CHAPTER – V

LEGAL DIMENSION OF LIFE INSURANCE
5. INTRODUCTION

Insurance sector has been opened up for competition from Indian private insurance companies with the enactment of Insurance Regulatory and Development Authority Act, 1999 (IRDA Act). As per the provisions of IRDA Act, 1999, Insurance Regulatory and Development Authority (IRDA) was established on 19th April 2000 to protect the interests of holder of insurance policy and to regulate, promote and ensure orderly growth of the insurance industry. IRDA Act 1999 lined the way for the entry of private players into the insurance market, which was up till then the exclusive privilege of public sector insurance company LIC. Under the new exemption Indian insurance companies in private sector were permitted to operate in India on the fulfillment of certain prerequisites. A large number of public and private players are competing today in both life and general insurance segments.

5.1 NEED FOR LEGAL REFORMS

People purchase life insurance to cover contingencies. Over the last few years, developments in the insurance sector have resulted in a paradigm shift in the way the business is conducted. In a free market scenario, the customer has a choice from whom to buy. He exercises this choice based on perceptions formed through his experiences.

But even with the overwhelming choice of products and providers, consumer grievances continue to rise. It has been observed that many of the complaints are a result of communication and administrative failures. Quite often, the point of sale is the root cause for most grievances as the consumer does not
know or just doesn’t understand what he is buying. Sometimes it is in the nature of the product, but more often than not, it is an unsatisfactory level of information from the insurer’s side. When the insurer or his representative is talking to a prospective customer, disclosure about the product is a vital need. There is a generic complaint in this industry about the products as the consumer is neither told what he should know nor does he know what to ask. This may result in the consumer ending up with a product he does not really require. Another common complaint is that the agent promises the customers higher returns than possible and understates the charges especially in unit linked insurance products.

The insurer or his representative should ensure that all material information about the product being sold is given and the customer is able to decide which the best cover is for him. Further, if the proposal form or other documents are not filled in by the prospect, a certificate needs to be incorporated at the end of the proposal form from the prospect that the contents of the form and the documents have been fully explained to the customer and that he has fully understood the significance of the proposed contract. This precaution if genuinely taken, takes care of an oft-repeated complaint against the insurance company that the customer wasn’t adequately informed. It is thus imperative that the insurance customers receive precise, clear and correct information of products and services from the insurer who also makes the customer aware of their responsibilities and duties in this regard. Apart from this there various operation & Business running issues where companies are lacking. Government felt the strong need for legal reform to maintain the stress free healthy business environment. Here are some regulation & suggestions for the above purpose.
5.2 WIDER AGENDA OF LEGAL REFORM

The subject matter of this topic is to Review of the Insurance Act and the related laws is part of the wider agenda of legal reform currently pursued by the Government of India to make the legal system more responsive to the challenges which we have to address to remain competitive in a global economy.

Banks and Financial Institutions are entering into the life insurance business in a big way breaching the boundaries between the life insurance and banking business. While it is necessary to encourage different players from entering into the field which will ultimately benefit the consumer, safeguarding the consumers’ interest against exploitation also requires to be addressed by law.

5.2.1 PROBLEMS IN ONLINE INSURANCE CONTRACT

First problem which has to be addressed legally while dealing with relates to the formation of electronic contracts. Financial Services particularly life insurance is contract based. The contractual terms and conditions along with the price which makes a product competitive should be seen very closely and comprehended so that legal issues can be avoided. More and more consumers resort to contracting through the net the legality of click wrap agreements is posing difficult problems. If a contract concluded through internet has to be free and fair the consumer must have access to all information relating to the products or services which he is contracting to buy. The use of electronic media to communicate with the existing and prospective policy holders and the content of the websites hosted on the internet gives rise to problems.
5.2.2 DISTANCE SELLING
Distance selling of insurance products will give a wider reach to the life insurance companies. Consumers will be able to compare and choose between different products. As ecommerce and distance selling become popular the interest of consumers should be protected. Contracts for retail financial services like life insurance and investment services are negotiated at a distance without the requirement of the simultaneous physical presence of the parties to the contract.
(i) Consumers must be given an opportunity to reflect and opt out if necessary.
(ii) They should also be provided with fair and accurate information about the products they are offered which require stringent disclosure standards.

5.3 REVIEW OF INSURANCE ACT, 1938
The Law Commission has favored a review and revision of the Insurance Act, 1938 in such a manner that it should not only promote insurance but also protect the interests of policyholders and strengthen the Insurance Regulatory Development Authority (IRDA) to ensure financial stability in this sector.
In its 190th report\(^1\) on the subject, tabled in Parliament during the winter session (Feb., 2008), the Chairman of the Law Commission, Justice Mr. Jagannadha Rao, has written to the Union Law Minister Mr. H.R. Bharadwaj, by way of summation of his report that in the changing economic scenario, IRDA has to play a vital role for the regulation and development of insurance business. The report recalled that following a discussion held with the IRDA, the Law Commission prepared an exhaustive Consultation paper in June 2003, identifying thirteen tentative grounds of
revision of the Insurance Act, 1938 and the IRDA Act, 1999 ranging from merger of relevant provisions of IRDA Act with the Insurance Act 1938 to according of the Act with rules and regulations. A letter of Ministry of Finance indicating, in total agreement with the proposals in the Consultation Paper concerning merger of the provisions of the IRDA Act with the Insurance Act, changes in definitions, deletion of redundant provisions, constitution of an appellate authority to examine decisions of the IRDA, enhancement of penalties, rationalising of the powers of the IRDA and strengthening obligations of the insurers and provision for the protection of the rights of the policyholders.

Stating that the Commission decided to confine its recommendations only with regard to the relevant legal issues arising in the Insurance Act, 1938, the report said the legal issues include the setting up of a grievance redressal mechanism, repudiation of life insurance polices under section 45 of the Insurance Act and provisions pertaining to nomination and assignment and transfer of policies under sections 39 and 38 respectively. The Law Commission did not found the existing system of Ombudsman under the redressal of Public Grievances Rules to deal with the complaints of policyholders satisfactory from the point of view of policyholder; nor does the remedy under the Consumer Protection Act, 1986 prove to be effective in the large number of cases of pending decision.

As such, the Commission has said that Grievance Redressal Authorities (GRA) should be constituted to deal with (i) disputes between the insured and the insurer (ii) disputes between insurer and the intermediaries and (iii) disputes between insurer and insurer. The GRA shall consist of one judicial member who will be the Chairman and the other two technical members.
Besides the GRA, it has been recommended that an Insurance Appellate Tribunal (IAT) should also be constituted to hear the appeals from the order of GRA. There will have to be a further statutory appeal to the Supreme Court from the decision of the IAT.

On repudiation of life insurance policy under existing Sec 45 Insurance Act 1938, the Commission has recommended taking into account the suggestion of the Life Insurance Corporation that after the expiry of five years, no policy of life insurance can be repudiated on any ground whatsoever. However, an insurer can repudiate a policy before the expiry of five years on the ground that the insured has made a misstatement of or suppressed a material fact. While Section 38 of the Insurance Act provides for assignment and transfer of life insurance policies, there are certain irregularities in the working of sub-sections. Hence the Commission has recommended that a clear distinction be made between absolute assignment and conditional assignment. As Section 39 of the Insurance Act provides that the policyholder might nominate one or more persons to whom the money secured by the policy should be paid in the event of the death of the policyholder, the Commission has favored amending this section to make a distinction between a "beneficial" nominee and a "collector" nominee.

5.3.1 SHAPE OF THE PROPOSED REFORM OF THE INSURANCE ACT

In addition to the concerns expressed above some of the problems which are engaging our attention while reviewing the Insurance Act are as follows:-

(a) To recast the Insurance Act 1938 this was enacted in the colonial era by shedding the old redundant provisions;
(b) The new Act will be a lean Act outlining the broad principles leaving the details to be worked out by the regulations;

(c) To provide an effective grievance redressal mechanism for redressal of the policy holders grievances. At present large number of complaints are filed before the Consumer courts under the Consumer Protection Act 1986 and the Consumer courts are called upon on to interpret the provisions of the Insurance Act 1938 which is a complex piece of legislation. If a special body of law has to develop then a special tribunal is necessary to deal with insurance cases. In proposing this we are inspired by the contribution of the Securities Appellate Tribunal which is functioning under the SEBI Act 1992 in laying down the foundations of modern securities law in India;

(d) To examine the decisions of the courts that impacts the various provisions of the Insurance Act 1938;

(e) The use of plain language in the policy so that the policy holder is not misled into agreeing to some condition which he did not have in mind.

The other area that IRDA should look at is the calculation of embedded value-the current value of future profits from the existing policies by the life insurers. Many life insurers are playing the top line growth game with an eye on coming out with an initial public offering. Some life insurers have started announcing the embedded value of their business and some have started issuing employees stock options.

The IRDA should start looking at the actuarial assumptions under which the embedded value is calculated so that general people should not fool with fancy valuations. Perhaps to bring some sort of comparability amongst
insurers IRDA could ask the insurers to declare the basis/assumptions on which the embedded value is calculated by an insurer.

5.3.2 ESTABLISHMENT OF INSURANCE ADVISORY COMMITTEE

According to IRDA Act 1999, The Authority may, by notification, establish with effect from such date as it may specify in such notification, a Committee to be known as the Insurance Advisory Committee. The Insurance Advisory Committee shall consist of not more than twenty-five members excluding ex officio members to represent the interests of commerce, industry, transport, agriculture, consumer forum, surveyors, agents, intermediaries, organizations engaged in safety and loss prevention, research bodies and employees' association in the insurance sector. The Chairperson and the members of the Authority shall be the ex officio Chairperson and ex officio members of the Insurance Advisory Committee. The objects of the Insurance Advisory committee shall be to advise the Authority on matters relating to the making of the regulations. The Insurance Advisory Committee may advise the Authority on such other matters as may be prescribed.

5.3.3 CAPITAL REQUIREMENTS FOR INSURANCE COMPANIES

According to Act, requirement as to capital No insurer carrying on the business of life insurance, general insurance, or reinsurance in India on or after the commencement of the Insurance Regulatory and Development Authority Act, 1999, shall be registered unless he has:

1. 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
2. a paid-up equity capital of rupees two hundred crores, in case of a person carrying on exclusively the business as a reinsurer.

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:

An insurer carrying on business of life insurance, general insurance or reinsurance 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.

5.4 MANNER AND CONDITIONS OF INVESTMENT

The Authority may, in the interests of the policyholders, specify by regulations made by the Authority, the time, manner and other conditions of investment of assets to be held by an insurer for the purposes of this Act. The Authority may, after taking into account the nature of business and to protect the interests of the policyholders, issue to an insurer the directions relating to the time, manner, and other conditions of investment of assets to be held by him. However, no directions shall be issued unless the insurer concerned has been given a reasonable opportunity of being heard.

5.4.1 IRDA PANEL ON INVESTMENT NORMS

The Insurance Regulatory and Development Authority (IRDA) has decided to form a working group to examine the existing investment regulations and
to review comprehensively the current statutory prescriptions and pattern of investments for insurance companies. In the light of the experience gained and developments in financial markets and also taking into account the genuine constraints being faced by the insurance companies, the regulator has sought suggestions from the working group.

**5.4.2 RECOMMENDATION ON INVESTMENTS**

The IRDA (Investment) Regulations 2000 were modified partially in 2004. The KPN Committee on amendments to Insurance Act, 1938\(^4\), has also recommended a re-look at the statutory provisions on the pattern of investments and suggested amendments that would provide flexibility to the authority in the manner of regulation on investments of insurers. The regulator has felt the need to examine developing appropriate regulatory framework in view of the expansion of financial sector and introduction of new financial instruments and requests for investment in such instruments and derivatives.

**5.4.3 FLEXIBILITY IN INITIAL PUBLIC OFFERINGS (IPO’S)**

The Insurance Regulatory Development Authority may soon allow insurers more flexibility in investing in highly rated initial public offerings. Currently, initial public offerings (IPO) fall within the ‘other than approved’ category and the insurance regulator could now look at making it easier for insurance companies by putting highly rated IPOs within the ‘approved’ category of investments. Insurers could be given the flexibility to invest in highly rated IPOs, as approved by SEBI. Instruments like mortgage based securities and highly rated infrastructure bonds may also make the cut as
“approved investment”. “Infrastructure and mortgage based securities have shown low defaults and high yields. Insurers investing in initial public offerings (IPO) of private sector companies will enjoy more freedom that could help policyholders acquire higher returns from equities post-listing.

They can also invest in fixed-income instruments such as mortgage-backed securities (MBS) and bonds floated by developers of SEZs. Insurers will get greater scope in their investments in mutual funds and venture funds as well. Insurance regulator IRDA notified major changes in the investment norms for insurers that will help companies diversify risks and lower the strain on capital. For policyholders, it would also mean higher yield on investments. The new regulations provide more flexibility to insurers that will help generate better returns. The control framework has also been tightened as a result of which risk management will be more robust. The control framework includes exposure limits that are more conservative than those applicable to mutual funds today.

Currently, insurers can invest in an IPO of a private sector company if the minimum issue size is Rs 500 crore. The amount is significantly lower at Rs 100 crore for investment in IPOs of public sector companies. The regulator has now fixed a uniform minimum issue size of Rs 200 crore. However, safeguards are in place to ensure that companies maintain their solvency margins and are able to pay claims to consumers. The investment in equity shares will have to comply with the prudential and exposure norms. Insurance companies can invest up to 10% of the face value of the company or 10% of their fund size as application money. In a changing market, the changes will ensure that investments are made only in good quality avenues.
The investment basket for insurers has also been widened to include MBS-structured loan instruments where cash flows from home loans are pooled together and converted into marketable securities. MBS will qualify as investments under the housing sector, but subject to industry exposure norms. This means insurance companies can only invest up to 10% of their portfolio in MBS under the approved investment category. They can also invest in bonds of SEZ developers, with IRDA aligning the definition of infrastructure with that of the banking regulator. The regulations will make investments for life insurers, who have Rs 8,00,000 crore assets under management. The housing finance and infrastructure finance industry will also benefit from the regulations that allow for investments in securitised paper from these sectors.

The insurers’ investment in liquid mutual funds will fall under approved investments. However, the instruments should not be used as long-term investments. They can be a maximum 5% of their investment portfolio in liquid mutual funds. The fund size is Rs 50,000 crore for a life company and Rs 2,000 crore for a non-life company. The new norms provide more clarity on investments in mutual funds. It has also aligned the exposure norms of public and private sector insurers. This means LIC can invest only 10% of its portfolio in a single company against 30% earlier. For the first time, exposure norms have been made mandatory for unit-linked insurance plans (ULIP), which are similar to mutual funds in design and have an added insurance cover. The move is aimed at mitigating the risks arising from investments in a few companies. The investment norms for insurers are stipulated in the insurance legislation. Now, an overhaul has been undertaken without taking recourse to legislative amendments. At present,
life insurance companies are allowed to invest 50% of their investible assets in government and other approved securities. Additionally, they can invest at least 15% in infrastructure instruments that qualify as approved instruments.

5.5 The Insurance Customer under Consumer Protection Act, 1986

A consumer is a person who buys goods or avails of any service for a consideration. The various aspects relating to consumer welfare affect the entire population of the country, as everyone is a consumer in one way or other. Therefore, ensuring consumer welfare becomes the responsibility of the government. About three decades ago, consumer action in India was virtually unknown. It was left to the individuals to look for ways to solve their own grievances. Relief was severely limited by the resources available with these individuals. There was not much organized effort to take up larger issues that affected masses of consumers or the general public. All this changed with the coming of the concept of public interest litigation. It gave individuals and the newly formed consumer groups’ easier access to law and introduced the broad public interest perspective. Apart from several other measures and enactments, the Consumer Protection Act, 1986 was a landmark legislation, which gave a new direction to the consumer movement upholding and protecting the consumer’s interests. It is a remarkable piece of legislation for its focus and objectives. It is one of the most progressive and comprehensive piece of legislation enacted for the protection of consumers. It involves minimum technical and legalistic procedure; and provides easy access to the redressal system. This Act applies to all goods and services, provided by private, public or cooperative sectors. This is a general legislation which lays down a uniform set of laws, procedures and forum for protecting the rights of all kinds of consumers.
Thus, it brings into existence a separate class of people called consumers, and endeavours to protect their rights irrespective of the nature of the transaction that takes place between the consumer and the seller. The advantage of this legislation is that it provides a speedy, informal and inexpensive justice within the reach of all the consumers.

5.5.1 DEFICIENCY IN INSURANCE SERVICES

Insurance is one of the express ‘services’ covered by the definition under the Act. The Insurance Companies may cause deficiency in services when they fail to indemnify the insured regarding loss, or they fail to make the payment to the nominee appointed under Section 39 of the Insurance Act, 1938 or fail to settle the claim under the insurance policy within a reasonable period of time.

The customer in insurance is not only the person who makes the decision to buy, but also the person who makes the claim for the insurance money, after the insured event has happened. The former is called the insured or the policyholder and the latter is called the claimant. However, as is evident, the policyholder may not always be the claimant.

The insured is not particularly happy to buy, because the context is one of loss, hardship, tragedy etc., which no one likes to visualize. He needs a lot of influence to recognize the imminence of that possibility and not to delay the insurance arrangement. Resistance to the purchase is natural. He is being made a promise by a representative of the insurer. He is not sure that the promise would be redeemed when the time comes for it. It is possible that the person representing the insurer at the time of the claim may not be the same as the one making the promise and may have different ideas as to what
the cover really meant. This possibility raises doubts about the precise nature of the purchase that creates difference.

The claimant would be seeking redemption of the promise made. The claimant may be the policyholder in the case of general insurance and may be aware of the nature of the promises made to him. But many of them may not understand the principle of indemnity on which the business of insurance operates. They may not appreciate the reasons for the costs of repairs or replacement not being paid in full. When deductions are made for depreciation, or because of lower sum assured, or for breach of warranties; the claimant sees these as strategy to avoid the claim. These are outcomes of the promises being understood differently by the insured.

In the case of life insurance the claimant may not be aware at all of the nature of the promise, if the policyholder had died. The claimant in this case, is not only anxious, but in a disturbed frame of mind, trying to come to terms with the new situation and an uncertain future.

The insurer asks for information and documents to confirm that the event has actually occurred and that the claim is genuine. This process of verification may create delays, leading to further doubts and anxiety about the intention of the insurer. The delays would be partly because these have to be obtained from third parties, like police, garages, hospitals, doctors, municipal offices, etc., who have other priorities and partly because the documents may not meet the exact needs of the insurer.

Thus, the circumstances relating to the business of insurance are such as to cause disturbances, more than satisfactions, to their customers, except perhaps, when the claim is paid. Even at that time, there could be a problem, if the claim is less than what the claimant thinks was his loss. In the case of
general insurance and in the case of maturity claims in the case of life insurance; the dissatisfactions could also arise if the amount of claim is found to be less than the total premium paid under the policy. That would be construed as a loss, as few appreciate the concept of risk having been covered and there being a cost to it. The erosion due to inflation could provide another perception of loss.

5.5.2 CUSTOMER SERVICE

The factors affecting perceptions of customers are different before, during and after purchase. Before purchase, they are affected by the image created by the brand, previous experience, what the friends say, published results and endorsements and the price as advertised. During purchase, the relevant factors are the performance specifications, the salesman, the warranties, service and repair arrangements, support programs and the price which is quoted. After purchase, the relevant factors shift to case of installation and operation, handling of claims and repairs, spare parts availability, reliability and service effectiveness.

In the case of life insurance, after the purchase, the only experience to create a perception, is the continued attention and concern shown to the customer, who would reassure him that the promise he believed in while making the purchase, was not misplaced. If he does not receive such attention and expressions of concern, he could start doubting the intention of the salesman. That is the first step to having doubts about the wisdom of the purchase. That is what is referred to as ‘Dissonance’. Differences are likely to be more frequent in the case of insurance purchases than in other purchases, because of the following:
Legal Dimension of Life Insurance

- In life insurance, the payment of premium is real and immediate, while the benefit is distant and uncertain.
- In most other purchases, there is tendency to buy, while in life insurance, it is as if the purchase has been forced. The need is not felt strongly.
- Policyholders feel a sense of loss or waste if the claim does not occur before the end of the term.
- There are conditions and warranties which the policyholders could ignore, being unaware of their implication, affecting validity of the insurance policy.

Apart from the help in processing the claim when it occurs, post-sales servicing would include regular reminders as to the customer’s obligations like payment of renewal, furnishing of data as may be required, compliance with warranties and so forth. There could also be changes in the customer’s situation, which the agent should become aware of to decide whether the policy conditions need amendment. These are all the various aspects, considerations, issues and situations that lead to the grievances which the insurance customer may experience, face with and encounter. Should there be any slackness or deficiency on the part of the service provider, namely the insurance company or any of its representatives, the Consumer Protection Act, 1986 is the proper instrument to afford speedy and cost effective remedy for the insurance customer and to provide due redress. Even before the Consumers Protection Act had been enacted in 1986, the consumer movement had been strong in India. There were many NGOs who volunteered to look after the interest of consumers.
5.5.3 MARKETING AND CONSUMERISM

Marketing and consumerism complement each other. Both focus on the consumer as the main concern of business, whose satisfactions should be the primary objective of all business. A company pursuing marketing principles in its strategy and policies will automatically conduct itself in ways that do not harm the consumer. There will be no room in this situation for a grievance or for a third party to intervene as a mediator in a dispute. Life Insurance is based on the principle of uberrima fides or utmost good faith. This requirement is mutual, binding on the insurance company, as much as it is binding on the policyholder. Consumer interests are automatically taken care of, if the insurance company adheres to these principles. An agent represents the insurance company and is therefore, bound by these principles in the same way as the insurer is. If ever a situation arises alleging that the insurer or its agent had misrepresented facts or given false information or misled the prospect to take insurance, the prima facie presumption has to be that the insurer is guilty of violating the principle of uberrima fides.

Increasing business also arose various conflicts in the industry. We can see there several disputes among the stakeholders in the industry. The stakeholders are Government (IRDA), Insurance companies, Intermediaries like agents & brokers and last customers. There is lot of pending cases in forums. The scenario is now worst after privatization. For getting business private players are using false commitment to the customer that later results in litigation among them.

In the twelve months to 30 June 2009, the Investments, Life Insurance & Superannuation group received a more than 50% increase in disputes. A
significant number of these are likely to require Panel or Adjudicator determination. This level of disputes is continuing in the second half of 2009. We anticipate a further 50% increase in the referral of matters for a decision by a Panel or Adjudicator in the 12 months from 1 July 2009. To date, the bulk of the increased dispute numbers has been in financial planning disputes. These are several kind of dispute that exists in the current scenario.

a. **Insurance company & Advisors**: Dispute regarding commission structure, benefits, incentives like gifts, foreign tours and delay in payment of remuneration.

b. **Insurance company, Regulator & Brokers**: There are various conflicts among these regarding commission structure & unfair business structure. IRDA has cancelled license of many brokers for punishment in recent period.

c. **Insurance companies & their employees**: Conflicts in working culture, insufficient remuneration, cheating with employees, delay in payment, promotion etc.

d. **Insurance company & Customer**: Dispute in deficiency in services, Online transactions, Miss-selling, Fraud by customers, needless claim repudiation etc.
5.5.4 NEGLIGENCE OF LIFE INSURANCE COMPANIES

Insurance companies it seems are yet to take the institution of Ombudsman or other forums seriously in dispute resolution with the customers as well as execution of awards. This was the opinion expressed by a majority of the 12 insurance Ombudsmen in the country in the operational reports for the last five years, submitted to the Insurance Regulatory and Development Authority (IRDA). There are all shades of negligence. Delay in response, speedy response without substance, delayed as well as non-substantial response and so on. It is also generally found that most of the documents lie in the hands of the insurance companies at the complaint stage, making disposal of complaints extremely difficult. In many cases, the officer representing on behalf of the insurers are not pleading the case properly. All this would mean a serious loss for a policy-holder at a time when mis-selling of policies, especially in the unit-linked products is very alarming. Not only private insurers, but even the public insurers are not spared in this regard. “In spite of clear instructions issued by Life Insurance Corporation of India for representing the cases properly, the office concerned with a specific complaint is not presenting the case properly. There needs to be a stricter mechanism to ensure implementation of awards given by the Ombudsman in a specific timeframe. However, as the awareness about Insurance Ombudsmen is growing, things would improve.

5.6 NEW NORMS FOR UNIT-LINKED PRODUCTS

Insurers selling unit-linked insurance products will have to be more transparent in disclosures pertaining to the charges, investment funds and benefits to policy holders. The Insurance Regulatory and Development
Authority has notified some norms to be followed by the insurers in the benefit illustrations for unit-linked insurance products.

According to a notification hosted on its Web site, the regulator directed that all the life insurance companies should list out all charges to be paid and also amounts available for investments in each policy year by using information specific to a particular policyholder. The insurers must also give figures separately in a table about guaranteed benefits and non-guaranteed benefits each policy year keeping in view the interest rates as specified by the Life Insurance Council. At present, the interest rates used for benefits, illustrations are 6 per cent and 10 per cent per annum respectively. Two tables containing details about the charges/funds available for investments and guaranteed/non-guaranteed benefits should also become part of the policy documents and should duly be signed by the policyholders.

Have you ever heard customers being asked to swear an affidavit saying that they have understood the details of the product offered? May be such a practice is going to be started by the life insurance industry in near future. According to a media report, the self-regulatory organisation of the industry, the Life Insurance Council, and statutory regulator IRDA have decided to impose on customers buying life insurance products the burden of executing an affidavit to the effect that they have understood the product they intend to buy and the risks associated with it; the affidavit will contain illustrations that an insurer gives customers to help them understand the product. The proposal may be well-intentioned to reduce the uncontrolled mis-selling in the industry. But to achieve this by asking the customer to swear an affidavit is big problem and time consuming activity. It is the customer who is being asked to swear an affidavit and not the agent, who
should in fact be responsible for satisfactorily explaining the details of the 
product to the prospective customer. In this context, it would be useful to 
just refresh why it used to be held that the principles of *caveat emptor* did 
not apply to financial products. The present move is an attempt by the 
industry to rewrite that saying. It is hoped this uncalled for and difficult 
burden on the customer is given up and instead the industry and the regulator 
ensure that the agents who are appointed by the individual insurers truly, 
faithfully and satisfactorily explain the products to the insuring public. That 
satisfaction is more important for the companies to achieve.

5.7 NORMS FOR VALUATIONS & DISCLOSURES

India’s insurance regulator will finalize norms for life insurers and 
guidelines for firms that evaluate them, giving potential investors greater 
clarity on the valuations of insurers that plan to sell shares in initial public 
offerings (IPOs).

According to **J. Hari Narayan**\(^{14}\), chairman of the Insurance Regulatory and 
Development Authority (Irda), that IRDA is in discussion with the 
Securities and Exchange Board of India (SEBI) to frame the IPO guidelines 
for insurers,” We are concerned about the disclosures of insurers, and should 
be able to come out with disclosure norms by the end of 2009 .Disclosures 
would give investors a clearer picture of the net worth of insurance 
companies. Research and consulting firms have released widely divergent 
estimates of the valuation of insurance firms that analysts say are largely 
attributable to inadequate disclosures.

Life insurers such as Reliance Life Insurance Co. Ltd and ICICI Prudential 
Life Insurance Co. Ltd have expressed their intention to raise money through 
IPOs in the next few years. A report by Edelweiss Securities Ltd values
ICICI Prudential at $5.4 billion (Rs26,028 crore) based on the company’s FY2011 earnings, while another by Bank of America Securities Merrill Lynch Research puts that number at $4.4 billion, a difference of $1 billion, or Rs 4,816 crore.

The industry needs to adopt a market-consistent embedded value (MCEV) method to evaluate life insurers. In order to do this, “the Institute of Actuaries of India would bring out a guidance note, which all insurers will be mandatory required to follow to evaluate them.

Market-consistent embedded value of an insurer is the difference between the market value of its assets and the value of liabilities assessed on a market-consistent basis. In a market-consistent valuation, all projected cash flows are valued in line with the prices of similar cash flows in the open market. Insurers’ valuations have also differed because of the application of different models for determining their worth.

5.7.1 MANDATORY DISCLOSURE
The IRDA has finalized the disclosure norms for insurance companies. Companies will now have to disclose their balance sheet, profit and loss account, revenue account as well as certain key ratios related to premium collections and company expenses. These disclosures will have to be published in at least one English daily newspaper on a half-yearly basis and on the company website on a quarterly basis.

Disclosures also have to be available on the website for the past five years. Both life and non-life insurers will have to comply with these norms from the period ended March 31, 2010.
5.7.2 TRANSPARENCY IN INSURANCE ACCOUNTING PROPOSED

The insurance accounting in India needs to be made more transparent to fill confidence in a policyholder and to make the industry ready for adopting International Financial Reporting Standard (IFRS) insurance contracts. A panel on insurance accounting set up by Institute of Chartered Accountants of India (ICAI) is currently coming out with a set of recommendations that can be forwarded to the Insurance Regulatory and Development Authority for consideration.

The panel has already identified the need to change some key insurance accounting practices currently followed in the country and there is similarity on imparting more transparency for the benefit of policyholder and industry.

5.7.3 PANEL SUGGESTIONS

Some of the recommendations which are yet to be formalised are unbundling of deposit component in deposit linked insurance schemes, reducing of fixed derivative accounting (which consists of investment and derivative part) and adequate provisioning to know the liability adequacy of an insurance company. The firms should segregate returns and assured sum in accounting in deposit-linked products. Similarly, in embedded derivatives accounting, the derivative part should be independently found out. Further, insurance companies’ accounting should provide enough scope to run a liability adequacy test. As of now there is no proper provisioning to know the liability adequacy of an insurer. Insurance companies should have a litmus test to reveal their financial health in a fashion similar to the capital adequacy ratio of banks. This could be of help to a prospective policy holder to take a decision on taking a policy from a particular company.
With a decade of opening up of insurance sector is to be completed by 2010, there is a possibility of some life insurance companies going public which promises some kind of transparency to the customers. However, the panel is debating to a novel idea of suggesting that even unlisted insurance firms should come up with a public balance sheet as a white paper on the financial condition of the firm. All these should be seen as an introduction of IFRS in India by 2010-11. We need to prepare as the European Union would be implementing them by 2007-08. This also promises well for global interest in Indian insurance and the protection of policy holder.

5.7.4 UNIQUE IDENTIFICATION NUMBER (ID)¹⁶

IRDA notified insurance companies that every life insurance product whether individual or group, and every rider, should be identified with a unique number; and this number has to be quoted in all relevant documents furnished to the policyholders, other users (public, distribution channels) and also in the statutory returns filed with the IRDA. This unique number will have ten characters/digits to indicate the registration number of Insurer allotted by the IRDA, to indicate the nature of product/rider, numeric value to indicate that the product is the nth product of insurer, to indicate the Version and numeric value to indicate the number of times the product is modified.

5.7.5 VIGILANCE ON INSURERS

Insurers have now come under the close scrutiny of the Insurance Regulatory and Development Authority (IRDA). For the first time, IRDA has started conducting on-site inspections¹⁷ of insurance companies and has already completed the inspections of a few companies. Earlier inspections
were done to investigate market conduct issues or check on investments as and when issues came up. But now IRDA is making a comprehensive inspection of all insurance companies once in a year. The insurance regulator has constituted three teams consisting of three members each for conducting these on-site inspections. There will also be one additional member who will check on compliance with all regulations.

The inspections will be conducted in a phased manner and they will ensure all systems are in place, particularly with respect to managing investments - the back office and the front office. IRDA also look at grievance redressal systems, market conduct issues and scrutinise the accounts and the minutes of the board meetings. Earlier, insurers were mainly offering traditional products, but as the market has developed they are now coming out with more complicated products. The immediate concern for the regulator was that insurers maintain their solvency and ensure that the policyholder’s money is safe. The regulator will also pay keen attention to the intermediaries (insurance agents, corporate agents) of the insurance companies. These inspections will be conducted on both life and non-life companies.

**5.8 NEW SOLVENCY NORMS**

Solvency margin is the excess of the value of assets and capital that insurers have to maintain over the insured liabilities. Under the current solvency regime, insurers are expected to maintain a 150 per cent margin over the insured liabilities. The new guidelines Solvency II however, does not imply any change in the margin but make the solvency margins dynamic.
But according to industry sources, the regulator’s starting at migration to Solvency II guidelines has more to do with the ground situation in the country. This implies that some of the insurers are simply not ready for migration. The situation is somewhat identical to the situation faced by the banking sector’s migration to the Basel II capital standards. Solvency II is the insurer’s equivalent of the Basel II. IRDA made it clear that it was no hurry to implement Solvency II guidelines. The IAIS final guidelines released in February 2008 address material risks that insurers face during underwriting risk, market risk, credit risk and operational risk. Instead, the insurance regulator has opted for step-by-step approach. As the first step, life insurers are now expected to file their audited reports on solvency compliance on a quarterly basis effective from this financial year. The migration though would still be short of a complete transition to Solvency II. This is because the asset valuation is currently done on a year-end basis. A half-yearly solvency regime would imply that the asset valuations would also have to be on similar terms. Government securities are still valued on a book value basis by the insurers.

Moreover, some of the western countries that have implemented advanced management information solutions (MIS) are also yet to fully accept the IAIS guidelines. The absence of such MIS in the Indian insurance industry is a major stumbling block for migration to new solvency guidelines. Only the private sector is in readiness for the migration, though they account for only about 30 per cent of the domestic market.

5.9 INSURANCE ACT, 1938

Earlier to the Insurance Act, 1938, the insurance business was carried by the insurance companies in accordance with the principles of the Company
Law, 1913. When the business started growing, the need for an independent law to regulate the insurance business was noticed and a separate Act, the Insurance Act, 1938 was legislated. The Act was used for all purposes relating to both life and general insurance businesses and their regulations. With regards to general insurance, this Act is being used to regulate the marine insurance, fire insurance and other insurances. Further growth of business has made it complex and more legal provisions were required to regulate it. The Marine Insurance Act, 1963, Public Liability Insurance Act, 1991, Insurance Regulatory and Development Authority Act, 1999 and regulations made by the IRDA are some of the legislations that govern the insurance business.

5.9.1 INSURANCE AGENT

Qualifications of the applicant - The applicant shall possess the minimum qualification of a pass in 12th Standard or equivalent examination conducted by any recognised Board/Institution, where the applicant resides in a place with a population of five thousand or more as per the last census, and a pass in 10th Standard or equivalent examination from a recognised Board/Institution if the applicant resides in any other place.

Practical Training - (1) The applicant shall have completed from an approved institution, at least, one hundred hours’ practical training in life or general insurance business, as the case may be, which may be spread over three to four weeks, where such applicant is seeking licence for the first time to act as insurance agent.

Examination.—The Applicant shall have passed the pre-recruitment examination in life or general insurance business, or both, as the case may
be, conducted by the Insurance Institute of India, Mumbai, or any other examination body.

**Fees payable.**-- (1) The fees payable to the Authority for issue or renewal of licence to act as insurance agent or a composite insurance agent shall be rupees two hundred and fifty.

**Code of Conduct.**-(1) Every person holding a licence, shall adhere to the code of conduct specified below:

**(i) Every insurance agent shall,**---

(a) identify himself and the insurance company of whom he is an insurance agent;

(b) disclose his licence to the prospect on demand;

(c) disseminate the requisite information in respect of insurance products offered for sale by his insurer and take into account the needs of the prospect while recommending a specific insurance plan;

(d) disclose the scales of commission in respect of the insurance product offered for sale, if asked by the prospect;

(e) indicate the premium to be charged by the insurer for the insurance product offered for sale;

(f) explain to the prospect the nature of information required in the proposal form by the insurer, and also the importance of disclosure of material information in the purchase of an insurance contract;

(g) bring to the notice of the insurer any adverse habits or income inconsistency of the prospect, in the form of a report (called “Insurance Agent’s Confidential Report”) along with every proposal submitted to the insurer, and any material fact that may adversely affect the underwriting
decision of the insurer as regards acceptance of the proposal, by making all reasonable enquiries about the prospect;

(h) inform promptly the prospect about the acceptance or rejection of the proposal by the insurer;

(i) obtain the requisite documents at the time of filing the proposal form with the insurer; and other documents subsequently asked for by the insurer for completion of the proposal;

(j) render necessary assistance to the policyholders or claimants or beneficiaries in complying with the requirements for settlement of claims by the insurer;

(k) advise every individual policyholder to effect nomination or assignment or change of address or exercise of options, as the case may be, and offer necessary assistance in this behalf, wherever necessary;

(ii) **No insurance agent shall,**----

(a) solicit or procure insurance business without holding a valid licence;

(b) induce the prospect to omit any material information in the proposal form;

(c) induce the prospect to submit wrong information in the proposal form or documents submitted to the insurer for acceptance of the proposal;

(d) behave in a discourteous manner with the prospect;

(e) interfere with any proposal introduced by any other insurance agent;

(f) offer different rates, advantages, terms and conditions other than those offered by his insurer;
(g) demand or receive a share of proceeds from the beneficiary under an insurance contract;

(h) force a policyholder to terminate the existing policy and to effect a new proposal from him within three years from the date of such termination;

(i) have, in case of a corporate agent, a portfolio of insurance business under which the premium is in excess of fifty percent of total premium procured, in any year, from one person (who is not an individual) or one organisation or one group of organisations;

(j) apply for fresh licence to act as an insurance agent, if his licence was earlier cancelled by the designated person, and a period of five years has not elapsed from the date of such cancellation;

(k) become or remain a director of any insurance company;

(iii) Every insurance agent shall, with a view to conserve the insurance business already procured through him, make every attempt to ensure remittance of the premiums by the policyholders within the stipulated time, by giving notice to the policyholder orally and in writing;

Cancellation of licence—The designated person may cancel a licence of an insurance agent, if the insurance agent suffers, at any time during the currency of the licence, from any of the disqualifications mentioned in sub-section (4) of section 42 of the Act, and recover from him the licence and the identity card issued earlier.

5.9.2 REDUCTION IN TRAINING HOURS
The Insurance Regulatory and Development Authority (Irda), through a recent notification, has reduced the number of training hours for insurance
agents. IRDA has also revised the present syllabus. The training hours have been cut to 50 hours from the earlier 100 hours with effect from 1 November 2007. The plan is to make the course more precise within the new time-frame.

The insurance companies will have to keep a record of the sponsored agents and provide a quarterly report about each person sponsored for the test and training. The report will include details like whether the agent has been issued a license within 15 days of passing the exam, the record of training to be given to each person, and the faculty employed for imparting training.

The Insurance industry condemned the recommendations of the D Swarup committee and said the implementation of some of the recommendations will curb its growth. “There is some misconception about the quantum of premium that insurance agents get paid. While the maximum that can be paid to insurance agents is 40 per cent of the first year’s premium, it can also be as low as 2 per cent. The average commission paid to agents would be up to 15 per cent of the premium so the perception that commissions are too high in the insurance business is wrong.

The commission paid to insurance agents, if looked from the perspective of the tenure of the policy (20-30 years), is not very high. Though reduction in the cost structure will help the industry in the long run, the assumption that the advisory model will help in preventing mis-selling is not valid.

5.9.3 CAPITAL REQUIREMENT

Capital requirement is same as mentioned in IRDA Act, 1999. i.e.-no insurer carrying on the business of life insurance, general insurance or re-insurance
in India on or after the commencement of the Insurance Regulatory and 
Development authority Act, 1999, shall be registered unless he has,-
(i) a paid-up equity capital of rupees one hundred crores, in case of a person 
carrying on the business of life insurance or general insurance; or
(ii) a paid-up equity capital of rupees two hundred crores, in case of a person 
carrying on exclusively the business as a 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:

5.9.4 AUDIT PROCESS
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.

5.9.5 INVESTMENT OF ASSETS
(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 security.

5.9.6 TRANSFER OF POLICIES
Concrete the way for free trading in Insurance policies, the Bombay High Court has, in a landmark judgment\(^{19}\), ruled that Life Insurance policies are very much tradable and transferable. The ruling came in response to a petition filed by 'Insure Policy Plus Services', a Mumbai-based insurance policy trading company, challenging the refusal by Life Insurance Corporation (LIC) to register assignments of life insurance policies. While disposing off a petition, a Division Bench of Justice F I Rebello and Justice Anoop Mohata held that assigning of Life Insurance policies was permissible under section 38 of the LIC Act.
Considering the terminology of the section, it was not open to the insurer to dispute the right of the insured, to transfer or assign the policy.
The Petitioner had sought declaration that insurance policies issued by LIC were tradable and assignable in accordance with the LIC Act, as it had issued two circulars refusing to register assignments in favour of companies trading only insurance policies, though assignments in favour of Banks and other Financial Institutions were continued to be allowed.

The LIC had taken stand that such companies having only wagering contracts had no insurable interests in the continuance of life insured and section 38 of the LIC Act was only a procedural provision. It was also contended that the LIC Act has been enacted for public interest and as a measure of social security and such a trading cannot be permitted under the Act. As an example, LIC had put forth that, in some states of Canada it was not only prohibited but also punishable under law. The court refused to accept contention of the LIC, making it clear that the legislature when it provided for assigning or transferring has not treated the policy as protection for a widow or security for family of life insured. On the contrary, Life Insurance has become one of the best forms of investments worldwide.

5.10 LIFE INSURANCE COUNCIL

The Life Insurance Council will have an Executive Committee of 16 members of which 2 will be from the IRDA and the rest from licensed life insurers. The Committee will set up standards of conduct and practices for efficient customer service, advise IRDA on controlling insurers’ expenses and serve as a forum that helps maintain healthy market conduct. It will create and manage a process for agent examination and certification. The Life Insurance Council is funded by the Life Insurers in India.
The Life Insurance Council seeks to play a significant and complementary role in transforming India’s life insurance industry into a vibrant, trustworthy and profitable service, helping the people of India on their journey to prosperity. Its Objective includes:

- To function as an active forum to aid, advise and assist insurers in maintaining high standards of conduct and service to policyholders
- Advise the supervisory authority in the matter of controlling expenses
- Interact with the Government and other bodies on policy matters
- Actively participate in spreading insurance awareness in India
- Take steps to develop education and research insurance
- Help bring to India the benefit of the best practices in the world

The Council will -

- Strive for a positive image of the industry through media, forums and opinion-makers and enhance consumer confidence in the industry
- Assist the industry in maintaining high standards of ethics and governance
- Promote awareness regarding the role and benefits of life insurance
- Organize structured, regular and proactive discussions with Government, lawmakers and Regulators on matters relevant to the contribution by the life insurance industry and act as an effective liaison between them
- Conduct research on operational, economic, legislative, regulatory and customer-oriented issues in life insurance, publish monographs on current developments in life insurance and contribute to the development of the sector
- Set up the Mortality and Morbidity Information Bureau (MMIB) and take an active role in its functioning
- Set up similar organizations for the benefit of the life insurance industry
- Act as a forum of interaction with organizations in other segments of the financial services sector
- Play a leading role in insurance education, research, training, discussion forums and conferences
- Provide help and guidance to members when necessary
- Be an active link between the Indian life insurance industry and the global markets

5.10.1 Legislations & Control

Address common issues in legislation and practice. Interface with the various other regulatory bodies on behalf of the insurance industry. Identify regularly the important issues to be taken up with Government and/or IRDA & PFRDA and make presentations on behalf of the industry. Prepare benchmarks for the industry in all areas of operation and help maintain high standards of conduct, ethics and governance. Take measures to prevent practices that are detrimental to the interests of the policyholders.

5.10.2 Training & Certification

Take up the work relating to the training, examination and certification of Agents as provided in the Insurance Act. Play a positive role in establishing standards, training of officials and intermediaries not only in products and sales but also other aspects relevant to the life insurance industry and lift the level of professionalism. Conduct professional development programs in collaboration with international councils and life insurance institutes.
5.10.3 Education & Awareness
It launches regular insurance awareness programs. Facilitate the conducting of Continuous Development Programs for intermediaries. Provide structured regular information to the public about the industry. Launch an interactive website/Life Insurance Journals/newsletters. It organizes/participates in major conferences, seminars, workshops and lectures by Indian/visiting experts on insurance and related areas. Facilitate knowledge-exchange programs (both in India and with Councils abroad) to develop and upgrade the skills of local insurance professionals. It co-ordinate with educational institutions in India and overseas to encourage research, professional development courses etc. Elevate the profession of insurance selling and that of the Advisor, to that of financial analysts and planners through certification programs developed in conjunction with Indian and International institutions. Establish a consumer relations cell.

5.10.4 Code of Conduct
The 'Code of Good Conduct' for the life insurance industry, which was approved at the Life Insurance Council, is expected to be notified by the IRDA\(^2\). The code is a set of self-regulations, meant to eliminate unethical, over-competitive, illustration and advertising practices. Essentially, the code lays down the ground rules for the conduct of business of the life insurance companies in India. More specifically, it puts down the do’s and don'ts for product design, disclosures in product brochures, premium receipts, and making available policy-related information.
For example, it says that all life insurance companies must provide official illustrations to the customers through their intermediaries for all the products, about the working of the policy. These illustrations must be refreshed at least once a year. The Life Insurance Council may, at the request of the IRDA, set the optimistic and conservative projection rates more frequently than annually. The appointed actuary must approve the illustrations that are provided to the customers. Further, at least two views should be illustrated - the optimistic view and the conservative view. However, while the code says that there should be "a standard common statutory warning on all illustrations," it does not say what. It is understood from sources that the "warning" is being worked out.

All policy, fund management and other policy charges payable by customers should be clearly spelt out and included within the illustration tables. On what should be disclosed or avoided in a brochure, the code says that sales illustration should clearly distinguish between guaranteed and non-guaranteed benefits. Also, the insurer "shall review the assumptions in its sales illustrations at least once a year." Under `product design', the code says that an extension to a life policy in the form of a rider must not be made compulsory at any time during the term of the policy. It further says that where an insurer proposes to defer the policyholder's right to participate in the surplus, the insurer shall make "a clear statement" to that effect in the sales brochures.

The code also requires the companies to inform the customers information such as the facility available and the mode of payment of premium and the periodicity of the payment, the person to be contacted for any enquiry or
service relating to the policy and the availability of the ombudsmen in the resolution of any dispute.

5.11 INSURANCE OMBUDSMAN

In a liberalized insurance market, the consumer has become the focal point of all activities and the establishment of the institution of Insurance Ombudsman has been a right step in the changed circumstances. The Government of India circulated Redressal of Public Grievances Rules 1998 (under the Insurance Act 1938) to establish the Institution of Insurance Ombudsman in the country with a view to provide the insuring public a speedy and inexpensive grievance redressal mechanism. The institution of Insurance Ombudsman started functioning since 1999. Ombudsmen are appointed from persons with experience in Industry, Civil, Administration and Judicial Services. Ombudsmen are provided with secretarial staff by the Insurance Council. Staff is drawn from public sector insurance companies through fixed term deputation. At present there are twelve Ombudsman centers covering all parts of the country with specific territorial jurisdiction at the following places –


Insurance Ombudsman is the insurance grievance redressal authority with the objective of providing a forum for resolving disputes and complaints from the aggrieved insured public or their legal heirs against insurance companies operating in general insurance business and life insurance business, in public and private sector. The authority resolves the complaints
relating to settlement of claims on the part of insurance companies in a cost effective, efficient and impartial manner.

**5.11.1 POWERS OF OMBUDSMAN**

The Insurance Ombudsman considers the following types of complaints:

a. Any partial or total repudiation of claims by an insurer

b. Any dispute in regard to premium paid or payable in terms of the policy

c. Any dispute on the legal construction of the policies in so far as such disputes relate to claims

d. Delay in settlement of claims

e. Non-issue of any insurance document to customers after receipt of premium

The following types of complaints are not fit or not maintainable or not entertainable by the Ombudsman.

- Complaints in respect of policies issued on firms/organizations/ companies.
- Complaints regarding lapsed policies
- Routine administrative or policy service matters
- Complaints against staff of insurance companies
- Complaints on agents/development officers/marketing officials of insurance companies.

**5.11.2 CONDITIONS FOR ADMITTING COMPLAINTS**

Any aggrieved individual who has taken insurance policy on personal lines or his legal heirs under such policy can approach Ombudsman within whose jurisdiction the Branch or office of the insurer complained against is located.

Insurance on 'personal lines' means a policy taken or given in an individual capacity, e.g. life insurance, personal accident insurance, insurance of
property of the individual such as motor vehicle, household articles, mediclaim insurance etc. In the case of complaints arising under group insurance schemes, place of residence of the complainant would decide the jurisdiction of Ombudsman irrespective of the place of issue of the policy. For a complaint to be admissible, it is essential that:

- Before approaching the Ombudsman, the complainant should have made a representation to the insurer who had either rejected the complaint or the complainant had not received any reply within one month or the complainant is not satisfied with the reply given by the insurer.
- The complaint is made within one year after the insurer had rejected the complaint or sent his final reply on the complainant's representation
- The subject matter of complaint should not be pending or considered by any Court or Consumer Forum or Arbitrator
- Compensation/relief claimed should not exceed Rs.20 lakh. Procedure for lodging complaint:

The procedure is simple as the complaint can be given on a plain paper. When the complaint falls within the terms of reference, the office of Ombudsman will issue prescribed forms to the complainant. No fees/charges are required to be paid. The complainant is not required to approach the Ombudsman through a lawyer as it is established to administer justice directly and expeditiously. The purpose of Ombudsman is to bring about an amicable resolution of the complaint in quick time and with minimal cost. After conducting personal hearing of the complainant and insurance companies, the Ombudsman decides the issue in the form of an award or ex-gratia. After conducting the hearing, the Ombudsman passes an award
within three months from the date of receipt of the complaint in the prescribed form. The award of the Ombudsman is binding on the insurer. If the award is not acceptable to the complainant, then the insurance company cannot obviously implement the award since the acceptance is a precondition for the company to implement the award. There is no provision for review of the orders passed by the Ombudsman. Mistakes apparent from record may be rectified by virtue of inherent powers. However, complainant can approach the consumer forum or civil court if not satisfied with the award of the Ombudsman, but not as an appeal.

5.11.3 COMPLAINT SETTLEMENT PROCEDURE
The Ombudsman may adopt any procedure which he deems fit for disposing off the complaint fairly and equitably. The Ombudsman may ask the parties for necessary papers in support of their claims and may collect factual information available with the insurance company. The Ombudsman may engage the services of professional experts to assist him in discharging his functions. The Ombudsman, as an independent and quasi-judicial body, may follow such procedure considered just and proper for promoting settlement of the complaint.

The Ombudsman shall act as counselor and mediator if requested to do so in writing by mutual agreement by the complainant and the insurance company. The Ombudsman shall make a recommendation which he thinks fair in the circumstances of the case within one month from the date of receipt of the complaint. Where the complaint is not settled by agreement, the Ombudsman shall pass a speaking award with detailed reasoning which he thinks fair in the facts and circumstances of the claim. The award shall state the amount awarded to the complainant and the compensation awarded
shall be limited to the loss suffered by the complainant as a direct consequence of the peril subject to a limit of Rs.20 lakh. If the action of the Insurance Company in rejecting the claim is found to be in order and as per law on the facts and circumstances of the case; the complaint shall be dismissed by the Ombudsman by passing a speaking order with detailed reasoning. If the Ombudsman deems fit, he may award Ex-gratia payment of a claim.

Advisory Committee - Consisting of five eminent persons is notified by the Government to assist IRDA to review the performance from time to time. IRDA, after discussion with GBIC may recommend to Government appropriate proposals for effective improvement in functioning of Ombudsman by amending the Scheme. Annual Reports are submitted by the Insurance Ombudsman containing:

(i) Review of the activities for the financial year,
(ii) Quality of service rendered by the insurers
(iii) Recommendations for improving them and
(iv) Suggestions for long term improvement of insurance sector.

5.11.4 SUGGESTIONS FOR REDUCING GRIEVANCES
The claim settlement performance of the industry is commendable as lakhs of claims are settled every year without any dispute or problem. The number of complaints to Ombudsman is not increasing in proportion to the increase in the number of policies issued and claims settled. However, there is scope for improvement and minimizing the grievances in the following areas:

1. Inordinate delay in processing claims and in communicating the decisions.
2. Inadequate appreciation of the fact and circumstances leading to claims and grievances.

3. Inadequate checks and balances in reviving the lapsed policies merely on the basis of good health certification. It is observed that revival of policies up to a period of five years without medical examination facilitates collusion, misrepresentation and fraud by the agents and policyholders. Preventive action is required to be taken against dishonest agents and development officers.

4. The customers should be educated on the risks they are exposed to and about the policies available.

5. In the cases where mis-sale or misrepresentation by the agent is established instead of letting officials go lightly, deterrent action is required to be taken and the policyholder need not be penalized. At least the claim should be settled with suitable ex-gratia at the representation stage.

6. Where third parties like TPAs, surveyors and professionals are involved, indulging in blame game and passing the buck is not desirable for the inordinate delay in processing the claim and rejecting the same on frivolous grounds.

7. Officials should be encouraged to take bold decisions in bona fide cases.

8. Simplification of forms and procedures is desirable and as far as possible the forms should be got filled up by the insured and the medical information may be required to be supported by medical records.

9. Policies should be drafted in simple understandable language. Industry should strive for common format of documentation and language for similar policies. Important provisions like exclusion clauses, time limits for preferring claims etc. should be prominently displayed and not in small print.
10. Rejection on technical grounds like delay in preferring the claims should be avoided where reasonable cause for the delay could be shown and the delay deserves to be condoned on the facts and circumstances of the case. If the claim is otherwise admissible, the delay should be ignored by the reviewing authorities of the internal grievance redressal mechanism instead of driving the policyholders to external authorities.

11. Rejection on the basis of assumptions, surmises or suspicion should be avoided. Any conclusions relating to pre-existing diseases etc. should be supported by proper evidence and records. Insurance companies should create awareness by displaying salient features of the scheme for common knowledge of the public enabling the small policyholders to avail the benefits of this inexpensive and expedient remedy.

**Conclusion:**

IRDA has taken major steps to regulate the life insurance business in India. We can see the consequence of those acts in each & every activity of insurers. If there is any kind of litigation between the Insurer & the Policyholder, it’s a loose- loose situation for both, as policyholder does not get his benefits on time and Insurer also face problems in legal proceedings. There are lots of cases pending in consumer forums for decision. IRDA is working in great deal to minimize the dispute among the stakeholders of the industry. Still there is need & wide scope to regulate the working & operations of companies. IRDA is continuously keeping eye on the operation & activities of insurers hence in the coming days the consumer can breathe in stress free environment.
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