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5.1 INTRODUCTION

This chapter deals with the legal aspects of the insurance industry since the beginning, including Life Insurance Act 1912, Insurance Act 1938, Life Insurance Act 1956, and IRDA Act 1999, and purport and scope of each of this legislation. The chapter also highlights how the private insurers are moving forward in the business by following the guidelines of IRDA, and also highlights about the aspects of future developments in the products of life insurance, and explains how the investment stipulations protect the policy holders, and some of the other legal aspects of the industry like, the legislative regimes, amendments of the acts etc.

5.2 LIFE INSURANCE COMPANIES ACT, 1912.

Up to the end of nineteenth century, the insurance was in its incipient stage; therefore, no legislation was required till that time. The Indian Companies Act 1883 was applicable in business concerns, banking and insurance companies. New Indian Insurance Companies and Provident Societies started at the time of national movement, but most of them were financially unsound. It was asserted that the Indian Companies Act, 1883 was inadequate for the purpose. Therefore, two Acts were passed in 1912, namely, Provident Insurance Societies Act V of 1912 and Indian Life Insurance Companies Act VI of 1912. These two Acts
were in pursuit of the English Insurance Companies Act of 1909; the Act put the life insurance business in India on sounder footing and resulted in creating a healthier atmosphere than before. It was also instrumental in the dissolution of some unsound Indian as well as non-Indian life offices or in the merging of some of them with the others. The legislation in India was confining of some of them with the others. To prevent financial weakness the insurers were required to keep certain stated deposits. The Indian insurers were exempted from submitting separate particulars regarding the business done in India. Some English companies ceased to underwrite further business with a view to avoiding submission of reports to the Government of India. Some Indian Companies which conducted business on assessments or on actuarially unsound basis either dropped or mortgaged team to conform to actuarial requirements. The policies issued by these companies were not less than Rs.1, 000. The aim of the Provident Insurance Societies Act 1912 was to govern Provident Insurance Societies which were engaged in issuing life policies worth Rs. 1,000 or less and marriage and disease policies, of very nominal amount. This act was purely based on the Friendly Societies Act.
These two enactments were governing only life insurance. There was no control on general insurance since such business was not so developed. Besides, there were the following defects in these Acts.

**Defects**

1. There was no regulation pertaining to investment. The need for restriction on investments was felt in India because unenlightened public was not able to judge the position of a company. But simply because there was no restriction on investment in England, no restriction was placed in India.

2. The control and enquiry was slight. Non-compliance of rules and regulations was not strictly penalized.

3. The foreign companies were to submit report of their total business both in India and outside India. But separate particulars regarding business done in India were not demanded and the absence of these made it impossible to get any idea of the cost of procuring business in India for foreign companies and comparing them with similar data of the Indian companies.

4. The Government Actuary was not vested with the power to order investigation into the conduct of a company even when it appeared that the company was insolvent under the power of exemption, several new underwriters were granted exemption even from
submitting reports to the Governments although the business transacted continued to be in force.

5. Any one can start life insurance business only with the sum of Rs. 25,000. It was too low to prevent the mushroom growth of companies. Foreign insurer was not bound to deposit a certain sum of life policy issued in India. Thus, it was not sufficient to check the floatation of unhealthy concerns and provided discrimination in India.

These defects were compelling the above Acts to be replaced. Public was aware of the fact that the Indian companies in foreign countries or in England were directed to have a certain sum in the shape of reserve contrary to the situation in India. The law in India was not in line with the laws in force in other countries. Persistent demands were made by various important public bodies in the country for statutory provisions which would provide for disclosure and publication of the business carried on in India by foreign companies. After a few years it was realized that there should be another efficient and adequate Act.

So, the Government placed a bill for essential amendment of the Act, in 1924. The bill was containing a wide scope of insurance
business. The bill came to the legislative assembly after thorough comments by different bodies.

During the time, an important thing happened miraculously about the enactments of insurance business in England. Great Britain appointed Clauson (under the chairmanship of Mr. A. C. Clauson) Committee to report the possible and required changes in the Legislation. Therefore, the Government of India thought it wise to postpone the bill to include the reports of Clauson Committee. The Clauson Committee submitted its report in February, 1927, but no action was taken on its recommendations by the Government of England. The Government of India in 1928 passed a stop-gap legislation with the main object of collecting statistics regarding insurance matters so that the information collected would be of value when the time would come to pass a comprehensive act. This act was not very comprehensive. The Government of India wanted to wait for the England Legislation which was expected to be passed in 1929 or so and base the law for India on the British model but the legislation was not passed in Britain. The slow progress of events in Britain again revived the agitation for amendment of the law of Insurance in India.
5.2.1 Demand for another Act

Since the Act of 1928 was not very comprehensive, demand for another Act was made. There were forceful and constant demands for such legislation which can control Indian as well as non-Indian insurance companies and can reduce the competition between these companies. The Government accepted the genuine demand and appointed one special officer for investigations the special and required reform of legislation in 1935. He was a well-known Calcutta Solicitor and was placed on special duty to report on the amendments necessary to modernize insurance legislation in India. His report was considered by the Advisory Committee appointed by the Government of India from representatives of all branches of insurance. The committee made several changes and the Government of India introduced the bill in the legislative Assembly in 1937 and after much debate and several changes, it emerged as the Insurance Act 1938.

5.3 THE INSURANCE ACT, 1938

The Insurance Act 1938 which came into effect from 1st July 1939 and was amended in 1950 and later in 1999 is the principal enactment relating to the business of Insurance in India. The Insurance Act, 1938, was the first legislation governing all forms of insurance to
provide strict control over insurance business. It was well balanced and was the first comprehensive piece of insurance legislation in this country governing both life and non-life branches of insurance. This Act provided to prevent the growth of mushroom companies, to enforce working on sound principles, to prevent misappropriation of funds and to protect the assets. This Act of 1938 was wide and more comprehensive. There was strict control over the insurance business.

The Act contains the provision regarding the following:

- Licensing of agents and their remuneration
- Prohibition of rebates
- Protection of policyholders interests
- Placing limits on the expenses of insurers
- Use of funds and patterns of investments
- Maintaining solvency levels
- Institution of Insurance Association and Insurance Councils
- Tariff Advisory Committee (For general insurance).

5.4 THE LIFE INSURANCE CORPORATION ACT, 1956.

Under the Chairmanship of Sri Kavas Ji Jahangir, a meeting was appointed which was to investigate all the misconduct of the insurance business. The committee gave its reports after a thorough
inquiry on which recommendation was made for amending many important sections and to introduce new sections. On this basis one amendment bill was made and was sent to different select committees and at last it was enacted on 18th April, 1950 by the Parliament. According to this amended Act, there are provisions pertaining to administration. The total right of control is with the Central Government. The Central Government controls the insurance business by appointing Controller of Insurance. The rules and regulations must be followed by the insurance companies; otherwise they will penalize under this Act. The Life Insurance business was nationalized in bringing into existence the LIFE INSURANCE CORPORATION OF INDIA owned by government of India by merging 245 life insurance companies through the passage of the Life Insurance Corporation Act in 1956. the functions of corporation as follows:

The Functions of the Corporation:

1. Subject, to the rules, if any made by the Central Government in this behalf, it shall be the general duty of the Corporation to carry on life insurance business, whether in or outside India, and the Corporation shall so exercise its powers under this Act as to secure
that life insurance business is developed to the best advantages of
the community.

2. Without prejudice to the generality of the generality of the
provisions contained in sub-section (1) but subject to the other
provisions contained in this Act, the Corporation shall have power
to:

a. carry on capital redemption business, annuity certain business or
reinsurance business in so far as such reinsurance business
appertains to life insurance business

b. subject to the rules, if any, made by the Central Government in this
behalf, to invest the funds of the Corporation in such manner as the
Corporation may think fit and to take all such steps as may be
necessary or expedient for the protection or realization of any
investment, including the taking over of and administering any
property offered as security for the investment until a suitable
opportunity arises for its disposal.

c. To acquire, hold and dispose of any property for the purpose of its
business

d. To transfer the whole or any part of the life insurance business
carried on outside India to any other person or persons, if in the
interest of the Corporation it is expedient so to do.
e. To advance or lend money up of on the security of any movable property or otherwise

f. To borrow or raise any money in such manner and upon such security as the Corporation may think fit.

g. To carry on any other business which may seen to the Corporation to be capable of being conveniently carried on in connection with its business and calculated directly or indirectly to render profitable the business of the corporation.

h. To carry on either by itself or through any subsidiary any other business in any case where such other business was being carried on by a subsidiary of an insurer whose controlled business has been transferred to an vested in the Corporation under this Act,

i. To do all such things as may be incidental or conductive to the proper exercise of any of the powers of the Corporation.

3. In the of discharge of any its function the Corporation shall act so far as may be on business principles.

This Act was the basis for establishment of LIC as a body corporate consisting of not more than 16 members appointed by the centralized one of them being the Chairman. The Corporation's duty was to carry on Life insurance business to the best advantage of community.
See 30 of the Act gave LIC the exclusive privilege to transact life insurance business in India. (This exclusion privilege ceased as a result of the amendments made in 1999, made in pursuance of the Government policy of economic reform) ¹.

5.5 LEGISLATIONS

5.5.1 Legislative Regime

The principal legislation regulating the insurance business in India is the Insurance Act of 1938 (hereinafter referred to as the principal Act). Some other existing legislation in the field is – the Life Insurance Corporation (LIC) Act, 1956, the Marine Insurance Act, 1963, the General Insurance Business (GIB) (Nationalization) Act, 1972 and the Insurance Regulatory and Development Authority (IRDA) Act, 1999. The provisions of the Indian Contract Act, 1872 are applicable to the contracts of insurance, whether for life or non-life. Similarly, the provisions of the Companies Act, 1956 are applicable to the companies carrying on insurance business.

The subordinate legislation includes Insurance Rules, 1939, and the Ombudsman Rules, 1998 framed by the Central Government under Sec.114 of the principal Act as also 27 regulations made by the IRDA under Sec.114 A of the principal Act and s.26 of the IRDA Act 1999.
5.5.2 Background to recent legislative changes

The announcement of the new industrial policy in 1991, envisaged the transition of the economy from a regulated to a liberalized and deregulated regime leading to the privatization of insurance sector to provide a better coverage to citizens and to augment the flow of long-term financial resources. This transition also meant that competition was bound to intensify in future with the entry of several private players in the field, particularly the foreign companies in joint venture with Indian partners. In order to prevent misuse by insurers of policyholders’ and shareholders’ funds and to ensure accountability, it was imperative to have in place an effective regulatory regime. Insurers being repositories of public trust, efficient regulation of their business became necessary to ensure that they remained worthy custodians of this trust. Further, insurance cash flows generated funds needed for investment in the social sector and for the development of infrastructure. Therefore, the regulation of insurance required a paradigm shift from just supervisory and monitoring role to development role so that the insurance business promoted economic growth.
5.6 MALHOTRA COMMITTEE REPORT

In the backdrop of new industrial policy, the Government of India set up in 1993 a high-powered committee headed by Mr. R. N. Malhotra to examine the structure of the insurance industry, to assess its strength and weaknesses in terms of the objective of providing high quality services to the public and serving as an effective instrument for mobilization of financial resources for development, to review the existing structure of regulation and supervision of insurance sector and to suggest reforms for strengthening and modernizing regulatory system in tune with the changing economic environment. The Malhotra Committee submitted its report in 1994. Some of the major recommendations made by it were as under:-

- the establishment of an independent regulatory authority (akin to Securities and Exchange Board of India);
- Allowing private sector to enter the insurance field;
- Improvement of the commission structure for agents to make it effective instrument for procuring business specially rural, personal and non-obligatory lines of business;
- Insurance plans for economically backward sections, appointment of institutional agents;
• Setting up of an institution of professional surveyors/loss assessors;
• Functioning of Tariff Advisory Committee (TAC) as a separate statutory body;
• Investment on the pattern laid down in Sec.27;
• Marketing of life insurance to relatively weaker sections of the society and specified proportion of business in rural areas;
• Provisions for co-operative societies for transacting life insurance business in states;
• The requirement of specified proportion of the general business as rural non-traditional business to be undertaken by the new entrants;
• Introduction of unlinked pension plans by the insurance companies; and
• Restructuring of insurance industry

5.6.1 Regulatory Legal Regime - Insurance Regulatory and Development Authority Act, (IRDA) 1999

On the recommendations of the Malhotra Committee, the Government of India constituted an interim Insurance Regulatory Authority and later enacted the Insurance Regulatory and Development Authority Act, 1999 to establish a statutory body to regulate promote and ensure orderly growth of insurance and reinsurance business as also to
protect the interest of policy holders. The constitution of the Insurance Regulatory and Development Authority (hereinafter referred to as the Authority/IRDA) is being considered as one of the most redeeming features of insurance reforms in ‘India.

The IRDA Act provides for the composition of the Authority, terms and conditions of the Chairperson and members including their tenure and removal; duties, powers and functions of the Authority including regulation making power and delegation of powers; establishment of Insurance Advisory Committee; Insurance Regulatory and Development Authority fund and powers of the Central Government to make rules, to issue directions to the Authority and to supersede the same, if it is necessary; and other miscellaneous provisions.

- The First Schedule appended to the IRDA Act listed out several amendments to the Insurance Act, 1938.
- The Second Schedule to the IRDA Act inserted Sec.30A in the Life Insurance Corporation Act, 1956 whereby the exclusive privilege of LIC to carry on life insurance business in India was to cease.
- The Third Schedule to the IRDA Act inserted a similar provision, Sec.24A, in the General Insurance Business (Nationalization) Act, 1972 whereby the exclusive privilege of the GIC and its subsidiaries in relation to general insurance business ceased.
5.7 THE INSURANCE REGULATORY AND DEVELOPMENT AUTHORITY ACT, 1999

Owing to the nationalization of the insurance sector there were no private insurance companies operating in India till 1999, when the Government of India introduced the Insurance Regulatory and Development Authority Act, thereby deregulating the insurance sector and allowing private companies into the insurance. Further, foreign investment was also allowed and capped at 26 per cent holding in the Indian insurance companies. Thus, the objective of the IRDA Act, 1999, was to provide for the establishment of an authority to protect the interests of holder of insurance policies, to regulate, promote and ensure orderly growth of the insurance industry and for matters connected therewith or incidental thereto and further to amend the Insurance Act, 1938, the Life Insurance Corporation Act, 1956.

The insurance Regulatory and Development Authority (IRDA) was constituted as an autonomous body to regulate and develop the business of insurance and re-insurance in the country in terms of Insurance Regulatory & Development Authority Act, 1999. The Authority was constituted on 19th April, 2000 vide Government of India’s notification
The key objective of the Authority is to promote market efficiency and ensure consumer protection.

The Authority has been required by law, under Section 20 of the IRDA Act, to furnish an Annual Report on its performance and other related issues to the central Government. This report is accordingly prepared and submitted to the Central Government.

5.7.1 MISSION STATEMENT OF IRDA

- To protect the interest of and secure fair treatment to policyholders;

- To bring about speedy and orderly growth of the insurance industry (including annuity and superannuation payments), for the benefit of the common man, and to provide long term funds for accelerating growth of the economy;

- To set, promote, monitor and enforce high standards of integrity, financial soundness, fair dealing and competence of those it regulates;

- To ensure that insurance customers receive precise, clear and correct information about products and services and make them aware of their responsibilities and duties in this regard;

- To ensure speedy settlement of genuine claims, to prevent insurance frauds and other malpractices and put in place effective grievance redressal machinery.
• To promote fairness, transparency and orderly conduct in financial markets dealing with insurance and build a reliable management information system to enforce high standards of financial soundness amongst market players;

• To take action where such standards are inadequate or ineffectively enforced;

• To bring about optimum amount of self-regulation in day to day working of the industry consistent with the requirements of prudential regulation.

5.7.2 The Powers and Functions of the IRDA

The IRDA has the duty to regulate, promote and ensure orderly development of the insurance and reinsurance business. The powers and functions of the IRDA include:

• registration/modification/cancellation of registration of insurers

• to cause compliance of the requirement of capital structure of the companies as also solvency margin, insurance business in rural and social sector, submission of their returns/reports, approval & preparation of the scheme of amalgamation and transfer of the insurance business.

• To issue of license to insurance intermediaries or agents

• Control over management of insurers
• Search and seizure
• Protection of interest of policy holders
• Promotion and regulation of professional organizations conducting insurance business
• Regulation of investment of funds by insurance companies
• Investigation and inspection of the affairs of the insurers
• Adjudication of disputes between insurers and insurance intermediaries
• Supervising functions of Tariff Advisory Committee
• And to frame regulations to carry out purposes of the Insurance Act, 1938

pursuant to its powers under the IRDA Act, the IRDA has framed 27 sets of Regulations on various topics like preparation and submission of actuarial reports, obligations of insurers to rural and social sectors, registration of Indian insurance companies, and preparation of financial statements and auditor’s report of insurance companies, form of annual statements of account and record, insurance brokers, etc. these regulations are important constituents of Regulatory regime.

The IRDA opened up the market in August 2000 with the invitation for application for registrations. Foreign companies were allowed
ownership of up to 26%. The Authority has the power to frame regulations under Section 114A of the Insurance Act, 1938 and has from 2000 onwards framed various regulations ranging from registration of companies for carrying on insurance business to protection of policyholders’ interest. The Insurance Regulatory and Development Authority (IRDA) Act, removed all entry restrictions for private players and allowing foreign players to enter the market with some limits on foreign direct ownership. There is a 26% equity cap for foreign partners in an insurance company. There is presently a proposal by the Government to increase this limit to 49%. The opening up of the insurance sector has led to the rapid growth of the life insurance sector. As at 31.3.07, there were 16 life insurance companies in the market. The potential for growth of insurance industry in India is immense as nearly 75% of Indian population is without life insurance cover. With such a large population and a vast untapped market makes Indian Life Insurance market a very big opportunity in India for the new entrants in the sector. The insurance sector has been growing steadily and is a major source of long-term contractual funds needed for infrastructure development through investment of Life Funds. Today it stands as a business growing at the rate of 15-20% annually. Together with banking services, it adds about 7% to the country’s GDP.
5.8 CONTROL MEASURES TAKEN BY IRDA

5.8.1 Protection of interests of policy holders

Consistent with the Mission Statement, the Authority has set up two grievance cells separately for life and non-life. The grievance cell adopts a proactive approach in identifying the complaints made against the insurers. Based on the nature of the companies made against the insurers. Based, on the nature of the complaints if necessary, the Authority further instructs the insurers to put in place easy access facilities and prompt servicing mechanism.

5.8.1.1 Married women's property Act 1874: Section 6 of the MWP Act is related to Life Insurance as it provides that a policy of insurance effected by any married man on his own life and expressed on the face of it for the benefit of his wife and children, shall be deemed to be a trust for the benefit of his wife and children and shall not be subject to the control of the life assured or his creditors or form part of his estate. The Act provides for appointment of Trustees by the Life assured to receive the policy moneys as and when due and hold them in trust for the benefit of beneficiaries.

5.8.1.2. Consumer protection Act 1986(CDPA): under this Act, a consumer as an individual or along with other individuals or through a consumer organisation, can approach the various forums prescribed under
the Act for readers, in case he is not satisfied with the goods or service provided. He has to allege a deficiency in goods or service. A defect or deficiency is a fault, imperfection, shortcoming or inadequacy in the quality, nature or manner of performance which is required to be maintained by or under any law or in pursuance of a contract or undertaking in relation to that service.

In order to attend to complaints under the Act, consumer dispute redressal forum are established in each district (District Forums) and for each State (State Commission). The forum at the district level hears complaints up to the value of Rs. 20 lakhs and the State Commission leave complaints up to the value of the 100 lakhs. The National Commission deals with complaints received by them beyond the jurisdiction of the State Commissions and also appeals against the decision of the State Commission. The COPA applies to the insurance business also. Aggrieved policyholders and beneficiaries have the right to seek redress against unfair products or unsatisfactory, service from insurance and from agents. The majority of disputes in life insurance rise out of repudiation of death claim and delays in claims.

5.8.1.3 Insurance ombudsman scheme

The Central Government has Framed Rules known as Redressal of Public Grievances Rules 1998 in exercise of the powers vested in it under sec
114(1) of Insurance Act 1938 on 11.11.1198. Under these rules the Central Government has notified Insurance Ombudsman Scheme to resolve all complaints relating to the claims against insurers. The Ombudsman may receive and consider complaints relating to:

- Any partial or total repudiation of claim by insurer
- Any dispute in regard to premium paid or payable in terms of the policy
- Any dispute in regard to the legal construction of the policies is so far such disputes relate to claim
- Delay in settlement of claims
- Non issue of an insurance document to the customer after receipt of the premium

If approached jointly in writing by the complainant and the insurers, the ombudsman shall act as a counselor and mediator in matters within his team of reference and make his recommendation for compliance by the insurer. Where there is a disagreement between the complainant and the insurer the Ombudsman consider the facts of the case and passes an award. Once the Ombudsman passes and Award, it is binding on the insurance company, if the complainant has given his consent. Insurance Ombudsman scheme is a grievance of policy holders and claimants outside the legal process.
5.9 MONTORING OF INVESTMENTS OF THE INSURERS

The IRDA monitors the investments made by the Life Insurers from time to time. The investments made by the insurers for public and private sector is given below, the investments of the LIC increased by

<table>
<thead>
<tr>
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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Total</td>
<td>% Increase</td>
<td>Total</td>
<td>% Increase</td>
</tr>
<tr>
<td>Life</td>
<td>307308.91</td>
<td>19.17</td>
<td>397188.66</td>
<td>8.46</td>
</tr>
<tr>
<td>Pension &amp; General Annuity</td>
<td>9551.85</td>
<td>12023.77</td>
<td>37264.29</td>
<td>209.92</td>
</tr>
<tr>
<td>Groups</td>
<td>34075.47</td>
<td>42680.85</td>
<td>26809.63</td>
<td>-37.19</td>
</tr>
<tr>
<td>Traditions (A)</td>
<td>350936.22</td>
<td>420924.47</td>
<td>461262.59</td>
<td>181.19</td>
</tr>
<tr>
<td>Unit Linked Funds</td>
<td>1688.31</td>
<td>7527.44</td>
<td>25888.14</td>
<td>243.92</td>
</tr>
<tr>
<td>ULIP (B)</td>
<td>1688.31</td>
<td>7527.44</td>
<td>25888.14</td>
<td>243.92</td>
</tr>
<tr>
<td>Total Investments</td>
<td>352624.53</td>
<td>428451.91</td>
<td>487150.73</td>
<td>604179.81</td>
</tr>
</tbody>
</table>

Source: IRDA Journal 2006-07

5.10 SOLVENCY AND PROFITABILITY

Every insurer is required to maintain a required solvency margin as per Section 64 VA of the Insurance Act 1938. Every insurer shall maintain an excess of the value of the assets over the amount of liabilities of not less than an amount prescribed by the IRDA, which is referred to as
Required Solvency Margin. It will be observed from the below table that all the insurance including LIC have the Required Solvency Margin with asserts equal to or more than 150% of the liabilities.

**TABLE 5.2**

**SOLVENCY RATIO OF LIFE INSURERS (2006-2007)**

<table>
<thead>
<tr>
<th>INSURER</th>
<th>Solvency Ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2006-07</td>
</tr>
<tr>
<td>BAJAJ ALLIANZ</td>
<td>2.45</td>
</tr>
<tr>
<td>RELIANCE LIFE</td>
<td>1.62</td>
</tr>
<tr>
<td>BSLI</td>
<td>1.80</td>
</tr>
<tr>
<td>AVIVA</td>
<td>6.31</td>
</tr>
<tr>
<td>HDFC STD LIFE</td>
<td>2.05</td>
</tr>
<tr>
<td>ICICI PRU</td>
<td>1.53</td>
</tr>
<tr>
<td>ING VYSYA</td>
<td>2.87</td>
</tr>
<tr>
<td>LIC</td>
<td>1.50</td>
</tr>
<tr>
<td>MNYL</td>
<td>2.08</td>
</tr>
<tr>
<td>METLIFE</td>
<td>1.73</td>
</tr>
<tr>
<td>KOTAK LIFE</td>
<td>1.64</td>
</tr>
<tr>
<td>SBI LIFE</td>
<td>1.78</td>
</tr>
<tr>
<td>TATA AIG</td>
<td>2.59</td>
</tr>
<tr>
<td>SAHARA</td>
<td>2.68</td>
</tr>
<tr>
<td>SHRIRAM LIFE</td>
<td>2.74</td>
</tr>
<tr>
<td>BHARTI AXA</td>
<td>1.96</td>
</tr>
</tbody>
</table>

Note: Source of the data IRDA annual report 2006-07 with reference to Source of the data- actuarial Report and Abstract as on 31-03-2007 Solvency Ration is defined as the ratio of available Solvency Margin to the required Solvency Margin.
The twin financial objectives of an insurance company are solvency: the ability to meet financial obligations, and profitability to maximize the returns to its stakeholders. During all these past seven years after the industry was opened up, the private players have been vying with one another in securing more and more new business. Because of the increased activity, the targeted market has expanded and a substantial growth has been achieved in mobilization of premium. The private insurers have been progressively focusing on expanding their marketing network in their anxiety to break even at the earliest. Some of the insurance companies have even succeeded in showing profits sooner than others. SBI life was the first private insurer to declare profits followed by Shriram Life. Lately Bajaj Allianz has also declared profits. Even though, the insurance companies may show an excellent performance in new business year after year, their profitability in the long run is a critical factor for survival. Only when valuation surpluses are generated in adequate measure, they can meet the regulator’s stipulations in regard to solvency margins. Secondly, policyholders deserve the highest priority in sharing the profits generated in the actuarial valuations as at least 90% of the surplus has to be distributed to the with profit policyholders as bonus. This requires a very high concern for quality in selection and underwriting of lives so that adverse claims experience against assumed mortality in
premium rates do not deprive the genuine policyholders of their legitimate returns from their policies. In a competitive environment, insurers need to balance their need to exercise care in proper selection of lives with an equally important need of not losing their potential customers to their competitors in their excessive concern for quality. This is no doubt a challenge for the insurers.

Above all, operating in a cost effective manner is another challenge that insurers face so that the financial interests of policyholders and shareholders are safeguarded. The challenges for the new players are more formidable considering that they may have to incur a lot of initial expenditure even before they start receiving premiums under the new policies besides the likely deficits arising due to unanticipated high value claims before they are comfortable with adequate life fund by increased new business over a period of time.

Even though statutory expense ratios like renewal expense ratio will help to study the long term health of the insurer there are some metrics which will have to be developed by the insurers to monitor the overall productivity of the marketing force and administrative personnel. These metrics must be able to provide the management information on the average business productivity of the agents in terms of premium income
and policies cost per agent, agent-wise persistency ratios, agent wise early claim experience etc. Similar metrics have to be developed and made use of for staff productivity and cost. By devising such measures of financial performance the insurers can have periodical review and take mid course corrections to ensure business progress and the financial health of the company.

While on this, the scholar has chance to read an article in the Economic Times dt 6th June, 2007, entitled “Insurers feel the growth pains” by Priti Patnaik. It has been discussed therein as to how private insurance companies, in their anxiety to get high valuations, are engaged in a race for top line growth, with profitability taking a back seat in the process. In the same article, Sanket Kawatkar, senior consultant in Mumbai at Watson Wyatt, a global consulting firm, has been quoted as saying that while capital gives strength to the balance sheet, return on capital, the way it is leveraged is far more important. Kawatkar has further observed “it is not necessary that companies should vie to be in top quartile as long as they develop a strategy to pursue volumes, by controlling costs, using optimal distribution models with high productivity.
5.11 ACTS AND AMENDMENTS

5.11.1 Legislative developments after 1999

The Insurance Amendment Act, 2002 permitted, by way of insertion of Sec.2 (8A) in the Insurance Act, 1938 insurance co-operative societies, registered under the Co-Operative Societies Act, 1912 or Multi-State Co-Operative Societies Act, 1984 or under any state law relating to co-operative society to carry on any class of insurance business. However, the IRDA has been empowered to exempt an insurance co-operative society from the application of any of the provisions of the principal Act or application of its provisions with exceptions, modifications or adaptations [see proviso to section 94A(2)]. The Amendment Act provided for insurance intermediaries, including insurance brokers and consultants, and provisions for the payment of commission, brokerage or fee to them, thereby introducing in this country the business practiced the world over in this area. Further, Sec.49 of the Act has been modified to provide shareholders an entitlement of actuarial surplus. By virtue of amendment to Sec.64 VB, the IRDA has been authorized to prescribe the mode of payment of premium, i.e., through credit cards or through the internet which in turn might result in an increase in insurance business. The Central Government was authorized to discharge its functions in respect of these subsidiaries in future.
5.11.2 Amendment of Insurance Act 1938

This Act was amended from time to time. Since 1938, there were six amendments up to 1945. The amendments made in the Insurance Act, 1938 prohibited insurers other than Indian insurance companies to carry on insurance business in India and investment of funds of the policyholders outside India. The amendments provided for:

- Requirements as to paid-up equity capital for both insurers and reinsures.
- Manner of divesting of excess shareholding by promoters.
- Manner and conditions of investment.
- Maintenance of required solvency margin at all times by the insurers.
- Issue of license to insurance agents, intermediary or insurance intermediary and surveyors by the Authority as also suspension and cancellation thereof.
- Obligations of insurers to compulsorily undertake specified percentage of insurance business in rural and social sector.
- Enhanced penalties for contravention of and failure to comply with, the provisions of the Act and offences by companies, and
- Powers of Authority make regulations as required by the Act.

5.11.3 Need for and grounds of revision of the Insurance Act, 1938

In this context, and in the changing economic scenario, it is felt that the IRDA would have to play a vital role for the regulation and
development of insurance business. Accordingly, it is felt that the Insurance Act, 1938 would require review and revision. This has prompted the present reference to the Law Commission of India. The revision of the Act has to be carried out in such a manner that it not only promotes insurance business but also protects policyholders and strengthens the Authority to ensure financial stability. While revising the Act, the other related laws are also to be reviewed and the relevant provisions of the IRDA, Act, 1999 are required to be merged into the principal Act after necessary modifications. In fact, an integrated approach to revise the insurance laws is the need of the hour.

The necessity for merging the provisions of the IRDA Act with the Insurance Act, 1938 is to bring about an integrated approach to the task of formulating a legislative regime that can encompass the key facets of the functioning of the Regulatory Authority even while strengthening the regulatory regime. With the IRDA exercising many of the key functions assigned to it under the Insurance Act, 1938, there is no justification for continuing to have a separate legislation concerning the constitution and functions of the IRDA. Moreover, at the time that the IRDA Act was being prepared, the task of a comprehensive revision of the Insurance Act, 1938 was felt necessary but was not undertaken due to paucity of time.
Now, with the experience of the functioning of the IRDA and several rounds of discussion with key insurance personnel, a comprehensive revision of the Insurance Act, 1938 appears possible.

The present exercise of revision of the Insurance Act, 1938 does not touch upon the following areas:

- The Marine Insurance Act, 1963
- Motor Vehicle Insurance
- Fire Insurance
- Principles governing third party risks in general insurance business

In other words, the present exercise of revision is confined to restructuring of Insurance Act, 1938 in view of the developments in the insurance sector referred to herein above and the merging of the provisions of the IRDA with the Insurance Act, 1938. Each of the areas mentioned at (I) to (IV) above would require an elaborate and separate study which, as presently advised, is not felt necessary.
5.12 LATEST ISSUES OF IRDA

Product Wise:

5.12.1 Health Insurance

Health Insurance business follows under the ambit of non-life insurance in India, but life insurers have been placing health insurances raiders like critical illness cover, dreaded diseases cover, hospital cash etc. providing for benefit has a ratio of basic sum assured. Liberalization of the insurance sector as well as the increasing demand for the health insurance cover, especially from the middle class, have given a fillip to the growth of health insurance in the country and today the sector is emerging as fastest growing segment in the industry. In 2006-07, health insurance premium stood at more than Rs. 3200 crore registering an increase of 35 per cent. Over the last five years the premium has nearly doubled. Despite this, health insurance penetration in India continues to be low. There are several other challenges in the health sector – from the perspective of policy holders, insurers and the Authority.

With a view to promoting health insurance in the country and looking for possible solutions to bring in as many people as possible into the insurance net, the IRDA has, over the last few years, given special thrust to addressing various issues concerning health insurance. These initiatives not only help develop health insurance in the country but also
address the concerns of the policy holder of health insurance. The industry has recently seen the entry of a second stand-alone health insurance companies. Some more are in the offing. Given its potential, health insurance business has generated considerable interest among the existing general and life insurers. Innovations in products are taking place though there is always scope for further enlargement of the canvas. Whilst on this, mention must be made of a stand-alone policy covering HIV that has been recently introduced in the market by one of the insurers. Many other innovative covers are being devised and are likely to come into the market.

To handle the plethora of issues relating to health insurance with focused attention, a separate health department was set up in IRDA. The team in the health unit has recently been strengthened and shall be scaled up further if required.

Health insurance is in focus for both life and non life insurance, threats to a huge potential, business in India and also globally. As such the IRDA has a long term focus for the future more on the health insurance

15.12.2 Micro-Insurance

Insurance can play a positive role in meeting the financial needs of the poor, and one would need to examine the many challenges involved in offering insurance to them through micro-insurance agents with simpler
types of insurance cover for property, personal accident, health and life insurance. The Authority had notified Micro-Insurance Regulations on 10\textsuperscript{th} November 2005.

The Micro-Insurance regulations, 2005 allow the sale of both term assurance as well as savings- linked insurance policies along with riders, on the life insurance side. Under non-life, covers include dwellings, life stock, tools and implements, personal accident covers and crop insurance. Health insurance, however, is allowed to be offered by both life and non-life insurers. Composite covers or package products can also be offered by the insurers through a tie up with the corresponding life/non-life counterparts.

This has provided framework for insurers to design suitable micro-insurance products. Norms are also laid down to recognize micro-insurance agents, like Non Government Organizations (NGO) and Self Help Groups (SHG). The relaxation of the KYC norms under Anti Money Laundering Act requirements, upto a premium of Rs.10000/- per annum helps the Micro-Insurance Sector. The Advertising guidelines notified on 14\textsuperscript{th} May 2007 provide for release of joint sales advertisements by the insurers and Micro-Insurance Agents.
A modest beginning has been made in the first year after notification of Micro Insurance regulations. White twelve Micro-Insurance Products has been filed by six life insurers, eight Micro-Insurance products have been filed by four non-life insurers till date 4.

5.13 SUMMING UP

We should now look into some of the challenges also which are staring at the insurance industry. Changes in the external environment for the life insurance market well have to be suitable understood in order to avoid cover selling and miss-selling out of over-enthusiasm. Customer expectations especially with regard to return on investment will have to be properly met. Fortunately, IRDA has come out with very exhaustive guidelines on sale of Unite Linked Insurance plans which help in ensuring proper sale of such polices to the insuring public.

Methods of conducting business will also have to be monitored. In this area IRDA has come out with regulations on the licensing and appointment of agents prescribing suitable norms which will help in regulating the market in the sale of products by professional intermediaries. The agent will have to disclose to the clients all the features of the product so that there is no communication gap. Policy conditions also will have to be spelt out to the client before the sale is
closed. Agents’ capabilities and competencies are to be enhanced to enable them to be consumer centric and highly professional.

To obtain the in-depth analysis of the market situation of customer preferences a detailed study was conducted in a selected area VIJAYAWADA in Krishna district in Andhra Pradesh as sample study of impact of privatization of life insurance sector in India. The profile of the selected area is as follows.
References:


[2]. Google website in relevant issues.
