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THE INSURANCE ACT, 1938¹

[AS AMENDED BY INSURANCE (AMENDMENT) ACT, 2002]

[4 of 1938]

An Act to consolidate and amend the law relating to the business of insurance

Whereas it is expedient to consolidate and amend the law relating to the business of insurance; it is hereby enacted as follows: -

PART I

Preliminary

Short title, extent and commencement.

1. (1) This Act may be called Insurance Act, 1938².
- (2) It extends to the whole of India.
- (3) It shall come into force on such date³ as the Central Government may, by Notification in the Official Gazette, appoint in this behalf.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context, -

- (1) “actuary” means an actuary possessing such ^{3a}[qualifications as may be specified by the regulations made by the Authority];

⁴[(1A) “Authority” means the Insurance Regulatory and Development Authority established under sub-section (1) of section 3 of the Insurance Regulatory and Development Authority Act, 1999;]

- (2) “policy-holder” includes a person to whom the whole of the interest of the policy-holder in the policy is assigned once and for all, but does not include an assignee thereof whose interest in the policy is defeasible or is for the time being subject to any condition;

- (3) “approved securities,” means-

- (i) Government securities and other securities charged on the revenue of the Central Government or of the Government of a State or guaranteed fully as regards principal and interest by the Central Government or the Government of any State;

- (ii) debentures or other securities for money issued under the authority of any Central Act or Act of a State Legislature by or on behalf of a port trust or municipal corporation or city improvement trust in any Presidency-town;

- (iii) shares of a corporation established by law and guaranteed fully by the Central Government or the Government of a State as to the repayment of the principal and the payment of the dividend;

- (iv) securities issued or guaranteed fully as regards principal and interest by the Government of any Part B State and specified as approved securities for the purposes of this Act by the Central Government by notification in the Official Gazette; and

- (4) “Auditor” means a person qualified under the Chartered Accountants Act, 1949 (38 of 1949), to act as an auditor of companies ;

(4A) "banking company" and "company" shall have the meanings respectively assigned in them in clauses (c) and (d) of sub-section (1) of Section 5 of the Banking Companies Act, 1949 (10 of 1949);

(5) "certified" in relation to any copy or translation of a document required to be furnished by or on behalf of an insurer or a provident society as defined in Part III means certified by a principal officer of such insurer or provident society to be a true copy or a correct translation, as the case may be;

(5A) "chief agent" means a person who, not being a salaried employee of an insurer, in consideration of any commission-

(i) performs any administrative and organising functions for the insurer, and

(ii) procures life insurance business for the insurer by employing or causing to be employed insurance agents on behalf of the insurer;

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

(6) "Court" means the principal Civil Court of original jurisdiction in a district and includes the High Court in exercise of its ordinary original civil jurisdiction;

(6A) "fire insurance business" means the business of effecting, otherwise than incidentally to some other class of insurance business, contracts of insurance against loss by or incidental to fire or other occurrence customarily included among the risks insured against in fire insurance Policies;

(6B) "general insurance business" means fire, marine or miscellaneous insurance business, whether carried on singly or in combination with one or more of them;

(7) "Government security" means a Government security as defined in the Public Debt Act, 1944 (18 of 1944);

²[(7A) "Indian insurance company" means any insurer being a company-

- (a) which is formed and registered under the Companies Act, 1956 (1 of 1956);
- (b) in which the aggregate holdings of equity shares by a foreign company, either by itself or through its subsidiary companies or its nominees, do not exceed twenty-six percent paid-up equity capital of such Indian insurance company;
- (c) whose sole purpose is to carry on life insurance business or general insurance business or re-insurance business.

Explanation- For the purpose of this clause, the expression "foreign company" shall have the meaning assigned to it under clause (23A) of section 2 of the Income-tax Act, 1961 (43 of 1961);]

(8) "insurance company" means any insurer being a company, association or partnership which may be wound up under the Indian Companies Act, 1913 (7 of 1913), or to which the Indian Partnership Act, 1932 (9 of 1932), applies;

(8A) "insurance co-operative society" means any insurer being a co-operative society,-

(a) which is registered on or after the commencement of the Insurance (Amendment) Act, 2002, as a co-operative 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 under the Multi-State Co-operative Societies Act, 1984 (51 of 1984);

(b) having a minimum paid-up capital, (excluding the deposits required to be made under section 7), of rupees one hundred crores;

(c) in which no body corporate, whether incorporated or not, formed or registered outside India, either by itself or through its subsidiaries or nominees, at any time, holds more than twenty-six per cent of the capital of such Co-operative Society;

(d) whose sole purpose is to carry on life insurance business or general insurance business in India;

(9) "Insurer" means-

(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-

(i) carries on that business in India, or

(ii) has his or its principal place of business or is domiciled in India, or

(iii) with the object of obtaining insurance business, employs a representative, or maintains a place of business, in India;

(b) any body 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 authorised 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;

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

(10A) "investment company" means a company whose principal business is the acquisition of shares, stocks debentures or other securities;

(10B) "*intermediary or insurance intermediary*" shall have the meaning assigned to it in clause (f) of sub-section 2 of the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999)

(11) "life insurance business" means the business of effecting contracts of insurance upon human life, including any contract whereby the payment of money is assured on death (except death by accident only) or the happening of any

(12) "Manager" and "officer" have the meanings assigned to those expressions in clauses (9) and (11), respectively of Section 2 of the Indian Companies Act, 1913 (7 of 1913);

(13) "Managing agent" means a person, firm or company entitled to the management of the whole affairs of a company by virtue of an agreement with the company, and under the control and direction of the directors except to the extent, if any, otherwise provided for in the agreement, and includes any person, firm or company occupying such position by whatever name called.

Explanation.—If a person occupying the position of managing agent calls himself manager or managing director, he shall nevertheless be regarded as managing agent for the purposes of Sec. 32 of this Act;

(13A) "marine insurance business" means the business of effecting contracts of insurance upon vessels of any description, including cargoes, freights and other interests which may be legally insured, in or in relation to such vessels, cargoes and freights, goods, wares, merchandise and property of whatever description insured for any transit, by land or water, or both, and whether or not including warehouse risks or similar risks in addition or as incidental to such transit, and includes any other risks customarily included among the risks insured against in marine insurance policies;

(13B) "miscellaneous insurance business" means the business of effecting contracts of insurance which is not principally or wholly of any kind or kinds included in clause (6A), (11) and

(13A);

(14) "prescribed" means prescribed by rules made under this Act; and

(15) "principal agent" means a person who, not being a salaried employee of an insurer, in consideration of any commission,—

(i) performs any administrative and organising functions for the insurer; and

(iii) procures general insurance business whether wholly or in part by employing or causing to be employed insurance agents on behalf of the

(16) "private company" and "public company" have the meanings respectively assigned to them in Clauses (13) and (13-A) of Sec. 2 of the Indian Companies Act, 1913 (7 of 1913);

(17) "special agent" means a person who, not being a salaried employee of an insurer, in consideration of any commission, procures life insurance business for the insurer whether wholly or in part by employing or causing to be employed insurance agents on behalf of the insurer, but does not include a chief agent.

Interpretation of certain words and expressions

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

Appointment of Authority of Insurance.

2B. [(1) If at any time, the Authority is superseded under sub-section (1) of section 19 of the Insurance Regulatory and Development Authority Act, 1999, the Central Government may, by notification in the Official Gazette, appoint a person to be the Controller of Insurance till such time the Authority is reconstituted under sub-section (3) of section 19 of that Act
(2) In making any appointment under this section, the Central Government shall have due regard to the following considerations, namely, whether the person to be appointed has had experience in industrial, commercial or insurance matter and whether such person has actuarial qualifications.]

PART II

PROVISIONS APPLICABLE TO INSURERS

Prohibition of transaction of insurance business by certain persons.

2C. (1) Save as hereinafter provided, no person shall, after the commencement of the Insurance (Amendment) Act, 1950 (47 of 1950), begin to carry on any class of insurance business in India and no insurer carrying on any class of insurance business in India shall after the expiry of one year from such commencement, continue to carry on any such business unless he is—

(a) a public company, or

(b) a 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) a body corporate incorporated under the law of any country outside India not being of the nature of a private company:

Provided that the Central Government may, by notification in the official Gazette, exempt from the operation of this section to such extent for such period and subject to such conditions as it may specify, any person or insurer for the purpose of carrying on the business of granting superannuation allowances and annuities of the nature specified in sub-clause (c) of clause (11) of Section 2 or for the purpose of carrying on any general insurance business:

Provided further that in the case of an insurer carrying on any general insurance business no such notification shall be issued having effect for more than three years at any one time:

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

(2) Every notification issued under subsection (1) shall be laid before Parliament as soon as may be after it is issued.

(3) Notwithstanding anything contained in sub-section (1), an insurance co-operative society may carry on any class of insurance business in India under this Act on or after the commencement of the Insurance (Amendment) Act, 2002

Insurers to be subject to this Act while liabilities remain unsatisfied

2D. Every insurer shall be subject to all the provisions of this Act in relation to any class of insurance business so long as his liabilities in 3[India] in respect of business of that class remain unsatisfied or not otherwise provided for.

This Act not to apply to certain insurers ceasing to enter into new contracts before commencement of Act

2E. The provisions of this Act shall not apply to an insurer as defined in paragraphs (i) or (iii) of sub-clause (a) of clause (9) of Section 2 in relation to any class of his insurance business whether such insurer hits ceased, before the commencement of this Act, to enter into any new contracts of that class of business.

Registration

3. (1) No person shall, after commencement of this Act, being to carry on any class of insurance business in India and no insurer carrying on any class of insurance business in India shall, after the expiry of three months from the commencement of this Act, continue to carry on any such business, unless he has obtained from the Authority a certificate of registration for the particular class of insurance business:

Provided that in case of an insurer who was carrying on any class of insurance business in India at the commencement of this Act, failure to obtain a certificate of registration in accordance with the requirements of this sub-clause shall not operate to invalidate any contract of insurance entered into by him if before such date as may be fixed in this behalf by the Central Government by notification in the official Gazette, he has obtained that certificate:

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

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

(2) Every application for registration shall be made in such manner as may be determined by the regulations made by the Authority and shall be accompanied by-

(a) a certified copy of the memorandum and articles of association, where the applicant is a company and 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); or under any Act repealed thereby,] or, in the case of any other insurer specified in sub-clause (a) (ii) or sub-clause (b) of clause (9) of section 2, a 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;

- (b) the name, address and the occupation, if any, of the directors 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), or under any Act repealed thereby, and in the case of an insurer specified in sub-clause (a) (ii) of clause (9) of section 2 the names and addresses of the proprietors and of the manager in India, and in any other case the full address of the principal office of the insurer in India, and the names of the directors and the manager at such office and the name and address of someone or more persons resident in India, authorised to accept any notice required to be served on the insurer;
- (c) a statement of the class or classes of insurance business done or to be done, and a statement that the amount required to be deposited by section 7 or section 98 before application for registration is made has been deposited together with a certificate from the Reserve Bank of India showing the amount deposited;
- (d) where the provisions of section 6 or section 97 apply, a declaration verified by an affidavit made by the principal officer of the insurer authorised in that behalf that the provisions of those sections as to paid-up equity capital or working capital have been complied with;
- (e) in the case of an insurer having his principal place of business or domicile outside India, a statement verified by an affidavit made by the principal officer of the insurer setting forth the requirements (if any) not applicable to nationals of the country in which such insurer is constituted, incorporated or domiciled which are imposed by the laws or practice of that country upon Indian nationals as a condition of carrying on insurance business in that country;
- (f) a certified copy of the published prospectus, if any, and of the standard policy 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 in connection with life insurance business by an actuary that such rates, advantages, terms and conditions are workable and sound:

Provided that in the case of marine accident and miscellaneous insurance business other than workmen's compensation and motor car insurance the above requirements regarding prospectus, forms and statements shall be complied with only insofar as the prospectus, forms and statements may be available; and

- (g) the receipt showing payment of fee as may be determined by the regulations which shall not exceed fifty thousand rupees for each class of business as may be specified by the regulations made by the Authority;
- (h) such other documents as may be specified by the regulations made by the Authority.
- (2A) If, on receipt of an application for registration and after making such inquiry as he deems fit, the Controller is satisfied 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 and has fulfilled all the requirements of this section applicable to him, the Authority may register the applicant as an insurer and grant him a certificate of registration.

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

(2B) Where the Authority refuses registration; he shall record the reasons for such decision and shall furnish a copy thereof to the applicant.

(2C) Any person aggrieved by the decision of the Authority refusing registration may, within thirty days from the date on which a copy of the decision is received by him, appeal to the Central Government.

(2D) The decision of the Central Government on such appeal shall be final and shall not be questioned before any Court.

(3) Notwithstanding anything contained in sub-section (2A), in the case of any insurer having his principal place of business or domicile outside India, the Authority, shall withhold registration or shall cancel a registration already made, if he is satisfied that in the country in which such insurer has his principal place of business or domicile Indian nationals are debarred by the law or practice of the country relating to, or applied to insurance from carrying on the business of insurance, or that any requirement imposed on such insurer under the provisions of section 62 is not satisfied.

(4) The Authority shall cancel the registration of an insurer either wholly or in so far as it relates to a particular class of insurance business, as the case may be, -

- (a) if the insurer fails to comply with the provisions of section 7 or section 98 as to deposits, or
- (aa) 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
- (b) if the insurer is in liquidation or is adjudged an insolvent, or
- (c) 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
- (d) if the whole of the deposit made in respect of insurance business has been returned to the insurer under Sec. 9, or
- (e) 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
- (ee) if the Central Government so directs under sub-section (4) of Sec. 33] and the Authority may cancel the registration of an insurer-
- (f) 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
- (g) 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
- (h) if the insurer carries on any business other than insurance business or any prescribed business, or
- (i) if the insurer makes a default in complying with any direction issued or order made, as the case may be, by the Authority under the Insurance Regulatory and Development Authority Act, 1999, or
- (j) if the insurer makes a default in complying with, or acts in contravention of, any requirement of the Companies Act, 1956 (1 of 1956), or the Life Insurance Corporation Act, 1956 (31 of 1956), or the General Insurance Business (Nationalisation) Act, 1972 (57 of 1972), or the Foreign Exchange Regulation Act, 1973 (46 of 1973).

(5) When the Authority withholds or cancels any registration under sub-section (3) or clause (a), clause (aa), clause (e), clause (ee), clause (f), clause (g) or clause (h) of sub-section (4), he shall give notice in writing to the insurer of his decision, and the decision shall take effect on such date as he may specify in that behalf in the notice, such date not being less than one month nor more than two months from the date of the receipt of the notice in the ordinary course of transmission.

(5A) When the Authority cancels any registration under clause (b), clause (c) or clause (d) of sub-section (4) the cancellation shall take effect on the date on which notice of the order of cancellation is served on the insurer.

(5B) When a registration is cancelled the insurer 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 him before such cancellation takes effect shall, subject to the provisions of sub-section (5D), continue as if the cancellation had not taken place.

(5C) Where a registration is cancelled under clause (a), clause (aa), clause (e), clause (f), clause (g) or clause (h) or clause (i) or clause (j) of sub-section (4), the Authority may at his discretion revive the registration, if the insurer within six months from the date on which the cancellation took effect makes the deposits required

by section 7 or Section 98, or complies with the provisions of Section 64VA as to the excess of the value of his assets over the amount of his liabilities or has his standing contract restored or has had an application under sub-section (4) of section 3A accepted, or satisfies the Authority that no claim upon him such as is referred to in clause (g) of sub-section (4) remains unpaid or that he has complied with any requirement of this Act or the Insurance Regulatory and Development Authority Act, 1999 or of any rule or any regulation, or order made there under or any direction issued under those Acts that he has ceased to carry on any business other than insurance business or any prescribed business, as the case may be, and complies with any directions which may be given to him by the Authority.

(5D) Where the registration of an insurance company is cancelled under sub-section (4), the Authority may, after expiry of six months from the date on which the cancellation took effect, apply to the Court for 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, unless the registration of the insurance company has been revived under sub-section (5C) or an application for winding up the company has been already presented to the Court. The Court may proceed as if an application under this sub-section were an application under sub-section (2) of section 53, or sub-section (1) of Sec. 58, as the case may be.

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

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

(6) [***]

(7) The Authority may, on payment of the prescribed fee, not exceeding 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.

Renewal of registration

3A. (1) An insurer who has been granted a certificate of registration under section 3 shall have the registration renewed annually for each year after that ending on the 31st day of March, after the commencement of the Insurance Regulatory and Development Authority Act, 1999.

(2) An application for the renewal of a registration for any year shall be made by the insurer to the Authority before the 31st day of December of the preceding year, and shall be accompanied as provided in sub-section

(3) by evidence of payment of the fee as determined by the regulations made by the Authority which may vary according to the total gross premium written direct in India, during the year preceding the year in which the application is required to be made under this section, by the insurer in the class of insurance business to which the registration relates but shall not—

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

(ii) be less, in any case, than five hundred rupees for each class of insurance business:

Provided that in the case of an insurer carrying on solely re-insurance business, the provisions of this sub-section shall apply with the modification that instead of the total gross premium written direct in India, the total premiums in respect of facultative re-insurances accepted by him in India shall be taken into account.

(3) The fee as determined by the regulations made by the Authority for the renewal of a registration for any year shall, be paid 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 the receipt shall be sent along with the application for renewal of the registration.

(4) If an insurer fails to apply for renewal of registration before the date specified in sub-section (2) the Authority may, so long as an application to the Court under sub-section (5-D) of section 3 has not been made, accept an application for renewal of the registration on receipt from the insurer of the fee payable with the application and such penalty, not exceeding the fee as determined by the regulations made by the Authority, and payable by him, as the Authority may require:

Provided that an appeal shall lie to the Central Government from an order passed by the Authority imposing a penalty on the insurer

- (5) The Authority shall, on fulfillment by the insurer of the requirements of this section, renew the registration and grant him a certificate of renewal of registration.

Certification of soundness of terms of life insurance business

- (3B) If, when considering an application for registration under section 3 or at any other time, it appears to the Authority that the Assured rates, advantages, terms and conditions offered or to be offered in connection with life insurance business are in any respect not workable or sound, he may require that a statement thereof shall be submitted to an actuary appointed by the insurer for the purpose and approved by the Authority, and may by order in writing further require the insurer to make within such time as may be specified in the order such modifications in the said rates, advantages, terms, or conditions, as the case may be, as the said actuary may report to be necessary to enable him to certify that the said rates, advantages, terms and conditions are workable and sound.

Minimum limits for annuities and other benefits secured by policies of life Insurance

4. (I) No insurer, not being a Co-operative Life Insurance Society to which Part IV of this Act applies, shall pay or undertake to pay on any policy of life insurance issued after the commencement of the Insurance (Amendment) Act, 1946 (6 of 1946), an annuity of less than one hundred rupees or a gross sum of less than one thousand rupees, exclusive of any profit or bonus provided that this shall not prevent an insurer from converting any policy into a paid-up policy of any value or payment of surrender value of any amount.
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- (2) Nothing contained in this section shall apply to any policy of the description known as a group policy, where the number of persons covered by the policy is not less than fifty or such smaller number as may be approved by the Authority and a standard form of the policy has been certified in writing by the Authority to be a policy of such description or to any policy undertaking to pay a gross sum of more than five hundred rupees or an annuity of more than fifty rupee, issued-

- (a) by an insurer to any person in his permanent employed respect of the life of that person, or
- (b) under any scheme, approved by the Authority and complying with such conditions, if any, as he may think fit to impose, whereby premiums due from persons employed under any employer are collected by or under the supervision of the employer,

or to any policy issued by a Mutual insurance Company to which Part IV applies and which the Authority may by order in writing exempt from the provisions of this section, for so long as the company complies with such conditions, if any, as may be prescribed.

Restriction on name of insurer

5. (I) An insurer shall not be registered by a name identical with that by which an insurer in existence is already registered, or so nearly resembling that name as to be calculated to deceive except when the insurer in existence is in the course of being dissolved and signifies his consent to the Authority.

- (2) If an insurer, through inadvertence or otherwise is without such consent as aforesaid registered by a name identical with that by which an insurer already in existence whether previously registered or not is carrying on business or so nearly resembling it as to be calculated to deceive, the first mentioned insurer shall, if called upon to do so by the Authority on the application of the second-mentioned insurer, change his name within a time to be fixed by the Authority:

Provided that nothing in this section shall apply to any insurer carrying on business before the 27th- day of January, 1937, under the Indian Life Assurance Companies Act, 1912 (6 of 1912):

Provided further that in the application of this section to any insurer who begins to carry on insurance business after the commencement of the Insurance (Amendment) Act, 1946 (6 of 1946), the references to an insurer in existence in sub-section (1) and this sub-section shall be construed as including references to a provident society (as defined in Part III in existence, whether or not the society is in course of being dissolved.

(3) No insurer other than a provident society as defined in Part III, who begins to carry on insurance business after the commencement of this Act, shall adopt as its name and no such insurer carrying on business before the commencement of this Act shall continue after the expiry of six months from the commencement thereof to use as its name any combination of words which includes the word "provident".

Requirements as to capital

6. No insurer carrying on the business of life insurance, general insurance or re-insurance in India on or after the commencement of the Insurance Regulatory and Development authority Act, 199, shall be registered unless he has,-

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

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

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

Requirements as to capital structure and voting rights and maintenance of registers of beneficial owners of shares

6A. (1) No public company limited by shares having its registered office in India, shall carry no life insurance business, unless it satisfies all the following conditions, namely:

- (i) that the capital of the company consists only of ordinary shares each of which have a single face value;
- (ii) that, except during any period not exceeding one year allowed by the company for payment of calls on shares, the paid-up amount is the same for all shares, whether existing or new:

Provided that the conditions specified in this sub-section shall not apply to a public company which has, before the commencement of the Insurance (Amendment) Act, 1950 (47 of 1950), issued any shares other than ordinary shares each of which has a single face value or any shares paid-up amount whereof is not the same for all of them for a period of three years from such commencement.

(2) Notwithstanding anything to the contrary contained in any law for the time being in force or in the memorandum or articles of association but subject to the other provisions contained in this section the voting right of every shareholder of any public company as aforesaid shall in all cases be strictly proportionate to the paid-up amount of the shares held by him.

(3) No public company as aforesaid which carries on life insurance business shall, after the commencement of the Insurance (Amendment) Act, 1950 (47 of 1950), issue any shares other than ordinary shares of the nature specified in sub-section (1).

(4) A public company as aforesaid which carries on life insurance business-

- (a) shall maintain, in addition to the register of members to be maintained under the Indian Companies Act, 1913 (7 of 1913) a register of shares in which shall be entered the name, occupation and address of the beneficial owner of each share, and shall incorporate therein any change of beneficial owner declared to it within fourteen days from the receipt of such declaration;

(b) shall not register any transfer of its shares

- (i) unless, in addition to compliance being made with the provisions of section 34 of the Indian Companies Act, 1913 (7 of 1913), the transferee furnishes a declaration in the prescribed form as to whether he proposes to hold the shares for his own benefit or as a nominee, whether jointly or severally, on behalf of others and in the latter case giving the name, occupation and

- address of the beneficial owner or owners, and the extent of the beneficial interest of each;
- (ii) where, after the transfer, the total paid-up holding of the transferee in the shares of the company is likely to exceed five per cent. of its paid-up capital or where the transferee is a banking or an investment company, is likely to exceed two and a half per cent of such paid-up capital, unless the previous²[approval of the Authority] has been obtained to the transfer;
 - (iii) where, the nominal value of the shares intended to be transferred by any individual, firm, group, constituents of a group, or body corporate under the same management, jointly or severally exceeds one per cent of the paid-up equity capital of the insurer, unless the previous approval of the Authority has been obtained for the transfer.

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

- (5) Every person who has any interest in any share of a company referred to in sub-section (4) which stands in the name of another person in the register of members of the company, shall, within thirty days from the commencement of the Insurance (Amendment) Act, 1950 (47 of 1950), or from the date on which he acquires such interest, whichever is later, make a declaration in the prescribed form (which shall be countersigned by the person in whose name the share is registered) to the company declaring his interest in such share, and notwithstanding anything contained in any other law or in any contract to the contrary, a person who fails to make a declaration as aforesaid in respect of any share shall be deemed to have no right or title whatsoever in that share:

Provided that nothing in this sub-section shall affect the right of a person who has an interest in any such share to establish in a court his right thereto, if the person, in whose name the share is registered, refuses to countersign the declaration as required by this sub-section:

Provided further that where any share, belonging to an individual who has made any such declaration as is referred to in this sub-section, is held by a company in its name in pursuance of any trust or for the purpose of safe custody or collection or realization of dividend, such individual shall, notwithstanding anything contained in the Indian Companies Act, 1913 (7 of 1913), or in the memorandum or articles of association of the company which has issued the share, be deemed to be the holder of the said share for the purpose of exercising any voting rights under this section to the exclusion of any other person.

- (6) If the total paid-up holding of any person in the shares of a company referred to in sub-section (1) on the commencement of the Insurance (Amendment) Act 1950 (47 of 1950), exceeds two and a half per cent of its paid-up capital where that person is a banking company or an investment company, or five per cent of its paid-up capital in any other case, he shall not be entitled to any vote as a shareholder of the company in respect of such excess holding of shares.

- (7) Where the total paid-up holding of any person in the shares of a company referred to sub-section (1) on the date of the commencement of the Insurance (Amendment) Act, 1950 (47 of 1950), exceeds five per cent of its paid-up capital where that person is a banking company or an investment company, or ten per cent of its paid-up capital in any other case, he shall dispose of the excess holding of shares within three years from such commencement or such further period not exceeding two years as may be allowed to him by the Central Government.

- (8) If, after the expiry of three years or of such further period as may be allowed to any person under sub-section (7), the total paid up holding of any such person has not been reduced to the limits specified in that sub-section, any shares in excess of the limits specified in that sub-section shall vest in the Administrator-General of the State in which the registered office of the company concerned is situate and the Administrator-General shall take such steps as may be necessary for taking charge of any property which has so vested in him and shall dispose of the said shares and the proceeds thereof in such manner as may be prescribed.

- (9) Subject to the other provisions contained in this section, but notwithstanding anything contained in the Indian Companies Act, 1913 (7 of 1913), or in the memorandum or articles of association of any such company as is referred to in sub-section (1), no such company shall refuse to register the transfer of any shares where the transfer is for the purpose of securing compliance with the provisions of sub-sections (7) and (8).

- (10) The Central Government may, subject to such restrictions as it may think fit to impose, exempt from the

operation of sub-sections (6), (7) and (8) any insurance company, in any case where the total paid-up holding of such insurance company in the shares of any other insurance company exceeds the limits specified in the said sub-sections, if the other insurance company is or is to be made a subsidiary company of the insurance company.

(11) The provisions of this section, except those of sub-sections (7), (8) and (9), shall, on and from the commencement of the Insurance (Amendment) Act, 1968, also apply to insurers carrying on general insurance business subject to the following notifications, namely:-

- (i) that references in sub-sections (1), (3), (5) and (6) to the Insurance (Amendment) Act, 1950, (47 of 1950), shall be construed as reference to the Insurance (Amendment) Act, 1968; and
- (ii) references in sub-section (10) to sub-sections (7) and (8) shall be omitted.

Explanation -For the purposes of this section, the holding of a person in the shares of a company shall be deemed to include-

(i) the total paid-up holding in such shares held by such person in the name of others; and

(ii) if any shares of the company are held -

- (a) by a public limited company, of which such person is a member holding more than ten per cent. of the paid-up capital, or
- (b) by a private limited company, of which such person is a member, or
- (c) by a company, of which such person is a managing director, manager, managing agent or in which he has a controlling interest, or
- (d) by a firm in which such person is a partner, or
- (e) by such person jointly with others,

such part of the total paid-up holding of the company or firm or of the total joint holding in those shares, as is proportionate to the contribution made by such person to the paid-up capital of the company, the paid-up capital of the firm or the joint holding, as the case may be.

Manner of divesting excess shareholding by promoter in certain cases

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

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

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

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

Provision for securing compliance with requirements relating to capital structure

6B.(1) For the purpose of enabling any public company carrying on life insurance business to bring its capital structure into conformity with the requirements of section 6A, an officer appointed in this behalf by the Central Government may, notwithstanding anything contained in the Indian Companies Act, 1913 (7 of 1913),—

- (a) examine any scheme proposed for the purpose aforesaid by the directors of the company:

Provided that—

- (i) the scheme has been placed before a meeting of the shareholders for their opinion and has been forwarded to the officer together with the opinion of the shareholders thereon, and
 - (ii) the scheme does not involve any diminution of the liability of the shareholders in respect of unpaid-up share capital;
- (b) invite objections and suggestions in respect of the scheme so proposed; and
- (c) after considering such objections and suggestions to the scheme so proposed, sanction it with such modifications as he may consider necessary or desirable.
- (2) Any shareholder or other person aggrieved by the decision of the officer sanctioning a scheme under sub-section (1) may, within ninety days of the date of the order sanctioning the scheme, prefer an appeal to the High Court within whose jurisdiction the registered office of the insurer is situate for the purpose of modifying or correcting any such scheme for the purpose specified in sub-section (1).
- (3) The decision of the High Court where an appeal has been preferred to it under sub-section (2), or of the officer aforesaid where no such appeal has been preferred, shall be final and binding on all the shareholders and other persons concerned.
- (4) The provisions of this section shall, on and from the commencement of the Insurance (Amendment) Act, 1968, also apply to insurers carrying on general insurance business.

Conversion of company limited by shares into company limited by guarantee

- 6C.** (1) Where a public company limited by shares carrying on insurance business has passed a special resolution for converting itself into a public company limited by guarantee, it may apply to the Central Government with a scheme for putting the special resolution into effect, including any provision for the alteration of the memorandum or articles of association insofar as it may be necessary for this purpose.
- (2) If the Central Government, after giving such notice to any person concerned as it thinks fit, is satisfied—
- (a) that the scheme makes suitable provision with respect to the repayment, conversion or liquidation of the paid-up capital of the company,
 - (b) that the consent of the creditors to the conversion of the company limited by shares into a company limited by guarantee has been obtained, or that suitable provisions have been made for discharging, determining or securing the debts or claims of such creditors, and
 - (c) that the scheme is otherwise reasonable, it may sanction the scheme and thereupon the scheme shall become binding on the company and on all the persons concerned.
- (3) Against the decision of the Central Government, sanctioning a scheme under sub-section (2), any person aggrieved thereby may, within ninety days of the date of the order sanctioning the scheme, prefer an appeal to the High Court within whose jurisdiction the registered office of the insurer is situate.
- (4) The decision of the High Court where an appeal has been preferred to it under sub-section (3) or of the Central Government where no such appeal has been preferred, shall be final and binding on all the persons concerned.
- (5) Where a scheme has been sanctioned under this section, the company shall file with the Registrar of Companies a certified copy of the scheme as sanctioned, and thereupon the provisions of the Indian Companies Act, 1913 (7 of 1913), relating to companies limited by guarantee shall become applicable to the company.

Deposits

7. (1) Every insurer shall, in respect of the insurance business carried on by him in India, deposit and keep deposited with the Reserve Bank of India in one of the offices in India of the Bank for and on behalf of the Central Government the amount hereafter specified, either in cash or in approved

securities estimated at the market value of the securities on the day of deposit, or partly in cash and partly in approved securities so estimated:-

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

Provided that, where the business done or to be done is marine insurance only and relates exclusively to country craft or its cargo or both, the amount to be deposited under this sub-section shall be one hundred thousand rupees only:

Provided further that in respect of an insurer not having a share capital and carrying on only such insurance business as in the opinion of the Central Government is not carried on ordinarily by insurers under separate policies, the Central Government may, by notification under Official Gazette, order that the provisions of this sub-section shall apply to such insurer with the modification that instead of sum of rupees twenty lakhs or rupees ten lakhs, as the case may be, the deposit to be made by such insurer shall be such amount, being not less than one hundred and fifty thousand rupees, as may be specified in the said order.

(2) Where the insurer is an insurer specified in sub-clause (c) of clause (9) of Section 2, he shall be deemed to have complied with the provisions of this section as to deposits, if in respect of insurance business carried on by him in India under a standing contract of the nature referred to in sub-clause (c) of clause (9) of section 2 a deposit of an amount one-and-a-half times that specified in sub-section (1) has been made in the Reserve Bank of India in one of the offices in India of the Bank for and on behalf of the Central Government in cash or approved securities estimated at the market value of the securities on the day of deposit by or on behalf of the underwriters who are members of the Society of Lloyd's with whom he has his standing contract.

(3) Where the deposit to be made by an insurer not carrying on insurance business in India immediately before the commencement of the Insurance (Amendment) Act, 1968, a deposit of rupees ten lakhs shall be made before the application for registration is made, and the provision of clause (ii) of sub-section (1A) shall apply to such insurer after his registration as they apply to an insurer specified in clause (a) of sub-section (1).

(4) An insurer shall not be registered for any class of insurance business in addition to the class or classes for which is already registered until the full deposit required under sub-section (1) has been made.

(5) Where an insurer who intends to become a member of a group, does not carry on all the classes of insurance business carried on by the other insurers in such group, or, where out of the several insurers who desire to form themselves into a group, any insurer does not carry on all the classes of insurance business carried on by the other insurers who desire to form themselves into the group, such insurer may be registered for that class or those classes of insurance business which is or are carried on by the other insurers of the group or the proposed group, as the case may be, and where any application for registration is made by any such insurer, the Authority may, notwithstanding anything contained in sub-section (2A) of Section 3 or sub-section (4), register such insurer for one or more additional classes of insurance, if the following conditions are fulfilled, namely:-

- (a) the Authority is satisfied that registration for the proposed one or more additional classes of insurance-business would qualify the insurer to become member of a group;
- (b) agreements have been executed by all the insurers in the group or proposed group, as the case may be, and such agreements in the opinion of the Authority, satisfy the requirements of the *Explanation* to sub-section (1B); and

(c) the insurer has, after the commencement of the Insurance (Amendment) Act, 1968, made deposit of a sum not less than the total of all the instalments of deposit which he would have been required to make after such commencement till the date of his becoming a member of the group, had he been a member of the group from such commencement.

(6) The Authority shall cancel the registration made in pursuance of the provisions of sub-section (5), if the insurer referred to therein fails to become, within a period of three months from the date of such registration' a member of the group or proposed group, as the case may be, and, where such registration has been cancelled, the provisions of this Act shall apply to the insurer as if he had not been registered for the class or classes of insurance business in relation to which his registration has been cancelled.

(7) Securities already deposited with the Controller of Currency in compliance with the Indian Life Assurance Companies Act, 1912 (6 of 1912), shall be transferred by him to the Reserve Bank of India and shall, to the extent of their market value as at the date of the commencement of this Act, be deemed to be deposited under this Act, as the instalment or as part of this instalment to be made under the foregoing provisions of this section before the application for registration is made whether any such application is or is not in fact made.

(8) A deposit made in cash shall be held by the Reserve Bank of India to the credit of the insurer and shall except to the extent, if any, to which the cash has been invested in securities under sub-section (9A), be returnable to the insurer in cash in any case in which under the provisions of this Act a deposit is to be returned; and any interest accruing due and collected on securities deposited under sub-section (1) or sub-section (2) shall be paid to the insurer, subject only to deduction of the normal commission chargeable for the realization of interest.

(9) The insurer may at any time replace any securities deposited by him under this section with the Reserve Bank of India either by cash or by other approved securities or partly by cash and partly by other approved securities, provided that such cash, or the value of such other approved securities estimated at the market rates prevailing at the time of replacement, or such cash together with such value, as the case may be, is not less than the value of the securities replaced estimated at the market rates prevailing when they were deposited.

(9A) The Reserve Bank of India shall, if so requested by the insurer,—

- (a) sell any securities deposited by him with the Bank under this section and hold the cash realized by such sale as deposit, or
- (b) invest in approved securities specified by the insurer the whole or any part of a deposit held by it in cash or the whole or any part of cash received by it on the sale of or on the maturing of securities deposited by the insurer, and hold the securities in which investment is so made as deposit.

and may charge the normal commission on such sale or on such investment.

(9B) where sub-section (9A) applies -

- (a) if the cash realized by the sale of or on the maturing of the securities (excluding in the former case the interest accrued) falls short of the market value of the securities at the date on which they were deposited with the Bank, the insurer shall make good the deficiency by a further deposit either in cash or in approved securities estimated at the market value of the securities, on the day on which they are deposited, or partly in cash and partly in approved securities so estimated, within a period of two months from the date on which the securities matured or were sold or where the securities matured or were sold before the 21st day of March, 1940, within a period of four months from the commencement of the Insurance (Amendment) Act, 1940 (20 of 1940); and unless he does so the insurer shall be deemed to have failed to comply with the requirements of this section as to deposits; and
- (b) if the cash realized by the sale of or on the maturing of the securities (excluding in the former case the interest accrued) exceeds the market value of the securities at the date on which they were deposited with the Bank, the Central Government may, if satisfied that the full amount required to be deposited under sub-section (1) is in deposit, direct the Reserve Bank to return the excess.

(10) If any part of a deposit made under this section is used in the discharge of any liability of the insurer,

the insurer shall deposit such additional sum in cash or approved securities estimated at the market value of the securities on the day of deposit, or partly in cash and partly in such securities, as will make up the amount so used. The insurer shall be deemed to have failed to comply with the requirements of sub-section (1), unless the deficiency is supplied within a period of two months from the date when the deposit or any part thereof is so used for discharge of liabilities.

Reservation of deposits

8. (1) Any deposit made under section 7 or section 98 shall be deemed to be part of the assets of the insurer but shall not be susceptible of any assignment or charge; nor shall it be available for the discharge of any liability of the insurer other than liabilities arising out of policies of insurance issued by the insurer so long as any such liabilities remain undischarged; nor shall it be liable to attachment in execution of any decree except a decree obtained by a policy-holder of the insurer in respect of a debt due upon a policy which debt the policy-holder has failed to realise in any other way.

(2) Where a deposit is made in respect of life insurance business the deposit made in respect thereof shall not be available for discharge of any liability of the insurer other than liabilities arising out of policies of life insurance issued by the insurer.

Refund of deposit

9. Where an insurer has ceased to carry on in India all classes of insurance business, and his liabilities in India in respect of all classes of insurance business have been satisfied or are otherwise provided for, the court may, on the application of the insurer, order the return to the insurer of the deposit made by him under this Act.

Separation of accounts and funds

10. (1) Where the insurer carries on business of more than one of the following classes, namely, life insurance, fire insurance, marine insurance or miscellaneous insurance, he shall keep a separate account of all receipts and payments in respect of each such class of insurances business and where the insurer carries on business of miscellaneous insurance whether alone or in conjunction with business of another class, he shall, unless the Authority waives this requirement in writing, keep a separate account of all receipts and payments in respect of each of such sub-classes of miscellaneous insurance business as may be prescribed in this behalf:

Provided that no sub-class of miscellaneous insurance business shall be prescribed under this sub-section if the insurance business comprised in the sub-clause consist of insurance contracts which are terminable by the insurer at intervals not exceeding twelve months and under which, if a claim arises, the insurer's liability to pay benefit ceases within one year of the date on which the claim arose.

(2) Where the insurer carries on the business of life insurance all receipts due in respect of such business, shall be carried to and shall form a separate fund to be called the life insurance fund the assets of which shall, after the expiry of six months from the commencement of the Insurance (Amendment) Act, 1946 (6 of 1946), be kept distinct and separate from all other assets of the insurer and the deposit made by the insurer in respect of life insurance business shall be deemed to be part of the assets of such fund; and every insurer shall, within the time limited in sub-section (1) of section 15 in regard to the furnishing of the statements and accounts referred to in section 11, furnish to the Authority a statement showing in detail such assets as at the close of every calendar year duly certified by an auditor or by a person qualified to audit under the law of the insurer's country:

Provided that such statement shall, in the case of an insurer to whom section 11 applies, be set out as a part of the balance-sheet mentioned in clause (a) of sub-section (1) of that section:

Provided further that an insurer may show in such statement all the assets held in his life department, but at the same time showing any deductions on account of general reserves and other liabilities of that department:

Provided also that the Authority may call for a statement similarly certified of such assets as at any other date specified by him to be furnished within a period of three months from the date with reference to which the statement is called for

(2A) No insurer carrying on life insurance business shall be entitled to be registered for any class of insurance business in addition to the class or classes for which he has been already registered unless the Authority is satisfied that the assets of the life insurance fund of the insurer are adequate to meet all his liabilities on policies of life insurance maturing for payment.

(3) The life insurance fund shall be as absolutely the security of the life policy-holders as though it belonged to an insurer carrying on no other business than life insurance business and shall not be liable for any contracts of the insurer for which it would not have been liable had the business of the insurer been only that of life insurance and shall not be applied directly or indirectly for any purposes other than those of the life insurance business of the insurer.

Accounts and balance-sheet

11. (1) Every insurer, in the case of an insurer specified in sub-clause (a) (ii) or sub-clause (b) of clause (9) of section 2 in respect of all insurance business transacted by him, and in the case of any other insurer in respect of the insurance business transacted by him in India, shall at the expiration of each financial year prepare with reference to that year,—

- (a) in accordance with regulations contained in part I of the First Schedule, a balance-sheet in the form set forth in Part II of that Schedule;
- (b) in accordance with the regulations contained in part I of the Second Schedule, a profit and loss account in the forms set forth in Part II of that Schedule, except where the insurer carries on business of one class only of the following classes, namely, life insurance, fire insurance or marine insurance and no other business;
- (c) in respect of each class or sub-class of insurance business for which he is required under sub-section (1) of section 10 to keep a separate account of receipts and payments, a revenue account in accordance with the Regulations, and in the form or forms, set forth in the Third Schedule applicable to that class or sub-class of insurance business.

(1A) Notwithstanding anything contained in sub-section (1), every insurer, on or after the commencement of the Insurance Regulatory and Development Authority Act, 1999, in respect of insurance business transacted by him and in respect of his shareholders' funds, shall, at the expiration of each financial year, prepare with reference to that year, a balance-sheet, a profit and loss account, a separate account of receipts and payments, a revenue account in accordance with the regulations made by the Authority.

(1B) Every insurer shall keep separate accounts relating to funds of shareholders and policy-holders.

(2) Unless the insurer is a company, as defined in clause (2) of sub-section (1) of Section 2 of the Indian Companies Act, 1913 (7 of 1913), the accounts and statements referred to in sub-section (1) shall be signed by the insurer, or in the case of a company by the chairman, if any, and two directors and the principal officer of the company, or in the case of a firm by two partners of the firm, and shall be accompanied by a statement containing the names, descriptions and occupations of, and the directorships held by, the persons in charge of the management of business during the period to which such accounts and statements refer and by a report on the affairs of the business during that period.

(3) Where an insurer carrying on the business of insurance at the commencement of this Act has prepared the balance-sheet and accounts required by the Indian Life Assurance Companies Act, 1912 (6 of 1912), or has based his accounts upon the financial and not the calendar year, the provisions of this section shall, if the Central Government so directs in any case, apply until the 31st day of December, 1939, as if in sub-section (1) references to the calendar year were references to the financial year.

Audit

12. The balance-sheet, profit and loss account, revenue account and profit and loss appropriation account of every insurer, in the case of an insurer specified in sub-clause (a)(ii) or sub-clause (b) of clause (9) of section 2 in respect of all insurance business transacted by him, and in the case of any other insurer in respect of the insurance business transacted by him in India, shall, unless they are subject to audit under the Indian Companies Act, 1913 (7 of 1913), be audited annually by an auditor, and the auditor shall in the audit of all such accounts have the powers of, exercise the functions vested in, and discharge the duties and be subject to the liabilities and penalties imposed on, auditors of companies by section 145 of the Indian Companies Act,

1913.

Actuarial report and abstract

13.(1) Every insurer carrying on life insurance business shall, in respect of the life-insurance business transacted by him in India, and also in the case of an insurer specified in sub-clause (a) (ii) or sub-clause (b) of clause (9) of section 2 in respect of all life insurance business transacted by him, every year cause an investigation to be made by an actuary into the financial condition of the life insurance business carried on by him, including a valuation of his liabilities in respect thereto and shall cause an abstract of the report of such actuary to be made in accordance with the regulations contained in Part I of the Fourth Schedule and in conformity with the requirements of Part II of that Schedule:

Provided that the Authority may, having regard to the circumstances any particular insurer, allow him to have the investigation made as at a date not later than two years from the date as at which the previous investigation was made:

Provided further that for an insurer carrying on life insurance business in India at the commencement of the Insurance (Amendment) Act, 1950 (47 of 1950), the last date as at which the first investigation after such commencement should be caused to be made by an actuary shall be-

- (a) the 31st day of December, 1950, or the date of expiration of five years from the date at which the last investigation was made by an actuary before such commencement, whichever is earlier, where the said last investigation was at a date-
 - (i) before the 31st day of December, 1946, but not more than five years before such commencement, or
 - (ii) after the 30th day of December, 1946, but before the 31st day of December, 1947, and had disclosed a deficit in the life insurance fund;
- (b) the 31st day of December, 1951, where the last investigation by an actuary before such commencement was at a date-
 - (i) after the 30th day of December, 1946, but before the 31st day of December, 1947, and did not disclose a deficit in the life insurance fund; or
 - (ii) after the 30th day of December, 1947, but before the 31st day of December, 1948;
- (c) the 31st day of December, 1952, where the last investigation by an actuary before such commencement was as at any date after the 30th day of December, 1948, but before the 1st day of January, 1950:

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

Provided also that, in the case of an insurer who has not caused an investigation to be made by an actuary as at any date prior to such commencement, the date of commencement of life insurance business in India shall, for the purpose of the preceding proviso, be deemed to be the date as at which the last investigation was made by an actuary before such commencement and such investigation shall be deemed to have disclosed no deficit in the life insurance fund:

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

(2) The provisions of sub-section (1) regarding the making of an abstract shall apply whenever at any other time an investigation into the financial condition of the insurer is made with a view to the distribution of profits or an investigation is made of which the results are made public.

(3) There shall be appended to every such abstract as is referred to in sub-section (1) or sub-section (2) a certificate signed by the principal officer of the insurer 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.

(4) There shall be appended to every such abstract a statement, in conformity with their requirements of a Part II of the Fifth Schedule and prepared in accordance with the regulations contained in Part I of that Schedule, of the life insurance business in force at the date to which the accounts of the insurer are made up for the purposes of such abstract:

Provided that, if the investigation referred to in sub-sections (1) and (2) is made annually by any insurer, the statement need not be appended every year but shall be appended at least once in every three years:

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

(5) Where an investigation into the financial conditions of an insurer is made as at a date other than the expiration of the year of account, the accounts for the period since the expiration of the last year of account and the balance sheet as at the date at which the investigation is made shall be prepared and audited in the manner provided by this Act.

(6) The provisions of this section relating to the life insurance business shall apply also to any such sub-class of insurance business included in the class "Miscellaneous Insurance" as may be prescribed under sub-section (1) of section 10; and the Authority may authorize such modifications and variations of the regulations contained in Part I of the Fourth and Fifth Schedules and of the requirements of Part II of those Schedules as may be necessary to facilitate their application to any such sub-class of insurance business:

Provided that, if the Authority is satisfied that the number and amount of the transactions carried out by an insurer in any such sub-class of insurance business is so small as to render periodic investigation and valuation unnecessary, he may exempt that insurer from the operation of this sub-section in respect of that sub-class of insurance business.

Register of policies and register of claims

14. Every insurer, in the case of an insurer specified in sub-clause (a)(ii) or sub-clause (b) of clause (9) of section 2 in respect of all business transacted by him, and in the case of any other insurer in respect of the insurance business transacted by him in India, shall maintain-

- (a) a register or record of policies, in which shall be entered, in respect of every policy issued by the insurer, the name and address of the policy-holder, the date when the policy was effected and a record of any transfer, assignment or nomination of which the insurer has notice, and
- (b) a register or record of claims, in which shall be entered every claim made together with the date of the claim, the name and address of the claimant and the date on which the claim was discharged, or, in the case of a claim which is rejected, the date of rejection and the grounds there for.

Submission of returns

15. (1) The audited accounts and statements referred to in section 11 or sub-section (5) of section 13 and the abstract and statement referred to in section 13 shall be printed, and four copies thereof shall be furnished as returns to the Authority within six months from the end of the period to which they refer:

Provided that the said period of six months shall in the case of insurers having their principal place of business or domicile outside India and in the case of insurers constituted, incorporated or domiciled in India but also carrying on business outside India be extended by three months, and provided further that the Central Government may in any case extend the time allowed by this sub-section for the furnishing of such returns by a further period not exceeding three months.

(2) Of the four copies so furnished one shall be signed in the case of a company by the chairman and two directors and by the principle officers of the company and, if the company has a managing director or managing agent, by that director or managing agent, in the case of a firm, by two partners of the firm, and, in

the case of an insurer being an individual, by the Insurer himself and one shall be signed by the auditor who made the audit or the actuary who made the valuation, as the case may be.

(3) Where the insurer's principal place of business or domicile is outside India, he shall forward to the Authority, along with the documents referred to in section 11, the balance-sheet, profit and loss account and revenue account and the valuation reports and valuation statements, if any, which the insurer is required to file with the public authority of the country in which the insurer is constituted, incorporated or domiciled, or, where such documents are not required to be filed, a certified statement showing the total assets and liabilities of the insurer at the close of the period covered by the said documents and his total income and expenditure during that period.

Returns by insurers established outside India.

16. (1) Where, by the law of the country in which an insurer, not being an insurer specified in sub-clause (a)(ii) or sub-clause (b) of clause (9) of section 2, is constituted, incorporated or domiciled, the insurer is required to prepare and to furnish to a public authority of that country documents of substantially the same nature as the documents required to be furnished as returns in accordance with provisions of section 15, the provisions of sub-section (2) of this section shall apply to such insurer in lieu of the provisions of sections 11, 12, 13 and 15.

(2) The insurer shall, within the time specified in sub-section (1) of Section 15, furnish to the Authority four certified copies in the English language of every balance-sheet, account, abstract, report and statement supplied to the public authority referred to in sub-section (1) of this section, and in addition thereto, four certified copies in the English language of each of the following statements, namely:-

- (a) a statement audited by an auditor or by a person duly qualified under the law of the insurer's country showing the assets held by insurer in India as at the date of any balance-sheet so furnished;
- (b) for each class or sub-class of insurance business for which he is required under sub-section (1) of section 10 to keep a separate account of receipts and payments, a revenue account for the period covered by any account so furnished, prepared in accordance with the regulations, and in the form or forms, set forth in the Third Schedule applicable to that class or subclass of insurance business and similarly audited, showing separately with respect to business transacted by the insurer in India the details required to be supplied in a revenue account furnished under this clause of this subsection;
- (c) a separate abstract of the valuation report in respect of all business transacted in India in each class or sub-class of insurance business to which section 13 refers, prepared in the manner required by that section; and
- (d) a declaration in the prescribed form stating that all amounts received by the insurer directly or indirectly whether from his head office or from any other source outside India have been shown in the revenue account except such sums as properly appertain to the capital account.

Exemption from certain provisions of the Indian Companies Act, 1913

17. Where an insurer, being 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 Acts, 1866 (10 of 1866), or under any Act repealed thereby, in any year furnishes his balance-sheet and accounts, in accordance with the provisions of section 15, he may at the same time send to the Registrar of Companies copies of such balance-sheet and accounts; and where such copies are so sent it shall not be necessary for the Company to file copies of the balance-sheet and accounts with the Registrar as required by sub-section (1) of section 134 of the first mentioned Act and such copies so sent shall be chargeable with the same fees and shall be dealt within all respects as if they were filed in accordance with that section.

This Act not to apply to preparation of account, etc., for periods prior to this Act coming into force.

17 A. Nothing in this Act shall apply to the preparation of accounts by an insurer and the audit and submission thereof in respect of any accounting year which has expired prior to the commencement of this Act, and notwithstanding the other provisions of this Act, such accounts shall be prepared, audited and submitted in accordance with the law in force immediately before the commencement of this Act.

Furnishing reports

18. Every insurer shall furnish to the Authority a certified copy of every report on the affairs of the concern which is submitted to the members or policy-holders of the insurer immediately after its submission to the members or policy-holders, as the case may be.

Abstract of proceedings of general meetings

19. Every insurer, being a company or body incorporated under any law for the time being in force in India, shall furnish to the Authority a certified copy of the minutes of the proceedings of every general meeting, as entered in the Minutes Book of the insurer within thirty days from the holding of the meeting to which it relates.

Custody and inspection of documents and supply of copies

20. (1) Every return furnished to the Authority or certified copy thereof shall be kept by the Authority and shall be open to inspection; and any person may procure a copy of any such return, or of any part thereof, on payment of a fee of six annas for every hundred words or fractional part thereof required to be copied, any five figures being deemed equivalent to one word.

(2) A printed or certified copy of the accounts, statements and abstract furnished in accordance with the provisions of section 15 or section 16 shall, on the application of any shareholder or policy-holder made at any time within two years from the date on which the document was so furnished, be supplied to him by the insurer within fourteen days when the insurer is constituted, incorporated or domiciled in India and in any other case within one month of such application.

(3) A copy of the memorandum and articles of association of the insurer, if a company shall on the application of any policy-holder, be supplied to him by the Insurer on payment of one rupee.

Powers of Controller regarding returns

21. (1) If it appears to the Authority that any return furnished to him under the provisions of this Act is inaccurate or defective in any respect, he 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.

(2) The Court may on the application of an insurer and after hearing the Authority cancel any order made by the Authority under clause (a), (b) or (c) of sub-section (1) or may direct the acceptance of any return which the Authority has declined to accept, if the insurer satisfies the Court that action of the Authority was in the circumstances unreasonable:

Provided that no application under this subsection shall be entertained unless it is made before the expiration of four months from the time when the Authority made the order or declined to accept the return.

Powers of Authority to order revaluation

22. (1) If it appears to the Authority that an investigation or valuation to which section 13 refers or an abstract of a valuation report furnished under clause (c) of sub-section (2) of section 16 does not properly indicate the condition of the affairs of the insurer by reason of the faulty basis adopted in the valuation, he may, after giving notice to the insurer and giving him an opportunity to be heard, cause an investigation and valuation to be made at such date as the Authority may specify to be made at the expense of the insurer by an actuary appointed by the insurer for this purpose and approved by the Authority and the insurer shall place at the disposal of the Actuary so appointed and approved all the material required by the Actuary for the purposes of the investigation and valuation within such period, not being less than three months, as the Authority may specify.

(2) The provisions of subsections (1) and (4) of section 13, and of sub-sections (1) and (2) of section 15 or, as the case may be, of sub-section (2) of section 16, shall apply in relation to an investigation and valuation under this section:

Provided that the abstract and statement prepared as the result of such investigation and valuation shall be furnished by such date as the Authority may specify.

Evidence of documents

23. (1) Every return furnished to the Authority which has been certified by the Authority to be a return so furnished, shall be deemed to be a return so furnished.

(2) Every document, purporting to be certified by the Authority to be a copy of a return so furnished, shall be deemed to be a copy of that return and shall be received in evidence as if it were the original return, unless some variation between it and the original return is proved.

Summary of returns to be published

24. *[Repealed by the Insurance (Amendment) Act, 1941]*

Returns to be published in statutory forms

25. No insurer shall publish in India any return in a form other than that in which it has been furnished to the Authority.

Provided that nothing contained in this section shall prevent an insurer from publishing a true and accurate abstract from such returns for the purposes of publicity.

Alterations in the particulars furnished with application for registration to be reported.

26. Whenever any alteration occurs or is made which affects any of the matters which are required under the provisions of sub-section (2) of section 3 to accompany an application by an insurer for registration, the insurer shall forthwith furnish to the Authority full particulars of such alteration. All such particulars shall be authenticated in the manner required by that sub-section for the authentication of the matters therein referred to, and where the alteration affects the assured rates, advantages, terms and conditions offered in connection with life insurance policies, the actuarial certificate referred to in clause (f) of the said sub-section shall accompany the particulars of the alteration.

Investment, Loans and Management

Investment of assets

27. (1) Every insurer shall invest and at all times keep invested assets equivalent to not less than the sum of-

- (a) the amount of his liabilities to holders of life insurance policies in India on account of matured claims, and
- (b) the amount required to meet the liability on policies of life insurance maturing for payment in India,

less-

- (i) the amount of premiums which have fallen due to the insurer on such policies but have not been paid and the days of grace for payment of which have not expired, and
- (ii) any amount due to the insurer for loans granted on and within the surrender values of policies of life insurance maturing for payment in India issued by him or by an insurer whose business he has acquired and in respect of which he has assumed liability,

in the manner following, namely, twenty-five per cent of the said sum in Government securities, a further sum equal to not less than twenty-five per cent of the said sum in Government securities or other approved securities and the balance in any of the approved investments specified in sub-section (1) of section 27A or, subject to the limitations, conditions and restrictions specified in sub-section (2) of that section, in any over investment.

(2) For the purposes of subsection (1),—

- (a) the amount of any deposit made under section 7 or section 98 by the insurer in respect of his life insurance business shall be deemed to be assets invested or kept invested Government securities;
- (b) the securities of, or guaranteed as to principal and interest by, the Government of the United Kingdom shall be regarded as approved securities other than Government securities for a period of four years from the commencement of the Insurance (Amendment) Act, 1950 (47 of 1950), in the manner and to the extent hereinafter specified, namely:—
 - (i) during the first year, to the extent of twenty-five per cent in value of the sum referred to in sub-section (1);
 - (ii) during the second year, to the extent of eighteen and three fourths per cent in value of the said sum;
 - (iii) during the third year, to the extent of twelve and a half per cent in value of the said sum; and
 - (iv) during the fourth year, to the extent of six and a quarter per cent in value of the said sum:

Provided that, if the Authority so directs in any case, the securities specified in clause (b) shall be regarded as approved securities other than Government securities for a longer period than four years, but not exceeding six years in all and the manner in which and the extent to which the securities shall be so regarded shall be as specified in the direction;

- (c) any prescribed assets shall, subject to such conditions, if any, as may be prescribed, be deemed to be assets invested or kept invested in approved investments specified in sub-section (1) of section 27A.

(3) In computing the assets referred to in subsection (1),—

- (a) any investment made with reference to any currency other than the Indian rupee which is in excess of the amount required to meet the liabilities of the insurer in India with reference to that currency, to the extent of such excess; and
- (b) any investment made in the purchase of any immoveable property outside India or on the security of any such property,

shall not be taken into account:

Provided that nothing contained in this sub-section shall affect the operation of sub-section (2):

Provided further that the Authority may, either generally or in any particular case, direct that any investment, whether made before or after the commencement of the Insurance (Amendment) Act, 1950 (47 of 1950), and whether made in or outside India, shall, subject to such conditions as may be imposed, be taken into account, in such manner as may be specified in computing the assets referred to in sub-section (1) and where any direction has been issued under this proviso copies thereof shall be laid before Parliament as soon as may be after it is issued.

(4) Where an insurer has accepted reinsurance in respect of any policies of life insurance issued by another insurer and maturing for payment in India or has ceded reinsurance to another insurer in respect of any such policies issued by himself, the sum referred to in subsection (1) shall be increased by the amount of the liability involved in such acceptance and decreased by the amount of the liability involved in such cession.

(5) The Government securities and other approved securities in which assets are under sub-section (1) to be invested and kept invested shall be held by the insurer free of any encumbrance, charge, hypothecation or lien.

(6) The assets required by this section to be held invested by an insurer incorporated or domiciled outside India shall, except to the extent of any part thereof which consists of foreign assets held outside India, be held in India and all such assets shall be held in trust for the discharge of the liabilities of the nature referred to in sub-section (1) and shall be vested in trustees resident in India and approved by the Authority, and the instrument of trust under this sub-section shall be executed by the insurer with the approval of the Authority and shall define the manner in which alone the subject-matter of the trust shall be dealt with.

Explanation.—This sub-section shall apply to an insurer incorporated India whose share capital to the extent of one-third is owned by, or the members of whose governing body to the extent of one-third consists of, members domiciled elsewhere than in India.

Further provisions regarding investments

27A. (1) No insurer shall invest or keep invested any part of his controlled fund otherwise than in any of the following approved investments, namely:

- (a) approved securities;
- (b) securities of, or guaranteed as to principal and interest by, the Government of the United Kingdom;
- (c) debentures or other securities for money issued with the permission of the State Government by any municipality in a State;
- (d) debentures or other securities for money issued by any authority constituted under any housing or building scheme approved by the Central or a State Government, or by any authority or body constituted by any Central Act or Act of a State Legislature;
- (e) first mortgages on immoveable property situated in India under any housing or building scheme of the insurer approved by the Authority or a State Government;
- (f) debentures secured by a first charge on any immoveable property plant or equipment of any company which has paid interest in full for the five years immediately preceding or for at least five out of the six or seven years immediately preceding on such or similar debentures issued by it;
- (g) debentures secured by a first charge on any immovable property, plant or equipment of any company where either the book value or the market value, whichever is less, of such property, plant or equipment is more than three times the value of such debentures;
- (h) first debentures secured by a floating charge on all its assets of any company which has paid dividends on its ordinary shares for the five years immediately preceding or for at least five out of the six or seven years immediately preceding;
- (i) preference shares of any company which has paid dividends on its ordinary shares for the five years immediately preceding or for at least five out of the six or seven years immediately preceding;
- (j) preference shares of any company on which dividends have been paid for the five years immediately preceding or for at least five out of the six or seven years immediately preceding and which have priority in payment over all the ordinary shares of the company in winding up;
- (k) shares of any company which have been guaranteed by another company, such other company having paid dividends on its ordinary shares for the five years immediately preceding or for at least five out of the six or seven years immediately preceding:

Provided that the total amount of shares of all the companies under guarantee by the guaranteeing company is not in excess of fifty per cent of the paid up amount of preference and ordinary shares of the guaranteeing company;

- (l) shares of any company on which dividends of not less than four per cent including bonus have been

paid for the seven years immediately preceding or for at least seven out of the eight or nine years immediately preceding;

- (m) first mortgages on immovable property situated in India or in any other country where the insurer is carrying on insurance business

Provided that the property mortgaged is not leasehold property with an outstanding term of less than thirty years and the value of the property exceeding by one-third, or if it consists of buildings, exceeds by one-half, the mortgage money;

- (n) immovable property situated in India or in any other country where the insurer is carrying on insurance business:

Provided that the property is free of all encumbrances;

- (o) loans on life interests, or on policies of life insurance within their surrender values issued by him or by an insurer whose business he has acquired and in respect of which business he has assumed liability;
- (p) life interests;
- (q) fixed deposits with banks included for the time being in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934) or with co-operative societies registered under the Indian Co-operative Societies Act, 1912 (6 of 1912), or under any other law for the time being in force, the primary object of which is to finance other co-operative societies similarly registered;
- (r) debentures of, or shares in co-operative societies registered under the Indian Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force;
- (s) such other investments as the Authority may, by notification in the Official Gazette, declare to be approved investments for the purposes of this section.

(2) Notwithstanding anything contained in sub-section (1), an insurer being a company or a co-operative life insurance society as defined in clause (b) of sub-section (1) of section 95, may, subject to the provisions contained in the next succeeding sub-sections, invest or keep invested any part of his controlled fund otherwise than in an approved investment, if-

- (i) after such investment, the total amounts of all such investments of the insurer do not exceed fifteen per cent of the sum referred to in sub-section (1) of section 27,
- (ii) the investment is made, or, in the case of any investment already made, the continuance of such investment is with the consent of all the directors present at a meeting and eligible to vote, special notice of which has been given to all the directors then in India, and all such investments, including investments in which any director is interested, are reported without delay to the Authority with full details of the investments and the extent of the director's interest in any such investment.

(3) An insurer shall not out of his controlled fund invest or keep invested in the shares of any one banking company or investment company more than—

- (a) two and a quarter per cent of the sum referred to in sub-section (1) of section 27, or
- (b) two per cent of the subscribed share capital and debentures of the banking company or investment company concerned,

whichever is less.

(4) An insurer shall not out of the controlled fund invest or keep invested in the shares or debentures of any one company other than a banking company or investment company more than-

- (a) two and a quarter per cent of the sum referred to in sub-section (1) of section 27, or
- (b) ten per cent. of the subscribed share capital and debentures of the company,

Whichever is less:

Provided that nothing in this sub-section shall apply to any investment made with the previous consent of the Authority by an insurer, being a company with a view to forming a subsidiary company carrying on insurance business.

(5) An insurer shall not out of his controlled fund invest or keep invest any sum in the shares or debentures of any private limited company.

(6) Where an investment is in partly paid-up shares, the uncalled liability on such shares shall be added to the amount invested for the purpose of computing the percentages referred to in clause (a) of sub section (3) and clause (a) of subsection (4).

(7) Notwithstanding anything contained in subsections (3) and (4), where new shares are issued to the existing shareholders by a company the existing shares of which are covered by Clause (i) or Clause (k) or Clause (l) of subsection (1) and of which an insurer is already a shareholder, the insurer may subscribe to such new shares:

Provided that the proportion of new shares subscribed by him does not exceed the proportion which the paid-up amount on the shares held by him immediately before such subscription bears to the total paid-up capital of the company at the time of such subscription

(8) If, on an application submitted through the Controller the Central Government is satisfied that special grounds exist warranting such exemption, the Central Government may for such period, to such extent and in relation to such particular investments and subject to such conditions as maybe specified by it in this behalf, exempt an insurer from all or any of the provisions of sub-sections (3), (4) and (7).

(9) An insurer shall not keep more than three per cent. of the controlled fund in fixed deposit or current deposit, or partly in fixed deposit and partly in current deposit, with any one banking company or with any one comparative society registered under the Insurance Cooperative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force and doing banking business:

Provided that in applying this sub-section to the amount in deposit with banking on any day all the premiums collected by that company on behalf of the insurer during the preceding thirty days shall be excluded:

Provided further that the Authority may permit a co-operative life insurance society as defined in Clause (b) of sub-section (1) of Section 95 to keep more than three per cent. of its controlled fund in fixed deposit with any cooperative society referred to in this subsection, if the fixed deposit is secured by a first mortgage on any immoveable property.

(10) All assets forming the controlled fund, not being Government securities or other approved securities in which assets are to be invested or held invested in accordance with Section 27, shall (except for a part thereof not exceeding one-tenth of the controlled fund in value which may, subject to such conditions and restrictions as may be prescribed, be offered as security for any loan taken for purposes of any investment), be held free of any encumbrance, charge, hypothecation or lien.

(11) If at any time the Authority considers any one or more of the investments constituting an insurer's controlled fund to be unsuitable or undesirable, the Authority may, after giving the insurer an opportunity of being heard, direct him to realise the investment or investments, and the insurer shall comply with the direction within such time as may be specified by the Authority.

(12) Every insurer in existence at the 'commencement of the Insurance (Amendment) Act, 1950 (47 of 1950), whose investments or any part thereof at such commencement contravene or contravenes any of the provisions of this section, shall, within ninety days from such commencement, submit to the Authority a report specifying in all such investments, and if the Authority is satisfied that it will not be in the interests of the insurer or any class of insurers generally to realise any such investments, it may, by order direct that the provisions of this section [other than the provisions contained in sub-section (11)] shall not apply in relation to any such investments or to any class of investments generally for such period or periods as may be specified in the order.

(13) Without prejudice to the powers given to the Authority by subsection (11), nothing contained in this section shall be deemed to require any insurer to realise any investment made in conformity with the provisions of subsection (1) after the commencement of this Act which after the making thereof, has ceased

to be an approved investment within the meaning of this section.

(14) Nothing contained in this section shall be deemed to affect in any way the manner in which any moneys relating to the provident fund of any employee or to any security taken from any employee or over moneys of a like nature are required -to be held by or under any Central Act, or Act of a State Legislature.

Explanation.- In this section "controlled fund" means-

(a) in the case of any insurer specified in sub-clause (a) (ii) or sub-clause (b) of Clause (9) of section 2 and carrying on life insurance business-

- (i) all his funds, if he carries on no other class of insurance business;
- (ii) all the funds appertaining to his life insurance business if he carries on some other class of insurance business also; and

(b) in the case of any other insurer carrying on life insurance business,-

- (i) all his funds in India, if he carries on no other class of insurance business;
- (ii) all the funds in India appertaining to his life insurance business if he carries on some other class of insurance business also;

but does not include any fund or portion thereof in respect of which the Authority is satisfied that such fund or portion thereof, as the case may be, is regulated by the law of any country outside India or in respect of which the Authority is satisfied that it would not be in the interest of the insurer to apply the provisions of this section.

Further provisions regarding investments.

27-B. (1) No insurer carrying on general insurance business shall, after the commencement of the Insurance (Amendment) Act, 1968 (62 of 1968), invest or keep invested any part of his asset otherwise than in any of the following approved investments, namely:

(a) the investment specified in clauses (a) to (e), (n), (g) and (r) of sub-section (1) of Sec. 27A;

(b) debentures secured by a first charge on any immoveable property, plant or equipment of any company which has paid interest in full for the three years immediately preceding or for at least three out of the four or five years immediately preceding on such or similar debentures issued by it;

(c) debentures secured by a first charge on any immoveable property, plant or equipment of any company where either the book value or the market value, whichever is less, of such property, plant or equipment is more than twice the value of such debentures;

(d) first debentures secured by a floating charge on all its assets or by a fixed charge on fixed assets and floating charge on all other assets of any company which has paid dividends on its equity shares for the three years immediately preceding or for at least three out of the four or five years immediately preceding the date of the investment;

(e) preference shares of any company which has paid dividends on its equity shares for the three years immediately preceding or for at least three out of the four or five years immediately preceding;

(f) preference shares of any company on which dividends have been paid for the three years immediately preceding or for at least three out of the four or five years immediately preceding and which have priority in payment over all the equity shares of the company in winding up;

(g) shares of any company which have been guaranteed by another company, such other company having paid dividends on its equity shares for the three years immediately preceding or for at least three out of the four or five years immediately preceding;

Provided that the total amount of shares of all the companies under - that guarantee by the guaranteeing company is not in excess of fifty percent. of the paid-up amount of preference and equity shares of the guaranteeing company;

(h) shares of any company on which dividends of not less than four per cent including bonus have been paid for the three years immediately preceding or for at least three out of the four or five years immediately preceding;

(i) first mortgages on immoveable property situated in India or in any other country where the insurer is carrying on insurance business:

Provided that the property mortgaged is not lease-hold property with an outstanding term of less than fifteen years and the value of the property exceeds by one-third, or if it consists of buildings, exceeds by one-half, the mortgage money;

(j) such other investments as the Authority may, by notification in the Official Gazette, declare to be approved investments for the purposes of this section.

(2) Any prescribed assets shall, subject to such conditions, if any, as may be prescribed be deemed to be assets invested or kept invested in approved investments specified in sub-section (1).

(3) Notwithstanding anything contained in sub-section (1), an insurer may, subject to the provisions contained in the next succeeding sub-sections, invest or keep invested any part of his assets otherwise than in an approved investment specified in subsection (1), if-

(i) after such investment, the total amounts of all such investments of the insurer do not exceed twenty-five per cent of his assets, and

(ii) the investment is made or in the case of any investment already made, the continuance of such investment is with the consent of all the directors, other than the directors appointed under Section 34-C, present at a meeting and eligible to vote, special notice of which has been given to all the directors then in India, and all such investments, including investments in which any director is interested, are reported without delay to the Authority with full details of investments and the extent of the director's interest in any such investment:

Provided that the making, or the continuance, of such investment is not objected to by any director appointed under Section 34-C

(4) An insurer shall not invest or keep invested any part of his assets in the shares of any one banking company or investment company more than-

(a) ten per cent of his assets, or

(b) two per cent of the subscribed share capital and Debentures of the banking company or investment company concerned,

whichever is less.

(5) An insurer shall not invest or keep invested any part of his assets in the shares or debentures of any one company other than a banking company or investment company more than

(a) ten per cent of his assets, or

(b) ten per cent of the subscribed share capital and debentures of the company,

whichever is less:

Provided that nothing in this sub-section shall apply to any investment made by an insurer in the shares of any other insurer if such other insurer is a company within the meaning of Section 3 of the Companies Act, 1956 (1 of 1956) and carries on insurance or re-insurance business in India.

(6) An insurer shall not invest or keep invested any part of his assets in the shares or debentures of any private company.

(7) Where an investment is in partly paid-up shares, the uncalled liability on such shares shall be added to the amount invested for the purpose of computing the percentages referred to in Clause (a) of sub-section (4) and Clause (a) of sub-section (5).

(8) Notwithstanding anything contained in sub-sections (4) and (5) where new shares are issued to the

existing shareholders by a company, the existing shares of which are covered by Clause (e) or clause (g) or Clause (h) of sub-section (1) and of which an insurer is already a share-holder, the insurer may subscribe to such new shares:

Provided that the proportion of new shares subscribed by him does not exceed the proportion which the paid-up amount on the shares held by him immediately before such subscription bears to the total paid-up capital of the company at the time of such subscription

(9) If, on an application submitted to the Authority, he has satisfied that special grounds exist warranting such exemption, he may, for such period, to such extent and in relation to such particular investments and subject to such conditions as may be specified by him in this behalf, exempt an insurer from all or any of the provisions of sub-sections (4), (5) and (8).

(10) An insurer shall not keep more than ten per cent. of his assets in fixed deposit or current deposit, or partly in fixed deposit and partly in current deposit, with any one banking company or with any co-operative society registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force and doing banking business:

Provided that in applying this sub-section to the amount in deposit with a banking company on any day, all the premiums credited during the preceding sixty days, to the account of the insurer with such banking company and the amounts deposited, during the preceding thirty days, by such insurer with that banking company for payment of claims or out of re-insurance recoveries, shall be excluded.

(11) All assets shall (except for a part thereof not exceeding one-tenth of the total assets in value which may, subject to such conditions and restriction as may be prescribed, be offered as security for any loan taken for purposes of any investment or for payment of claims, or which may be kept as security deposit with the banks for acceptance of policies) be held free of any encumbrance, charge, hypothecation or lien.

(12) If at any time the Authority considers any one or more of the investments constituting an insurer's assets to be unsuitable or undesirable, he may, after giving the insurer an opportunity of being heard, direct the insurer to realize the investment or investments, and the insurer shall comply with the direction within such time as may be specified in this behalf by the Authority.

(13) Every insurer in existence at the commencement of the insurance (Amendment) Act, 1968, whose investments or any part thereof at such commencement do or does not fulfill the requirements of this section, shall, within ninety days from such commencement, submit to the Authority a report specifying all such investments, and, if the Authority is satisfied that it will not be in the interest of the insurer or any class of insurers generally to realise any such investments, he may, by order direct that the provisions of this section, other than the provisions contained in sub-section (12), shall not apply in relation to any such investments or to any class of investments generally for such period or periods as may be specified in the order.

(14) Without prejudice to the powers conferred on the Authority by subsection (12), nothing contained in this section shall be deemed to require any insurer to realise any investment made in conformity with the provisions of sub-section (1) after the commencement of the Insurance (Amendment) Act, 1968(62 of 1968), which, after the making thereof, has ceased to be an approved investment within the meaning of this section.

(15) Nothing contained in this section shall be deemed to affect in any way the manner in which any moneys relating to the provident fund of any employee or to any security taken from any employee or other moneys of a like nature are required to be held by or under any Central, Provincial or State Act.

(16) In this section, unless the context otherwise requires, "assets" means-

(a) in the case of an insurer carrying on life insurance business in India, all his assets required to be shown under the column "Other Classes of Business" in the balance-sheet in Form A, in Part II of the First Schedule, but excluding any items against the head "Other Accounts (to be specified)";

(b) in the case of an insurer specified in sub-clause (a) (ii) or sub-clause (b) of Clause (9) of Sec. 2, who is not carrying on life insurance business in India, all his assets required to be shown in the balance-sheet in Form A in Part II of the First Schedule but excluding any items against the head "Other Accounts (to be specified)"; and

(c) in the case of any other insurer, the assets required to be shown in the statement in Form AA,

in Part II of the First Schedule, but excluding office furniture,

but does not include any assets specifically held against any fund or portion thereof in respect of which the Authority is satisfied that such funds or portion thereof, as the case may be, is regulated by the law of any country outside India or in respect of which the Authority is satisfied that it would not be in the interest of the insurer to apply the provisions of this section.

Prohibition of investment of funds outside India

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

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

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

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

Statement of investment of assets

28. (1) Every insurer carrying on the business of life insurance shall every year, within thirty-one days from the beginning of the year submit to the Authority a return showing as at the 31st day of December of the preceding year the assets held invested in accordance with Section 27 and all other particulars necessary to establish that the requirements of that section have been complied with, and such return shall be certified by a principal officer of the insurer.

(2) Every such insurer shall also furnish, within fifteen days from the last day of March, June, and September, a return certified as aforesaid showing as at the end of each of the said months the assets held invested in accordance with Sec. 27.

(2A) In respect of the Government securities and other approved securities invested and kept invested in accordance with sub-section (1) of Section 27 an insurer shall submit along with the returns referred to in sub-sections (1) and (2) a certificate, where such assets are in the custody of a banking company, from that company, and in any other case from the chairman, two directors and a principal officer, if the insurer is a company, or otherwise from a principal officer of the insurer to the effect that the securities are held free of any encumbrance, charge, hypothecation, or lien, and every such certificate after the first shall also state that since the date of the certificate immediately preceding all the securities have been so held.

(2B) In respect of the assets forming the controlled fund within the meaning of Section 27A, and which do not form part of the Government securities and approved securities invested and kept invested in accordance with Section 27, an insurer shall submit, along with the returns referred to in sub-sections (1) and (2), a statement, where such assets are in the custody of a banking company, from that company, and, in any other case, from the chairman, two directors and a principal officer if the insurer is a company, or from a principal officer of the insurer if the insurer is not a company, specifying the assets, which are subjected to any charge and certifying that the assets, which are held free of any encumbrance, charge, hypothecation, or lien, and every such statement after the first shall also specify the charges created in respect of any of those assets since the date of the statement immediately preceding, and, if any such charges have been liquidated, the date on which they were so liquidated.

(3) The Authority may, at his discretion require any insurer to whom sub-section (1) applies to submit before the 1st day of August in each or any year a return of the nature referred to in subsection (1), certified as required by sub-section and prepared as at the 30th day of June.

(4) In the case of an insurer having his principal place of business or domicile outside India, the Authority

may, on application made by the insurer, extend the periods of fifteen and thirty-one days mentioned in the foregoing sub-sections to thirty days and sixty days, respectively.

(5) The Authority shall be entitled at any time to take such steps as he may consider necessary for the inspection or verification of the assets invested in compliance with Section 27 or for the purpose of securing the particulars necessary to establish that the requirements of that section have been complied with; the insurer shall comply with any requisition made in this behalf by the Authority, and if he fails to do so within two months from the receipt of the requisition he shall be deemed to have made default in complying with the requirements of this section.

Return of investments relating to controlled fund and changes therein.

28A. (1) Every insurer carrying on life insurance business, shall every year, within thirty-one days from the beginning of the year submit to the Authority a return in the form specified by the regulations made by the Authority showing as at the 31st day of March of the preceding year, the investments made out of the controlled fund referred to in Section 27A, and every such return shall be certified by a principal officer of the insurer.

(2) Every insurer referred to in sub-section (1) shall also submit to the Authority a return in the form specified by the regulations made by the Authority showing all the changes that occurred in the investments aforesaid during each of the quarters ending on the last day of March, June, September and December within thirty-one days from the close of the quarter to which it relates, and every such return shall be certified by a principal officer of the insurers.

Returns of investments relating to the assets and changes therein

28B. (1) Every insurer carrying on general insurance business, shall, every year, within thirty-one days from the beginning of the year, submit to the Authority a return in the form specified by the regulations made by the Authority form showing as at the 31st day of March of the preceding year the investments made out of his assets referred to in Section 27B, and every such return shall be certified by a principal officer of the insurer.

(2) Every insurer referred to in sub-section (1) shall also submit to the Authority a return in the form specified by the regulations made by the Authority showing all the changes that occurred in the investment aforesaid during each of the quarters ending on the last day of March, June, September and December within thirty-one days from the close of the quarter to which it relates, and every such return shall be certified by a principal officer of the insurer.

(3) Every insurer shall submit, along with the returns referred to in sub-sections (1) and (2), a statement, where any part of the assets are in the custody of a banking company, from that company, and in any other case, from the chairman, two directors and a principal officer, if the insurer is a company, or from a principal officer of the insurer, if the insurer, is not a company, specifying the assets, which are subject to charge and certifying that the other assets are held free of any encumbrance, charge, hypothecation or lien, and every such statement after the first shall also specify the charges created in respect of any of those assets since the date of the statement immediately preceding, and, if any such charges have been liquidated, the date on which they were so liquidated.

Prohibition of loans

29. (1) No insurer shall grant loans or temporary advances either on hypothecation of property or on personal security or otherwise, except loans on life policies issued by him within their surrender value, to any director, manager, managing agent, actuary, auditor or officer of the insurer if a company, or where the insurer is a firm, to any partner therein, or to any-other company or firm in which any such director, manager, managing agent, actuary, officer or partner holds the position of a director, manager, managing agent' actuary, officer or partner:

Provided that nothing contained in this sub-section shall apply to loans made by an insurer to a banking company:

Provided further that nothing in this section shall prohibit a company from granting such loans or advances to subsidiary company or to any other company of which the company granting the loan or advance is a subsidiary company eland where any such loan or advance is made out of any life insurance fund the matter

shall be reported within thirty days of the making of such loan or advance to the Authority.

(2) The provisions of Section 86D of the Indian Companies Act, 1913 (7 of 1913), shall not apply to a loan granted to a director of an insurer being a company, if the loan is one granted on the security of a policy on which the insurer bears the risk and the policy was issued to the director on his own life, and the loan is within the surrender value of the policy.

(3) Subject to the provisions of sub-section (1), no insurer carrying on life insurance business shall grant—

- (a) any loans or temporary advances either on hypothecation of property or on personal security or otherwise, except such loans as are specified in sub-section (1) of Section 27A;
- (b) temporary advances to any chief, special or insurance agent to facilitate the carrying out of his functions as such except in cases where such advances do not exceed in the aggregate—
 - (i) in the case of a chief agent, the overriding renewal commission earned by him during the year immediately preceding,
 - (ii) in the case of special agent, the renewal commission earned by him during the year immediately preceding,
 - (iii) in the case of an insurance agent, the renewal commission earned by him during the year immediately preceding.

Explanation. The temporary advance referred to in clause (b) of this sub-section shall also be admissible in the case of any special agent or insurance agent newly appointed, but such advance—

- (a) shall be repayable within two years from the date on which such special agent or insurance agent was first appointed, and
- (b) shall not exceed, in the case of the special agent, five hundred rupees, and, in the case of the insurance agent, one hundred rupees,

and the total amount of all advances so made shall not exceed ten thousand rupees in the case of any insurer whose business in force is one crore of rupees or more and five thousand rupees in any other case.

(4) Every loan or advance existing at the commencement of the Insurance (Amendment) Act, 1950 (47 of 1950), which contravenes the provisions of subsection (3) shall be notified by the insurer to the Authority within thirty days of such commencement and shall notwithstanding any contract to the contrary be repaid within one year from commencement.

(5) Where any event occurs giving rise to circumstances, the existence of which at the time of the grant of any subsisting loan or advance would have made such grant a contravention of this section, such loan or advance shall, notwithstanding anything in any contract to the contrary, be repaid within three months from the occurrence of such event.

(6) In case of default in complying with the provisions of sub-section (4) or subsection (5) the director, manager, auditor, actuary, officer or partner, or the chief, special or insurance agent concerned shall, without prejudice to any other penalty which he may incur, cease to hold office under, or to act for, the insurer granting the loan on the expiry of the said period of one year or three months, as the case may be.

Liability of directors, etc. for loss due to contraventions of Sections 27, 27A and 29

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

Assets of insurer how to be kept

31. (1) None of the assets in India of any insurer shall, except in the case of deposits made with the Reserve Bank of India under Section 7 or Section 98 or in so far as assets are required to be vested in trustees by sub-section (4) of Section 27, be kept otherwise than in the name of a public officer approved by the Authority,

or in the corporate name of the undertaking, if a company, or in the name of the partners, if a firm, or in the name of the proprietor, if an individual.

(2) Nothing contained in this section shall be deemed to prohibit the endorsement in favour of a banking company of any security or other document solely for the purpose of collection or for realization of interest, bonus or dividend.

Provisions relating to managers, etc

(31)A. (1) Notwithstanding anything to the contrary contained in the Indian Companies Act, 1913 (7 of 1913), or in the articles of association of the insurer, if a company, or in any contract or agreement, no insurer shall after expiry of one year from the commencement of the Insurance (Amendment) Act, 1950 (47 of 1950),

- (a) be managed by a company or a firm, or
- (b) be directed or managed by, or employ as manager, or officer or in any capacity, any person whose remuneration or any part thereof takes the form of commission or bonus or a share in the valuation surplus in respect of the life insurance business of the insurer, or
- (c) be directed or managed by, or employ as manager or officer or in any capacity, any person whose remuneration or any part thereof takes the form of commission or bonus in respect of the general insurance business of the insurer:

Provided that nothing in this sub-section shall be deemed to prohibit-

- (i) the payment of commission to a chief agent, special agent or an insurance agent, in respect of life insurance business procured by or through him;
 - (ii) the payment of commission to a principal agent or an insurance agent in respect of general insurance business procured by or through him;
 - (iii) the payment of commission, with the approval of the Central Government and for such period as it may determine, to a person not being an officer of an insurer who was, on the 1st November, 1944, employing on behalf of an insurer, chief agents or special agents and continues so to do in respect of insurance business procured by or through him;
 - (iv) the employment of any individual in a clerical or other subordinate capacity who, as an insurance agent, receives commission in respect of insurance business procured by him;
 - (v) the employment as an officer of any individual who receives renewal commission in respect of life insurance business procured by him in his capacity as an insurance agent or as an employer of agents before such employment, or before the commencement of the Insurance (Amendment) Act, 1950 (47 of 1950), whichever is later;
 - (vi) the payment of a share in the profits of general insurance business;
 - (vii) the payment of bonus in any year on a uniform basis to all salaried employees or any class of them by way of additional remuneration.
- (2) Notwithstanding anything to the contrary contained in the Indian Companies Act, 1913 (7 of 1913), or in the articles of association of the insurer, being a company, or in any contract or agreement, no manager, managing director or any other person concerned in the management of an insurer's business shall be entitled to nominate a successor to his office, and no person so nominated, whether before or after the commencement of the Insurance (Amendment) Act, 1950 (47 of 1950), shall be entitled to hold or to continue in such office.
- (3) If in the case of any insurance company provision is made by the articles of association of the company or by an agreement entered into between any person and the company for empowering a director or manager or other officer of the company to assign his office to any other person, any assignment of office made in pursuance of the said provision, shall, notwithstanding anything to the contrary contained in the said provisions or in Section 86B of the Indian Companies Act, 1913 (7 of 1913), be void.

- (4) No person shall have any right, whether in contract or otherwise, to any compensation for any loss incurred by reason of the operation of any provision of this section.

Power to restrict payment of excessive remuneration

31B. (1) The Authority may if it is satisfied that any insurer, in the case of an insurer specified in sub-clause (a) (ii) or sub-clause (b) of Clause (9) of Section 2 in respect of all insurance business transacted by him, and in the case of any other insurer in respect of the insurance business transacted by him in India, is paying any person remuneration, whether by way of commission or otherwise on a scale disproportionate, according to the normal standards prevailing in insurance business, to the resources of the insurer, call upon the insurer to comply within six months with such directions as it may think fit to issue in the matter, and if compliance with the directions so issued requires the alteration of any of the terms of the contract entered into by the insurer with such person, no compensation shall be payable to such person by the insurer by reason only of such alteration or of the resignation of such person if the altered terms are not acceptable to him and no payment by way of renewal commission or otherwise shall be made to such person by the insurer in respect of any premiums paid after the date of such resignation except at such rate as may be approved by the Central Government in this behalf.

(2) Every insurer shall, before the close of the month following every year, submit to the Authority a statement in the form specified by the regulations made by the Authority showing the remuneration paid whether by way of commission or otherwise, to any person in cases where such remuneration exceeds such sum as may be specified by the regulations made by the Authority.

(3) Where any person not being a chief agent, principal agent or special agent is in respect of remuneration exceeding the sum of five thousand rupees in any year, the Authority may, by notice in writing, require the insurer to submit certified copies of the agreement entered into between the insurer and any such person, and the insurer shall comply with any such requisition within the time specified in the notice.

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

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

Limitation on employment of managing agents and on the remuneration payable to them

32. (1) No insurer shall after the commencement of this Act, appoint a managing agent for the conduct of business.

(2) Where any insurer engaged in the business of insurance before the commencement of this Act employs a managing agent for the conduct of his business, then notwithstanding anything to the contrary contained in the Indian Companies Act, 1913 (7 of 1913) and notwithstanding anything to the contrary contained in the articles of the insurer, if a company, or in any agreement entered into by the insurer, such managing agent shall cease to hold office on the expiry of three years from the commencement of this Act and no compensation shall be payable to him by the insurer by reason only of the premature termination of his employment as managing agent.

(3) After the commencement of this Act, notwithstanding anything contained in the Indian Companies Act, 1913 (7 of 1913), and notwithstanding anything to the contrary contained in any agreement entered into by an insurer or in the articles of association of an insurer being a company, no insurer shall pay to a managing agent and no managing agent shall accept from an insurer as remuneration for his services as managing agent more than two thousand rupees per month in all, including salary and commission and other remuneration payable to and receivable by him, for his services as managing agent.

Prohibition of common officers and requirement as to whole time officers

32A. (1) A managing director or other officer of an insurer specified in sub-clause (b) of clause (9) of Section 2 and carrying on life insurance business shall not be a managing director or other officer of any other insurer carrying on life insurance business or of a banking company or of an investment company:

Provided that the Authority may permit such managing director or other officer to be a managing director or other officer of any other insurer carrying on life insurance business for the purpose of amalgamating the business of the two insurers or transferring the business of one insurer to the other.

(2) Where an insurer specified in sub-clause (b) of Clause (9) of Section 2 has a life insurance fund of more than twenty-five lakhs of rupees or insurance funds totaling more than fifty lakhs of rupees, the manager, managing director or either officer of the insurer shall be a whole time employee of the insurer:

Provided that the Authority may, for such period as it thinks fit, permit the employment of any specified person as a part-time manager, managing director or other officer of such insurer.

(3) Nothing in this section, shall prevent—

- (a) the manager, managing director or other officer of a insurer being the manager, managing director or other officer of a subsidiary company of the insurer with the previous approval of the Authority;
- (b) the manager, managing director or other officer of an insurer, exclusively carrying on life insurance business being the manager, managing director or other officer of an insurer not carrying on life insurance business;
- (c) any officer of a branch of one insurer carrying on general insurance business from being any officer of a branch in the same town of another insurer carrying on general insurance business;
- (d) an officer in the employment of an insurer for giving professional advice;

Explanation: In this section the expression "officer" does not include a director.

Insurance business in rural or social sector

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

Obligations of insurer in respect of rural or unorganized sector and backward classes

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

Investigation

Power of investigation and inspection by Authority

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

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

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

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

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

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

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

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

(b) cancel the registration of the insurer; or

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

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

(8) The Authority may 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 under this section.

Explanation.—for the purposes of this section, the expression "insurer" shall include in the case of an insurer incorporated in India—

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

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

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

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

Power to appoint staff

33A. The Authority may appoint such staff, and at such places as it or he may consider necessary, for the scrutiny of the returns, statements and information furnished by insurers under this Act and generally to ensure the efficient performance of the functions of the Authority under this Act.

Power of the Authority to issue directions

34. (1) where the Authority is satisfied that

(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, it is necessary to issue directions to insurers generally or to any insurer In particular, he may, from time to time, issue such directions as he deems fit, and the insurers or the insurer, as the case may be, shall be bound to comply with such directions:

Provided that no such directions shall be issued to any insurer in particular unless such insurer has been given a reasonable opportunity of being heard

(2) The Authority may, on representation made to him or on his own motion, modify or cancel any direction issued under sub-section (1), and in so modifying or canceling any directions, may impose such conditions as he thinks fit, subject to which the modification or cancellation shall have effect.

Control over Management

Amendment of provisions relating to appointments of managing directors, etc., to be subject to previous approval of the Authority

34A. (1) In the case of an insurer,—

- (a) no amendment made, after the commencement of the Insurance (Amendment) Act, 1968, of any provision relating to the appointment, re-appointment, termination of appointment or remuneration of a managing or whole-time director, or of a manager or a chief executive officer, by whatever name called, whether that provision be contained in the insurers memorandum or articles of associations, or in an agreement entered into by him, or in any resolution passed by the insurer in general meeting or by his Board of Directors shall have effect unless approved by the Authority;
- (b) no appointment, re-appointment or termination of appointment made after the commencement of the Insurance (Amendment) Act, 1968, of a managing or whole-time director, or a manager or a chief executive officer, by whatever name called, shall have effect unless such appointment, reappointment or termination of appointment is made with the previous approval of the Authority.

Explanation- For the purposes of this sub-section, any provision conferring any benefit or providing any amenity or perquisite, in whatever form, whether during or after the termination of the term of office of the manager or the chief executive officer, by whatever name called or a managing or whole-time director, shall be deemed to be a provision relating to his remuneration.

(2) Nothing contained in Sections 268 and 269, the proviso to sub-section (3) of Section 309, Sections 310 and 311, the proviso to Section 387 and Section 388 (in so far as Section 388 makes the provisions of Sections 310 and 311 apply in relation to the manager of a company) of the Companies Act, 1956 (1 of 1956), shall apply to any matter in respect of which the approval of the Authority has to be obtained under sum section (1).

(3) No act done by a person as a managing or whole-time director or a director not liable to retire by rotation or a manager or a chief executive officer, by whatever name called, shall be deemed to be invalid on the ground that it is subsequently discovered that his appointment or re-appointment had not taken effect by reason of any of the provisions of this Act; but nothing in this subsection shall be construed as rendering valid any act done by such person after his appointment or re-appointment has been shown to the insurer not to have had effect.

Power of Authority to remove managerial persons from office

34B. (1) Where the Authority 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, for reasons to be recorded in writing, by order, remove from office, with effect from such date as may be specified in the order, any director or the chief executive officer, by whatever name called, of the insurer.

(2) No order under sub-section (1) shall be made unless the director or chief executive officer concerned has been given a reasonable opportunity of making a representation to the Authority against the proposed order:

Provided that if, in the opinion of the Controller, any delay would be detrimental to the interests of the insurer or his policy-holders, he may, at the time of giving the opportunity aforesaid or at any time thereafter, by order direct that, pending the consideration of the representation aforesaid, if any, the director or, as the case may be, chief executive officer, shall not, with effect from the date of such order,

- (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.

(3) Where any order is made in respect of a director or chief executive officer of an insurer under sub-section (1), 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.

(4) If any person in respect of whom an order is made by the Authority under sub-section (1) or under the proviso to sub-section (2) contravenes the provisions of this section, he shall be punishable with fine which may extend to two hundred and fifty rupees for each day during which such contravention continues.

(5) Where an order under sub-section (1) has been made, 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 under that sub-section, with effect from such date as may be specified in the order.

(6) Any person appointed as director or chief executive officer under this section shall-

- (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.

(7) Notwithstanding anything contained in any law or in any contract, memorandum or articles of association, on the removal of a person from office under this section, that person shall not be entitled to claim any compensation for the loss or termination of office.

Power of Controller to appoint additional directors

34C. (1) If the Authority 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, he may, from time to time, by order in writing, appoint, with effect from such date as may be specified in the order, one or more persons to hold office as additional directors of the insurer:

Provided that the number of additional directors so appointed 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.

(2) Any person appointed as additional director in pursuance of this section,—

- (a) shall 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) shall 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) shall not be required to hold qualification shares of the insurer.

(3) For the purpose of reckoning any preparation of the total number of directors of the insurer, any additional director appointed under this section shall not be taken into account.

Sections 34B and 34C to override other laws

34-D. Any appointment or removal of a director or chief executive officer in pursuance of Section 34B or Section 34C shall have effect notwithstanding anything to the contrary contained in the Companies Act, 1956 (1 of 1956), or any other law for the time being in force or in any contract or any other instrument.

Further powers

34E. 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,—
 - (i) 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;
 - (ii) 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;
 - (iii) 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;
 - (iv) 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;
 - (v) 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.

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

34F. (1) Without prejudice to the generality of the powers conferred by sub-section (1) of Section 34, the Authority may, if he is of opinion that the terms or conditions of any re-insurance treaty or other re-insurance contract entered into by an insurer are not favourable to the insurer or are detrimental to the public interest, he may, by order, require, the insurer to make, at the time when the renewal of such treaty or contract becomes next due, such modifications in the terms and conditions of such treaty or contract as he may specify in the order or not to renew such treaty or contract, and, if the insurer fails to comply with such order, he shall be deemed to have failed to comply with the provisions of this Act.

(2) The Authority may, if he has reason to believe that an insurer is entering into or is likely to enter into re-insurance treaties or other re-insurance contracts which are not favourable to the insurer or are detrimental to the public interest, he may, by order, direct that the insurer shall not enter into such re-insurance treaty or other re-insurance contract unless a copy of such treaty or contract has been furnished to him in advance and the terms and conditions thereof have been approved by him and if the insurer fails to comply with such order he shall be deemed to have failed to comply with the requirements of this Act.

Power of Authority to order closure of foreign branches

34G. Without prejudice to the generality of the powers conferred by sub-section (1) of Section 34 the Controller may, if he has reason to believe that the working of any branch outside India of an insurer being an insurer specified in sub-clause (b) of clause (9) of Section 2, 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, he may, after giving an opportunity to the insurer of being heard, direct that the insurer shall cease, within such period not being less than one year, as may be specified in the order, to carry on insurance business in the country in which such branch is situated and if the insurer fails to comply with such order he shall be deemed to have failed to comply with the provisions of this Act.

Search and seizure

34H. (1) Where the Chairperson of the Authority in consequence of information in his possession, has reason to believe that—

- (a) any person who has been required under sub-section (2) of Sec. 33 to produce, or cause to be produced, any books, accounts or other documents in his custody or power has omitted or failed to produce, or cause to be produced, such books, accounts or other documents, or
- (b) any person to whom a requisition 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

under sub-section (1) of Section 33 or an inspection under sub-section (1A) of that section, 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 authorise any subordinate officer of his, not lower in rank than an officer authorized by the Authority (hereafter referred to as the authorised officer) to-
 - (i) 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;
 - (ii) 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;
 - (iii) seize all or any such books, accounts or other documents found as a result of such search;
 - (iv) place marks of identification on such books, accounts or other documents or make or cause to be made extracts or copies there from.

(2) The authorised 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 specified in sub-section (1) and it shall be the duty of every such officer to comply with such requisition.

(3) The authorised officer may, where it is not practicable to seize any such book, account or other document, specified in sub-section (1), 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 for ensuring compliance with this sub-section.

(4) The authorised 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 may thereafter be used in evidence in any proceeding under this Act.

(5) The books, accounts, papers, receipts, vouchers, reports, or other documents seized under subsection (1) shall not be retained by the authorised officer for a period exceeding one hundred and eighty days from the date of the seizure unless the reasons for retaining the same recorded by him in writing and the approval of the Chairperson of the Authority for such retention is obtained:

Provided that the Chairperson of the Authority shall not authorise 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.

(6) The person from whose custody any books, accounts, papers, receipts, vouchers, reports, or other documents are seized under sub-section (1) may make copies thereof, or take extracts there from, in the presence of the authorised officer or any other person empowered by him in this behalf at such place and time as the authorised officer may appoint in this behalf.

(7) If a person legally entitled to the books, accounts, papers, receipts, vouchers, reports, or other documents seized under sub-section (1) objects for any reason to the approval given by the Chairperson of the Authority

under sub-section (5), he may make an application to the Central Government stating therein the reasons for such objection and requesting for the return of the books, accounts, papers, receipts, vouchers, reports, or other documents.

(8) On receipt of the application under sub-section (7) the Central Government may, after giving the applicant an opportunity of being heard, pass such orders as it thinks fit.

(9) The provisions of the Code of Criminal Procedure, 1898 (5 of 1898), relating to searchers and seizures shall apply, so far as may be, to every search and seizure made under sub-section (1).

(10) The Central Government may, by notification in the official Gazette, make rules in relation to any search or seizure under this section; in particular, and without prejudice to the generality of the foregoing power, such rules may provide for the procedure to be followed by the authorised officer,—

- (i) for obtaining ingress into such building or place to be searched where free ingress thereto is not available;
- (ii) for ensuring safe custody of any books, accounts, papers, receipts, vouchers, reports, or other documents seized under this section.

Amalgamation and Transfer of Insurance Business

Amalgamation and transfer of insurance business

35. (1) No life insurance business of an insurer specified in sub-clause (a) (ii) or sub-clause (b) of Clause (9) of Section 2 shall be transferred to any person or transferred to or amalgamated with the life insurance business of any other insurer except in accordance with a scheme prepared under this section and approved by the Authority.

(2) Any scheme prepared under this section shall set out the agreement under which the transfer or amalgamation is proposed to be effected, and shall contain such further provisions as may be necessary for giving effect to the scheme.

(3) Before an application is made to the Authority to approve any such scheme, notices 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 the Authority, 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 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.

The balance-sheets, reports and abstracts referred to in Clauses (b), (c) and (d) shall all be prepared as at the date at which the amalgamation or transfer if approved 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 under this section:

Provided that if the Authority so directs in the case of any particular insurer there may be substituted respectively for the balance-sheet, report and abstract referred to in Clauses. (b) and (c) prepared in accordance with this sub-section certified copies of the last balance-sheet and last report and abstract prepared in accordance with Sections 11 and 13 of this Act or Sections 7 and 8 of the Indian Life Assurance Companies Act, 1912 (6 of 1912), if that balance-sheet is prepared as at a date not more than twelve months, and that report and abstract as at a date not more than five years, before the date on which the application to the Authority is made under this section.

Sanction of amalgamation and transfer by Authority.

36. (1) When any application, such as, is referred to in sub-section (3) of Section 35 is made to the Authority, the Authority shall cause, if for special reasons he so directs, notice of the application to be sent to every person resident in India who is the holder of a life policy of any insurer concerned and shall 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 period as he may direct, and, after hearing the directors and such policy-holders as apply to be heard and other persons whom he considers entitled to be heard, may approve the arrangement, he is satisfied 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 7 or Section 98:

Provided that

- (a) no part of the deposit made by any party to the amalgamation or transfer shall be returned except where, after effect is given to the arrangement, the whole of the deposit to be made by the insurer carrying on the amalgamated business or the person to whom the business is transferred is completed,
 - (b) only so much shall be returned as is no longer required to complete the deposit last mentioned in Clause (a), and
 - (c) while the deposit last mentioned in Clause (a) remains uncompleted, on accession, resulting from the arrangement, to the amount already deposited by the insurer carrying on the amalgamated business or the person to whom the business is transferred shall be appropriated as payment or part-payment of any instalment of deposit subsequently due from him under Section 7 or Section 98.
- (2) If the arrangement involves a reduction of the amount of the insurance and other contracts of the transferor insurer or of any or all of the insurers concerned in the amalgamation, the Authority may approve the arrangement, reducing the amount of such contracts upon such terms and subject to such conditions as he may think proper, and the reduction of contracts as approved by the Authority shall be valid and binding on all the parties concerned.

Statements required after amalgamation and transfer

37. Where an amalgamation takes place between any two or more insurers, or where any business of an insurer is transferred, whether in accordance with a scheme confirmed by the Authority or otherwise, the insurer carrying on the amalgamated business or the person to whom the business is transferred, as the case may be, shall, within three months from the date of the completion of the amalgamation or transfer, 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.

Power of the Authority to prepare scheme of Amalgamation

(37A). (1) If the Authority is satisfied that-

- (i) in the public interest; or
- (ii) in the interests of the policy-holders; or
- (iii) in order to secure the proper management of an insurer; or
- (iv) in the interests of insurance business of the country as a whole;

it is necessary so to do, he may prepare a scheme for the amalgamation of that insurer with any other insurer (hereinafter referred to in this section as the transferee insurer):

Provided that no such scheme shall be prepared unless the other insurer has given his written consent to the proposal for such amalgamation

(2) The scheme aforesaid may contain provisions for all or any of the following matters, namely:

- (a) 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;
- (b) 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;
- (c) 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;
- (d) 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;
- (e) subject to the provisions of the scheme, the continuation by or against the transferee insurer, of any actions or proceedings pending against the insurer;
- (f) 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;
- (g) 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 under clause (f), in respect of such interest or rights as so reduced;
- (h) 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 under clause (f) 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;
- (i) 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:

Provided that the scheme shall contain a provision that the transferee insurer shall pay or grant not later than the expiry of the period of three years, from the date of the amalgamation, to the said employees the same remuneration and the same terms and conditions of service as are applicable to the other employees of corresponding rank on status of the transferee insurer subject to the qualifications and experience of the said employees being the same as or equivalent to those of such other employees of the transferee insurer:

Provided further that if in any case any doubt or difference arises as to whether the qualification and experience of any of the said employees are the same as or are equivalent to the qualifications and experience of the other employees of corresponding rank or status of the transferee insurer, the doubt or difference shall be referred to the Authority whose decision thereon shall be final;

- (j) notwithstanding anything contained in clause (i), where any of the employee, of the insurer not being workmen within the meaning of the Industrial Disputes Act, 1947 (14 of 1947), are specifically mentioned in the scheme under clause (i) or where any employees of the insurer have by notice in writing given to the insurer or, as the case may be, the transferee insurer at any time before the expiry of one month next following the date on which the scheme is sanctioned by the Central Government, intimated their intention of not becoming employees of the transferee insurer, the payment to such employees of compensation, if any, to which they are entitled under the Industrial Disputes Act, 1947, and such pension, gratuity, provident fund, or other retirement benefits ordinarily admissible to them under the rules or authorizations of the insurer immediately before the date of the amalgamation;
- (k) any other terms and conditions for the amalgamation of the insurer;
- (l) such incidental, consequential and supplemental matters as are necessary to secure that the amalgamation shall be fully and effectively carried out.

(3) (a) A copy of the scheme prepared by the Authority shall be sent in draft to the insurer and also to the transferee insurer and any other insurer concerned in the amalgamation, for suggestions and objections, if any, within such period as the Authority may specify for this purpose.

(b) 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 from the insurer and also from the transferee insurer, and any other insurer concerned in the amalgamation and from any shareholder, policyholder or other creditor of each of those insurers and the transferee insurer.

(4) The scheme shall thereafter be placed before the Central Government for its sanction and the Central Government may sanction the scheme without any modification or with such modifications as it may consider necessary; and the scheme as sanctioned by the Central Government shall come into force on such date as the Central Government may specify in this behalf:

Provided that different dates may be specified for different provisions of the scheme

(5) The sanction accorded by the Central Government under sub-section (4) shall be conclusive evidence that all the requirements of this section relating to amalgamation have been complied with and a copy of the sanctioned scheme certified in writing by an officer of the Central Government to be a true copy thereof, shall, in all legal proceedings (whether in appeal or otherwise) be admitted as evidence to the same extent as the original scheme.

(6) The Authority may, in like-manner, add to, amend or vary any scheme made under this section.

(7) On and from the date of the coming into operation of the scheme or any provision thereof; the scheme or such provision shall be 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.

(8) On and from such date as may be specified by the Central Government in this behalf, their properties and assets of the insurer shall, by virtue of and to the extent provided in the scheme, stand transferred to, and vest in, and the liabilities of the insurer shall, by virtue of and to the extent provided in the scheme, stand transferred to and become the liabilities of, the transferee insurer.

(9) If any difficulty arises in giving effect to the provisions of the scheme the Central Government may by order do anything not inconsistent with such provisions which appears to it necessary or expedient for the purpose of removing the difficulty.

(10) Copies of every scheme made under this section and of every order made under sub-section (9) shall be laid before each House of Parliament, as soon as may be, after the scheme has been sanctioned by the Central Government or, as the case may be, the order has been made.

(11) Nothing in this section shall be deemed to prevent the amalgamation with an insurer by a single scheme of several insurers.

(12) The provisions of this section and of any scheme made under it shall have effect notwithstanding anything to the contrary contained in any other provisions of this Act or in any other law or any agreement, award or other instrument for the time being in force.

(13) The provisions of section 37 shall not apply to an amalgamation given effect to under provisions of this section.

Assignment or transfer of policies and nominations

Assignment and transfer of insurance policies

38. (1) A transfer or assignment of a policy of life insurance, whether with or without consideration, may be made only by an endorsement upon the policy itself or by a separate instrument, signed in either case by the transferor or by the assignor or his duly authorised agent and attested by at least one witness, specifically setting forth the fact of transfer or assignment.

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

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

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

(4) Upon the receipt of the notice referred to in sub-section (2), the insurer shall record the fact of such transfer or assignment together with the date thereof and the name of the transferee or the assignee and shall, on the request of the person by whom the notice was given, or of the transferee or assignee, on payment of a

fee not exceeding one rupee, grant a written acknowledgment of the receipt of such notice; and any such acknowledgment shall be conclusive evidence against the insurer that he has duly received the notice to which such acknowledgment relates.

(5) Subject to the terms and conditions of the transfer or assignment, the insurer shall, from the date of the receipt of the notice referred to in subsection (2), recognise the transferee or assignee named in the notice as the only person entitled to benefit under the policy, and such person shall subject to all liabilities and equities to which the transferor or assignor was subject at the date of the transfer or assignment and may institute any proceedings in relation to the policy without obtaining the consent of the transferor or assignor or making him a party to such proceedings.

(6) Any rights and remedies of an assignee or transferee of a policy of life insurance under an assignment or transfer affected prior to the commencement of this Act shall not be affected by the provisions of this section.

(7) Notwithstanding any law or custom having the force of law to the contrary, and assignment in favour of a person made with the condition that it shall be inoperative or that the interest shall pass to some other person on the happening of a specified event during the lifetime of the person whose life is insured, and an assignment in favour of the survivor or survivors of a number of persons shall be valid.

Nomination by policy-holder

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

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

(2) Any such nomination in order to be effectual shall, unless it is incorporated in the text of the policy itself, be made by an endorsement on the policy communicated to the insurer and registered by him in the records relating to the policy and any such nomination may at any time before the policy matures for payment be cancelled or changed by an endorsement or a further endorsement or a will, as the case may be, but unless notice in writing of any such cancellation or change has been delivered to the insurer, the insurer shall not be liable for any payment under the policy made *bona fide* by him to a nominee mentioned in the text of the policy or registered in records of the insurer.

(3) The insurer shall furnish to the policy-holder a written acknowledgment of having registered a nomination or a cancellation change thereof, and may charge a fee not exceeding one rupee for registering such cancellation or change.

(4) A transfer or assignment of a policy made in accordance with section 38 shall automatically cancel a nomination:

Provided that the assignment of a policy to the insurer who bears the rats on the policy at the time of the assignment, in consideration of a loan granted by that insurer on the security of the policy within its surrender value, or its reassignment on repayment of the loan shall not cancel a nomination, but shall affect the rights of the nominee only to the extent of the insurer's interest in the policy.

(5) Where the policy matures for payment during the lifetime of the person whose life is insured or where the nominee or, if there are more nominees than one, all the nominees die before the policy-holder or his heirs or legal representatives or the holder of a succession certificate, as the case may be.

(6) Where the nominee or, if there are more nominees than one, a nominee or nominees survive the person whose life is insured, the amount secured by the policy shall be payable to such survivor or survivors.

(7) The provisions of this section shall not apply to any policy of life insurance to which section 6 of the Married Women's Property Act, 1874 (3 of 1874), applies or has at any time applied:

Provided that where a nomination made whether before or after the commencement of the Insurance (Amendment) Act, 1946 (VII of 1946), in favour of the wife of the person who has insured his life or of his

wife and children or any of them is expressed, whether or not on the face of the policy as being made under this section, the said section 6 shall be deemed not to apply or not to have applied to the policy.

Commission and Rebates and Licensing of Agents

Prohibition of payment by way of commission or otherwise for procuring business

40. (1) No person shall after the expiry of six months from the commencement of this Act, pay or contract to pay any remuneration or reward whether by way of commission or otherwise for soliciting or procuring insurance business in India to any person except an insurance agent or an intermediary or insurance intermediary.

(1A) In this section and section 40A, 41 and 43 references to an insurance agent shall be construed as including references to an individual soliciting or procuring insurance business exclusively in the territories which Immediately before the 1st November, 1956 were comprised in a Part B State notified in this behalf by the Central Government in the Official Gazette and holding a valid licence as an insurance agent under the law of that Part B State.

(2) No insurance agent shall be paid or contract to be paid by way of commission or as remuneration in any form an amount exceeding, in the case of life insurance business, forty per cent of the first year's premium payable on any policy or policies effected through him and five per cent of a renewal premium, payable on such a policy, or, in the case of business of any other class, fifteen per cent of the premium:

Provided that insurers in respect of life insurance business only may pay during the first ten years of their business to their insurance agents fifty-five per cent of the first years premium payable on any policy or policies effected through them and six per cent of the renewal premiums payable on such policies:

Provided further that nothing in this sub-section shall apply in respect of any policy of life insurance issued after the 31st day of December, 1950, or in respect of any policy of general insurance issued after the commencement of the Insurance (Amendment) Act, 1950 (47 of 1950).

(2A) Save as hereinafter provided, no insurance agent or intermediary or insurance intermediary shall be paid or contract to be paid by way of commission or as remuneration in any form any amount in respect of any policy not effected through him:

Provided that where a policy of life insurance has lapsed and it cannot under the terms and conditions applicable to it be revived without further medical examination of the person whose life was insured thereby, an insurer, after giving by notice in writing to the insurance agent through whom the policy was effected if such agent continues to be an agent of the insist an opportunity to effect the revival of the policy within a time specified in the notice, being not less than one month from the date of the receipt by him of the notice, may pay to another insurance agent who effects the revival of the policy an amount calculated at a rate not exceeding half the rate of commission at which the agent through whom the policy was effected would have been paid had the policy not lapsed, on the sum payable on revival of the policy on account of arrear premiums (excluding any interest on such arrear premiums) and also on the subsequent renewal premiums payable on the policy.

(3) Nothing in this section shall prevent the payment under any contract existing prior to the 27th day of January, 1937, of gratuities or renewal commission to Many person, whether an insurance agent within the meaning of this Act or not, or to his representatives after his decease in respect of insurance business effected through him before the said date.

Limitation of expenditure on commission

40A. (1) No person shall pay or contract to pay to an insurance agent, and no insurance agent shall receive or contract to receive by way of commission or remuneration in any form in respect of any policy of life insurance issued in India by an insurer after the 31st day of December, 1950, and effected through an insurance agent, an amount exceeding-

- (a) where the policy grants an immediate annuity or a deferred annuity in consideration of a single premium, or where only one premium is payable on the policy, two per cent of that premium,
- (b) where the policy grants a deferred annuity in consideration or more than one premium, seven and a

half per cent of the first year's premium, and two per cent of each renewal premium payable on the policy, and

- (c) in any other case, thirty-five per cent of the first year's premium, seven and a half per cent of the second and third year's renewal premium, and thereafter five per cent of each renewal premium payable on the policy:

Provided that in a case referred to in clause (c), an insurer, during the first ten years of his business may pay to an insurance agent and an insurance agent may receive from such an insurer, forty per cent of the first year's premium payable on the policy:

Provided further that in case referred to in clause (c) where the rate of commission payable on the first year's premium is equal to or less than twenty-one per cent thereof, and the rate on the fourth and fifth year's premiums does not exceed six per cent thereof, the Life Insurance Corporation of India may pay to an insurance agent, and the insurance agent may receive from it, commission on the sixth and subsequent year's renewal premiums payable on the policy at a rate not exceeding six per cent of each renewal premium.

(2) No person shall pay or contract to pay to a special agent, and no special agent, shall receive or contract to receive, by way of commission or as remuneration in any form, in respect of any policy of life insurance issued in India by an insurer after the 31st day of December, 1950, and effected through a special agent, an amount exceeding—

- (a) in a case referred to in clause (a) of sub-section (1), one-half per cent of the premium,
- (b) in a case referred to in clause (b) of sub-section (1), two per cent of the first year's premium payable on the policy and
- (c) in a case referred to in clause (c) of sub-section (1), fifteen per cent of the first year's premium payable on the policy:

Provided that in a case referred to in clause (c), an insurer, during the first ten years of his business, may pay to a special agent, and a special agent may receive from such an insurer, seventeen and a half per cent of the first year's premium payable on the policy:

Provided further that in a case referred to in clause (c), where the rate of commission payable on the first year's premium is equal to or less than twenty-one per cent thereof, and the rate on the fourth and fifth year's premiums does not exceed six per cent thereof, the Life Insurance Corporation of India may pay to an insurance agent, and the insurance agent may receive from it, commission on the sixth and subsequent year's renewal premiums payable on the policy at a rate not exceeding six per cent of each renewal premium.

(3) No person shall pay or contract to pay to a special agent, and no special agent, shall receive or contract to receive, by way of commission or remuneration in any form in respect of any policy of general insurance issued in India by an insurer after the COMMENCEMENT OF Insurance (Amendment) Act, 1968, and effected through an insurance agent, an amount not exceeding fifteen per cent of the premium payable on the policy where the policy relates to fire or marine insurance or miscellaneous insurance.

(4) No person shall pay or contract to pay to a principal agent, and no principal agent shall receive or contract to receive, by way of commission or remuneration in any form, in respect of any policy of general insurance issued in India by an insurer after the commencement of the Insurance (Amendment) Act, 1950, and effected through a principal agent, an amount exceeding

- (a) in the case referred to in clause (a) of sub-section (3), twenty per cent of the premium payable on the policy, and
- (b) in the case referred to in clause (b) of that sub-section, fifteen per cent of the policy,

less any commission payable to any insurance agent in respect of the said policy:

Provided that the Authority may, in such circumstances and to such extent and for such period as may be specified, authorise the payment of commission or remuneration exceeding the limits specified in this sub-section to a principal agent of an insurer incorporated or domiciled elsewhere than in India, if such agent carries out and has continuously carried out in his own office duties on behalf of the insurer which would

otherwise have been performed by the insurer.

(5) Without prejudice to the provisions of section 102 in respect of a contravention of any of the provisions of the preceding sub-sections by an insurer, any insurance agent who contravenes the provisions of sub-section (1) or sub-section (3) shall be punishable with fine which may extend to one hundred rupees.

Limitation of expenses of management in life insurance business

40B. (1) Every insurer transacting life insurance business in India shall furnish to the Controller, within such time as may be prescribed, statements in the prescribed form certified by an actuary on the basis of premiums currently used by him in regard to new business in respect of mortality, rate of interest, expenses and bonus loading.

(2) After the 31st day of December, 1950, no insurer shall, in respect of life insurance business transacted by him in India, spend as expenses of management in any calendar year an amount in excess of the prescribed limits and in prescribing any such limits regard shall be had to the size and age of the insurer and the provision generally made for expenses of management in the premium rates of insurers:

Provided that where an insurer has spent as such expenses in any year an amount in excess of the amount permissible under this sub-section, he shall not be deemed to have contravened the provisions of this section, if the excess amount so spent is within such limits as may be fixed in respect of the year by the Authority after consultation with the Executive Committee of the Life Insurance Council constituted under section 64-F, by which the actual expenses incurred may exceed the expenses permissible under this sub-section.

(3) In respect of any statement mentioned in subsection (1), the Authority may require that it shall be submitted to another actuary, appointed by the insurer for the purpose and approved by the Authority, for certification by him, whether with or without modifications.

(4) Every insurer transacting life insurance business in India shall incorporate in the revenue account

- (a) a certificate signed by the chairman and two directors and by the principal officer of the insurer, and an auditor's certificate, certifying that all expenses of management in respect of life insurance business transacted by the insurer in India have been fully debited in the revenue account as expenses, and
- (b) if the insurer in carrying on any other class of insurance business in addition to life insurance business an auditor's certificate certifying that all charges incurred in respect of his life insurance business and in respect of his business other than life insurance business have been fully debited in the respective revenue accounts.

Explanation.—in this section.-

(a) "calendar year" or "year" means, in relation to an insurer who is required to furnish returns in accordance with sub-section (2) of section 16, the period covered by the revenue account furnished by such insurer under clause (b) of that sub-section;

(b) "expenses of management" means all charges wherever incurred whether directly or indirectly, and includes-

- (i) commission payments of all kinds,
- (ii) any amount of expenses capitalized,
- (iii) in the case of an insurer having his principal place of business outside India, a proper share of head office expenses which shall not be less than such percentage as may be prescribed of the total premiums (less re-insurance) received during the year in respect of life insurance business transacted by him in India,

but does not include in the case of an insurer having his principal place of business in India any share of head office expenses in respect of life insurance business transacted by him outside India.

Limitation of expenses of management in general insurance business

40C. (1) After the 31st day of December, 1949, no insurer shall, in respect of any class of general insurance

business transacted by him in India, spend in any calendar year as expenses of management including commission or remuneration for procuring business an amount in excess of the prescribed limits and in prescribing any such limits regard shall be had to the size and age of the insurer:

Provided that where an insurer has spent as such expenses in any year an amount in excess of the amount permissible under this subsection, he shall not be deemed to have contravened the provisions of this section, if the excess amount so spent is within such limits as may be fixed in respect of the year by the Authority after consultation with the Executive Committee of the General Insurance Council constituted under section 64F, by which the actual expenses incurred may exceed the expenses permissible under this sub-section.

(2) Every insurer as aforesaid shall incorporate in the revenue account a certificate signed by the chairman and two directors and by the principal officer of the insurer, and by an auditor certifying that all expenses of management wherever incurred, whether directly or indirectly, in respect of the business referred to in this section have been fully debited in the revenue account as expenses.

Explanation.—In this section,—

- (a) "calendar year" shall have the meaning assigned to it in section 40B;
- (b) "expenses of management" means all charges, wherever incurred whether directly or indirectly, including commission payments of all kinds and, in the case of an insurer having his principal place of business outside India, a proper share of head office expenses, which shall not be less than such percentage as may be prescribed, of his gross premium income (that is to say, the premium income without taking into account premiums or reinsurance ceded or accepted) written direct in India during the year, but in computing the expenses of management in India the following, and only the following expenses may be excluded, namely
 - (i) in the case of an insurer having his principal place of business in India, a share of head office expenses in respect of general insurance business transacted by him outside India not exceeding such percentage of his gross direct premium written outside India as may be prescribed;
 - (ii) in the case of an insurer having his principal place of business outside India, a share of the expenses of his office in India in respect of general insurance business transacted by him outside India through his office in India, not exceeding such percentage of his gross direct premium written outside India through his office in India, as may be prescribed;
 - (iii) any expenses debited to profit and loss account relating exclusively to the management of capital, and dealings with share holders and a proper share of managerial expenses calculated in such manner as may be prescribed; and
 - (iv) any expenses debited to claims in the revenue account in Form F of Part II of the Third Schedule;
- (c) "insurance business transacted in India" includes insurance business, wherever effected relating to any property situate in India or to any vessel or aircraft registered in India.

Prohibition of rebates

41. (1) No person shall allow or offer to allow, either directly or indirectly, as an inducement to any person to take 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 prospectuses or tables of the insurer:

Provided that acceptance by an insurance agent of commission in connection with a policy of life insurance taken out by himself on his own life shall not be deemed to be acceptance of a rebate of premium within the meaning of this sub-section if at the time of such acceptance the insurance agent satisfies the prescribed conditions establishing that he is a *bona fide* insurance agent employed by the insurer.

(2) Any person making default in complying with the provisions of this section shall be punishable with fine which may extend to five hundred rupees.

Licensing of insurance agents

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

Provided that—

- (i) in the case of an individual, he does not suffer from any of the disqualification mentioned in sub-section (4); and
- (ii) in the case of a company or firm, any of its directors or partners does not suffer from any of the said disqualifications:

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

(2) A licence issued under this section shall entitle the holder to act as an insurance agent for any insurer.

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

(3A) No application for the renewal of a licence under this section shall be entertained if the application does not reach the issuing authority before the licence ceases to remain in force:

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

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

- (a) that the person is a minor;
- (b) that he is found to be of unsound mind by a Court of competent jurisdiction;
- (c) that he has been found guilty of criminal misappropriation or criminal breach of trust or cheating or forgery or an abetment of or attempt to commit any such offence by a Court of competent jurisdiction:

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

- (d) that in the course of any judicial proceeding relating to any policy of insurance of the winding up of an insurance company or in the course of an investigation of the affairs of 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;
- (ea) that in the case of a company or firm making an application under sub-section (1) or sub-section (3), 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 under clauses (e) and (f);

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

(5) if it be found that an insurance agent being an individual is, or being a company or firm contains a director or partner who is suffering from any of the disqualifications mentioned in sub-section (4), then, without prejudice to any other penalty to which he may be liable, the Authority shall, and if the insurance agent has knowingly contravened any of the provisions of this Act may, cancel the licence issued to the agent under this section.

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

(7) Any person who acts as an insurance agent without holding a licence issued under this section to act as such shall be punishable with fine which may extend to five hundred rupees., and any insurer or any person acting on behalf of an insurer, who appoints as an insurance agent any person not licensed to act as such or transacts any insurance business in India through any such person shall be punishable with fine which may extend to one thousand rupees.

(8) Where the person contravening sub-section (7) is a company or a firm, then, without prejudice to any other proceedings which may be taken against the company, or firm, every director, manager, secretary or other officer of the company, and every partner of the firm who is knowingly a party to such contravention shall be punishable with fine which may extend to five thousand rupees.

Registration of principal agents, chief agents and special agents

42A. (1) The Authority or an officer authorised by it in this behalf shall in the prescribed manner and on payment of the prescribed fee, which shall not be more than twenty-five rupees for a principal agent or a chief agent and ten rupees for a special agent, register any person who makes an application to him in the prescribed manner if,—

- (a) in the case of an individual, he does not suffer from any of the disqualifications mentioned in sub-section (4) of Section 42, or
- (b) in the case of a company or firm, any of its directors or partners does not suffer from any of the said disqualifications,

and a certificate to Act as a principal agent, chief agent or special agent, as the case may be, for the purpose of procuring insurance business shall be issued to him.

(2) A certificate issued under this section shall entitle the holder thereof to act as a principal agent, chief agent, or special agent, as the case may be, for any insurer.

(3) A certificate issued under this section shall remain in force for a period of twelve months only from the date of issue, but shall, on application made on this behalf, be renewed from year to year on production of a certificate from the insurer concerned that the provisions of clauses (2) and (3) of Part A of the Sixth Schedule in the case of a principal agent, the provisions of clauses (2) and (4) of Part B of the said Schedule in the case of a chief agent, and the provisions of clauses (2) and (3) of Part C of the said Schedule in the case of a special agent, have been complied with, and on payment of the prescribed fee, which shall not be more than twenty-five rupees, in the case of a principal agent or a chief agent, and ten rupees in the case of a special agent, and an additional fee of the prescribed amount not exceeding five rupees by way of penalty, in cases where the application for renewal of the certificate does not reach the issuing authority before the date on which the certificate ceases to remain in force:

Provided that, where the applicant is an individual, he does not suffer from any of the disqualifications mentioned in clauses (b) to (d) of sub-section (4) of section 42 and where the applicant is a company or a firm, any of its directors or partners does not suffer from any of the said disqualifications.

(4) Where it is found that the principal agent, chief agent or special agent being an individual is, or being a company or firm contains a director or partner who is suffering from any of the disqualifications mentioned in subsection (4) of section 42, without prejudice to any other penalty to which he may be liable, the Authority shall, and where a principal agent, chief agent or special agent has contravened any of the

provisions of this Act may cancel the certificate issued under this section to such principal agent, chief agent or special agent.

(5) The authority which issued any certificate under this section may issue a duplicate certificate to replace a certificate lost, destroyed or mutilated on payment of the prescribed fee, which shall not be more than two rupees.

(6) Any person who acts as a principal agent, chief agent or special agent, without holding a certificate issued under this section to act as such, shall be punishable with fine which may extend to five hundred rupees, and any insurer or any person acting on behalf of an insurer, who appoints as a principal agent, chief agent or special agent any person not entitled to act as such or transacts any insurance business in India through any such person, shall be punishable with fine which may extend to one thousand rupees.

(7) Where the person contravening sub-section (6) is a company or a firm, then, without prejudice to any other proceedings which may be taken against the company or firm, every director, manager, secretary or any 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 hundred rupees.

(8) The provisions of sub-sections (6) and (7) shall not take effect until the expiry of six months from the commencement of the Insurance (Amendment) Act, 1950.

(9) No insurer shall, on or after the commencement of the Insurance (Amendment) Act, 2002, appointment or transact any insurance business in India through any principal agent, chief agent or special agent.

Regulation of employment of principal agents

42B. (1) No insurer shall, after the expiration of seven years from the commencement of the Insurance (Amendment) Act, 1950, appoint, or transact any insurance business in India, through a principal agent.

(2) Every contract between an insurer and a principal agent shall be in writing and the terms contained in Part A of the Sixth Schedule shall be deemed to be incorporated in, and form part of, every such contract.

(3) No insurer shall, after the commencement of the Insurance (Amendment) Act, 1950 (47 of 1950), appoint any person as a principal agent except in a presidency-town unless the appointment is by way of renewal of any contract subsisting at such commencement.

(4) Within sixty days of the commencement of the Insurance (Amendment) Act, 1950 (47 of 1950), every principal agent shall file with the insurer concerned a full list of insurance agents employed by him indicating the terms of the contract between the principal agent and each of such insurance agents, and, if any principal agent fails to file such a list within the period specified, any commission payable to such principal agent on premiums received from the date of expiry of the said period of sixty days until the date of the filing of the said list shall, notwithstanding anything in any contract to the contrary, cease to be so payable.

(5) A certified copy of every contract as is referred to in sub-section (2) shall be furnished by the insurer to the Authority within thirty days of his entering into such contract, and intimation of any change in any such contract shall be furnished by the insurer with full particulars thereof to the Authority within thirty days of the making of any such change.

(6) If the commission due to any insurance agent in respect of any general insurance business procured by such agent is not paid by the principal agent for any reason, the insurer may pay the insurance agent the commission so due and recover the amount so paid from the principal agent concerned.

(7) Every contract as is referred to in sub-section (2), subsisting at the commencement of the Insurance (Amendment) Act, 1950 (47 of 1950), shall, with respect to terms regarding remuneration, be deemed to have been so altered as to be in accordance with the provisions of sub-section (4) of section 40A.

(8) If any dispute arises as to whether a person is or was a principal agent the matter shall be referred to the Authority, whose decision shall be final.

(9) Every insurer shall maintain a register in which the name and address of every principal agent appointed by him, the date of such appointment and the date, if any, on which the appointment ceased shall be entered.

Regulation of employment of chief and special agents

42C. (1) Every contract between an insurer carrying on life insurance business and a chief agent shall be in writing, and shall specify the area (not being less in extent than a district or the equivalent thereof) for which the chief agent is appointed, and the terms contained in Part B of the Sixth Schedule shall be deemed to be incorporated in, and form part of, every such contract.

(2) No chief agent shall, either directly or through insurance agents or special agents employed by or through him procure life insurance business for the insurer or any area outside the area for which he has been appointed or in any area for which another chief agent has been appointed or in any area in which the head office or any branch office of the insurer is operating, and neither the head office nor any branch office of the insurer shall operate in any area for which a chief agent has been appointed:

Provided that nothing in this sub-section shall be deemed to prohibit the head office of an insurer which had been operating at the commencement of the Insurance (Amendment) Act, 1950; for a period of not less than ten years before such commencement within the municipal limits of any town where the head office is situate, and a chief agent who, in pursuance of an agreement in writing, had been operating for a similar period within such limits, from continuing to operate within the said limits:

Provided further that nothing in this sub-section shall be deemed to prohibit an insurance agent from procuring life insurance business in or from any area and submitting the proposals direct to the principal office of the insurer in India.

(3) Within sixty days of the commencement of the Insurance (Amendment) Act, 1950, every chief agent shall file with the insurer concerned a full list of the insurance agents employed by him, indicating the terms of the contract between the chief agent and each of such insurance agents and the business secured by each of such agents, and if any chief agent fails to file such a list within the period specified, any commission payable to such chief agent on premiums received from the date of the expiry of the said period of sixty days until the date of the filing of the said list shall, notwithstanding anything in any contract to the contrary, cease to be so payable.

(4) Every contract between an insurer carrying on life insurance business and a special agent, or between a chief agent of such insurer and a special agent, shall be in writing and the terms contained in Part C of the Sixth Schedule shall be deemed to be incorporated in, and form part of, every such contract:

Provided that the Authority may, in the case of a contract between a co-operative life insurance society as defined in clause (b) of sub-section (1) of section 95 and a co-operative society registered under the Indian Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force and acting as a special agent, alter, to such extent as he thinks fit, all or any of the said terms.

(5) A certified copy of every contract as is referred to in sub-section (1) or sub-section (4) shall be furnished by the insurer or the chief agent to the Authority within thirty days of his entering into such contract, and intimation of any change in any such contract shall be furnished by the insurer or the chief agent with full particulars thereof to the Authority within thirty days of the making of any such change.

(6) No such contract as is referred to in sub-section (1) or sub-section (4) shall be entered into or renewed for a period exceeding ten years at any one time and notwithstanding the terms of any contract to the contrary, no option to renew any such contract given to any of the parties shall be enforceable without the consent of the other.

(7) Every contract between an insurer and a person acting on behalf of such insurer who, before the commencement of the Insurance (Amendment) Act, 1950, has been employing insurance agents for the purpose of life insurance business, which is subsisting on such commencement, shall terminate after the expiration of ten years from such commencement, if it does not terminate earlier:

Provided that every such contract shall be modified by the parties before the 1st day of January, 1951, to bring it into conformity with this act, and any such modification shall-

- (i) as respects remuneration, whether in respect of business already procured or in respect of business to be procured thereafter, be such as may be mutually agreed upon between the parties, subject in the case of remuneration payable on business procured before such

- commencement, to a maximum of an overriding commission of two and a half per cent. plus a further commission not exceeding three and three-quarter per cent. on premiums in respect of which no commission is payable to any insurance agent;
- (ii) be deemed to include all the terms specified in Part B or Part C of the Sixth Schedule, as the case may be:

Provided further that, in the event of any dispute as to the terms of any fresh contract, the matter shall be referred to arbitration

(8) Any such contract as is referred to in sub-section (7) which was subsisting on the 1st day of January, 1949, but has terminated or has been terminated before the commencement of the Insurance (Amendment) Act, 1950, shall be subject to the maximum limits specified in clause (i) of the proviso to sub-section (7) as respects remuneration, if any, payable on business procured before the termination of the contract.

(9) Nothing in this section shall be deemed to prevent any special agent from receiving any renewal commission on policies effected through him as an insurance agent at any time before his appointment as such special agent.

(10) If any dispute arises as to whether a person is or was a chief agent or a special agent for the purposes of this Act, the matter shall be referred to the Authority whose decision shall be final.

(11) Every insurer shall maintain a register in which the name and address of every chief agent appointed by him, the date on which the appointment was made and the date, if any, on which the appointment ceased shall be entered, and a separate register in which similar particulars relating to every special agent shall be entered, and every chief agent shall maintain a register in which similar particulars relating to every special agent appointed by him shall be entered.

Issue of licence to intermediary or insurance intermediary

42D. (1) 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 licence to act as an intermediary or an insurance intermediary under this Act:

Provided that,-

- (a) in the case of an individual, he does not suffer from any of the disqualifications mentioned in sub-section (4) of section 42, or
- (b) in the case of a company or firm, any of its directors or partners does not suffer from any of the said disqualifications.

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

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

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

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

- (5) The disqualifications above referred to shall be the following: -
- (a) that the person is a minor;
 - (b) that he is found to be of unsound mind by a court of competent jurisdiction;
 - (c) that he has been found guilty of criminal misappropriation or criminal breach of trust or cheating or forgery or an abetment of or attempt to commit any such offence by a court of competent jurisdiction;

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

- (d) that in the course of any judicial 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) that he does not possess the requisite qualifications and practical training for a period not exceeding twelve months, as may be specified by the regulations made by the Authority in this behalf;
 - (f) that he has not passed such examinations as may be specified by the regulations made by the Authority in this behalf;
 - (g) that he violates the code of conduct as may be specified by the regulations made by the Authority.
- (6) If it be found that an intermediary or an insurance intermediary suffers from any of the foregoing disqualifications, without prejudice to any other penalty to which he may be liable, the Authority shall, and if the intermediary or an insurance intermediary has knowingly contravened any provisions of this Act may cancel the licence issued to the intermediary or insurance intermediary under this section.
- (7) The Authority may issue a duplicate licence to replace a licence lost, destroyed or mutilated, on payment of such fee, as may be determined by the regulations made by the Authority.
- (8) Any person who acts as an intermediary or an insurance intermediary without holding a licence issued under this section to act as such, shall be punishable with fine, and any insurer or any person who appoints as an intermediary or an insurance intermediary or any person not licensed to act as such or transacts any insurance business in India through any such person, shall be punishable with fine.
- (9) Where the person contravening sub-section (8) is a company or a firm, then, without prejudice to any other proceedings which may be taken against the company or firm, every director, manager, secretary or other officer of the company, and every partner of the firm who is knowingly a party to such contravention shall be punishable with fine.

Commission, brokerage or fee payable to intermediary or insurance intermediary

42E. (1) No intermediary or insurance intermediary shall be paid or contract to be paid by way of commission, fee or as remuneration in any form, an amount exceeding thirty per cent of the premium payable as may be specified by the regulations made by the Authority, in respect of any policy or policies effected through him:

Provided that the Authority may specify different amounts payable by way of commission, fee or as remuneration to an intermediary or insurance intermediary or different classes of business of insurance.

(2) Without prejudice to the provisions contained in this Act, the Authority may, by the regulations made in this behalf, specify the requirements of capital, form of business and other conditions to act as an intermediary or insurance intermediary.

Register of insurance agents

43. (1) Every insurer and every person who acting on behalf of an insurer employs insurance agents shall maintain a register showing the name and address of every insurance agent appointed by him and the date on which his appointment began and the date, if any, on which his appointment ceased.

Prohibition of cessation of payments of commission

44. (1) Notwithstanding anything to the contrary contained in any contract between any person and an insurance agent providing for the forfeiture or stoppage of payment of renewal commission to such insurance agent, no such person shall, in respect of life insurance business transacted in India, refuse payment to an insurance agent of commission due to him on renewal premium under the agreement by reason only of the termination of his agreement, except for fraud:

Provided that-

- (a) such agent ceases to act for the insurer concerned after the Central Government has notified in the official Gazette that it is satisfied that the circumstances in which the said insurer is placed are such as to justify the agent's ceasing to act for him; or
- (b) such agent has served the insurer continually and exclusively in respect of life insurance business for at least five years and policies assuring a total sum of not less than fifty thousand rupees effected through him for the insurer were in force on a date one year before his ceasing to act as such agent for the insurer, and that the commission on renewal premiums due to him does not exceed four per cent in any case; or
- (c) such agent has served the insurer continually and exclusively for at least ten years and after his ceasing to act as such agent he does not directly or indirectly solicit or procure insurance business for any other person.

Explanation.—For the purpose of this sub-section, service of an insurance agent under a chief agent of the insurer, whether before or after the commencement of the Insurance (Amendment) Act, 1950 (47 of 1950), shall be deemed to be service under the insurer.

(2) Any commission payable to an insurance agent under the provisions of clause (b) and (c) of the proviso to sub-section (1) shall, notwithstanding the death of the agent, continue to be payable to his heirs for so long as such commission would have been payable had such insurance agent been alive.

Power to call for information

44A. For the purposes of ensuring compliance with the provisions of sections 40A, 40B, 40C, 42B and 42C the Authority may by notice,—

- (a) require from an insurer, principal agent, chief agent, or special agent such information, certified if so required by an auditor or actuary, as he may consider necessary;
- (b) require an insurer, principal agent, chief agent, or special agent to submit for his examination as the principal place of business of the insurer in India, any book of account, register or other document, or to supply any statement which may be specified in the notice;
- (c) examine any officer of an insurer or a principal agent, chief agent or special agent on oath, in relation to any such information, book, register, document or statement and administer the oath accordingly;

and an insurer, principal agent, chief agent or special agent shall comply with any such requirement within such time as may be specified in the notice.

Special provisions of law

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

45. No policy of life insurance effected before the commencement of this Act shall after the expiry of two years from the date of commencement of this Act and no policy of life insurance effected after the coming into force of this Act shall, after the expiry of two years from the date on which it was effected be called in question by an insurer on the ground that statement made in the proposal or in any report of a medical officer, or referee, or friend of the insured, or in any other document leading to the issue of the policy, was inaccurate or false, unless the insurer shows that such statement was on a material matter or suppressed facts which it was material to disclose and that it was fraudulently made by the policy-holder and that the policy-holder knew at the time of making it that the statement was false or that it suppressed facts which it was material to disclose:

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

Application of the law in force in India to policies issued in India

46. The holder of a policy of insurance issued by an insurer in respect of insurance business transacted in India after the commencement of this Act shall have the right, notwithstanding anything to the contrary contained in the policy or in any agreement relating thereto, receive payment in India of any sum secured thereby and to sue for any relief in respect of the policy in any court of competent jurisdiction in India; and if the suit is brought in India any question of law arising in connection with any such policy shall be determined according to the law in force in India:

Provided that nothing in this section shall apply to a policy of marine insurance

Payment of money into Court

47. (1) Where in respect of any policy of life insurance maturing for payment an insurer is of opinion 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 the insurer to obtain a satisfactory discharge for the payment of such amount, the insurer may, apply to pay the amount into the Court within the jurisdiction of which is situated the place at which such amount is payable under the terms of the policy or otherwise.

(2) A receipt granted by the Court for any such payment shall be a satisfactory discharge to the insurer for the payment of such amount.

(3) An application for permission to make a payment into Court under this section, shall be made by a petition verified by an affidavit signed by a principal officer of the insurer setting forth the following particulars, namely:

- (a) the name of the insured person and his address;
- (b) if the insured person is deceased, the date and place of his death;
- (c) the nature of the policy and the amount secured by it;
- (d) the name and address of each claimant so far as is known to the insurer with details of every notice of claim received;
- (e) the reasons why in the opinion of the insurer satisfactory discharge cannot be obtained for the payment of the amount; and
- (f) the address at which the insurer may be served with notice of any proceeding relating to disposal of the amount paid into Court.

(4) An application under this section shall not be entertained by the Court if the application is 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.

(5) 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 paid into Court and shall invest the amount in Government securities pending its disposal.

(6) The insurer shall transmit to the Court every notice of claim received after the making of the application under sub-section (3), and any payment required by the Court as costs of the proceedings or otherwise in connection with the disposal of the amount paid into Court shall as to the cost of the application under sub-section (3) be borne by the insurer and as to any other costs be in the discretion of the Court.

(7) 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.

(8) The Court shall decide all questions relating to the disposal of claims to the amount paid into Court.

Claims on small life insurance policies

47A (1) In the event of any dispute relating to the settlement of a claim on a policy of life insurance assuring a sum 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.

(2) The decision of the Authority under this sub-section shall be 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.

(3) There shall be charged and collected in respect of the duties of the Authority under this section such fees whether by way of percentage or otherwise as may be prescribed.

Directors of insurers being companies

48. (1) Where the 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), or under any Act repealed thereby, and carries on the business of life insurance, not less than one-fourth of the whole number of the directors of the company the number to be elected not being less than two in any case shall notwithstanding anything to the contrary in the Articles of Association of the company be elected in the prescribed manner by the holders of policies of life insurance issued by the company.

(2) Only and all persons holding otherwise than as assignees policies of life insurance issued by the company of such minimum amount and having been in force for such minimum period as may be prescribed shall unless disqualified under sub-section (2A) be eligible for election as directors under sub-section (1), and only and all persons holding policies of life insurance issued by the company and having been in force at the time of the election for not less than six months shall be eligible to vote at such elections:

Provided that the assignment of a policy to the persons who took out the policy shall not disqualify that person for being eligible for election as a director under sub-section (1)

(2A) A person shall be ineligible for election as a director, under subsection (1) of any company if he is a director, officer, employee, or legal or technical adviser of that company, or any other insurer, and shall cease to be a director under sub-section (1) if after election he acquires any disqualification specified in this sub-section or no longer holds the qualifications required by sub-section (2):

Provided that nothing in this sub-section shall disqualify a person who is an elected director under sub-section (1) and is not otherwise disqualified under this sub-section, from being re-elected:

Provided further that the Authority may exempt any director of a subsidiary company of the insurer from any disqualification imposed by this sub-section

(3) The Central Government may, for such period, or to such extent and subject to such conditions as may be specified by it in this behalf, exempt from the operation of this section—

- (a) any mutual Insurance Company as defined in clause (a) of sub-section (1) of section 95 in respect of which the Authority certifies that in his opinion owing to conditions governing membership of the company or to the nature of the insurance contracts undertaken by it the application of the provisions of this section to the company is practicable, or
- (b) any company in respect of which the Authority certifies that in opinion the company, have taken all reasonable steps to achieve compliance with the provisions of this section, has been unable to obtain the required number of directors with the required qualifications.

(4) This section shall not take effect, in respect of any company in existence at the commencement of this Act, until the expiry of one year there from, and in respect of any company incorporated after the commencement of this Act, until the expiry of two years from the date of registration to carry on life insurance business.

Life Insurance agents not to be directors of life insurance companies

48A. No insurance agent who solicits or procures life insurance business, and no chief agent or special agent shall be eligible to be or remain a director of any insurance company carrying on life insurance business:

Provided that any director holding office at the commencement of the Insurance (Amendment) Act, 1946 (6

of 1946), shall not become ineligible to remain a director by reason of this section until the expiry of six months from the commencement of that Act.

Further provision regarding directors

48B. (1) An insurer specified in sub-clause (b) of clause (9) of section 2 and carrying on life insurance business shall not have a common director with another such insurer.

(2) The Authority may, for such period, to such extent and subject to such conditions as it may specify, exempt from the operation of this I section—

(a) any insurer, who is a subsidiary company of another insurer, or

(b) two or more insurers, for the purpose of facilitating their amalgamation or the transfer of business of one insurer to the other.

Appointment of additional directors

48C. [*Repealed by the Insurance (Amendment) Act, 1968(62 of 1968).*]

Restriction on dividends and bonuses

49.(1) No insurer, being an insurer specified in sub-clause (a) (ii) or sub-clause (b) of clause (9) of section 2, who I carries on the business of life insurance or any other class or subclass of insurance business to which Sec. 13 applies, shall, for the purpose of declaring or paying any dividend to shareholders or any bonus to policy-holders or of making any payment in services of any debentures, utilize directly or indirectly any portion of the 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 such form as may be specified by the regulations made by the Authority submitted to the Authority as part of the abstract referred to in Section 15 as a result of an actuarial valuation assets and liabilities of the insurer; nor shall he increase such surplus by contributions out of any reserve fund or otherwise unless such contributions have been brought in as revenue account applicable to that class or sub-class of insurance business on or before the date of the valuation aforesaid, except when the reserve fund is made up solely of transfers from similar surpluses disclosed by valuations in respect of which returns have been submitted to the Authority under Section 15 of this Act or to the Central Government under Section 11 of the Indian Life Assurance Companies Act, 1912 (6 of 1912):

Provided that payments made out of any such surplus in service of any debentures shall not exceed fifty per cent. of such surplus including any payment by way of interest on the debentures, and interest paid on the debentures shall not exceed ten per cent of any such surplus except where the interest paid on the debentures is offset against the interest credited to the fund or funds concerned in deciding the interest basis adopted in the valuation disclosing the aforesaid surplus:

Provided further that the share of any such surplus allocated to or reserved for the shareholders (including any amount for the payment of dividends guaranteed to them, whether by way of first charge or otherwise) shall not exceed such sums as may be specified by the Authority and such share shall in no case exceed ten percent of such surplus in case of participating policies and in other cases the whole thereof.

(2) For the purposes of sub-section (1) the actual amount of income-tax deducted at source during the period following the date as at which the last preceding valuation was made and preceding the date as at which the valuation in question is made may be added to such surplus after deducting an estimated amount for income-tax on such surplus, such addition and deduction being shown in an abstract of the report of the actuary referred to in sub-section (1) of section 13.

Notice of options available to the assured on the lapsing of a policy

50. An insurer shall, before the expiry of three months from the date on which the premiums in respect of a policy of life insurance were payable but not paid, give notice to the policy-holder informing him of the options available to him unless these are set forth in the policy.

Supply of copies of proposals and medical reports

51. Every insurer shall, on application by a policy-holder and on payment of a fee not exceeding one

rupee, supply to the policy-holder certified copies of the questions put to him and his answers thereto contained in his proposal for insurance and in the medical report supplied in connection therewith.

Prohibition of business on dividing principle

52. (1) No insurer shall after the commencement of this Act begin, or after three years from that date continue to 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:

Provided that nothing in this section shall be deemed to prevent an insurer from allocating bonuses to holders of policies of life insurance as a result of a periodical actuarial valuation either as reversionary additions to the sums insured or as immediate cash bonuses or otherwise:

Provided further that an insurer who continues to carry on insurance business on the dividing principle after the commencement of this Act shall withhold from distribution a sum of not less than forty per cent of the premiums received during each year after the commencement of this Act in which such business is continued so as to make up the amount required for investment under Section 27.

(2) On the expiry of the period of three years referred to in sub-section (1), or on the insurer's ceasing before such expiry but at any time after the commencement of the Insurance (Amendment) Act, 1941 (13 of 1941), to carry on business on the dividing principle, the insurer shall forthwith cause an investigation to be made by an actuary, who shall determine the amount accumulated out of the contributions received from the holders of all policies to which the dividing principle applies and the extent of the claims of those policy-holders against the realisable assets of the insurer, and shall, before the expiration of six months from the date on which he is entrusted with the investigation, make recommendations regarding the distribution, whether by cash payment or by the allocation of paid-up policies or by a combination of both methods, of such assets as he finds to appertain to such policy-holder; and the insurer shall, before the expiry of six months from the date on which the actuary make his recommendations, distribute such assets in accordance with those recommendations.

(3) Where at any time prior to the commencement of the Insurance (Amendment) Act, 1941 (13 of 1941), an insurer has to carry on business on the dividing principle, the insurer shall before the expiration of two months from the commencement of that Act, report to the Authority the measures taken or proposed by him for the distribution among holders of policies to which the dividing principle applies of the assets due to them; and the Authority may either sanction such measures or refuse his sanction, and, if he refuses his sanction or if the insurer does not report to him as required by this sub-section, the provisions of sub-section (2) shall apply to the insurer forthwith.

Mismanagement by Administrator

When Administrator for management of insurance business may be appointed

52A (1) If at any time the Authority has reason to believe that an insurer carrying on life insurance business is acting in a manner likely to be prejudicial to the interests of holders of life insurance policies, he may, after giving such opportunity to the insurer to be heard as he thinks fit, make a report thereon to the Central Government.

(2) The Central Government, if it is of opinion after considering the report that it is necessary or proper to do so, may appoint an Administrator to manage the affairs of the insurer under the direction and control of the Authority.

(3) The Administrator shall receive such remuneration as the Central Government may direct and the Central Government may at any time cancel the appointment and appoint some other person as Administrator.

(4) The management of the business of the insurer shall as on and after the date of appointment of the Administrator vest in such Administrator, but except with the leave of the Authority the Administrator shall not issue any further policies.

(5) As on and after the date of appointment of the Administrator any person vested with any such

management immediately prior to that date shall be divested of that management.

(6) The Authority may issue such directions to the Administrator as to his powers and duties as he deems desirable in the circumstances of the case, and the Administrator may apply to the Authority at any time for instructions as to the manner in which he shall conduct the management of the business of the insurer or in relation to any matter arising in the course of such management.

Powers and duties of the Administrator

52B (1) The Administrator 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.

(2) On the filing of the report with the Authority, the Authority may take such action as he thinks fit for promoting the interests of the holders of life insurance policies in general.

(3) Any order passed by the Authority under sub-section (2), shall be binding on all persons concerned, and shall have effect notwithstanding anything in the memorandum or articles of association of the insurer, or a company.

Powers of Administrator respecting property liable to attachment under Section 106

52BB. (1) If the Administrator is satisfied that any person has rendered himself liable to be proceeded against under Section 106, he may, pending the institution of proceedings against such person under that section, by order in writing, prohibit him or any other person from transferring or otherwise disposing of any property which, in the opinion of the Administrator, would be liable to attachment in proceedings under that section.

(2) Any person aggrieved by an order made by the Administrator under sub-section (1) may, within fourteen days from the date on which the order is served on him, appeal against such order to the Central Government, and the Central Government may pass such order thereon as it thinks fit.

(3) An order made by the Administrator under sub-section (1) shall, subject to any order made by the Central Government on appeal, be in force for a period of three months from the date of the order unless, before the expiry of the said period, an application is made under sub-section (1) of Sec. 106 to the Court competent to exercise jurisdiction under that sub-section, and when such an application is made, the order shall, subject to any order made by that Court, continue in force as if it were an order of attachment made by that Court in proceedings under that section.

(4) An order made by the Administrator under this section shall,—

- (a) in the case of an order affecting a corporation or firm, be served in the manner provided for the service of summons in rule 2 of Order XXIX or rule 3 of Order XXX, as the case may be, in the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908), and
- (b) in the case of an order affecting a person not being a corporation or firm, be served on such person -
 - (i) personally, by delivering or tendering to him the order, or
 - (ii) by post, or

- (iii) where the person cannot be found, by leaving a copy of the order with some adult male member of his family or by affixing such copy to some conspicuous part of the premises in which he is known to have last resided or carried on business or personally worked for gain.

and every such order shall also be published in the official Gazette.

(5) If any question arises whether a person was duly served with an order under sub-section (4), the publication of the order in the official Gazette shall be conclusive proof that the order was so served, and a failure to comply with the provisions of Clause (a) or Clause (b) of sub-section (4) shall not affect the validity of the order.

(6) Notwithstanding anything contained in this sections any property in respect of which an order has been made by the Administrator may, with the previous permission of the Administrator and subject to such terms and conditions as he may impose, be transferred or otherwise disposed of.

(7) Notwithstanding anything contained in any other law for the time being in force, the transfer or other disposition of any property in contravention of any order made by the Administrator under this section or of any terms and conditions imposed by him shall be void.

(8) For the purpose of enabling him to form an opinion as to whether any property would be liable to attachment in proceedings under Sec. 106 or for the purpose of enabling him to institute proceedings under that section, the Administrator may require any person to furnish information on such points or matters as, in the opinion of the Administrator, may be relevant for the purpose, and any person so required shall be deemed to be legally bound to furnish such information within the meaning of Sec. 176 of the Indian Penal Code (45 of 1860).

(9) The Administrator shall have all the powers of a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit in respect of the following matters, namely:

- (a) summoning and enforcing the attendance of witnesses and examining them on oath;
- (b) requiring the production of documents; and
- (c) receiving evidence on affidavits,

and any proceeding before the Administrator under this section shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code (45 of 1860).

(10) Save as provided in this section or in Section 106, and notwithstanding anything contained in any other law for the time being in force,—

- (a) no suit or other legal proceeding shall lie in any Court to set aside or modify any order of the Administrator or the Central Government made under this section, and
- (b) no Court shall pass any decree, grant any injunction or make any other order which shall have the effect of nullifying or affecting in any way any such order.

Cancellation of contracts and agreements

52C. The Administrator may, at any time during the continuance of his appointment with respect to an insurer and 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 which the Administrator is satisfied is prejudicial to the interest of holders of life insurance policies.

Termination of appointment of Administrator

52D. If at any time, on a report made by the Authority in this behalf, it appears to the Central Government that the purpose of the order appointing the Administrator has been fulfilled or that for any reason it is undesirable that the order of appointment should remain in force, the Central Government may cancel the

order and thereupon the Administrator shall be divested of the management of the insurance business which shall, unless otherwise directed by the Central Government, again vest in the person in whom it was vested immediately prior to the date of appointment of the Administrator.

Finality of decision appointing Administrator

52E. Any order or decision of the Central Government made in pursuance of Section 52-A or Section 52-D shall be final and shall not be called in question in any Court.

Penalty for withholding documents of property from Administrator

52 F If any director or officer of the insurer or any other person fails to deliver to the Administrator any books of account, registers, or any other documents in his custody relating to the business of the insurer the management of which has vested in the Administrator, or retains any property of such insurer, he shall be punishable with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Protection of action taken under Sections 52-A to 52-D

52G No suit, prosecution or other legal proceeding shall lie against an Administrator for anything which is in good faith done or intended to be done in pursuance of Section 52-A, Section 52-B, Section 52-BB or Section 52-C.

(2) No suit or other legal proceeding shall lie against the Central Government or the Authority for any damage caused- or likely to be caused by anything which is in good faith done or intended to be done under Section 52-A, Section 52-B, or Section 52-D.

Acquisition of the Undertakings of Insurers in Certain Cases

Power of Central Government to acquire undertakings of insurers in certain cases

52H (1) If, upon receipt of a report from the Authority, the Central Government 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 the public interest or to the interests of his policy-holders, or share-holders,

and that

I. in the public interest, or

II. 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 (hereafter in this section and in Sections 52-I, 52-J and 52-N and in the Eighth Schedule referred to as the acquired insurer) with effect from such date as maybe specified in the order (hereinafter in this section and in Sections 52-I and 52J and in the Eighth Schedule referred to as the appointed day):

Provided that no undertaking off an insurer shall be so acquired unless such insurer has been given a reasonable opportunity of showing cause against the proposed action

Explanation~.—For the purposes of this section and of Sections 52-1 to 52N—

(a) "notified order" means an order published in the official Gazette;

(b) "undertaking", in relation to an insurer incorporated outside India, means the undertaking of the insurer in India,

(2) Subject to the other provisions contained in this section and in Sections 52-I to 52M, on the appointed day, all the assets and liabilities of the undertaking of the acquired insurer shall stand transferred to, and vest in, the Central Government.

(3) The assets and liabilities of the undertaking of the acquired insurer shall be deemed to include all rights, powers, authorities and privileges and all property, whether movable or immovable, including, in particular, cash balances, reserve funds, investments, deposits and all other interests and rights in, or arising out of, such property' as may be in the possession of or held by, the acquired insurer immediately before the appointed day and all books, accounts and documents relating thereto, and shall also be deemed to include all debts, liabilities and obligations of whatever kind, then existing of the acquired insurer.

(4) Notwithstanding anything contained in sub-section (2), the Central Government may, if it is satisfied that all the assets and liabilities of the undertaking of the acquired insurer should, instead of vesting in the Central Government, or continuing to so vest, vest in a corporation or company, whether established under the scheme made under Sec. 52-I or not (hereafter In this section and in Section 52-1 to 52-N and in the Eighth Schedule referred to as the acquired insurer), by order, direct that the assets and liabilities of the said undertaking, shall vest in the acquiring insurer, either on the publication of the notified order or on such other date as may be specified in this behalf in the direction.

(5) Where the undertaking of the acquired insurer vests in an acquiring insurer under sub-section (4), the acquiring insurer shall, on and from the date of such vesting, be deemed to have become the transferee of the acquired insurer and all the rights and liabilities in relation to the acquired insurer shall, on and from the date of such vesting, be deemed to have been the rights and liabilities of such acquiring insurer.

(6) Unless otherwise expressly provided by or under this section or Sections 52-I to 52M, all contracts, deeds, bonds, agreements, powers of attorney, grants of legal representation and other instruments of whatever nature subsisting, having effect immediately before the appointed day and to which the acquired insurer is a party or which are in favour of the acquired insurer shall be of as full force and effect against or in favour, of the Central Government or, as the case may be, the acquiring insurer, and may be enforced or acted upon as fully and effectually as of in the place of the acquired insurer the Central Government or the acquiring insurer had been a party thereto or as if they had been issued in favour of the Central Government or the acquiring insurer, as the case may be.

(7) If, on the appointed day, any suit, appeal or other proceeding, of whatever nature, is pending by or against the acquired insurer the same shall not abate, be discontinued or be, in any way, prejudicially affected by reason of the transfer of the undertaking of the acquired insurer or of anything contained in this section or in Sections 52-I to 52M, but the suit, appeal or other proceeding may be continued, prosecuted and enforced by or against the Central Government or the acquiring insurer, as the case may be.

Power of Central Government to make scheme

52-I (1) The Central Government may make a scheme for carrying out the purposes of Sections 52 H and 52J to 52-M (both inclusive) in relation to the acquired insurer.

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

- (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) the constitution of 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) the continuance of 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, so far as may be, as are specified in Clauses (i) and (j) of sub-section (2) of Sec. 37A so far as they may apply;

- (d) the continuance of 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) 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) the provision, if any, completing 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) 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.
- (3) The Central Government may, by notification in the official Gazette, add to, amend or vary any scheme made under this section.
- (4) Every scheme made under this section shall be published in the official Gazette.
- (5) Copies of every scheme made under this section shall be laid before each House of Parliament as soon as may be after it is made.
- (6) The provisions of Sections 52H and 52J to 52M and of any scheme made under this section shall have effect notwithstanding anything to the contrary contained in any other provision of this Act or in any other law or any agreement, award or other instrument for the time being in force.

Compensation to be given to the acquired insurer

52J (1) The acquired insurer shall be given by the Central Government or the acquiring insurer, as the case may be, such compensation in respect of the transfer of the undertaking of the acquired insurer as is determined in accordance with the principles contained in the Eighth Schedule.

(2) The amount of compensation to be given in accordance with the principles contained in the Eighth Schedule shall be determined, in the first instance, by the Central Government or the acquiring insurer, as the case may be, in consultation with the Authority, and shall be offered by it to the acquired insurer, in full satisfaction thereof.

(3) If the amount of compensation offered in terms of sub-section (2) is not acceptable to the acquired insurer, he may, before such date as may be notified by the Central Government in the official Gazette, request the Central Government in writing to have the matter referred to the Tribunal constituted under Section 52K.

(4) If before the date notified under sub-section (3) the Central Government does not receive request as provided in that sub-section, the amount of compensation offered under sub-section (2), or where a reference has been made to the Tribunal, the amount determined by it, shall be the compensation payable under sub-section (1) and shall be final and binding on all the parties concerned.

(5) Where the Central Government does not receive request as provided In sub-section (3), the compensation payable in pursuance of the provisions of this section shall become due for payment on the expiry of one year from the appointed day, and where a reference has been made to the Tribunal under sub-section (3), the amount determined by the Tribunal as compensation shall 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.

(6) If between the appointed day and the date on which the compensation becomes due in pursuance of sub-section (5), any facts come to light which call for revision of the amount of the compensation, the

necessary modification of the amount of the compensation shall be made and the amount of the compensation so determined shall be the compensation payable in pursuance of sub-section (1).

(7) There shall also be paid 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.

Constitution of the Tribunal

52K (1) The Central Government may, for the purposes of Sections 52-H to 52J, constitute a tribunal which shall consist of a Chairman and two other members.

(2) The Chairman shall be a person who is, or has been, a Judge of a High Court or of the Supreme Court and of the two other members, one shall be a person who, in the opinion of the Central Government, has had experience of matters connected with general insurance and the other shall be a person who is a chartered accountant within the meaning of the Chartered Accountants Act, 1949 (38 of 1949).

(3) If, for any reason, a vacancy occurs in the office of the Chairman or any other member of the Tribunal, the Central Government may fill the vacancy by appointing another person thereto in accordance with the provisions of subsection (2), and any proceeding may be continued before the Tribunal so constituted from the stage at which the vacancy occurred.

(4) The Tribunal may, for the purpose of determining any compensation payable under Sec. 52J, choose one or more persons having special knowledge or experience of any relevant matter to assist it in the determination of such compensation.

Tribunal to have powers of Civil Court

52L (1) The Tribunal shall have the powers of a Civil Court, while trying a suit, under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely:-

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) issuing commission for the examination of witnesses or documents.

(2) Notwithstanding anything contained in sub-section (1) or in any other law for the time being in force, the Tribunal shall not compel the Central Government or the Authority-

- (a) to produce any books of account, or other documents which the Central Government or the Authority claims to be of a confidential nature;
- (b) to make any such books or documents a part of the record of the proceedings before the Tribunal;
- (c) to give inspection of any such books or documents to any party before it and to any other person.

(3) Any proceeding before the Tribunal shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code, and the Tribunal shall be deemed to be a civil Court for the purposes of Section 195 and Chapter XXXV of the Code of Criminal Procedure, 1898 (5 of 1898).

Procedure of the Tribunal

52M (1) The Tribunal shall have power to regulate its own procedure.

(2) The Tribunal may hold the whole or any part of its inquiry *in camera*.

(3) Any clerical or arithmetical error in any order of the Tribunal or any error arising therein from any

accidental slip or omission may, at any time, be corrected by the Tribunal either of its own motion or on the application of any of the parties.

Special provisions for the dissolution of acquired insurers

52N Where any acquired insurer, being a company, has in accordance with the provisions of this Act, collected and distributed any monies paid to him by the Central Government or the acquiring insurer, as the case may be, by way of compensation or otherwise, and has also complied with any directions given to him by the Central Government or the acquiring insurer, as the case may be, by way of compensation or otherwise, and has also complied with any directions given to him by the Central Government or the acquiring insurer, as the case may be, for the purpose of securing that the ownership of any property or any right is effectively transferred to the Central Government or the acquiring insurer, as the case may be, the Central Government may, on application being made to it in this behalf by such insurer, grant a certificate to be the insurer that there is no reason for the continued existence of the insurer, and upon the publication of such certificate, the insurer shall be dissolved.

Winding up

Winding up by the Court

53. (1) The Court may order the winding up in accordance with the Indian Companies Act, 1913 (7 of 1913), of any insurance company and the provisions of that Act shall, subject to the provisions of this Act apply accordingly.

(2) In addition to the grounds on which such an order may be based, the Court may order the winding up of an insurance company

- (a) if with the sanction of the Court previously obtained a petition in this behalf is presented by shareholders not less in number than one-tenth of the whole body of shareholders and holding not less than one tenth of the whole share capital or by not less than fifty policy-holders holding policies of life insurance that have been in force for not less than three years and are of the total value of not less than fifty thousand rupees; or
- (b) if the Authority, who is hereby authorised to do so, applies in this behalf to the Court on any of the following grounds, namely
 - (i) that the company has failed to deposit or to keep deposited with the Reserve Bank of India the amounts required by Section 7 or Section 98;
 - (ii) that the company having failed to comply with any requirement of this Act has continued such failure Nor having contravened any provision of this Act has continued such contravention for a period of three months after notice of such failure Nor contravention has been conveyed to the company by the Authority.
 - (iii) that it appears from Many returns or statements furnished under the provisions of this Act or from the results of any investigation made there under that the company is, or is deemed to be, insolvent, or
 - (iv) that the continuance of the company is prejudicial to the interest if the policy-holders or to the public interest generally

Unpaid-up share capital

53A Notwithstanding anything contained in any other law, in ascertaining for any purpose of this Act the solvency or otherwise of an insurer no account shall be taken of any assets of the insurer consisting of unpaid-up share capital.

Voluntary winding up

54. Notwithstanding anything contained in the Indian Companies Act, 1913 (7 of 1913), an insurance company shall not be wound up voluntarily except for the purpose of effecting an amalgamation or a re-construction of the company, or on the ground that by reason of its liabilities it cannot continue its

business.

Valuation of liabilities

55. (1) In the winding up of an insurance company or in the insolvency of any other insurer the value of the assets and the liabilities of the insurer shall be ascertained in such manner and upon such basis as the liquidator or receiver in insolvency thinks fit, subject, so far as applicable, to the rule contained in the Seventh Schedule and to any directions which may be given by the Court.

(2) For the purposes of any reduction by the Court of the amount of the contracts of any insurance company the value of the assets and liabilities of the company and all claims in respect of policies issued by it shall be ascertained in such manner and upon such basis as the Court thinks proper having regard to the rule aforesaid.

(3) The rule in the Seventh Schedule shall be of the same force and may be repealed, altered or amended as if it were a rule made in pursuance of section 246 of the Indian Companies Act, 1913 (7 of 1913) and rules may be made under that section for the purpose of carrying into effect the provisions of this Act with respect to the winding up of insurance companies.

Application of surplus assets of life insurance fund in liquidation or insolvency

56 (1) In the winding up of an insurance company and in the insolvency of any other insurer the value of the assets and the liabilities of the insurer in respect of life insurance business shall be ascertained separately from the value of any other assets or any other liabilities of the insurer and no such assets shall be applied to the discharge of any liabilities other than those in respect of life insurance business except in so far as those assets exceed the liabilities in respect of life-insurance business.

(2) In the winding up of an insurance company carrying on the business of life insurance or in the insolvency of any other insurer carrying on such business where any proportion of the profits of the insurer was before the commencement of the winding up or insolvency allocated to policy-holders, if, when the assets and liabilities of the insurer have been ascertained, there is found to be a surplus of assets over liabilities (hereinafter referred to as a *prima facie* surplus) there shall be added to the liabilities of the insurer in respect of the life-insurance business an amount equal to such proportion of the *prima facie* surplus as is equivalent to such proportion of the profits allocated to shareholders and policy-holders as was allocated to policy-holders during the ten years immediately preceding the commencement of the winding up and the assets of the insurer shall be deemed to exceed his liabilities only in so far as those assets exceed those liabilities after such addition:

Provided that-

- (a) if in any case there has been no such allocation or if it appears to the Court that by reason of special circumstances it would be inequitable that the amount to be added to the liabilities of the insurer in respect of the life insurance business should be an amount equal to such proportion as aforesaid, the amount to be so added shall be such amount as the Court may direct, and
- (b) for the purpose of the application of this sub-section to any case where before the commencement of the winding up or insolvency a proportion of such profits as aforesaid of a branch only of the life insurance business in question has been allocated to policy-holders, the value of the assets and liabilities of the insurer in respect of that branch shall be separately ascertained in like manner as the value of his assets and liabilities in respect to the life insurance business was ascertained, and the surplus so found, if any, of assets over liabilities shall, for the purpose of determining the amount to be added to :the liabilities of the insurer in respect of the life insurance business be deemed to be the *prima facie surplus*..

Winding up of secondary companies

57 (1) Where the insurance business or any part of the insurance business of an insurance company has been transferred to another insurance company under an arrangement in pursuance of which the first mentioned company (in this section referred to as the secondary company) or the creditors thereof has or have claims against the company to which such transfer was made (in this section referred to as the principal company) then, if the principal company is being wound up by or under the supervision of the Court, the Court shall (subject as hereinafter mentioned) order the secondary company to be wound up in conjunction with the

principal company and may, by the same or any subsequent order appoint the same person to be liquidator for the two companies and make provision for such other matters as may seem to the Court necessary with a view to the companies being wound up as if they were one company.

(2) The commencement of the winding up of the principal company shall, save as otherwise ordered by the Court, be the commencement of the winding up of the secondary company.

(3) In adjusting the rights and liabilities of the members of the several companies among themselves the Court shall have regard to the constitution of the companies and to the arrangements entered into between the companies in the same manner as the Court has regard to the rights and liabilities of different classes of contributories in the case of the winding-up of a single company or as near thereto as circumstances admit. I

(4) Where any company alleged to be secondary is not in process of being wound up at the same time as the principal company to which it is alleged to be secondary, the Court shall not direct the secondary company to be wound up, unless, after hearing all objections (if any) that may be urged by or on behalf of the company against its being wound up, the Court is of opinion that the company is secondary to the principal company and that the winding up of the company in conjunction with the principal company is just and equitable.

(5) An application may be made in relation to the winding up of any secondary company in conjunction with the principal company by any creditor of, or person interested in, the principal or secondary company.

(6) Where a company stands in the relation of a principal company to one insurance company and in the relation of a secondary company to some other insurance company or where there are several insurance companies standing in the relation of secondary companies to one principal company, the court may deal with any number of such companies together or in separate groups as it thinks most expedient upon the principles laid down in this section.

Schemes for partial winding-up of insurance companies

58. (1) If at any time it appears expedient that the affairs of an insurance company in respect of any class of business comprised in the undertaking of the Company should be wound up but that any other class of business comprised in the undertaking should continue to be carried on by the company or be transferred to another insurer, a scheme for such purposes may be prepared and submitted for confirmation of the Court in accordance with the provisions of this Act.

(2) Any scheme prepared under this section shall provide for the allocation and distribution of the assets and liabilities of the company between any classes of business affected (including the allocation of any surplus assets which may arise on the proposed winding-up) for any future rights of every class of policy-holders in respect of their policies and for the manner of winding-up any of the affairs of the company which are proposed to be wound up and may contain provisions for altering the memorandum of the company with respect to its objects and such further provisions as may be expedient for giving effect to the scheme.

(3) The provisions of this Act relating to the valuation of liabilities of insurers in liquidation and insolvency and to the application of surplus assets of the life insurance fund in liquidation or insolvency shall apply to the winding up of any part of the affairs of a company in accordance with the scheme under this section in like manner as they apply in the winding up of an insurance company, and any scheme under this section may apply with the necessary modifications any of the provisions of the Indian Companies Act, 1913 (7 of 1913), relating to the winding up of companies.

(4) An order of the Court confirming a scheme under this section whereby the memorandum of a company is altered with respect to its objects shall as respects the alteration have effect as if it were an order confirmed under Sec. 12 of the Indian Companies Act, 1913 (7 of 1913), and the provisions of Sections 15 and 16 of that Act shall apply accordingly.

Return of deposits

59. In the winding up of an insurance company (otherwise than in a case to which Section 58 applies) and in the insolvency of any other insurer the liquidator or assignee as the case may be shall apply to the Court for an order for the return of the redeposit made by the company or the insurer, as the case may be, under Section 7 or Section 98 and the Court shall on such application order a return of the deposit subject to such terms and conditions as it shall direct.

Notice of policy values

60. In the winding up of an insurance company for the purposes of a cash distribution of the assets and in the insolvency of any other insurer the liquidator or assignee, as the case may be, in the case of all persons appearing by the books of the company or other insurer to be entitled to or interested in the policies granted by the company or other insurer shall ascertain the value of the liability of the company or other insurer to each such person and shall give notice of such value to those persons in such manner as the Court may direct and any person to whom notice is so given shall be bound by the value so ascertained unless he gives notice of his intention to dispute such value in such manner and within such time as may be specified by a rule or order of the Court.

Power of Court to reduce contracts of insurance

61. (1) where an insurance company is in liquidation or any other insurer is insolvent, the Court may make an order reducing the amount of the insurance contracts of the company or other insurer upon such terms and subject to such conditions as the Court thinks Just.

(2) Where a company carrying on the business of life insurance has been proved to be insolvent, the Court may if it thinks fit in place of making a winding up order reduce the amount of the insurance contracts of the company upon such terms and subject to such conditions as the Court thinks fit.

(3) Application for an order under this section may be made either by the liquidator or by or on behalf of the company or by a policy-holder, or by the Authority and any person whom the Court thinks likely to be affected shall be entitled to be heard on any such application.

Special Provisions Relating to External Companies

Power of Central Government to impose reciprocal disabilities on non-Indian companies

62. Where by the law or practice of any country outside India in which an insurer carrying on insurance business in India is constituted, incorporated or domiciled, insurance companies incorporated in India are required as a condition of carrying on insurance business in that country to comply with any special requirement whether as to the keeping of deposits or assets in that country or otherwise which is not imposed upon insurers of that country under this Act, the Central Government shall, if satisfied of the existence of such special requirement, by notification in the official Gazette, direct that the same requirement or requirements, as similar thereto as may be, shall be imposed upon insurers of that country as a condition of carrying on the business of insurance in India.

Particulars to be filled by insurers established outside India

63. Every insurer, having his principal place of business or domicile outside Indian, who establishes a place of business within India or appoints a representative in India with the object of obtaining insurance business shall within three months from the establishment of such place of business or the appointment of such representative file with the Authority.

- (a) a certified copy of the charter, statutes, deed of settlement or memorandum and articles or other instrument constituting or defining the constitution of the insurer, and, if the instrument is not written in the English language, a certified translation thereof.
- (b) a list of the directors, if the insurer is a company,
- (c) the name and address of some one or more persons resident in India authorised to accept on behalf of the insurer service of process and any notice required to be served on the insurer together with a copy of the power of attorney granted to him.
- (d) the full address of the principal office of the insurer in India.
- (e) a statement of the classes of insurance business to be carried on by the insurer, and
- (f) a statement verified by an affidavit setting forth the special requirements, if any, of the nature specified in Section 62 imposed in the country of origin of the insurer on Indian nationals,

and, in the event of any alteration being made in the address of the principal office or in the classes of business to be carried on, or in any instrument here referred to, or in the name of any of the persons here referred to, or in the matters specified in Clause(f) above, the company shall forthwith furnish to the Authority particulars of such alteration.

Books to be kept by insurers established outside India

64. Every insurer having his principal place of business or domicile outside India shall keep at his principal office in India such books of account, registers and documents as will enable the accounts, statements and abstracts which he is required under this Act to furnish to the Authority in respect of the insurance business transacted by him, in India to be complied and if necessary, checked by the Authority and shall furnish to the Authority on or before the last day of January in every calendar year a certificate from an auditor to the effect that the said books of account, register and documents are being kept as required at the principal office of the insurer in India.

PART II-A

Insurance Association of India, Councils of the Association and Committees thereof

Incorporation of the Insurance Association of India

64A. (1) All insurers carrying on insurance business in India at the commencement of the Insurance (Amendment) Act, 1950 (47 of 1950), all insurers who may after such commencement begin to carry on insurance business in India, and, if the Central Government, by notification in the official Gazette, so declares all provident societies carrying on insurance business in India on the date of such notification and all provident societies which may begin to carry on insurance business in India after such date are hereby constituted a body corporate by the name of the Insurance Association of India.

(2) All insurers and provident societies incorporated or domiciled in India shall be known as members of the Insurance Association of India, and all insurers and provident societies incorporated or domiciled elsewhere than in India shall be known as associate members of that Association.

(3) The Insurance Association of India shall have perpetual succession and a common seal and shall have power to acquire, hold and dispose of all property both moveable, and immoveable and shall by the said name sue and be sued.

Entry of names of members in the register

64B. (1) The Authority shall take or cause to be taken through such agency as he thinks fit such steps as may be necessary to have the names of all insurers and provident societies, who or which are entitled to have their names entered in the register of members and associate members of the Insurance Association of India maintained for this purpose entered therein.

(2) Where any insurer or provident society has ceased to carry on business as such the Authority shall cause such steps to be taken as may be necessary to have the name of such insurer or provident society, as the case may be, removed from the register.

Councils of the Insurance Association of India

64C. There shall be two Councils of the Insurance Association of India, 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.

Authority of members of Association to act through agents

64D. It shall be lawful for any member of the Life Insurance Council or the General Insurance Council to authorise any individual, whether an officer of the insurer or not, to act as the representative of such member

at any meeting of the Council concerns or to stand as a candidate for any election held by that Council.

Authorities of the Life Insurance Council and the General Insurance Council

64E. The authorities of the Life Insurance Council and the General Insurance Council shall be the Executive Committees constituted in the manner provided in this Part.

Executive Committees of the Life Insurance Council and the General Insurance Council

64F.1) The Executive Committee of the Life Insurance Council shall consist of the following persons, namely:

- (a) two officials nominated by the Authority, one as the Chairman and the other as a member;
- (b) eight representatives of members of the Insurance Association of India carrying on life insurance business elected in their individual capacity by the said members in such manner, from such groups of members and from such areas as may be specified by the Authority.
- (c) one official not connected with any insurance business, nominated by the Authority and
- (d) five persons connected with life insurance business, nominated by the Authority for the purpose of representing such groups of insurers carrying on life insurance business or such areas as have not been able to secure adequate representation on the Executive Committee of the Life Insurance Council or for any other purpose.

(2) The Executive Committee of the General Insurance Council shall consist of the following persons, namely:

- (a) two officials nominated by the Authority, one as the Chairman and the other as a member;
- (b) eight representatives of members of the Insurance Association of India carrying on general insurance business elected in their individual capacity by the said members in such manner, from such groups of members and from such areas as may be specified by the Authority
- © one non-official not connected with any insurance business, nominated by the Authority and
- (d) five persons connected with general insurance business, nominated by the Authority for the purpose of representing such groups of insurers carrying on general insurance business or such areas as have not been able to secure adequate representation on the Executive Committee of the General Insurance Council or for any other purpose.

(3) If any body of persons specified in sub-sections (1) and (2) fails to elect any of the members of the Executive Committees of the Life Insurance Council or the General Insurance Council, the Authority may nominate any person to fill the vacancy, and any person so nominated shall be deemed to be a member of the Executive Committee of the Life Insurance Council or the General Insurance Council, as the case may be, as if he had been duly elected thereto.

(4) No official nominated by the Authority shall be entitled, whether as chairman or as a member, to vote in respect of any matter coming up before any meeting of the Executive Committee of the Life Insurance Council or the Executive Committee of the General Insurance Council, as the case may be, and subject thereto each of the said Executive Committees may, with the approval of the Authority, make bye-laws for the transaction of any business at any meeting of the said Committee, and any such bye-law may provide that any member of the Committee who is interested in any matter for the time being before that Committee may not be present at or take part in any meeting thereof.

(5) The life insurance Council or the General Insurance Council may form such other committees consisting of such persons as it may think fit to discharge such functions as may be delegated thereto:

Provided that any action taken by any of the said Council under this subsection shall be with the previous consent of the Authority and nothing in this sub-section shall derogate from any of the powers vested in the Executive Committees.

(6) The Secretary of the Executive Committee of the Life Insurance Council and of the Executive Committee of the General Insurance Council shall in each case be an official nominated by the Authority.

Resignation and filling up of casual vacancies

64G. (1) Any member of the Executive Committee of the Life Insurance Council or of the General Insurance Council may resign his membership of the Committee by notice in writing addressed to the Chairman of the Committee to that effect.

(2) Casual vacancies in the Executive Committee of the Life Insurance Council or of the General Insurance Council, whether caused by resignation, death or otherwise, shall be filled by nomination by the Authority, and any person so nominated to fill the vacancy shall hold office until the dissolution of the Committee to which he has been nominated.

(3) No act of the Executive Committee of the Life Insurance Council or of the General Insurance Council shall be called in question on the ground merely of the existence of any vacancy in, or defect in the constitution of, the Committee concerned.

Duration and dissolution of Executive Committees

64H. (1) The duration of the Executive Committee of the Life Insurance Council or the General Insurance Council shall be three years from the date of its first meeting on the expiry of which it shall stand dissolved and a new Executive Committee constituted.

(2) Notwithstanding the dissolution of the Executive Committee of the Life Insurance Council or the General Insurance Council, the out-going members thereof shall continue to hold office and discharge such administrative and other duties as may be prescribed until such time as a new Executive Committee of the Life Insurance Council or the General Insurance Council, as the case may be, shall have been constituted.

Power of Executive Committee of Life Insurance Council to hold examinations for Insurance agents

64-I The Life Insurance Council may, with the approval of the Authority authorise its Executive Committee to hold examinations for individuals wishing to qualify themselves as insurance agents for the purpose of procuring life insurance business, and if the Authority, by notification in the official Gazette, so declares, then, notwithstanding anything contained in Sec. 42, only individuals who have passed any such examination shall be eligible to apply for a licence under Section 42:

Provided that nothing in this sub-section shall affect the right of any individual, who has been licensed to act as an insurance agent under Section 42 before the date of such notification, to act as such, or to have his licence renewed from time to time

Functions of Executive Committee of Life Insurance Council

64J. (1) The functions of the Executive Committee of the Life Insurance Council shall be

- (a) to aid, advise and assist insurers carrying on life 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 policies;
- (b) to render advice to the Authority in the matter of controlling the expenses of insurers in respect of their life 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 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 Council in the Gazette of India.

(2) For the purpose of enabling it effectively to discharge its functions, the Executive Committee of the Life Insurance Council may collect such sums of money, whether by way of fees or otherwise, as may be prescribed from all members and associate members of the Insurance Association of India who carry on life

insurance-business.

Executive Committee of Life Insurance Council may advise in controlling expenses

64K. (1) It shall be the duty of the Executive Committee of the Life Insurance Council to meet at least once before the 31st day of March every year to advise the Authority in fixing under the proviso to sub-section (2) of Section 40-B the limits by which the actual expenses incurred by an insurer carrying on life insurance business in respect of such business in the preceding year may exceed the limits prescribed under that sub-section, and in fixing any such limits the Authority shall have due regard to the conditions obtaining in life insurance business generally during that year and he may fix different limits for different groups of insurers.

(2) Where an insurer is guilty of contravening the provisions of Section 40B with respect to the expenses of management, the Authority may, after giving the insurer an opportunity of being heard, administer a warning to the insurer.

(3) Where within a period of seven years two warnings have been given to an insurer under sub-section (2) and they have been disregarded by him, the Authority may cause an investigation and valuation, as at such date as the Authority may specify, to be made at the expense of the insurer by an actuary appointed by the insurer for this purpose and approved by the Authority, and the insurer shall place at the disposal of the said actuary all the materials required by him for the purpose of such investigation and valuation, within such period, not being less than three months, as the Authority may specify.

(4) The provisions of sub-sections (1) and (4) of Section 13 and sub-sections (1) and (2) of Section 15, or, as the case may be, of sub-section (2) of Sec. 16 shall apply in relation to an investigation and valuation under this section:

Provided that the abstract and statement prepared as the result of such investigation and valuation shall be furnished by such date as the Authority may specify.

(5) There shall be appended to every such abstract a statement signed by the actuary giving such information as may be prescribed.

(6) On receipt of the abstract and statement furnished in accordance with sub-section (4), the Authority may take such action as may be prescribed.

Functions of the Executive Committee of General Insurance Council

64L (1) The functions of the Executive Committee of the General Insurance Council shall be -

- (a) to aid and advise insurers, carrying on 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 policies of general insurance;
- (b) to render advice to the Authority in the matter of controlling the expenses of such insurers carrying on business in India in the matter of commission and other expenses;
- (c) to bring to the notice of the Authority the case of any such insurer acting in a manner prejudicial the interests of holders of 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 General Insurance Council in the Gazette of India.

(2) For the purpose of enabling it effectively to discharge its functions, the Executive Committee of the General Insurance Council may collect such fees as may be prescribed from all insurers carrying on general insurance business:

Provided that if the General Insurance Council thinks fit, it may by a resolution passed by it, waive the collection of the prescribed fees for any year and where any such resolution has been approved by the Authority, the Executive Committee of the General Insurance Council shall not collect any fees in relation to that year.

Executive Committee of the General Insurance Council may advise in controlling expenses.

64M. (1) It shall be the duty of the Executive Committee of the General Insurance Council to meet at least once before the 31st day of March every year to advise the Authority in fixing under the proviso to subsection (1) of Section 40-C the limits by which the actual expenses of management incurred by an insurer carrying on general insurance business in respect of such business in the preceding year may exceed the limits prescribed under that sub-section, and in the fixing any such limits the Authority shall have due regard to the conditions obtaining in general insurance business in the preceding year, and he may fix different limits for different groups of insurers.

(2) Where an insurer is guilty of contravening the provisions of Section 40C with respect to the expenses of management the Authority may, after giving the insurer an opportunity of being heard, administer a warning to the insurer.

(3) Where in any case two warnings given to an insurer under sub-section (2) have been disregarded by him, the Authority may take such action against the insurer as may be prescribed.

Powers of Executive Committees to act together in certain cases

64N. The Central Government may prescribe the circumstances in which, the manner in which, and the conditions subject to which, 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 it shall be lawful for the two Committees at any such joint meeting to delegate any matter under consideration for the determination of a sub committee appointed for this purpose from amongst the members of the two Committees.

General powers of Life Insurance Council and General Insurance Council

64R (1) For the efficient performance of its duties, the Life Insurance Council or the General Insurance Council, as the case may be, may

- (a) appoint such officers and servants as may be necessary and fix the conditions of their service;
- (b) determine the manner in which any prescribed fee may be collected;
- (c) 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;
- (d) with the previous approval of the Authority, make regulations for
 - (i) the holding of elections other than the first elections;
 - (ii) the summoning and holding of meetings, the conduct of business thereat and the number of persons necessary to form a quorum;
 - (iii) the 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) the levy and collection of any fees;
 - (v) the regulation of any other matter which may be necessary for the purpose of enabling it to carry out its duties under this Act.

(2) The Life Insurance Council or the General Insurance Council may authorise the Executive Committee concerned to exercise any of the powers conferred on the Life Insurance Council or the General Insurance Council, as the case may be, under Clause (a), Clause (b) or Clause (c) of sub-section (1).

Power of Central Government to remove difficulties

64S. The Central Government may exercise such powers as may be necessary for bringing the Life

Insurance Council, the General Insurance Council or the Executive Committee of any of the said Councils, as the case may be, into effective existence for the purposes of this Part, and any such powers shall include

- (a) the power to hold, in such manner as may be directed by the Central Government, the first elections to the Executive Committees of the Life Insurance Council and the General Insurance Council;
- (b) where a notification under sub-section (1) of Section 64A has been issued declaring provident societies to be members of the Insurance Association of India, the powers to associate provident societies effectively in the exercise of all powers and the discharge of all functions of the Life Insurance Council and the Executive Committee thereof;
- (c) the power to make the provisions of Section 40B applicable to the provident societies specified in Clause (b) in the same manner as they apply to insurers.

Power to exempt

64T. The Central Government may, subject to such conditions and restrictions as it may think fit to impose, exempt any insurer specified in sub-clause (c) of Clause (9) of Section 2 from the operation of all or any of the provisions of this Part.

PART II-B

TARIFF ADVISORY COMMITTEE AND AUTHORITY OF TARIFF RATES

Establishment of Tariff Advisory Committee

64U (1) With effect from the commencement of the Insurance (Amendment) Act, 1968, there shall be established a Committee, to be called the Tariff Advisory Committee (hereafter in this Part-referred to as the Advisory Committee) to control and regulate the rates, advantages, terms and conditions that may be offered by insurers in respect of general insurance business.

(2) The Advisory Committee shall be 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 immovable, and to contract, and may, by the said name, sue and be sued.

Composition of the Advisory Committee

64UA. (1) The Advisory Committee shall consist of the following members, namely:—

- (a) the Chairperson of the Authority *ex officio*, who shall be the Chairman;
- (b) a senior officer of the office of the Authority nominated by the Authority, who shall be the Vice-Chairman;
- (c) not more than ten representatives of Indian insurers, elected (In their individual capacities) by such insurers in such manner, from such areas and from among such insurers or groups of insurers as may be prescribed;
- (d) not more than four representatives of insurers incorporated or domiciled elsewhere than in India but registered in India elected (in their individual capacities) by such insurers in such manner, and from among such insurers or groups of insurers as may be prescribed.

(2) The Secretary to the Advisory Committee shall be an officer of the office of the Authority, nominated by the Authority.

Power to make rules in respect of matters in this part

64UB. (1) The Authority may by notification in the official Gazette may make regulations to carry out the purposes of this Part.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations

may provide for all or any of the following matters, namely:-

- (a) the functions to be discharged by the Advisory Committee;
- (b) the term of office of the members of the Advisory Committee, the procedure for their election and the manner of filling casual vacancies in the Advisory Committee;
- (c) the traveling and other allowances payable to the members of the Advisory Committee;
- (d) the procedure for holding the meeting of the Advisory Committee and for transaction of business thereat.

(3) The Advisory Committee may, by notification in the Official Gazette with the previous approval of the Authority, make regulations for all or any of the following matters, namely,—

- (a) the constitution, powers and duties of Regional Committees and of sub-committees constituted by the Advisory committee or any Regional Committee;
- (b) the method of election of candidates for Regional Committees and of sub-committees, their eligibility, term of office and method of filling casual vacancies;
- (c) the procedure for convening meetings and transaction of business by Regional committees and sub-committees;
- (d) the appointment of officers and other employees of the Advisory Committee and of Regional Committees or sub-committees constituted by or under the Advisory Committee or any Regional Committee and the terms and conditions of their service including travelling and other allowances;
- (e) such other matters pertaining to procedure as are not inconsistent with the provisions of this Act or of rules made there under,

and may, from time to time, with the previous approval of the Authority, add to, amend or vary any such regulations.

(4) The regulations made by the Tariff Committee of the General Insurance Council under Section 64-O as they were in force immediately before the commencement of the Insurance (Amendment) Act, 1968, shall, after such commencement, continue to be in force until rules are made by the Central Government under sub-section (1) and immediately after such rules have come into effect, the regulations aforesaid shall cease to be valid.

(5) The Chairperson of the Authority shall be in direct charge of the establishment of the Advisory Committee and the Secretary of the Advisory Committee shall work under his direction and control.

Power of the Advisory Committee to regulate rates, advantages, etc

64UC. (1) The Advisory Committee may, from time to time and to the extent it deems expedient, 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, the rates, advantages, terms and conditions of which, in its opinion, it is proper to control and regulate, and any such rate, advantages, terms and conditions shall be binding on all insurers:

Provided that 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.

(2) In fixing, amending or modifying any rates, advantages, terms or conditions, relating to any risk, the Advisory Committee shall try to ensure, as far as possible, 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.

(3) Every decision of the Advisory Committee shall be valid only after and to the extent it is ratified by the Authority, and every such decision shall take effect from the date on which it is so ratified by the Authority, or if the Authority so orders in any case, from such earlier date as he may specify in the order.

(4) The decisions of the Advisory Committee in pursuance of the provisions of this section shall be final.

(5) Where an insurer is guilty of breach of any rate, advantage, term or condition fixed by the Advisory Committee, he shall be deemed to have contravened the provisions of this Act.

Provided that instead of proceeding against the insurer for such contravention, the Authority may, if the insurer removes the contravention by recovering the deficiency in the premium, or where it is not practicable to do so, modifies suitably or cancels the contract of insurance, compound the offence on payment to the Advisory Committee of such fine, not exceeding rupees one thousand, as he may decide in consultation with the Advisory Committee.

Transitional provisions

64UD. (1) Notwithstanding anything contained in this Part, until the names of the members of the Advisory Committee elected for the first time after the commencement of the Insurance (Amendment) Act, 1968, are notified, the Tariff Committee of the General Insurance Council appointed under regulations made under sub-section (2) of Section 64-0 as it was in force immediately before the commencement of the Insurance (Amendment) Act, 1968, and in existence on such commencement (hereafter in this Part referred to as the Tariff Committee) shall continue to function and shall be deemed to be the Advisory Committee duly elected under this Part and the Authority of Insurance shall become the Chairman of that Committee with effect from the commencement of the Insurance (Amendment) Act, 1968, and function as such, and any chairman of the Tariff Committee holding office immediately before such commencement shall cease to be the Chairman thereof from the date of such commencement but shall continue to be an ordinary member of the Advisory Committee.

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

(2) Notwithstanding anything contained in this Part, the constitution of the Regional Councils established under Section 64-P, as in force immediately before the commencement of the Insurance (Amendment) Act, 1968 (hereafter referred to as the Regional Councils), and of the Sectional Committees formed there under, existing immediately before such commencement, shall continue to be in full force and be of full effect until the regulations made by the Advisory Committee for the first time under Section 64UB come into effect and as soon as such regulations have come into effect such constitutions shall cease to have effect.

(3) Notwithstanding anything contained in this Part, until the Secretary to the Advisory Committee is nominated under sub-section (2) of Section 64UA, the Secretary to the Tariff Committee holding office immediately before the commencement of the Insurance (Amendment) Act, 1968, shall function as the Secretary and shall be deemed to have been duly nominated under this Part.

(4) All rates, advantages, terms and conditions fixed by the Tariff Committee or the Regional Councils prior to the commencement of the Insurance (Amendment) Act, 1968, and in force immediately before such commencement shall continue, except to such extent as they may be altered, replaced or abolished by the Advisory Committee, to be valid and fully in force as if they were rates, advantages, terms and conditions fixed by the Advisory Committee. -

Power of the Advisory Committee to require Information, etc

64UE. (1) The Advisory Committee may require, by notice in writing, any insurer to supply to it such information or statements, periodical or *ad hoc*, as it may consider necessary to enable it to discharge its functions under this Part and every insurer shall comply with such requirements within such period as may be specified by the Advisory Committee in this behalf, failing which the insurer shall be deemed to have contravened the provisions of this Act.

(2) Any information supplied under this section shall be certified by a principal officer of the insurer or where the Advisory Committee has agreed in advance, by such other officer or officers of the insurer as the principal officer of the insurer may nominate for the purpose and if the notice so requires, also by an auditor.

(3) The Authority may, at any time, in writing, depute any subordinate of his, to make a personal inspection of 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 him under sub section (1), or to verify that full particulars have been supplied by him in respect of all policies issued by him and the insurer shall provide all facilities for such inspection, and make available to such person all the books of account, ledgers, policy registers and other books or documents of the insurer which might be needed by him for such verification and the person deputed may himself extract from out of the books and records of the insurer such information as may be needed to fill up or complete the returns required to be submitted to the Advisory Committee under this section.

(4) The Advisory Committee may, at any time, on the application of an insurer, make arrangements for the inspection of an organization which is concerned with the inspection of risks, adjustment of losses or fire-fighting appliances, and may, whenever necessary, advise insurers about the adequacy of the arrangements for the inspection of risks and adjustment of losses or the suitability of such appliances:

Provided that no such inspection shall be made without the written permission of the concerned organization

Assets and liabilities of the General Insurance Council to vest in the Advisory Committee

64UF. (1) On the commencement of the Insurance (Amendment) Act, 1968, all the assets and liabilities of the General Insurance Council appertaining to its Tariff Committee and to its Regional Councils and their Sectional Committees existing on that day shall be transferred to, and vest in, the Advisory Committee.

(2) The assets appertaining to the Tariff Committee, the Regional Councils, and their Sectional Committees shall be deemed to include all rights and powers and all property, whether moveable or immovable, including, in particular, cash balances, reserve funds, investments, deposits and all other interests and rights in, or arising out of, such property as may be in the possession of the Tariff Committee, Regional Councils and their Sectional Committees and all books of account or documents thereof; and liabilities shall be deemed to include all debts, liabilities and obligations of whatever kind existing and appertaining to the work of the Tariff Committee, the Regional Councils and their Sectional Committees.

(3) Where the General Insurance Council has established a provident or superannuation fund or any other fund for the benefit of the employees of its Tariff Committee or Regional Councils and constituted a trust in respect thereof (hereafter in this section referred to as an existing trust), the monies standing to the credit of any such fund at the commencement of the Insurance (Amendment) Act, 1968, shall, subject to the provisions of subsection (4), stand transferred to, and vest in, on such commencement, the Advisory Committee.

(4) Where any employee of the Tariff Committee, or the Regional Councils, or the General Insurance Council does not become an employee of the Advisory Committee, the monies and other assets appertaining to any fund referred to in subsection (3) shall be apportioned between the trustees of the fund and the Advisory Committee in the prescribed manner; and in case of any dispute regarding such apportionment, the decision of the Central Government thereon shall be final.

(5) The Advisory Committee shall, as soon as may be after the commencement of the Insurance (Amendment) Act, 1968, constitute in respect of the monies and other assets which are transferred to, and vested in it, under sub section (3), one or more trusts having, as far as practicable, objects similar to the objects of the existing trusts.

(6) Where all the monies and other assets belonging to an existing trust are transferred to, and vested in, the Advisory Committee under sub-section (3), the trustees of such trust shall, on the commencement of the Insurance (Amendment) Act, 1968, be discharged from the trust except as respects things done or omitted to be done by them before such commencement.

Contracts, etc., to be effective by or against the Advisory Committee

64UG (1) Unless otherwise expressly provided by or under this Act, all contracts, agreements and other instruments of whatever nature subsisting or having effect immediately before the commencement of the

Insurance (Amendment) Act, 1968, and to which Tariff Committee, or any Regional Council is a party or which is in favour of that Committee or that Council, shall be of as full force and effect against or in favour of the Advisory Committee and may be enforced or acted upon as fully and effectually as if, instead of the Tariff Committee, or the Regional Council, the Advisory Committee had been a party thereto or as if they had been entered into or issued in favour of the Advisory Committee.

(2) If, at the commencement of the Insurance (Amendment) Act, 1968, any suit, appeal or other legal proceeding of whatever nature is pending by or against the Tariff Committee, or any Regional Council then it shall not abate, be discontinued or in any way be prejudicially affected by reason of the transfer to the Advisory Committee of the assets and liabilities of the Tariff Committee, and the Regional Councils or of anything done under this Act, but the suit, appeal or other proceeding may be continued, prosecuted or enforced by or against the Advisory Committee.

Employees, etc., to continue.—

64UH. (1) Every whole-time employee of the Tariff Committee, or the Regional Councils who was employed by that Committee or those Councils wholly or mainly in connection with its or their statutory duties immediately before the commencement of the Insurance (Amendment) Act, 1968, shall, on and from such commencement, become an employee of the Advisory Committee and shall hold his office in it by the same tenure, at the same remuneration, and upon the same terms and conditions and with the same rates and privileges as to pension, gratuity and other matters as he would have held on such commencement if this Part had not been enacted, and shall continue to do so until his employment under the Advisory Committee is terminated or until his remuneration, terms and conditions, are duly altered by the Advisory Committee:

Provided that nothing contained in this sub-section shall apply to any employee who has given notice to the Central Government in writing either prior to or within two months from the commencement of the Insurance (Amendment) Act, 1968, intimating his intention of not becoming an employee of the Advisory Committee.

(2) Where the Central Government is satisfied that for the purpose of securing uniformity in the scales of pay, remuneration and other terms and conditions of service applicable to employees of the Tariff Committee or the Regional Councils, it is necessary so to do, or that a reduction in the remuneration payable or revision of the other terms and conditions of service applicable to employees or any class of them is called for, the Central Government may, notwithstanding anything contained in sub-section (1), or in the Industrial Disputes Act, 1947 (14 of 1947), or in any other law for the time being in force or in any award settlement, or agreement for the time being in force, alter (whether by way of reduction or otherwise) the remuneration and other terms and conditions of service to such extent and in such manner as it thinks fit; and if the alteration is not acceptable to any employee, the Advisory Committee may terminate his employment by giving him compensation equivalent to three months' remuneration, unless the contract of service with such employees provides for a shorter notice of termination.

Explanation. - The compensation payable to an employee under this subsection shall be in addition to and shall not affect any pension, gratuity, provident fund money or any other benefit to which the employee may be entitled under his contract of service.

(3) If any question arises as to whether any person was a whole-time employee of the Tariff Committee, or the Regional Council, on the commencement of the Insurance (Amendment) Act, 1968, or as to whether any employee was employed wholly or mainly in connection with the statutory duties of the Tariff Committee, or any Regional Council immediately before such commencement, the question shall be referred to the Central Government whose decision thereon shall be final.

(4) Notwithstanding anything contained in the Industrial Disputes Act, 1947 (14 of 1947), or in any other law for the time being in force, the transfer of the services of any employee of the Tariff Committee, or the Regional Councils, to the Advisory Committee shall not entitle any such employee to any compensation under that Act or other law, and no such claim shall be entertained by any Court, tribunal or other authority.

Duty of person having custody or control of property to deliver such property to the Advisory Committee

64UI. (1) Where any property of the Tariff Committee, or the Regional Councils (appertaining to its or their statutory duties) has been transferred to, and vested in, the Advisory Committee, then,

- (a) every person in whose possession, custody or control any such property may be, shall deliver the property to the Advisory Committee forthwith;
- (b) any person, who, on the commencement of the Insurance (Amendment) Act, 1968, has in his possession, custody or control any books, documents and other papers relating to the Tariff Committee, or the Regional Councils, shall be liable to account for the said books, documents and papers to the Advisory Committee and shall deliver them to such person as the Committee may direct.

(2) Without prejudice to the provisions contained in this section, it shall be lawful for the Advisory Committee to take all necessary steps for securing possession of all properties which have been transferred to and vested in it, under this Act.

Power of the Advisory Committee to constitute Regional Committees

64UJ. (1) The Advisory Committee may constitute such Regional Committees as and when it deems fit for one or more of the prescribed regions.

(2) Each Regional Committee shall consist of not more than seven persons of which not more than five shall be elected by such groups of insurers carrying on general insurance business in the region as may be prescribed and not more than two shall be nominated by the Authority.

(3) For the purpose of enabling it effectively to discharge its duties, and Regional Committee may constitute such sub committees as it may think fit, whether consisting of members of the Regional Committee or not.

(4) It shall be the duty of every Regional committee to advise the Advisory Committee on any question connected with the fixation of rates, advantages, terms and conditions for risks in its region which may be referred to it by the Advisory Committee for advice, and in addition, every Regional Committee shall perform such other functions as may be delegated to it by the Advisory Committee by regulations made by it with the previous approval of the Central Government.

(5) Where, in the exercise of any functions delegated to it under this section any Regional Committee or any sub-committee thereof restrains an insurance agent from procuring or causing to be procured general insurance business in any area, such agent may prefer an appeal to the Authority against such order within thirty days from the date of service of that order on him and the Authority may after giving such agent an opportunity of being heard, pass such orders thereon as it may think fit and the orders made by the Authority on such appeal shall be final.

(6) Notwithstanding anything contained in this section every Regional Council and every Sectional or other Committee of the Regional Council, in existence immediately before the commencement of the Insurance (Amendment) Act, 1968, shall, until it is abolished by the Advisory Committee, be deemed to be a Regional Committee or sub-committee as the case may be, established in accordance with the provisions of this section and shall function as such and shall have all the powers and responsibilities which it had immediately before such commencement, and if the term of any such Council or Committee expires before Regional Committees constituted under sub-section (1) and subcommittees constituted under sub-section (3) come into existence, such terms shall be deemed to have been validly extended up to the time when such Regional Committees and sub-committees are established.

Levy of fees by the Advisory Committee.

64UK. (1) Every insurer shall annually before the prescribed date make payment to the Advisory Committee in the prescribed manner of such fees, not exceeding for any year, in the case of an insurer doing only re-insurance business in India, one per cent of his total premiums in respect of facultative re-insurance accepted by him in India in the preceding year and in the case of any other insurer, one per cent of the total gross premium written direct by him in India in the preceding year, as may be specified by the Advisory Committee for the purpose of this part.

(2) The Advisory Committee may collect, in addition to the fees mentioned in sub-section (1), reasonable fees and charges from any person to cover the cost of any specific services rendered by it.

(3) If an insurer fails to make payment within the prescribed date of any fee required to be paid under sub-section (1) he shall be deemed to have failed to comply with the provisions of this Act.

(4) The Authority may, so long as an application to the Court under sub section (5-D) of Section 3 has not been made, revive the registration which might have been cancelled for failure to make payment of the fee required to be made under sub section (1), if the insurer makes payment of such fee together with such penalty not exceeding the actual amount of fee payable as the Authority may require.

Power to remove difficulties

64UL. If any difficulty arises in giving effect to the provisions of this Part, the Central Government may, by order, make such provisions or give such directions not inconsistent with the provisions of this Act as may appear to it to be necessary or expedient for the removal of the difficulty:

Provided that no such power shall be exercised after the expiry of a period of four years from the commencement of this Part

Licensing of surveyors and loss assessors

64UM (1) (A) Save as otherwise provided in this section, no person shall act as a surveyor or loss assessor in respect of general insurance business after the expiry of a period of one year from the commencement of the Insurance (Amendment) Act, 1968, unless he holds a valid licence issued to him by the Authority.

(B) Every person who intends to act as a surveyor or loss assessor after the expiry of a period of one year from the commencement of the Insurance (Amendment) Act, 1968, but before the commencement of the Insurance Regulatory and Development Authority Act, 1999, shall make an application to the Authority within such time, in such form, in such manner and on payment of such fee, not exceeding rupees two hundred and fifty, as may be prescribed.

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

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

(C) Every licence issued under this section shall remain in force, unless cancelled earlier, for a period of five years from the date of issue thereof, and may be renewed for a period of five years at a time, on payment of such fee, not exceeding rupees two hundred, as may be determined by the regulations.

(D) No licence to act as a surveyor or loss assessor shall be issued unless

(i) the applicant, where he is an individual, satisfies the Authority that he –

- (a) *has been* in practice as a surveyor or loss assessor on the date of commencement of the Insurance Regulatory and Development Authority Act, 1999 or
- (b) holds a degree of a recognised University in any branch of engineering, or
- (c) 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
- (d) Possesses actuarial qualifications or holds a degree or diploma of any recognized University or institute in relation to insurance, or
- (e) holds a diploma in insurance granted or recognised by the Government, or
- (f) possesses such other technical qualifications as may be specified by the regulations made by the Authority, and
- (g) does not suffer from any of the disqualifications mentioned in sub section (4) of Section 42;

(ii) the applicant, where he is a company or firm, satisfies the Authority that all his directors or partners, as the case may be, possess one or more of the qualifications specified in Clause (i) and none of such directors or partners suffer from any of the disqualifications mentioned in sub section (4) of Section 42.

(E) Every application for the renewal of the licence shall be made at least thirty days before the expiry of the period of validity thereof.

(F) The Authority may, if he is satisfied that any licence issued or renewed under this section has been lost or destroyed, issue a duplicate licence on payment of a fee of rupees five and the duplicate licence so issued shall remain in force for the remainder of the period of a validity of the licence in lieu of which it is issued.

(G) Without prejudice to the powers conferred by sub-section (7), the Authority, if satisfied that the holder of any licence has made a statement which is false in material particulars with regard to his eligibility for obtaining such licence or has, after the issue or renewal of such licence, acquired any of the disqualifications mentioned in sub-section (4) of Section 42, may, after giving a reasonable opportunity to the holder of such licence of being heard, by order cancel such licence and notify such cancellation in the official Gazette.

(1A) Every surveyor and loss assessor shall comply with the code of conduct in respect of their duties, responsibilities and other professional requirements as may be specified by the regulations made by the Authority.

(2) No claim in respect of a loss which has occurred in India and requiring to be paid or settled in India equal to or exceeding twenty thousand rupees in value on any policy of insurance, arising or intimated to an insurer at any time after the expiry of a period of one year from the commencement of the Insurance (Amendment) Act, 1968, shall, unless otherwise directed by the Authority, be admitted for payment or settled by the insurer unless he has obtained a report, on the loss that has occurred, from a person who holds a licence issued under this section to act as a surveyor or loss assessor (hereafter referred to as "approved surveyor or loss assessors")

Provided that nothing in this sub-section shall be deemed to take away or abridge the right of the insurer to pay or settle any claim at any amount different from the amount assessed by the approved surveyor or loss assessor.

(3) The Authority may, at any time, in respect of any claim of the nature referred to in sub-section (2), call for an independent report from any other approved surveyor or loss assessor specified by him and such surveyor or loss assessor shall furnish such report to the Authority within such time as may be specified by the Authority or if no time limit has been specified by him within reasonable time and the cost of, or incidental to, such report shall be borne by the insurer.

(4) The Authority may, on receipt of a report referred to in sub-section (3), issue such directions as he may consider necessary with regard to the settlement of the claim including any direction to settle a claim at a figure less than, or more than, that at which it is proposed to settle it or it was settled and the insurer shall be bound to comply with such directions:

Provided that where the Authority issues a direction for settling a claim at a figure lower than that at which it has already been settled, the insurer shall be deemed to comply with such direction if he satisfies the Authority that all reasonable steps with due regard to the question whether the expenditure involved is not disproportionate to the amount required to be recovered, have been taken with due despatch by him:

Provided further that no direction for the payment of a lesser sum shall be made where the amount of the claim has already been paid and the Authority is of opinion that the recovery of the amount paid in excess would cause undue hardship to the insured:

Provided also that nothing in this section shall relieve the insurer from any liability, civil or criminal, to which he would have been subject but for the provisions of this sub-section.

(5) No insurer shall, after the expiry of a period of one year from the commencement of the Insurance (Amendment) Act, 1968, pay to any person any fee or remuneration for surveying, verifying or reporting on a claim of loss under a policy of insurance unless the person making such survey, verification or report is an approved surveyor or loss assessor.

(6) Where, in the case of a claim of less than twenty thousand rupees in value on any policy of insurance it is not practicable for an insurer to employ an approved surveyor or loss assessor without incurring expenses disproportionate to the amount of the claim, the insurer may employ any other person (not being a person disqualified for fee time being for being employed as a surveyor or loss assessor) for surveying such loss and may pay such reasonable fee or remuneration to the person so employed as he may think fit.

(7) If the Authority is satisfied that an approved surveyor or loss assessor has been guilty of wilfully 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, he may, after giving such surveyor or loss assessor an opportunity of being heard, cancel the licence issued to him with effect from such date as may be specified by him and shall notify such cancellation in the official Gazette.

(8) Any surveyor or loss assessor whose licence has been cancelled shall not be eligible for having a licence to act as a surveyor or loss assessor for a period of three years from the date on which the cancellation is notified in the official Gazette.

(9) The Authority may in respect of any claim of value of less than twenty thousand rupees on an insurance policy, if the claim has not been or is not proposed to be reported upon by a surveyor or loss assessor, direct that such claim shall be reported upon by an approved surveyor or loss assessor and where the Authority makes such direction, the provisions of sub sections (3) and (4) shall apply in respect of such claim.

(10) Where, in relation to any class of claims, the Authority is satisfied that it is customary to entrust the work of survey or loss assessment to any person other than a licensed surveyor or loss assessor, or if not practicable to make any survey or loss assessment, it may, by an order published in the Gazette, exempt such class of claims from the operation of this section.

PART II-C

SOLVENCY MARGIN, ADVANCE PAYMENT OF PREMIUM AND RESTRICTIONS ON THE OPENING OF A NEW PLACE OF BUSINESS

Assets and liabilities how to be valued

64V. (1) For the purpose of ascertaining compliance with the provisions of Section 64 VA,—

(i) assets shall be valued at values not exceeding their market or realisable value and the assets hereafter mentioned shall be excluded to the extent indicated, namely:

- i. agents' balances and outstanding premiums in India, to the extent they are not realized within a period of thirty days;
- ii. agents' balances and outstanding premiums outside India, to the extent they are not realisable;
- iii. sundry debts, to the extent they are not realizable;
- iv. advances of an unrealizable character;
- v. furniture, fixtures, dead stock and stationery;
- vi. deferred expenses;
- vii. profit and loss appropriation account balance and any fictitious assets other than pre-paid expenses;
- viii. such other asset or assets as may be specified by the regulations made in this behalf.

(ii) a proper value shall be placed on every item of liability and liabilities in respect of share capital, general reserve and other reserves of similar nature not created to meet specific liabilities and investment reserves, reserve for bad and doubtful debts, and depreciation fund shall be excluded and liabilities hereafter mentioned shall be included to the extent indicated, namely:

(a) provision for dividends declared or recommended, and outstanding dividends in full;

(b) reserves for unexpired risks in respect of

- (i) fire and miscellaneous business, 50 per cent.,
- (ii) marine cargo business, 50 per cent., and
- (iii) marine hull business, 100 per cent., of the premium, net of re-insurances, during the preceding twelve months;

(c) estimated liability in respect of outstanding claims, in full;

- (d) amount due to insurance companies carrying on insurance business in full;
- (e) amounts due to sundry creditors, in full;
- (f) provision for taxation, in full.
- (g) such other liability which may be made in this behalf to be included for the purpose of clause (ii)

Explanation. In the case of an insurer, whose principal place of business or domicile is outside India, where, in the accounts filed with the public authority of the country in which the insurer is constituted, incorporated or domiciled, in respect of marine insurance business, the provisions for unexpired risks and outstanding claims are not shown separately, the liabilities under items (b) and (c) of Clause (ii) in respect of marine insurance business shall be taken together at a figure of not less than the total premium less-reinsurances in respect of that class of business during the preceding twelve months.

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

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

Sufficiency of assets

64VA. (1) An insurer shall, at all times, before the commencement of the Insurance Regulatory and Development Authority Act, 1999, maintain an excess of the value of his assets over the amount of his liabilities of not less than the amount arrived at as follows (hereafter in this section referred to as the "relevant amount"), namely—

(i) in the case of an insurer whose total premium income less reinsurances in respect of general insurance business (hereafter in this subsection referred to as the "said income") in the preceding twelve months did not exceed five crores of rupees, one fifth of the said income subject to a minimum of

- a. five lakhs of rupees in the case of an insurer who is a cooperative society registered under the Cooperative Societies Act, 1912 (2 of 1912), or any other law for the time being in force in any State relating to co-operative societies, or
- b. ten lakhs of rupees in the case of any other insurer; and

(ii) in the case of an insurer whose said income in the preceding twelve months exceeded five crores of rupees, the aggregate of one-fifth of the first five crores of rupees of the said income and one-tenth of the amount by which the said income in the preceding twelve months exceeded five crores of rupees:

Provided that where a number of insurers occupying the status of parent and subsidiary companies prepare, under the laws of the country of origin of the parent company, a consolidated balance sheet, the provisions of this subsection shall apply to such of them as are not members of any group as if they constituted a single insurer, subject to the further condition that the relevant amount shall, in no case, be less than a sum equal to—

- I. the number of such insurers multiplied by ten lakhs of rupees, or
- II. where all the insurers are co-operative societies registered under the Co-operative Societies Act, 1912 (2 of 1912), or any other law for the time being in force in any State relating to co-operative societies, the number of such insurers multiplied by five lakhs of rupees:

Provided further that If in respect of any insurer the Central Government is satisfied that either by reason of an unfavorable claim, experience or because of a sharp increase in the volume of new business or for any other reason, compliance with the provisions of this sub-section would cause undue hardship to the insurer, it may direct that for such period and subject to such conditions as it may specify, the provisions of this sub-section shall apply to that insurer with the modification that instead of the proportion of one-fifth, wherever mentioned in this sub-section, such other proportion being not less than one-tenth as may be specified by that Government shall be applicable to that insurer:

Provided also that in the case of an insurer carrying on insurance business at the commencement of the Insurance (Amendment) Act, 1968, it shall be sufficient compliance with the provisions of this sub-section until the 31st December, 1972 or until such subsequent date, not being later than 31st December, 1976, as the Central Government may, at its discretion, allow for any particular insurer, if he progressively brings up the excess of the value of his assets over the amount of his liabilities, in such manner as may be prescribed, to the relevant amount.

(1A) Every Insurer shall, at all times, on or after the commencement of the Insurance Regulatory and Development of Authority Act, 1999, maintain an excess of the value of his assets over the amount of his liabilities of not less than the amount arrived at as follows (hereinafter referred to in this section referred to as the “required solvency margin”), namely:-

- i. in the case of an insurer carrying on life insurance business, the required solvency margin shall be the higher of the following amounts-
 - a) fifty crores of rupees (one hundred crores of rupees in case of reinsurers); or
 - b) the aggregate sums of the results arrived at in items (I) and (II) stated below:-
 - I. the aggregate of the results arrived at by applying the calculation described in item (A) below (Step I) and the calculation described in items (B) below (Step II):
 - A. for Step I-
 - (A.1) there shall be taken, a sum equal to a percentage determined by the regulations not exceeding five per cent of the mathematical reserves for direct business and re-insurance acceptances without any deduction for re-insurance cessions;
 - (A.2) the amount of mathematical reserves at the end of the preceding financial year after the deduction of re-insurance cessions shall be expressed as a percentage of the amount of those mathematical reserves before any such deduction; and
 - (A.3) the sum mentioned in item (A.1) above shall be multiplied-
 - (A.3-1) where the percentage arrived at under item (A.2) above is greater than eighty-five per cent. (Or in the case of a re-insurer carrying on exclusive re-insurance business, fifty percent), by that greater percentage; and
 - (A.3-2) in any other case, by eighty-five percent. (or in the case of a re-insurer carrying on exclusive re-insurance business, by fifty per cent.);
 - (B) for Step II –
 - (B1) there shall be taken, a sum equal to a percentage determined by the regulations made by the Authority not exceeding one per cent of the sum at risk for the policies on which the sum at risk is not a negative figure, and
 - (B.2) the amount of sum at risk at the end of the preceding financial year for policies on which the sum at risk is not a negative figure after the deduction of re-insurance cession shall be expressed as a percentage of the amount of that sum at risk before any such deduction, and
 - (B.3) the sum arrived at under item (B.1) above shall be multiplied-
 - (B.3-1) where the percentage arrived at under item (B.2) above is greater than fifty per cent, by that greater percentage; and
 - (B.3-2) in any other case, by fifty per cent
 - (II) a percentage determined by the regulations made by the Authority of the value of assets determined in accordance with the provisions of section 64V;
 - (ii) in the case of an insurer carrying on general insurance business, the required solvency margin, shall be the highest of the following amounts:-
 - a) fifty crores of rupees (one hundred crores of rupees in case of reinsurer); or
 - b) a sum equivalent to twenty per cent of net premium income; or
 - c) a sum equivalent to thirty per cent of net incurred claims,

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

Provided that if in respect of any insurer, the Authority is satisfied that either by reason of an unfavorable claim experience or because of sharp increase in the volume of the business, or for any other reason, compliance with the provisions of this sub-section would cause undue hardship to the insurer, the Authority

may direct, for such period and subject to such conditions, such solvency margin not being less than the lower of the amount mentioned in sub-clause (i) or sub-clause (ii) above, as the case may be.

Explanation – For the purposes of this sub-section, the expressions-

- (i) “Mathematical reserves” means the provision made by an insurer to cover liabilities (excluding liabilities which have fallen due and liabilities arising from deposit back arrangement in relation to any policy whereby an amount is deposited by re-insurer with the cedant) arising under or in connection with policies or contracts for life insurance business. Mathematical reserves also include specific provision for adverse deviations of the bases, such as mortality and morbidity rates, interest rates, and expense rates, and any explicit provision made in the valuation of liabilities in accordance with the regulations made by the Authority for this purpose;
- (ii) “net incurred claims” means the average of the net incurred claims during the specified period of not exceeding three preceding financial years;
- (iii) “sum at risk”, in relation to a life insurance policy, means a sum which is-
 - a. in any case in which an amount is payable in consequence of death other than a case falling within sub-clause (b) below, the amount payable on death, and
 - b. in any case in which the benefit under the policy in question consists of the making, in consequence of death, of the payments of annuity, payment of a sum by instalments or any other kind of periodic payments, the present value of that benefit, less in either case the mathematical reserves in respect of the relevant policies.)

(2) An insurer who does not comply with the provisions of sub-section (1) shall be deemed to be insolvent and may be wound up by the Court.

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

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

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

(3) The Authority shall be entitled at any time to take such steps as he may consider necessary for the inspection or verification of the assets and liabilities of any insurer *or for* securing the particulars necessary to establish that the requirements of this section have been complied with as on any date and the insurer shall comply with any requisition made in this behalf by the Authority, and if he fails to do so within two months from the receipt of the requisition, he shall be deemed to have made default in complying with the requirements of this section.

(4) The provisions of this section shall not apply to an insurer specified in sub-clause (c) of Clause (9) of Section 2.

(5) In applying the provisions of sub-section (1) to any insurer, who is a member of a group, the relevant amount for that insurer shall be an amount equal to that proportion of the relevant amount which that group, if considered as a single insurer, would have been required to maintain as the proportion of his share of the risk on each policy issued by the group bears to the total risk on that policy:

Provided that when a group of insurers ceases to be a group, every insurer in that group who continues to carry on any class of insurance business in India shall comply with the requirements of sub-section (1) as if he had not been an insurer in a group at any time:

Provided further that it shall be sufficient compliance with the provisions of the foregoing proviso if the insurer brings up the excess of the value of his assets over the amount of his liabilities to the required amount within a period of six months from the date of cessation of the group:

Provided also that the Central Government may, on sufficient cause being shown, extend the said period of six months by such further periods as it may think fit, so however that the total period may not in any case

exceed one year.

(6) The Central Government may, by notification in the Official Gazette, reduce the sum of ten lakhs of rupees or five lakhs of rupees, as the case may be, referred to in sub-section (1) to a lower figure not less than one hundred thousand rupees in respect of a country craft insurer or in respect of an insurer not having a share capital and carrying on only such insurance business as, in the opinion of the Central Government, is not carried on ordinarily by insurers under separate policies.

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

No risk to be assumed unless premium is received in advance.

64VB. (1) No insurer shall assume any risk in India in respect of any insurance business on which premium is not ordinarily payable outside India unless and until the premium payable is received by him or is guaranteed to be paid by such person in such manner and within such time as may be prescribed or unless and until deposit of such amount as may be prescribed, is made in advance in the prescribed manner.

(2) For the purposes of this section, in the case of risks for which premium can be ascertained in advance, the risk may be assumed not earlier than the date on which the premium has been paid in cash or by cheque to the insurer.

Explanation. ~ Where the premium is tendered by postal money-order or cheque sent by post, the risk may be assumed on the date on which the money-order is booked or the cheque is posted, as the case may be.

(3) Any refund of premium which may become due to an insured on account of the cancellation of a policy or alteration in its terms and conditions or otherwise shall be paid by the insurer directly to the insured by a crossed or order cheque or by postal money-order and a proper receipt shall be obtained by the insurer from the insured, and such refund shall in no case be credited to the account of the agent.

(4) Where an insurance agent collects a premium on a policy of insurance on behalf of an insurer, he shall deposit with, or despatch by post to, the insurer, the premium so collected in full without deduction of his commission within twenty-four hours of the collections excluding bank and postal holidays.

(5) The Central Government may, by rules, relax the requirements of sub-section (1) in respect of particular categories in insurance policies.

Restrictions on the opening of a new place of business

64VC. (1) No insurer shall, after the commencement of the Insurance (Amendment) Act, 1968, open a new place of business in India or change otherwise than within the same city, town or village, the location of an existing place of business situated in India without obtaining the prior permission of the Authority.

(2) The Authority may grant permission under sub-section (1) subject to such conditions as he may think fit to impose either generally or with reference to any particular case.

(3) Where, in the opinion of the Authority, an insurer has, at any time, failed to comply with any of the conditions imposed on him under this section, the Authority 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 granted under this section.

Explanation.—For the purposes of this section, "place of business" include a branch, sub-branch, inspectorate, organisation office and any other office, by whatever name called.

PART III

Provident Societies

65. Definition of "provident society". - (1) In this Part "Provident society" means a person who, or a body of persons (whether corporate or unincorporate, which, not being an insurer registered for the time being under Part II of this Act, carries on the business of insuring the payment, on the happening of any of the contingencies mentioned in sub-section (2), 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,

exclusively in both cases (a) and (b) of any profit or bonus not being a guaranteed profit or bonus.

Explanation.—For the purposes of this sub-section a period is "certain" if its duration is ascertainable in advance and "uncertain" if its duration is not so ascertainable.

(2) The contingencies referred to in sub-section (1) are the following, namely:

- 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 authorised by the State Government with the approval of the Central Government.

(3) For the purposes of sub-sections (1) and (2),—

(a) contracts entered into before the commencement of this Act shall not be taken into account;

(b) two or more policies issued to one person shall, for the purposes of determining whether the limits fixed by sub-section (1) have or have not been exceeded, be deemed to be one policy if the contingencies on the happening of which the sums are payable under the policies (whether the contingencies be the same or different) relate to one-person only, whether he be the policy-holder or some other person.

(4) Every person or body of persons for the time being registered as a provident society under the Provident Insurance Societies Act, 1912 (5 of 1912) and every person or body of persons for the time being registered as a provident society under this Act shall be deemed to be a provident society for all the purposes of this Act.

(5) If any question arises whether any person or body of persons is or is not a provident society within the meaning of this section, the Authority shall decide the question and his decision shall be final.

Prohibition of transaction of insurance business by provident societies other than public companies or co-operative societies

65A. No person shall, after the commencement of the Insurance (Amendment) Act, 1950 (47 of 1950), begin to carry on in India any business specified in sub-section (1) of Section 65, and no provident society carrying on any such business in India shall, after the expiry of one year from such commencement continue to carry on any such business, unless he or it is—

- (a) a public company, or
- (b) a 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) a body corporate incorporated under the law of any country outside India not being of the nature of a private company.

Restrictions on provident societies

66. No provident society shall undertake any form of insurance not falling within the limits fixed by sub-section (1) of Section 65, nor shall any provident society be eligible to be registered under Section 3.

Name

67. No provident society established after the commencement of this Act shall adopt as its name, and no provident society established before the commencement of this Act shall continue after the expiry of six months from the commencement thereof to use as its name any combination of words which fails to include the word "provident" or which includes the word "life".

Insurable interest.-

68. Repealed by the Insurance (Amendment) Act, 1950

Dividing business

69. (1) 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.

(2) The Authority shall, as so-on as possible, take steps to have any provident society which carries on business on dividing principle wound up:

Provided that, 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 reorganise 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.

(3) Where after the commencement of the Insurance (Amendment) Act, 1941 (13 of 1941), a provident society is to be wound up in pursuance of this section, or where, whether before or after the commencement of that Act, a provident society ceases to carry on business on the dividing principle the provisions of sub-sections (2) and (3) of Section 52 shall, so far as may be apply in like manner as they apply to an insurer ceasing to carry on business on the dividing principle.

Registration

70. (1) 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.

(2) 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, 1913 (7 of 1913) or under the Indian Companies Act, 1882 (6 of 1882), or under the Indian Companies Act, 1866 (10 of 1866), or under any Act repealed thereby,] 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 authorised 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 authorised 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.

(3) The Authority may refuse to issue a certificate of registration until he is satisfied that the rules of the society comply with the provisions of this Act and that the society complies with the provisions of Sections 65-A, 67, 71, 72, 73 and 73-A, but if he is so satisfied he shall register the society and its rules.

(4) The Authority may, after giving previous notice in writing in such manner as he thinks fit 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 section 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:

Provided that the Authority may, if he thinks fit, instead of applying for cancellation of the registration under sub-clause (i) of Clause (a) of this subsection 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:

Provided further that 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

- (aa) cancel the registration of a provident society if any deposit required by Sec. 73 has not been made, or

- (b) 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

- (c) 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.

(5) 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.

(6) Where a registration is cancelled under *Clause b* of sub-section (4), or Clause (c) of the second proviso to that sub-section, 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 such as is referred to in the said Clause © 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.

(7) 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.

Renewal of registration

70A (1) Every provident society registered under this Act, or under the Provident Insurance Societies Act, 1912 (5 of 1912), shall have its registration renewed annually for each period of twelve months after that ending on the 30th day of June, 1942.

(2) 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, and shall be accompanied as provided in sub-section (3) by evidence of payment of the prescribed fee which shall not exceed two hundred rupees but may vary according to the volume of insurance business done by the society.

(3) The prescribed fee for the renewal of a registration for any year shall be paid 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 the receipt shall be sent along with the application for renewal of the registration.

(4) If a provident society fails to apply for renewal of registration before the date specified in sub-section (2) 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.

(5) 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.

Supplements information and reports of alterations in particulars furnished with application for registration.

70B. (1) Every provident society registered under Section 70 before the commencement of the Insurance (Amendment) Act, 1941 (13 of 1941), shall, before the expiration of three months from the commencement of the Insurance (Amendment) Act, 1941 furnish to the Authority such particulars in addition to those already supplied for the purpose of obtaining registration as are required by sub-section (2) of Section 70 of this Act as amended by the Insurance (Amendment) Act, 1941.

(2) Every provident society registered under the provisions of the Provident Insurance Societies Act, 1912 (5 of 1912), shall, before the expiration of three months from the commencement of the Insurance (Amendment) Act, 1941 (13 of 1941), furnish to the Authority so far as it has not already done so the documents and information required by Clauses (a) and (b) of sub-section (2) of Section 70 to accompany an application by a provident society for registration under that section.

(3) When any alteration occurs or is made which affects any of the matters which are required under the provisions of sub-section (2) of Section 70 to accompany an application by provident society for registration under that section, or are to be furnished to the Authority, under this section, the provident society shall furnish forthwith to the Authority full particulars duly authenticated of such alteration.

Certain provisions of Part II to apply to provident societies

71. The provisions of sub-sections (2) and (3) of Section 10, Section 20, sub-section (1) of Section 27, Sections 27-A, 28, 29, 31-A, 31-B 32, 46 and 53A shall apply to provident societies as they apply to insurers, and in such application references to shareholders of an insurer shall be construed as references to members of a provident society and references to Section 7 or Section 98 shall be construed as references to Section 73:

Provided that a provident society may charge a fee not exceeding one rupee for supplying a copy of any document referred to in sub-section (2) of Section 20.

Working capital

72. 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.

73. Deposits.—(1) Every provident society shall, if established before the commencement of this Act within one year from such commencement, apply for registration under Section 70, deposit and keep deposited with the Reserve Bank of India in one of the offices in India of the Bank, for and on behalf of the Central Government, cash or approved securities amounting at the market value of the securities on the date of deposit to five thousand rupees, and shall thereafter make each calendar year a further deposit amounting to not less than one-fifth of the premium income for the preceding calendar year as shown in the revenue account of the society (including admission fees and other fees received by the society) until the total amount so deposited and kept is fifty thousand rupees.

(2) The provisions of sub-sections (8), (9), (9-A), (9-B) and (10) of Section 7 and of sub-section (1) of Section 8 and of Section 9 shall apply to the deposits made under this section as they apply to deposits made by an insurer.

Restriction on name of provident society

73A. (1) 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.

(2) 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:

Provided that nothing in this section shall apply to any provident society carrying on business before the commencement of the Insurance (Amendment) Act, 1946 (6 of 1946)

Rules.

74. (1) Every provident society shall, in its rules, set forth-

- (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) unless these are provided for in the articles of association of a society which 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), or under any Act repealed thereby:
 - i. the mode of appointment and removal, the qualification and the powers of a director, manager, secretary or other officer of the society;
 - ii. the manner of raising additional capital; and

- iii. 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; and

(p) such other matters as may be prescribed.

(2) Where the rules of any provident society registered under the Provident Insurance Societies Act, 1912 (5 of 1912), fail to comply with the provisions of this section, the society shall, before the expiry of twelve months from the commencement of this Act, amend the rules so as to comply with these provisions.

Amendment of rules

75. (1) No amendment of any rule of a provident society shall be valid until it has been sent to the Authority and has been registered by him.

(2) The Authority on being satisfied that the proposed amendment is not contrary to the provisions of this Act shall, unless he is of opinion that the amendment unfairly affects the rights of existing members or policy-holders of the society, issue to the society an acknowledgment of the registration of the amended rule.

Supply of copy of rules

76. Every provident society shall on demand deliver free of cost to any member of the society a copy of the rules of the society and to any person other than a member a copy of such rules on the payment of a sum not exceeding one rupee.

Registered office

77. 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.

Publication of authorised capital to contain also subscribed and paid-up capital

78. Where any notice, advertisement or other official publication of a provident society contains a statement of the amount of the authorised capital of the society, the publication shall also contain a statement of the amount of the capital which has been subscribed and the amount paid-up.

Registers and books.

79. Every provident society shall keep at its principal office in India

- (a) such registers in such form as may be prescribed
- (b) a cash book in which shall be entered separately for each class of contingency separately specified in Section 65 all sums received and expended by the society and matters in respect of which the receipt or expenditure takes place,
- (c) a ledger;
- (d) a journal.

Revenue account, balance-sheet and annual statements

80. (1) Every provident society shall at the expiry of the calendar year prepare a 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 and shall cause the revenue account and balance-sheet to be audited by an auditor, and the auditor shall so far as may be the audit of a provident society have the powers of, exercise the functions vested in, and discharge the duties and be subject to the liabilities imposed on, an auditor of companies by Section 145 of the Indian Companies Act, 1913 (7 of 1913).

(2) Every provident society shall at the expiry of the calendar year prepare with respect to that year-

- (a) a statement showing separately for each class of contingency separately specified in Section 65

- i.* the number of new policies effected, the total amount insured thereby and the total premium income received in respect thereof and the number of existing policies discontinued during the year with the total amount insured thereby, and
- ii.* the total amount of claims made and the total amount paid in satisfaction thereof;
- (*b*) a statement showing details of every insurance effected on a life other than the life of the person insuring; and
- (*c*) a statement showing the total amount paid as allowances to agents and canvassers.

(3) Until the expiry of two years from the commencement of this Act this section and Section 73 shall apply to provident societies registered before the commencement of this Act under the Provident Insurance-Societies Act, 1912 (5 of 1912), as if the reference to the calendar year were a reference to either the financial year or the calendar year.

Actuarial report and abstract

81. 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.

(2) The report of the actuary shall contain an abstract in which shall be stated .

- (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,

and shall have appended to it a certificate signed by a principal officer of the society 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.

Submission of returns to Authority

82.(1) The revenue account and balance-sheet with the auditor's report thereon and the report on the general state of the society's affairs referred to in sub-section (2) of Section 80, shall be printed and four copies of these and of the statements referred to in sub-section (2) of Section 80, shall be furnished as returns to the Authority within six months from the end of the period to which they relate.

(2) All the material necessary for the proper valuation of the liabilities of the society under the provisions of Section 81 shall be placed at disposal of the actuary within three months from the end of the period to which such material relates, and the report and abstract referred to in Section 81 shall be furnished as a return to the Authority within a further period of three months:

Provided that the Central Government may, in any case, extend the time allowed by this sub-section for the furnishing of such return by a period not exceeding three months.

(3) The provisions of sub-section (2) of Section 15 relating to the copies therein referred shall apply to the returns referred to in sub-section (1) of this section, and the provisions of Section 17 shall apply to the accounts and balance sheet of provident society being 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) or under any Act repealed thereby, as they apply to the accounts and balance-sheet of an insurer, and the Authority may exercise, in respect of returns made by a provident society and in respect

of an investigation or valuation to which Section 81 refers, the same powers as are exercisable by him under Sections 21 and 22, respectively, in the case of an insurer.

Actuarial examination of schemes

83. (1) Every provident society, registered after the commencement of this Act, shall cause every scheme of insurance which it proposes to put into operation, and every provident society registered before the commencement of this Act under the provisions of the Provident Insurance Societies Act, 1912 (5 of 1912), shall cause any scheme which it proposes to put into operation for the first time, after such commencement to be examined by an actuary, and shall not receive any premium or contribution in connection with the scheme until the actuary has certified that the rates, advantages, terms and conditions of the scheme are workable and sound and such certificate has been forwarded to the Authority.

(2) The provisions of sub-section (1) shall apply to any alteration of a scheme already in operation, but the Authority may, if he is of opinion that the alteration unfairly affects the interests of existing policy holders, prohibit the alteration, and, if he does so, the society shall not put the altered scheme into operation, unless it first discharges to the satisfaction of the Authority all its liabilities to those of the existing policy holders who dissent from the alteration.

(3) Every provident society registered before the commencement of this Act under the provisions of the Provident Insurance Societies Act, 1912 (5 of 1912), shall, as soon as may be and in any event before the expiry of six months from the commencement of this Act, submit all schemes of insurance which the society has in operation at the commencement of this Act to examination by an actuary and shall, before the expiration of six months from the commencement of the Insurance (Amendment) Act, 1941 (13 of 1941), send the report of the actuary thereon to the Authority

(4) The report of the actuary shall state in respect of each scheme whether the advantages, terms and conditions are workable and sound and, where no actuarial report such as is referred to in Section 81 has been made within the two years preceding the examination the report shall also state whether the assets of the society are sufficient to meet its liabilities under the existing schemes, and, if not how in the opinion of the actuary the existing contracts should be modified.

(5) If the rates, advantages, terms and conditions of any scheme are not reported by the actuary to be workable and sound, Authority shall give notice to the society prohibiting the scheme, and the society shall not after its receipt of such notice enter into any new contract of insurance under the scheme, but all rights and liabilities in respect of contracts of insurance entered into by the society before receipt of the notice shall, subject to the provisions of subsection (6), continue as if the notice had not been given.

(6) Where a scheme is prohibited under the provisions of subsection (5) the society shall, where its assets are sufficient to meet all existing liabilities, set apart out of its assets the sum sufficient in the opinion of the actuary to meet the liabilities incurred under the scheme so prohibited, and, where its assets are not so sufficient, within three months from the date of the prohibition, apply to the Court for a modification of its existing contracts or failing such modification for the winding up of the society.

Separation of accounts and funds

84. Where a provident society effects policies of insurance in connection with more than one of the classes of contingency separately specified in sub-section (2) of Section 65, the receipts and payments in respect of each such class shall be recorded in a separate account in the cash book kept in accordance with Section 79.

Investment of funds

85. (1) [Repealed]

(2) No funds or investments of a provident society except a deposit made under Section 73 or under the law of any State or country relating to insurance shall be kept otherwise than in the name of the society or in the name of a public officer approved by the Central Government.

(3) 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:

Provided that nothing in this sub-section shall apply to loans made by a provident society to a banking company:

Provided further that where any event occurs giving rise to circumstances, the existence of which at the time of the grant of any subsisting loan would have made such grant a contravention of this sub-section, such loan shall, notwithstanding any contract to the contrary, be repaid 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, the director, manager, auditor, actuary or partner concerned shall, without prejudice to any other penalty which he may incur, cease to hold office in the society on the expiry of the said three months.

(3A) Any loan prohibited under sub-section (3), made before and outstanding at the commencement of the Insurance (Amendment) Act, 1940 (2 of 1940) shall be repaid before the 1st day of January, 1941, and in case of default the director, manager managing agent, auditor, actuary, officer or partner who has received the loan or is connected with the concern which has received the loan, as the case may be, shall cease to hold office in or be a partner of the society and shall be ineligible to hold office in or to be a partner of the society until the loan is repaid.

(4) Any director, manager, managing agent, auditor, actuary, officer or partner of a society which contravenes the provisions of sub-section (3), who is knowingly a party to the contravention, shall without prejudice to any other penalty which he may incur be jointly and severally liable to the society for the amount of the loan, and such amount, together with interest from the date of the loan at such rate not exceeding twelve per cent per annum as the Authority may fix, shall on application by the Authority to any civil court of competent jurisdiction be recoverable by execution as if a decree for such amount had been passed by that Court.

(5) The provisions of Section 86D of the Indian Companies Act, 1913 (7 of 1913), shall not apply to a loan granted to a director of a provident society being a company if the loan is one granted on the security of a policy on which the society bears the risk and the policy was issued to the director on his own life and the loan is within the surrender value of the policy.

Inspection of books.

86. The books of every provident society shall at all reasonable times be open to inspection 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, to make such inspection.

87. Inquiry by or on behalf of Authority.

87. (1) 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.

(2) 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.

(3) 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.

(4) All expenses of incidental to any inquiry made by an auditor or actuary under sub-section (1) including any expenses incurred before the date on which the Authority receives notice of an appeal under Clause (e) of sub-section (1) of Section 110 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.

(5) 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.

(6) If the society fails to comply with any direction issued under subsection (5), 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.

Amalgamation and transfer of insurance business

87A (1) 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 under this section and sanctioned by the Authority.

(2) Any scheme prepared under this section shall set out the agreement under which the transfer or amalgamation is proposed to be effected, and shall contain such further provisions as may be necessary for giving effect to the scheme.

(3) 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,
- e) any other reports on which the scheme of amalgamation or transfer was founded;

and the balance-sheets, reports and abstracts referred to in Clauses (b), (c) and (d) 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 under this section:

Provided that 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

(4) When any application such as is referred to in sub-section (3) is made to the Authority, he may require, if for special reasons he so directs, notice of the application to 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, and 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:

Provided that:

- a) no part of the deposit made by any party to the amalgamation or transfer shall be returned except where, after effect is given to the arrangement the whole of the deposit to be made by the provident society carrying on the amalgamated business or the person to whom the business is transferred is

completed;

- b) only so much shall be returned as is no longer required to complete the deposit last mentioned in Clause (a);
- c) while the deposit last mentioned in Clause (a) remains uncompleted, no accession, resulting from the arrangement, to the amount already deposited by the provident society carrying on the amalgamated business or the person to whom the business is transferred shall be appropriated as payment or part payment of any instalment of deposit subsequently due from it or him under Section 73.

(5) A copy of the order under subsection (4) 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.

(6) 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.

Winding up by Court and voluntary winding up

88. (1) The Court may order the winding up of a provident society being 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), or under any Act repealed thereby and the provisions of the Indian Companies Act, 1913 (7 of 1913) shall, subject to the provisions of this Part, apply accordingly.

(2) In addition to the grounds on which an order may be based, the Court may order the winding up of a provident society if the Authority, who is hereby authorised to do so, applies in this behalf to the Court 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.

(3) A provident society being 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) or under any Act repealed thereby may be wound up voluntarily in accordance with the provisions of the Indian Companies Act, 1913, but shall not be so wound up except for the purpose of effecting an amalgamation or re-construction of the society or on the ground that by reason of its liabilities it cannot continue its business.

(4) A provident society not being a company incorporated under the Indian Companies Act, 1913 (7 of 1913) if or under the Indian Companies Act 1882 (6 of 1882), or under the Indian Companies Act, 1866 (10 of 1866) or under any Act repealed thereby may be wound up voluntarily under this Act if a resolution is passed by the proprietors that the society should be wound up voluntarily for the purposes or on the ground specified in sub-section (3), and the Authority may, in any case where he has ordered the cancellation of the registration of a society under sub-section (4) of Sec. 70, order the winding up of the society under this Act.

Reduction of insurance contracts

89. The Court may make an order reducing the amount of the insurance contracts of a provident society upon such terms and subject to such conditions as the Court thinks just-

- (a) if the Authority as an alternative to canceling the registration of a society under sub-section (4) of Section 70 applies to the Court in this behalf;
- (b) if while a society is in liquidation the Court thinks fit;
- (c) if when a society has been proved to be insolvent the Court thinks fit to do so in place of making an order for the winding up of the society; or
- (d) if the Court is satisfied on an application made in this behalf by the society supported by the report of an actuary, and after giving the policy-holders an opportunity to be heard that it is desirable to do so.

Appointment of liquidator

90. (1) Where a provident society is to be wound up whether under the Indian Companies Act, 1913 (7 of 1913), or under this Act, 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 authorising the winding up, as the case may be, give notice thereof to the Authority shall appoint the liquidator and shall determine the remuneration to be paid to him:

Provided that 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.

(2) Any liquidator appointed by the Authority under subsection (1) may be removed by the Authority if satisfied that the duties entrusted to him are not being properly discharged.

Application of Act to liquidators

90A. Notwithstanding anything to the contrary contained in the Indian Companies Act, 1913 (7 of 1913), the provisions of Sections 91, 92 and 93 shall apply to any liquidator appointed to wind up a provident society, whether by the Court, the Authority or the society itself.

Powers of liquidator.

91. (1) A liquidator appointed to wind up a society shall have power

- (a) to institute or defend any legal proceedings on behalf of the society by his name of office;
- (b) to determine the contribution to be made by members of the society respectively to the assets of the society;
- (c) to investigate all claims against the society and to decide questions of priority arising between claimants;
- (d) to 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) to 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) to 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) with the sanction of the Authority to employ such establishment and to obtain such assistance from an actuary or an auditor as may be necessary for the discharge of his duties;
- (h) to 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.

(2) The liquidator shall, for settling the list of contributories and releasing the amount of contributions, have the same powers as an official liquidator appointed by the Court for the winding up of a company under the Indian Companies Act, 1913 (7 of 1913).

Procedure at liquidation

92. (1) As soon as a liquidator is appointed to wind up a society he shall take charge of all property moveable or immoveable of the society and of all its books and documents.

(2) 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.

(3) The liquidator shall, within fifteen days of his appointments 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.

(4) 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.

(5) 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.

(6) The liquidator 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.

(7) The liquidator 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.

(8) The liquidator 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.

(9) In administering and distributing the assets of the society the liquidator shall have regard to any directions that may be given by the creditors or contributories at a general meeting or by the Authority.

(10) The liquidator 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.

(11) If the winding up continues for more than a year the liquidator shall summon a meeting of the creditors and contributories 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.

(12) So far as is not otherwise provided herein or is not otherwise prescribed under this Act, the liquidator shall so far 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).

(13) The costs of the liquidation including the remuneration of the liquidator and any expenses incurred under Clause (g) of sub-section (1) of Section 91 shall, if the liquidator decides that they shall be payable out of the assets of the society, be payable in priority to all other claims.

Dissolution of provident society

93. (1) As soon as the affairs of a provident society are fully wound up the liquidator shall prepare an account of the winding up showing how the winding up has been conducted and the property of the society has been disposed of and shall call a meeting of the members, creditors and contributories for the purpose of laying before it the account and giving any explanation there of.

(2) Notice of the meeting shall be sent 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.

(3) Within one week after the meeting the liquidator shall send to the Authority a Copy of the account

and shall report to him the holding of the meeting and its date and shall forward to him a copy of the proceedings of the meeting.

(4) 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.

(5) 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.

(6) If within a period of five years from the date on which any sums have been made over to the Authority under sub-section (5) 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.

Nominations and assignments

94. (1) The provisions of Sections 38 and 39 relating to assignment, transfer and nomination in the case of life insurance policies shall, subject to the provisions of this section, apply to policies of insurance issued by any provident society covering any of the contingencies specified in Clause (a) of sub-section (2) of Section 65.

PART IV

MUTUAL INSURANCE COMPANIES AND CO-OPERATIVE LIFE INSURANCE SOCIETIES

Definitions.

95. (1) In this Part, before the date of commencement of the Insurance Regulatory and Development Authority Act, 1999, -

(a) "Mutual Insurance Company" means an insurer, being 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) or under any Act, repealed thereby, which has no share capital and of which by its constitution only and all policy-holders are members;

and

(b) "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 co-operative 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:

Provided that 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.

(2) Notwithstanding anything contained in sub-section (1), other cooperative societies may be admitted as members of a co-operative life insurance society, without being eligible to any dividend, profit or bonus.

(3) A State Government may, subject to any rules made by the Central Government, empower the Registrar of Co-operative Societies of the State to register co-operative societies for the insurance of cattle or crops or both under the provisions of the Co-operative Societies Act in force in the State.

(4) A State Government may make rules not inconsistent with any rules made by the Central Government to govern such societies, and the provisions of this Act, in so far as they are inconsistent with those rules, shall not apply to such societies.

Application of Act to Mutual Insurance Companies and Co-operative Life Insurance Societies

96. The provisions of Sections 6 and 7 and of sub-section (2) of Section 20, so far as those provisions are inconsistent with the provisions of this part, shall not apply, and the provisions of this Part shall apply, to co-operative life insurance societies.

Working capital of Mutual Insurance Companies and Co-operative Life Insurance Societies

97. No co-operative life insurance society registered after the 26th day of January, 1937 under the Co-operative Societies Act, 1912 (2 of 1912) or under an Act of a State Legislature governing the registration of co-operative societies shall be registered under this Act, unless it has as working capital a sum of fifteen thousand rupees, exclusive of the deposit to be made before or at the time of application for registration in accordance with sub-section (2) of Section 98 of this Act and of the preliminary expenses, if any, incurred in the formation of the company or society.

Deposit to be made by Mutual Insurance Companies and Co-operative Life Insurance Societies

98. (1) Everyday Co-operative Life Insurance Society shall, in respect of the life insurance business carried on by it in India, deposit and keep deposited with one of the offices in India, of the Reserve Bank of India for and on behalf of the Central Government, a sum of two hundred thousand rupees in cash or in approved securities estimated at the market value of the securities on the day of deposit.

(2) The deposit referred to in sub-section (1) may be made in instalments, of which the first shall be a payment, made before or at the time the application for registration under this Act is made, of not less than twenty five thousand rupees or such sum as with any deposit previously made by the insurer under the provisions of the Indian Life Assurance Companies Act, 1912 (6 of 1912), brings the amount deposited up to not less than twenty-five thousand rupees, and the subsequent instalments shall be annual instalments made before the expiry of each subsequent calendar year of an amount in cash or in approved securities estimated at the marked value of the securities on the day of payment of the instalment, equal to not less than one-third of the premium income in the preceding calendar year as shown in the revenue account.

(3) The provisions of sub-section (7) of Section 7 shall apply in respect of a co-operative life insurance society as if for the words "under the foregoing provisions of this section" the words and figures "under the provisions of Sec. 98" were substituted.

Prohibition of loans

98A. The provisions of Section 29 shall apply to cooperative life insurance societies as they apply to other insurers.

Transferees and assignees of policies not to become members

99. No transferee or assignee of a policy issued by an insurer to whom this Part applies shall become a member of a mutual insurance company or a cooperative life insurance society merely by reason of any such transfer or assignment.

Publication of notices and documents of Mutual Insurance Companies and Cooperative Life Insurance Societies

100. Notwithstanding the provisions of Sections 79 and 131 of the Indian Companies Act, 1913 (7 of 1913), a 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:

Provided that, 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.

Supply of documents to members

101. Every mutual insurance company and every 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 under the provisions of Section 134 of the Indian Companies Act, 1913 (7 of 1913), 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.

PART IV-A

RE-INSURANCE

Re-insurance with Indian reinsurers

101A. (1) Every insurer shall re insure with Indian re-insurers such percentage of the sum assured on each policy as may be specified by the Authority with the previous approval of the Central Government under sub-section (2).

(2) For the purposes of sub-section (1), the Authority may, by notification in the official Gazette,—

- (a) specify the percentage of the sum assured on each policy to be reinsured and different percentages may be specified for different classes of insurance:

Provided that no percentage so specified shall exceed thirty per cent of the sum assured on such policy; and

- (b) also specify the proportions in which the said percentage shall be allocated among the Indian re-insurers.

(3) Notwithstanding anything contained in sub-section (1), an insurer carrying on fire-insurance business in India may, in lieu of re-insuring the percentage specified under sub-section (2) 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

Explanation- For the purposes of this-section, the year 1961 shall be deemed to mean the period from the 1st April to the 31st December of that year.

(4) A notification under subsection (2) may also specify the terms and conditions in respect of any business of re-insurance required to be transacted under this section and such terms and conditions shall be binding on Indian re-insurers and other insurers.

(5) No notification under sub-section (2) shall be issued except after consultation with the Advisory Committee constituted under Section 101B.

(6) Every notification issued under this section shall be laid before each House of Parliament, as soon as may be, after it is made.

(7) For the removal of doubts, it is hereby declared that nothing in subsection (1) shall be construed as preventing an insurer from reinsuring with any Indian re-insurer or other insurer the entire sum assured on any policy or any portion thereof in excess of the percentage specified under sub-section (2).

(8) In this section,

- i. "policy" means a policy issued or renewed on or after the 1st day of April, 1961, in respect of general insurance business transacted in India and does not include a re-insurance policy; and
- ii. "Indian re-insurer" means an insurer specified in sub-clause (b) of Clause (9) of Section 2 who carries on exclusively re-insurance business and is approved in this behalf by the Central Government.

Advisory Committee

101B. (1) The Authority with the previous approval of the Central Government shall, for the purposes of Section 101A, constitute an Advisory Committee consisting of not more than five persons having special Knowledge and experience of the business of insurance.

(2) The term of office of, and the allowance payable to, members of the Advisory Committee, the procedure to be followed by, and the quorum necessary for the transaction of business of, the Committee and the manner of filling casual vacancies therein shall be such as may be determined by the regulations made by the Authority.

Examination of re-insurance treaties

101C. The Authority may, at any time

- (a) 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;
- (b) examine any officer of the insurer on oath in relation to any such document as is referred to in Clause (a) above; or
- (c) by notice in writing, require any insurer to supply him with copies of any of the documents referred to in Clause (a), certified by a principal officer of the insurer.

PART V

MISCELLANEOUS

Penalty for default in complying with or act in contravention of, this Act.

102. *If any person, who is required under this Act, or rules or regulations made there under,-*

- (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.

Penalty for carrying on insurance business in contravention of sections 3, 7 and 98:

103. *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.*

Penalty for false statement in document

104. *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.

Wrongfully obtaining or withholding property.

105. 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.

Offences by Companies

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

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

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

Explanation- For the purposes of this section,-

- (a) “company” means any body corporate, and includes-
 - i. a firm; and
 - ii. an association of persons or a body of individuals, whether incorporated or not; and
- (b) “director” in relation to –
 - i. a firm, means a partner in the firm;
 - ii. an association of persons or a body of individuals, means any member controlling the affairs thereof.

Penalty for failure to comply with section 32B

105B. 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.

Penalty for failure to comply with section 32C

105C. 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.

Power of Court to order restoration of property of insurer or compensation in certain cases

106. (1) If, on the application of the Authority or an Administrator appointed under Section 52-A or an insurer or any policy-holder or any member of an insurance company or the liquidator of an insurance company (in the event of the insurance company being in liquidation), the Court is satisfied—

- (a) that any insurer (including in any case where the insurer is an insurance company any person who has taken part in the promotion or formation of the insurance company or any past or present director, managing agent, manager secretary or liquidator) or any officer employee or agent of the insurer,—
 - i. has misapplied or retained or become liable or become accountable for any money or property of the insurer; or
 - ii. has been guilty of any misfeasance or breach of trust in relation to the insurer; or

- (b) that any person, whether he is or has been in any way connected with the affairs of the insurer or not, is in wrongful possession of any money or property of the insurer or having any such money or property in his possession wrongfully withholds it or has converted it to any use other than that of the insurer; or
- (c) that by reason of any contravention of the provisions of this Act, the amount of the life-insurance fund has been diminished;

the Court may examine any such insurer, director, managing agent, manager, secretary or liquidator or any such other officer, employee or agent of the insurer or such other person, as the case may be, and may compel him to contribute such sums to the assets of the insurer by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust, as the Court thinks fit, or to pay such sum as may be found due from him in respect of any money or property of the insurer for which he is liable or accountable or to restore any money or property of the insurer or any part thereof, as the case may be; and where the amount of the life insurance fund has been diminished by reason of any contravention of the provisions of this Act, the Court shall have power to assess the sum by which the amount of the fund has been diminished and to order the person guilty of such contravention to contribute to the fund the whole or any part of that sum by way of compensation; and in any of the aforesaid cases the Court shall have power to order interest to be paid at such rate and cases the Court shall have power to order interest to be paid at such rate and from such time as the Court may deem fit.

(2) Without prejudice to the provisions contained in sub-section (1) or subsection (3), where it is proved that any money or property of an insurer has disappeared or has been lost' the Court shall presume that every person in charge of, or having a disposing power over, such money or property at the relevant time (whether a director, manager, principal officer or any other officer) has become accountable for such money or property within the meaning of sub-clause (i) of Clause (a) to sub-section (1), and the provisions of that sub-section shall apply accordingly, unless such person proves that the money or property has been utilised or disposed of in the ordinary course of the business of the insurer and for the purpose of that business or that he took all reasonable steps to prevent the disappearance or loss of such money or property or otherwise satisfactorily accounts for such disappearance or loss.

(3) Where the insurer is an insurance company and any of the acts referred to in Clauses (a), (b) and (c) of sub-section (1) has been committed by any person, every person who was at the relevant time a director, managing agent, manager, liquidator, secretary or other officer of the insurance company shall, for the purposes of that sub-section, be deemed to be liable for that act in the same manner and to the same extent as the person who has committed the act, unless she proves that the act was committed without his consent or connivance and was not facilitated by any neglect or omission on his part.

(4) Where at any stage of the proceedings against any person under this section (hereinafter referred to as the delinquent), the Court is satisfied by affidavit or otherwise—

- (a) that a *prima facie* case has been made out against the delinquent; and
- (b) that it is just and proper so to do in the interests of the policyholders of an insurer or of the members of an insurance company, the Court may direct the attachment of
 - i. any property of the insurer in the possession of the delinquent;
 - ii. any property of the delinquent which belongs to him or is deemed to belong to him with the meaning of sub-section (5);
 - iii. any property transferred by the delinquent within two years before the commencement of proceedings under sub-section (1) or during the pendency of such proceedings/ if the Court is satisfied by affidavit or otherwise that the transfer was otherwise than in good faith and for consideration.

(5) For the purposes of sub-section (4), the following classes of property shall be deemed to belong to a delinquent:

- (a) any property standing in the name of any person which by reason of the person being connected with the delinquent, whether by way of relationship or otherwise, or on account of any other relevant circumstances appears to belong to the delinquent;
- (b) the property of a private company in respect of the affairs of which the delinquent, by himself or through his nominees, relatives, partners or persons interested in any shares of the company is able to exercise or is entitled to acquire control, whether direct or indirect.

Explanation.—For the purposes of this section a person shall be deemed to be a nominee of a delinquent, if, whether directly or indirectly, he possesses on behalf of the delinquent, or may be required to exercise on the direction or on behalf of the delinquent, any right or power which is of such a nature as to enable the delinquent to exercise or to entitle the delinquent to acquire control over the company's affairs.

(6) Any claim to any property attached under this section or any objection to such attachment shall be made by an application to the Court, and it shall be for the claimant or object or to adduce evidence to show that the property is not liable to attachment under this section, and the Court shall proceed to investigate the claim or objection in a summary manner.

(7) When disposing of an application under sub-section (1), the Court shall, after giving all persons who appear to it to be interested in any property attached under this section an opportunity of being heard, make such order as it thinks fit respecting the disposal of any such property for the purpose of effectually enforcing any liability under this section, and all such persons shall be deemed to be parties to the proceedings under this section.

(8) In any proceedings under this section the Court shall have full power and exclusive jurisdiction to decide all questions of any nature whatsoever arising there under and, in particular, with respect to any property attached under this section, and no other court shall have jurisdiction to decide any such question in any suit or other legal proceeding.

(9) In making any order with respect to the disposal of the property of any private company referred to in Clause (b) of sub-section (5), the Court shall have due regard to the interests of all persons interested in such property other than the delinquent and persons referred to in that clause.

(10) This section shall apply notwithstanding that the act is one for which the person concerned may be criminally liable.

(11) In proceedings under this section the Court shall have all the powers which a court has under Section 237 of the Indian Companies Act, 1913 (7 of 1913).

(12) This section shall apply in respect of a provident society as defined in Part III as it applies in respect of an insurer.

(13) On and from the commencement of the Insurance (Second Amendment) Act, 1955 (54 of 1955), the Court entitled to exercise jurisdiction under this section shall be the High Court within whose jurisdiction the registered office of the insurer is situate (hereinafter referred to as the High Court) and any proceedings under this section pending at such commencement in any Court other than the High Court shall, on such commencement, stand transferred to the High Court.

(14) The High Court may make rules providing for

- (a) the manner in which enquiries and proceedings may be held under this section,
- (b) any other matter for which provision has to be made for enabling the High Court to effectively exercise its jurisdiction under this section.

Notice to and hearing of Authority.

106A. (1) When application is made to the Court for the making of any order to which this section applies the Court shall, unless the Authority has himself made the application or has been made a party thereto, send a copy of the application together with intimation of the date fixed for the hearing thereof to the Authority, and shall give him an opportunity of being heard.

(2) The orders to which this section applies are the following namely:

- (a) an order for the attachment in execution of a decree of any deposit made under Section 7 or Section 98;
- (b) an order under Section 9 or Section 59 for the return of any such deposit;
- (c) an order under Section 36 sanctioning any arrangement for the transfer or amalgamation of life insurance business or any order consequential thereon;
- (d) an order for the winding up of an insurance company or a provident society;

- (e) an order under Section 58 confirming a scheme for the partial winding up of an insurance company;
- (f) an order under Section 89 reducing the amount of the insurance contracts of a provident society.

Previous sanction of Advocate-General for institution of proceedings

107. (1) Except where proceedings are instituted by the Authority or an Administrator appointed under Section 52A, no 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 shall be instituted by any person unless he has previously thereto obtained the sanction of the Advocate-General of the State where the principal place of business in India of such insurer is situate to the institution of such proceedings:

Provided that where the principal place of business of such insurer is situated in a Union territory references in this section to the Advocate General of the Province shall be construed as references to the Attorney General for India.

(2) This section shall apply in respect of a provident society as defined in Part III as it applies in respect of an insurer.

Chairman, etc. to be public servant

107A. Every whole-time Chairman, whole-time director, auditor, liquidator, manager and any other employee of an insurer shall be deemed to be a public servant for the purposes of Chapter IX of the Indian Penal Code (45 of 1860).

Power of Court to grant relief

108. In any proceedings, civil or criminal, it appears to the Court hearing the case that a person is or may be liable in respect of negligence, default, breach of duty or breach of trust but that he has acted honestly and reasonably and that having regard to all the circumstances of the case he ought fairly to be excused for the negligence, default, breach of duty or breach of trust, the Court may relieve him either wholly or partly from his liability on such terms as it may think fit.

Cognizance of offences

109. (1) No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence under this Act. -

(2) No Court shall take cognizance of any offence punishable under sub-section (4) of Section 34B or sub-section (1A) of Section 102 except upon complaint in writing made by an officer of the Central Government generally or specially authorised in writing, in this behalf by the Authority, and no Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any such offence.

Appeals

110. (1) An appeal shall lie to the Court having jurisdiction from any of the following orders, namely:

- (a) an order under Section 3 cancelling the registration of an insurer;
- (b) an order under Section 5 directing the insurer to change his name;
- (c) an order under Section 42 cancelling the licence issued to an agent;
- (d) an order under Section 75 refusing to register an amendment of rules;
- (e) an order under Section 87 or Section 87A;
- (f) an order made in the course of the winding up or insolvency of an insurer or a provident society.

(2) The Court having jurisdiction for the purposes of sub-section (1) shall be the principal Court of civil jurisdiction within whose local limits the principal place of business of the insurer concerned is situate.

(3) An appeal shall lie from any order made under sub-section (1) to the authority authorised to hear appeals from the decisions of the Court making the same and the decision on such appeal shall be final.

(4) No appeal under this section shall be entertained unless it is made before the expiration of four months from the date on which the order appealed against was communicated to the appellant.

Delegation of powers and duties of Chairperson of the Authority

110A. The Chairperson of the Authority may by general or special order delegate any of his powers or duties under this act to any person subordinate to him. The exercise or discharge of any of the powers or duties so delegated shall be subject to such restrictions, limitations and conditions, if any as the Chairperson of the Authority may impose, and shall be subject to his control and revision.

Signature of documents

110B. Every document which is required by Act or by any rule made there under to be signed by the Chairperson of the Authority or by any person subordinate to him or by any officer authorised by him under sub-section (1) of Section 42 shall be deemed to be properly signed, if it bears a facsimile of the signature of such Chairperson of the Authority, person or officer printed, engraved, lithographed or impressed by any of other mechanical process approved by the Central Government.

Power to call for information

110C. (1) The Chairperson of the Authority may, by notice in writing, require any insurer to supply him with any information relating to his insurance business, and the insurer shall comply with such requirement within such period after receipt of the notice as may be specified therein.

(2) Any information supplied under this section shall be certified by a principal officer of the insurer and if the notice so requires also by an auditor.

Certain claims for compensation barred

110D. No person shall have any right, whether in contract or otherwise, to any compensation for any loss incurred by reason of the operation of any of the provisions contained in Section 34 or Section 34A or Section 34E or Section 37A or by reason of the compliance by an insurer with any order or direction given to him under this Act.

Sections 3A, 27B, 28B, 33, etc. to apply to general insurance business of the Life Insurance Corporation of India

110E. Notwithstanding anything contained in the Life Insurance Corporation Act, 1956 (31 of 1956), the provisions of Sections 3A, 27B, 28B, 33, 34. Clause (a) of Section 34E, 34F, 40C, 44A, 64U to 64UM (both inclusive), 64V, 64VA, 64VB, 64VC, 101A, 101C, 110 D, 110G and 110H, shall also apply, so far as may be to and in relation to the general insurance business carried on by the Life Insurance Corporation of India and the provisions of Section 37A shall also apply to that Corporation if it becomes an acquiring insurer.

Provisions applicable to State Governments, etc

110F. The provisions of Section 3, 3A, 27B, 28B, 33, 34, Clause (a) of Section 34E; 34F, 40A, 40C, 44A, 64U to 64 UM (both inclusive), 64V, 64VA, 64VB, 64VC and 101A, 101C, 110-D, 110-G and 110-H shall, notwithstanding any exemption granted under Section 118, also apply, so far as may be, and in relation to the general insurance business carried on by a State Government or a Government company as defined in Section 617 of the Companies Act, 1956 (1 of 1956).

Constitution of Consultative Committee

110G (1) The Central Government shall constitute a Consultative Committee consisting of the Chairperson of the Authority (who shall be the Chairman thereof) and not more than four other members having special knowledge and experience of the business of insurance.

(2) The term of office of, and the allowance payable to the members of the Consultative Committee, the procedure to be followed by, and the quorum necessary for the transaction of business of, the Consultative Committee and the manner of filling casual vacancies therein shall be such as may be prescribed.

(3) Before making any order under Sections 34, 34A, 34B, 34C, 34E, 34F, 34G, sub-sections (4) and (7)

of Section 64UM and Section 64VC, the Authority shall consult the Consultative Committee constituted under sub-section (1).

Appeals

110H. (1) any person aggrieved by any order made by the Authority under Sections 27D, 34, 34A, 34B, 34C, 34E, 34F, 34G, sub-sections(1), (4), and (7) of Section 64UM or Section 64VC may, within a period of thirty days from the date of such order prefer an appeal against such order to the Central Government and that Government may, by order, confirm, modify or reverse the order made by the Authority and the order so made by the Central Government shall be final.

(2) No claim for compensation shall lie in favour of any person for anything done in pursuance of an order of the Authority so long as such order was effective.

(3) The Central Government may, on the application of an appellant, stay, until the decision of the appeal, the operation of any order made under Section 34 or subsection (5) of Section 34-B or sub-clause (v) of Clause (b) of Section 34E.

Service of notices

111. (1) Any process or notice required to be served on an insurer or provident society shall be sufficiently served if addressed to any person registered with the Authority as a person authorised to accept notices on behalf of the insurer or provident society and left at, or sent by registered post to, the address of such person as registered with Authority.

(2) any notice or other document which is by this Act required to be sent to any policy-holder may be addressed and sent to the person to whom notices respecting such policy are usually sent and any notice so addressed and sent shall be deemed to be notice to the holder of such policy:

Provided that, where any person claiming to be interested in a policy as transferee, assignee or nominee has given to an insurer or to a provident society notice in writing of his interest, any notice which is by his Act required to be sent to policy-holders shall also be sent to such person at the address specified by him in his notice.

Declaration of interim bonuses

112. Notwithstanding anything to the contrary contained in this Act an insurer carrying on the business of life insurance shall be at liberty to declare an *interim bonus* or bonuses to policy holders whose policies mature for payment by reason of death or otherwise during the inter-valuation period on the recommendation of the investigating actuary made at the last preceding valuation.

Acquisition of surrender values by policy.

113.(1) A policy of life insurance under which the whole of the benefits become payable either on the occurrence, or at a fixed interval or fixed intervals after the occurrence, of a contingency which is bound to happen, shall, if all premiums have been paid for at least three consecutive years in the case of a policy issued by an insurer, or five years in the case of a policy issued by a provident society defined in Part III, acquire a guaranteed surrender value, to which shall be added the surrender value of any subsisting bonus already attached to the policy, and every such policy issued by insurer shall show the guaranteed surrender value of the policy at the close of each year after the second year of its currency or at the close of each period of three years throughout the currency of the policy:

Provided that the requirements of this sub-section as to the addition of the surrender value of the bonus attaching to the policy at surrender shall be deemed to have been complied with where the method of calculation of the guaranteed surrender value of the policy makes provision for the surrender value of the bonus attaching to the policy:

Provided further that the requirements of this sub-section as to the showing of the guaranteed surrender value on a policy shall be deemed to have been complied with where the insurer shows on the policy the guaranteed surrender value of the policy by means of a formula accepted in this behalf by the Authority as satisfying the said requirements:

Provided further that the provisions of this sub-section as to the showing of the guaranteed surrender value on a policy shall not take effect until after the expiry of six months from such date *as* the Authority may, by notification in the official Gazette, appoint in this behalf

(2) Notwithstanding any contract to the contrary, a policy which has acquired a surrender value shall not lapse by reason of the non-payment of further premiums but shall be kept alive to the extent of the paid-up sum insured, and the paid-up sum insured shall for the purposes of this sub-section include in full all subsisting reversionary bonuses that have already attached to the policy, and shall, where the policy is one on which the maximum number of annual premiums payable is fixed and the premiums are of uniform amount, be before the inclusion of such bonuses not less than the amount bearing to the total sum insured by the policy exclusive of bonuses the same proportion as the total period for which premiums have already been paid bears to the maximum period *for* which premiums were originally payable.

(3) A policy kept alive to the extent of the paid-up sum insured under sub section (2) shall not be entitled by virtue of that sub-section to participate in any profits declared distributable after the conversion of the policy into a paid-up policy.

(4) Sub-section (2) and sub-section (3) shall not apply -

- (a) where the paid-up sum insured by a policy being a policy issued by an insurer, is less than one hundred rupees inclusive of any attached bonus or takes the form of an annuity of less than twenty-five rupees, or where the paid-up sum insured by a policy, being a policy issued by a provident society as defined in Part III, is less than fifty rupees inclusive of any attached bonus or take the form of an annuity of less than twenty-five rupees, or
- (b) where the parties after the default has occurred in the payment of the premium agree in writing to some other arrangement, or
- (c) to policies in which the surrender value is automatically applied under the terms of the contract to maintaining the policy in force after its lapse through non-payment of premium.

Power of Central Government to make rules

114. (1) The Central Government may, subject to the condition of previous publication by notification in the official Gazette, make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may prescribe

- (a) the qualifications to be possessed by actuaries;
 - (aa) such other percentage of paid-up equity capital in excess of twenty-six percent of the paid-up equity capital and the period within which such excess paid-up equity capital shall be divested under sub-section (1) of section 6AA.
- (b) the manner in which it shall be determined which of the transactions of an insurer are to be deemed for the purposes of this Act to be insurance business transacted in India.
- (c) the procedure to be followed by the Reserve Bank of India in dealing with deposits made in pursuance of this Act, including the receipt of custody of, withdrawal of, and payment of interest on securities lodged as such deposits, and their inspection and verification by the Authority.
- (d) the form referred to in Clause (d) of sub-section (2) of Section 16;
- (e) the manner in which the prospectuses and tables referred to in sub-section (1) of Section 41 shall be published and the form in which they shall be drawn up;
- (f) the matters to be prescribed for the purposes of section 48;
- (g) (Omitted)
- (h) the contingencies other than those specified in Clauses (a) to (f) of Section (2) of Section 65 on the happening of which money may be paid by provident societies;
- (i) the matters other than those specified in Clauses (a) to (o) of subsection (1) of Section 74 on which a provident society shall make rules;
- (j) the form of any account, return or register required by Part III and the manner in which such account, return or register shall be verified;
- (k) subject to the provisions of this Act, the fees payable there under and the manner in

- which they are to be collected;
- (1) the conditions and the matters which may be prescribed under sub-sections (5), (6), (10) and (12) of Section 92;

(3) Every rule made under this section or Hinder subsection (10) of Section 34H or under sub-section (1) of Section 64UB and every regulation made under sub-section (3) of Section 64UB and every regulation made under this part shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be so, however, that any such modification of annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

(4) All rules made by a Local Government under the provisions of Section 24 of the Provident Insurance Societies Act, 1912 (5 of 1912), and in force at the commencement of this Act shall, so *far as not* inconsistent with the provisions of Part III, continue in force and have effect as if duly made under this section until they are replaced by rules made under this section.

Power of Authority to make regulations

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

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

- a) the matters including fee relating to the registration of insurers under section 3;
- b) the manner of suspension or cancellation of registration under sub-section (5E) of section 3;
- c) such fee, not exceeding five thousand rupees as may be determined by the regulations for issue of a duplicate certificate of registration under sub-section (7) of section 3;
- d) the matters relating to the renewal of registration and fee there for under section 3A;
- e) the manner and procedure for divesting excess share capital under sub-section 2 section 6AA;
- f) the preparation of balance-sheet, profit and loss account and a separate account of receipts and payments and revenue account under sub-section (1A) of section 11.
- g) the manner in which abstract of the report of the actuary to be specified under the fourth proviso to sub-section (1) of section 13;
- h) the form and manner in which the statement referred to in sub-section (4) of section 13 shall be appended;
- i) the time, the manner and other conditions of investment of assets held by an insurer under sub-sections (1), (1A) and (2) of section 27D;
- j) the minimum information to be maintained by insurer in their books, the manner in which such information should be maintained, the checks and other verifications to be adopted by insurers in that connection and all other matters incidental thereto under sub-section (8) of section 33;
- k) the manner for making an application, the manner and the fee for issue of a licence to act as an insurance agent, under sub-section (1) of section, 42;
- l) the fee and the additional fee to be determined for renewal of licence of insurance agent under sub-section (3) of section 42;
- m) the requisite qualifications and practical training to act as an insurance agent under clause (e) of sub-section (4) of section 42;
- n) the passing of examination to act as an insurance agent under clause (f) of sub-section (4) of section 42;
- o) the code of conduct under clause (g) of sub-section (4) of section 42;
- p) the fee not exceeding rupees fifty for issue of duplicate licence under sub-section (6) of section 42;
- q) the manner and the fees for issue of a licence to an intermediary or an insurance intermediary under sub-section (1) of section of section 42;
- r) the fee and the additional fee to be determined for renewal of licence of intermediaries or insurance intermediaries under sub-section (3) of section 42D;
- s) the requisite qualifications and practical training of intermediaries or insurance intermediaries under clause (e) of sub-section (5) of section 42D;
- t) the examination to be passed to act as an intermediary or insurance intermediary under clause (f) of sub-section (5) of section 42D;

- u) the code of conduct clause (g) of sub-section (5) of section 42 D;
- v) the fee for issue of duplicate licence under sub-section (7) of section 42D;
- w) such matters as specified under sub-section (2) of section 64UB relating to the Tariff Advisory Committee.
- x) The matters relating to relating to licensing of surveyors and loss assessors, their duties, responsibilities and other professional requirements under section 64UM;
- y) Such other asset or assets as may be specified under clause (h) of sub-section (1) of section 64V for the purposes of ascertaining sufficiency of assets under section 64VA;
- z) the valuation of assets and liabilities under sub-section (3) of section 64V;
- za) the matters specified under sub-section (1A) of section 64VA relating to sufficiency of assets;
- zb) the matters relating to reinsurance under sections 101A and 101B;
- zc) the matters relating to redressal of grievances of policy-holders to protect their interest and to regulate, promote and ensure orderly growth of insurance industry; and
- zd) any other matter which is to be, or may be, specified by the regulations made by the Authority or in respect of which provision is to be made or may be made by the regulations;

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

Alteration of forms

115. The Central Government may, on the application or with the consent of an insurer, not being a company, alter the forms contained in the Schedules as respects that insurer, for the purpose of adapting them to the circumstances of that insurer:

Provided that nothing done under this section shall exempt the insurer from supplying all information required under this Act so far as it is possible for the insurer to do so.

Power to exempt from certain requirements

116. (1) The Central Government may, by notification in the official Gazette, exempt any insurer constituted, incorporated or domiciled in any country or State outside India from any of the provisions of this Act which may be specified in the notification either absolutely or subject to such conditions or modifications as may be specified in the notification.

(2) This section shall apply in respect of provident societies as defined in Part III as it applies in respect of insurers.

Summary of returns to be published

116A. The Central Government before the date of commencement of the Insurance Regulatory and Development Authority Act, 1999, shall every year cause to be published, in such manner as it may direct, a summary of the accounts, balance-sheets, statements, abstracts and other returns under this Act or purporting to be under this Act which have been furnished in pursuance of the provisions of this Act to the Authority during the year preceding the year of publication, and may append to such summary any note of the Authority or of the Central Government before the date of commencement of the Insurance Regulatory and Development Authority Act, 1999 and any correspondence:

Provided that nothing in this section shall require the publication of the statement referred to in sub-section (2) of Section 10 of the returns referred to in sub-section (1) of Section 28 or Section 28A or Section 28B or the statements referred to in subsection (2) of Section 31B or Section 40B.

Saving of provisions of Indian Companies Act, 1913

117. Nothing in this Act shall affect the liability of an insurer being a company or a provident society as defined in Part III being a company to comply with the provisions of the Indian Companies Act, 1913 (7 of

1913), in matters not otherwise specifically provided for by this Act.

Exemptions

118. Nothing in this Act shall apply—

- (a) to any trade union registered under the Indian Trade Unions Act 1926 (16 of 1926); or
- (b) to any provident fund to which the provisions of the Provident Funds Act, 1925 (19 of 1925), apply; or
- (c) if the Central Government so orders in any case, and to such extent or subject to such conditions or modifications as may be specified in the order, to any insurance business carried on by the Central Government or a Government company as defined in Section 617 of the Companies Act, 1956 (1 of 1956); or
- (d) if the Authority so orders in any case, and to such extent or subject to such conditions or modifications as may be specified in the order, to—
 - i. any approved superannuation fund as defined in Clause (a) of Section 58-N of the Indian Income-tax Act, 1922 (11 of 1922); or
 - ii. any fund in existence and officially recognized by the Central Government before the 27th day of January, 1937 maintained by or on behalf of Government servants or Government pensioners for the mutual benefit of contributors to the fund and of their dependents or
 - iii. any mutual or provident insurance society composed wholly of Government servants or of railway servants which has been exempted from any or all of the provisions of the Provident Insurance Societies Act, 1912 (5 of 1912)

Inspection and supply of copies of published prospectus, etc

119. Any person may, on payment of a fee of five rupees, inspect the documents filed by an insurer with the Authority under Clause (f) of sub-section (2) of Section 3, and may obtain a copy of any such document or part thereof on payment in advance at the prescribed rate, for the making of the copy.

Determination of market value of securities deposited under this Act

120. The market value on the day of deposit of securities deposited in pursuance of any of the provisions of this Act with the Reserve Bank of India shall be determined by the Reserve Bank of India whose decision shall be final.

121. (*Repealed*)

122 (*Repealed*)

123 (*Repealed*)