tr>
<td>B</td>
<td>Marine Cargo</td>
<td>Effecting and carrying out contracts of insurance against loss of or damage to merchandise, cargo and all other goods in transit irrespective of the form of transport and risks in addition to or as incidental to such transit.</td>
</tr>
<tr>
<td>C</td>
<td>Marine –other than Cargo</td>
<td>Effecting and carrying out contracts of insurance upon vessels used on sea or on inland waters or upon machinery, tackle, furniture or equipment of such vessels as also against damage arising out of or in connection with use of such vessels, including third party risks and carrier’s liability.</td>
</tr>
<tr>
<td>D</td>
<td>Motor Vehicles</td>
<td>Effecting and carrying out contracts of insurance against loss of or damage to vehicles to used on land – including railway rolling stock – damage arising out of or in connection with the use of vehicles on land including third party risks and carrier’s liability.</td>
</tr>
<tr>
<td>E</td>
<td>Aviation</td>
<td>Effecting and carrying out contracts of insurance upon aircraft or upon machinery, tackle, furniture or equipment of aircraft as also against damage arising out of or in connection with use of aircraft, including third party risks and carrier’s liability.</td>
</tr>
<tr>
<td>F</td>
<td>General Liability</td>
<td>Effecting and carrying out contracts of insurance against risks of the persons insured incurring liabilities to third parties, risks being other than those covered under classes C to E above.</td>
</tr>
<tr>
<td>G</td>
<td>Accident &amp; Health</td>
<td>Effecting and carrying out contracts of insurance, as in classes 3 and 6 of the long-term insurance business, for a period of three years or less.</td>
</tr>
<tr>
<td>H</td>
<td>Miscellaneous General Insurances</td>
<td>Effecting and carrying out contracts of insurance, which are not principally or wholly of any kind or kinds included in classes A to G above.</td>
</tr>
</tbody>
</table>
3.3 **Establishment of the Regulatory Authority**

i) This will provide for the aspects covered in the IRDA Act 1999:

- Chapter II – In respect of establishment of the Authority and the set up of the Authority;
- Chapter IV – Duties, Powers and Functions of the Authority;

**Suggestions**

- In sub-clause (k) of clause (2) of section 14, the word ‘regulating’ may be replaced by ‘prescribing investment pattern and monitoring of’
- Sub-clause (o) of clause (2) of section 14 envisages contribution of specified percentage of premium income of the insurers to finance schemes for promoting and regulating professional organisations. In this provision, the ‘premium income’ may be defined as ‘surplus / underwriting profits’
- In managing its affairs, the regulatory authority must have regard to such generally accepted principles of good corporate governance as it is reasonable to regard as applicable to it.

- Chapter V – Finance, Accounts and Audit of the Authority; and
- Chapter VI – Miscellaneous – covering Sections 18 to 29 of the Chapter.

**Suggestions**

- In clause (2)(b) of section 19, there is a reference to “Controller of Insurance. This office has not been defined in the IRDA Act 1999. The words ‘Controller of Insurance’ may be replaced by ‘the official nominated by the Central Government who shall be designated as Controller of Insurance’.
- In clause (2) of section 25, accounting and actuarial profession also need to be included.
- The need for proviso to section 29 may be examined.
- In the proposed unified insurance legislation, provisions of section 30, 31 and 32 would not be required.
- Powers of the Central Government to make Rules shall, inter alia, may allow for

i) Rules to prescribe minimum capital and nature of capital of an insurance and reinsurance company and an insurance co-operative society
ii) Maximum foreign equity that can be allowed in an insurance/reinsurance joint venture
iii) Transaction of reinsurance business without incorporating a company in India; and
iv) Insurance operations in India by a specified entity without incorporation in India or registration as an insurance co-operative society.

3.4 **Insurance Legislation:** This part may cover the provisions of insurance legislation as outlined herein:

i) No person to conduct any class of insurance business unless the registration to conduct that class of business is obtained, the exceptions being the Central and State Governments or other entities so permitted by the Central Government;

**Suggestions**

- The provisions of section 2C of the Insurance Act 1938 are adequate except that the issue of how to allow co-operative societies in the insurance business will have to be addressed.

ii) Capital structure of insurance companies and insurance co-operatives and voting rights;

**Suggestions**

- Clause 2(b) of section 95 of the Insurance Act 1938 defines ‘Co-operative Life Insurance Society’. The section does not envisage any share capital on which dividend or bonus is payable. However, section 97 of the Insurance Act 1938 envisages working capital of fifteen thousand rupees. These provisions will have to be reviewed in the context of the current environment.
- Clause (3) and Clause (4) of section 95 of the Insurance Act 1938 empowers the state government to make rules for registration and governing of co-operative societies for insurance of cattle or crop or both. This provision may have to be reviewed in the context of the experience of the banking industry in respect of the dual control of the Reserve Bank of India and the State Governments on Co-operative banks. This also may form part of the new Agricultural insurance Corporation being formed.
- It would appear that the provisions of section 6AA (1) of the Insurance Act 1938 are envisaged to be applicable to private insurance companies only and not to the state owned insurance companies or insurance co-operative societies. This may be made clear.
- In the context of the recommendations of the N.K.Singh Committee to allow foreign equity in the insurance sector up to 49 % and the inclination of the government, as reported in the press, to allow such increase, the provisions of section 6AA(1)
may have to be reviewed. Currently, most of the foreign promoters hold 26% equity in the insurance joint ventures and if they have to raise their holding beyond the limit of 26%, they will have to pay premium for acquiring such holding. If thereafter the promoter holding is required to be brought down to 26% as envisaged in current legislation, it could result in losses for the foreign promoter at the time of divestment. The current thinking about the shareholding of an Indian insurance company after ten years, viz. promoters holding 52%, 26% by Indian promoter/s and 26% by foreign promoter, with balance 48% to be widely held by the public will have to change. The unified insurance law will have to address this issue.

• The restriction on voting rights as envisaged in clause (6) of section 6A of the Insurance Act 1938 onwards may have to be reviewed in the context of present environment. It was reported in the press that the government was considering removal of the ceiling of 10% on the voting rights as it exists in the banking regulations.

iii) Registration of Insurers, which would include application for registration, criteria on which an application would be judged, granting of registration, deposit to be made with the RBI, renewal of registration and withdrawal or cancellation of registration;

Suggestions

• Now that every insurance company incorporated in India has to have a minimum paid up capital of Rs 100 crore, the provision for deposit as prescribed in Section 7 may not be considered necessary. The deposit was prescribed when the insurers were not required to have capital or the capital requirements were very low.

iv) Requirement for annual audited accounts and annual actuarial investigation. Accounts and Actuarial Investigation Report which may include general guidelines for annual accounts and balance sheet, annual actuarial investigation of company, appointment of Appointed Actuary, annual statements for classes of business transacted, audit of accounts, regulatory reporting year, separation of funds for different classes of business as required, provisions in respect deficit in policyholder funds, distribution of surplus of life insurance business

Suggestions

• Section 10 of the Insurance Act 1938 that deals with ’Separation of accounts and funds’ essentially addresses the issues that used to arise in a composite company before nationalisation of life insurance. However, now that a composite company
is not to be allowed, those provisions are not relevant. However, the proposed legislation may have to provide for separation of funds within the long-term insurance business such as shareholder fund, non-linked participating and non-participating funds, pension and annuity fund and linked funds and within the general insurance, for classes defined in the relevant section. The legislation will have to provide for earmarking of the assets separately for each of these funds as also separate revenue accounts for each of these funds or funds to be specified except the shareholder fund.

• The existing provision may be amended as: “where the insurer carries on the business of miscellaneous general insurance, whether alone or in conjunction with general business of another class, he shall keep separate account of all receipts or payments in respect of each sub-class of miscellaneous general insurance business”, as may be prescribed by the Authority in this behalf.

• Each class of general insurance business, for which a separate account is kept of the receipts and payments in terms of this section, shall be accounted on a one-year basis, except Marine-cargo and Marine –other than cargo insurances, Aviation insurance and Non-proportional reinsurance, which shall be accounted for on a three year basis.

It is the practice globally, for a majority of general insurance classes, to follow a basis of accounting that presents at the end of each period of account, the estimated underwriting result of business exposed during the accounting year. But, Marine insurance business, aviation insurance business and Goods-in-transit (transport) business globally follow a three-year accounting. In this three-year accounting, the estimated underwriting result of business written during a given underwriting year is presented. A profit cannot be struck until an underwriting year is closed after three years. This is because information on premiums and claims may take several years to develop. Non-proportional reinsurance also is accounted on this basis. Lloyd’s use it for all their syndicates.

• The principal legislation may provide only for the matters as covered in clause (1A) of section 11 of the Insurance Act 1938 and leave the details to be covered by the sub-ordinate legislation.

• The principal legislation may provide for the time-frame for submission of the annual accounts and actuarial investigation.
It will be necessary to define the regulatory reporting year.

The principal legislation may have to provide for auditing of the accounts in general with the details laid down in the sub-ordinate legislation. The regulations shall specify the requirements as to qualifications, experience and other matters in respect of auditors as may be required.

The principal legislation may provide for the time-frame for submission an annual actuarial investigation under long-term business which would be the same as prescribed for accounts as the accounts cannot be completed without completing the actuarial investigation. The principal legislation may prescribe that an actuarial investigation has to be carried out annually. The details may be covered in the subordinate legislation.

The principal legislation may prescribe the manner in which the deficits in the policyholder fund be dealt with, such as – the deficit/s where the shareholders’ funds are adequate to meet the deficit and the solvency margin could be allowed to continue / cover up the deficit/s by transfer of the required amount from shareholders’ funds to each segregated policyholder fund / hypothecate the assets of the shareholder fund to each of the policyholder fund equal to the amount of deficit in the policyholder fund / allow for subordinated loan from shareholder fund to each of the policyholder fund which could be interest free and repaid on the recommendation of the Appointed Actuary with specific approval of the regulatory authority.

Clause (1) of Section 49 of the Insurance Act 1938 prescribes that “No insurer,...........,who carries on the business of life insurance........shall, for the purpose of declaring or paying any dividend to shareholders or any bonus to the policy-holders ........utilize directly or indirectly any portion of life insurance fund or of the fund of such other class or sub-class of insurance business, as the case may be, except a surplus shown in the valuation balance-sheet.....”. In the early stages of a life insurance company when the policyholder fund is in deficit, the shareholders may, despite this, like to declare bonus to policy-holders which is financed by the shareholders. In the context of the provisions of clause (1) of Section 49 cited above, the bonus to the policyholders can be paid only out of the surplus disclosed at the valuation and for payment of bonus to the policy-holders as mentioned herein the shareholders have to transfer such an amount from the shareholder fund to the policy-holder fund as would, after meeting the deficit in
the policy-holder fund, facilitate emergence of such surplus as is necessary to declare the desired bonus. The provisions of clause (1) of Section 49 of the Insurance Act 1938 is being debated by the profession and as soon a consensus on this is evolved we shall revert back to you.

v) Guiding principles of investments and main requirements such as covered in section 27A, 27B, 27C and 27D with other details shifted to subordinate legislation;

Suggestions

The principal legislation shall cover:

- No insurer shall directly or indirectly invest outside India the funds of the policyholders in respect of or supporting domestic liabilities, without the express permission of the Authority.
- In most jurisdictions, investment of shareholders’ funds is not regulated. As such, the regulations may not prescribe any pattern for investment of shareholders’ funds except as mentioned in the next bullet point.
- The regulatory authority, shall make regulations in regard to the investment of assets representing each of the policyholder funds and that portion of the shareholder fund that is required to meet the required solvency margin on the following matters:
  i) the localisation of such assets
  ii) the currency of such assets
  iii) the concentration of such assets and
  iv) the permitted classes of investment for such assets.

- The regulatory authority shall make regulations in regard to the investment of assets representing each of the policyholder funds and that portion of the shareholder fund that is required to meet the solvency margin, on the following matters:
  i) the time manner and other conditions of investment of such assets and
  ii) the information to be provided to the regulatory authority in regard to such assets.

At present, there is an invitation to show investment income for each class of general insurance business in the corresponding revenue account but is not consistently being filled up by the industry. The underwriting losses being shown do not represent the true nature of profitability of the class of business, as the income/gains earned on the technical reserves of the policyholders do not get reflected. (In general insurance, investment income is not, under all classes, a
factor built into the costing of premiums and so the investment income actually earned is taken to the shareholders’ funds. In one way, this positive investment return and the negative underwriting result get netted and the shareholders are responsible to meet the net deficit in each class) This can be ensured through subordinate legislation, provided enablement is made in the principal legislation.

As such, principal legislation shall require the investment returns, on the assets allocated or deemed as allocated to each general insurance class of business for which separate accounts are maintained, included in each Revenue Account to reflect a true and fair view of each such class of business.

vi) Margins of solvency, consequences of failure to maintain the required solvency margin;

Suggestions
The principal legislation shall cover:

• Every insurer shall at all times ensure that the value of assets attributable to each of the policyholder funds is at least equal to value of the liabilities in respect of that fund. For the purposes of this section the value of assets and liabilities will be determined in accordance with the regulations made for this purpose by the regulatory authority.

• Every insurer shall maintain a margin of solvency of such amount as may be determined in accordance with the regulations made by the regulatory authority.

• An insurer that fails to comply with the above requirements shall:
  i) submit to the regulatory authority a plan for the restoration of a sound financial position;
  ii) propose modifications to the plan or a previously modified plan, if the regulatory authority considers it inadequate;
  iii) put into effect any plan accepted as adequate by the regulatory authority.

vii) Powers of intervention in the affairs of insurers by the regulatory authority, power to impose requirements for protection of policyholders;

Suggestions
• The powers of intervention could cover the provisions similar to those of sections 31B, 33, 34 B, 34 C, 34E, 34G and 34 H of the Insurance Act 1938.
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- In order to protect the interests of the policyholders, provisions may be made similar to those of section 52A to 52D of the Insurance Act 1938, except that an administrator could be appointed by the regulatory authority without involving the Central Government. In this regard, intervention in the affairs of an insurance company or an insurance co-operative society shall not be guided by the provisions of any other legislation, except the Insurance Act.

viii) Amalgamation / Transfer of Business: To cover the transfer or amalgamation of a block of business from one insurer to another or to any other entity.

Suggestions

The broad principles of sections 35, 36, 37, and 37A may be retained, except that the powers to approve transfers and amalgamation shall lie with the Court rather than the regulatory authority, but the details shall be laid down in the sub-ordinate legislation. The broad principles shall be:

- Where it is proposed to carry out a scheme under which the whole or part of the insurance business carried on by one insurer is to be transferred to another, the scheme must receive the prior approval of the Court. Either of the insurers involved may seek the approval of the Court.

- The Court shall not consider an application for approval of such a scheme unless the application is accompanied by a report on the terms of the scheme to ensure that the interests of the existing policyholders were not compromised.

- The regulatory authority shall make regulations as to the information that must be provided as part of the application for approval.

- The court must be satisfied that any such scheme does not disadvantage any of the groups of policyholders that are affected by the transfer either directly or indirectly, before it grants approval.

- The Court shall not sanction the scheme unless it is satisfied that the transferee company is, or immediately after the making of the order will be, authorised to carry on the business transferred under the scheme.

- The competent court to pass such order could be the court not lower than the High Court of a state.
ix) Winding up provisions

Suggestions

Sections 53, 53A, 54, 55, 56, 57, 58, 59, 60 and 61 can be retained broadly as those are, but with the following suggested changes:

• Section 53 (2)(a) :Increase the required number of policyholders to 500 and the total value of their policies to be at least Rs 1 crore, with value being defined as surrender value.

• Section 55: The rule contained in the seventh schedule be moved into the main text to give it greater prominence.

• Section 56: An actuary approved by the Court to advise the Court on a variety of schemes to distribute the surplus to the policyholders.

• Section 60: Policy values to be determined by an actuary approved by the Court.

• Section 61: An actuary approved by the Court to advise the Court on a variety of schemes to reduce the benefits of contracts.

x) Management of insurers- ‘Fit and Proper’ persons, approval of proposed CEO of insurer, introduction of independent directors instead of policyholders’ directors, requirement of an Appointed Actuary;

Suggestions

• Without prejudice to the provisions of the Companies Act 1956, the principal legislation may lay down the minimum number of directors that an insurance company shall have

• The directors of an insurance company shall be persons of ability, integrity and standing, shall not have been found guilty of moral turpitude or convicted of any economic offence or violation of any securities laws or Securities Exchange Board of India (Mutual Fund) Regulations 1996 and shall not have been working for or be director of any financial services provider whose registration had been suspended or cancelled any time by the relevant regulatory authority. The appointment of directors shall be with prior approval of the regulatory authority
The concept of policyholders’ director may be dispensed with and instead the concept of independent directors be introduced. The ‘independent’ status could be defined as not having any association with the promoters or their subsidiaries in any manner whatsoever.

The principal legislation shall also lay down number of independent directors in relation to the total strength of the board of directors as also stipulate the absolute minimum number of independent directors.

The key personnel of an insurance company shall not have been found guilty of moral turpitude or convicted of economic offence and shall not have been working for any financial services provider whose registration had been suspended or cancelled any time by the relevant regulatory authority.

The requirements in respect of the CEO and Managing Director may be similar to those provided for in sections 34A and 34B of the Insurance Act 1938.

Every insurer shall appoint an Actuary, designated as Appointed Actuary, in the manner prescribed by the regulatory authority in the subordinate legislation. The regulatory authority may also lay down the functions of the Appointed Actuary who shall carry out those functions as per the guidance provided by the ASI.

Suggestions

The principal legislation may stipulate that regulations may be made as to the form and contents of advertisements. Regulations made, may make different provision in relation to insurance advertisements of different classes or descriptions. For the purpose of regulations “insurance advertisement” shall mean an advertisement inviting persons to enter into or to offer to enter into contracts of insurance, and an advertisement which contains information calculated to lead directly or indirectly to persons entering into or offering to enter such contracts shall be treated as an advertisement inviting them to do so. Any person who, by
any statement, promise or forecast which he knows to be misleading, false or deceptive, or by any dishonest concealment of material facts, or by the reckless making, dishonestly or otherwise, of any statement, promise or forecast which is misleading, false or deceptive, induces or attempts to induce another person to enter into or offer to enter into any contract of insurance with an insurance company shall be guilty of an offence

- In respect of appointment/licensing of intermediaries the principal legislation may lay down the general principles and the details be left to be covered in the sub-ordinate legislation. It may be considered whether the principal legislation shall allow for claw back of remuneration from an intermediary. It may also be considered whether provisions of section 44 be retained

- It may be considered whether the provisions of section 41 be retained in its present form or allow an intermediary to forego his remuneration up to a certain percentage for improving the customer’s benefits

- The limitation of expenditure on commission and expenses of management be shifted to sub-ordinate legislation

- The principal legislation may provide for right to withdraw from transaction in respect of life insurance business, i.e. “Free Look”. Sections 76 and 77 of the insurance Companies Act, 1982 of the UK deal with this practice.

- The principal legislation may have provisions similar to those of section 45 of the insurance Act 1938 regarding suppression of material information by the proposer.

xii) Provisions regarding protection of policyholders’ interests

- Apart from the existing provisions in the insurance legislation, both principal and sub-ordinate, for protection of policyholders’ interest, it may be considered whether the principal legislation should provide for imposition of an industry level levy on the insurers to generate funds required for restoration, say of 80 % or 90 %, of the benefits of the policyholders of the company that would get liquidated.

- In the UK, the Policyholders Protection Act 1975 provides for establishment of a statutory body, the Policyholders Protection Board to administer the protection scheme. The provisions of the Policyholders Protection Act requires the Board to
secure the payment of 90% of any amounts outstanding under long term policies to individual policyholders at the beginning of a liquidation. Broadly, the Board is to secure continuity of insurance to 90%, or if this proves impossible, to pay the policyholder a sum equivalent to 90% of the value of his policy. The Board’s expenditure is financed principally by levies on authorised insurance companies. There are separate levies for general and long term business. The general business levy is raised on companies’ net UK premium income for all classes of general business except marine, aviation and transport insurance business and reinsurance. The long term business levy is raised on companies’ premium income from the UK long term policies effected after 31st December 1974. Neither levy may exceed 1% of the premium income liable to the levy in any one calendar year. The Board may only impose a levy to meet expenditure they have already incurred, or which they expect to incur within a year. The Board may also impose levies on intermediaries who have earned substantial commission in respect of long term business from a failed company.

xiii) Rural and Social Obligations

Suggestions

• Every insurer carrying on long-term insurance business shall in every regulatory reporting year write certain percentage of the total number of policies written by it during that year from the rural area. Such percentages shall be prescribed by the regulatory authority from time to time. The characteristic of the place as ‘rural’ shall be determined as per the provisions of the latest census report.

• Every insurer carrying on life insurance business shall in every regulatory reporting year provide life insurance cover to such number of lives from the economically weaker sections of the society, by whatever name such sections are referred to, as shall be prescribed by the regulatory authority from time to time.

• Every insurer carrying on general business shall in every regulatory reporting year shall write such volume of business from the rural area as shall generate premium income that shall bear such percentage to the total premium income of the insurer as shall be prescribed by the regulatory authority.
xiv) Criminal proceedings

**Suggestions**

- The provisions in respect of this may have to be in keeping with the current environment.

xv) Penalties

**Suggestions**

- The penalties that may have to be in keeping with the current environment.

xvi) Reinsurance

**Suggestions**

- It has been suggested that transaction of reinsurance business may be allowed without incorporation in India. Such entities shall match the domestic liabilities with domestic assets, both valued in terms of applicable regulations and shall maintain at all times a solvency margin as specified and submit annual returns and other information in the prescribed fashion.

- In respect of reinsurance ceded by the direct insurers to reinsurers, the principal legislation may only stipulate that this business shall be transacted as per the norms prescribed by the regulatory authority in the sub-ordinate legislation, including provision of accounting on one-year basis for proportional reinsurances and three-year basis for non-proportional reinsurances.

xvii) Insurance Association of India

**Suggestions**

- The Insurance Act, 1938 provides for constitution of Insurance Association of India and its two Councils, Life Insurance Council and General Insurance Council. The setting up these self regulatory bodies be totally left to the insurers and no provision therefor be considered necessary in the legislation, whether principal or subordinate.
xviii) Tariff Advisory Committee

Suggestions

- The regulator has already announced phasing out of the tariff structure in India. There will be no point in the principal legislation carrying full details of the Tariff Committee and the working norms. The Act may only provide an enablement like “The Tariff Advisory Committee that has been established after the commencement of the Insurance (Amendment) Act, 1968 shall continue to control and regulate the rates, advantages, terms and conditions that may be offered by the insurers in respect of any risk or of any class or category of risks. The Authority may, by notification in the Official Gazette, make regulations about its composition, the functions to be discharged and the procedures to be followed by the advisory Committee, as also about its powers to require information, to impose levies and control and regulate the rates, advantages, terms and conditions that may be offered by the insurers in respect of any risk, class or category of risks for a period to be specified from time to time or to cease such controls and responsibilities after a specified period.”

xix) Ombudsman

Suggestions

- Currently the Ombudsman Rules have been framed by the Ministry of Finance, Insurance Division, in terms of the powers conferred by sub-section (1) of section 114 of the Insurance Act 1938. This was possibly because there is no specific provision in the Insurance Act 1938 enabling establishment of the office of Ombudsman. It would, however, be appropriate to make provision in the principal legislation for framing of “Ombudsman Scheme” as it is desirable that the scheme is operated under the provisions of the principal insurance legislation. The Financial Services and Markets Act 2000 of the UK provides for establishment of a body by the Financial Services Authority to operate the “Ombudsman Scheme”.

4. Provisions in Respect of LIC:

4.1 The necessary definitions from the LIC Act may be carried over to the principal legislation.

i) Establishment of Life Insurance Corporation of India:
Suggestions

• Section 3 of the LIC Act may be retained.

ii) Constitution of the Corporation:

Suggestions

• Section 4 of the LIC Act may be retained.

iii) Capital of LIC:

Suggestions

• The capital requirement of LIC shall be brought in line with those required of all other life insurers and reinsurers. Section 5 of the LIC Act may be retained if it is necessary to maintain the historic legislation.

iv) Functions of LIC:

Suggestions

• Section 6 of LIC Act may be retained.

• Section 6A of the LIC Act may be reviewed with a view to not carrying it into the principal legislation.

v) Transfer of existing life insurance business to LIC:

Suggestions

• If it is considered necessary to maintain the historic legislation then sections 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 33, 34, 35, 36, 39, 40, 44, and 45 may be retained but need to be modified to make clear that these only apply to life insurance business existing on the “appointed day”.

vi) Penalty for withholding property as envisaged in section 40 of the LIC Act

Suggestions

• This may be retained.

vii) The powers of Central Government to make regulations applicable specifically to LIC.
Suggestions

• This may be retained.

viii) Exemptions from the provisions of the principal legislation and special treatment

Suggestions

All provisions of the principal legislation shall by default apply to the LIC, however if the LIC is to be given any special treatment then this shall be specifically mentioned. Special treatment might cover:

• distribution of surplus
• utilisation of business other than life insurance
• LIC policies to be guaranteed by the Central Government
• Winding up
• Legal protection of members and employees of LIC

ix) Management of LIC

Suggestions:

• Section 48 and 49 of LIC Act may be retained
• Chapter V, Sections 32 and 46 may be moved to the LIC Regulations.

5. Provisions in Respect of GIC and Four State Owned Companies

As the new National Re and the four PSU general insurers have been separated in August 2002, no further action is necessary in the new Act.
About the Author:

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Mr Subhedar is Fellow, Actuarial Society of India and has retired as Managing Director from LIC of India. He is the former President of ASI and Insurance Institute of India. He is also a member of IRDA Advisory Committee and CII Insurance Committee.