A. INSURANCE ACT, 1938

Since the Act of 1928 was not very comprehensive, demand for another act was made. There were forceful and constant demands of 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, a well known Calcutta solicitor and was placed on special duty to report on the amendments necessary to modernise 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 of 1938. The Act extends to whole of India and came into force from 26 February, 1938 as per under section 1 of the Act.

MAIN PROVISIONS OF INSURANCE ACT, 1938

Application

The Act applies to all types of insurance business – life, fire, marine, etc. – done by companies incorporated in India or elsewhere. It also governs the provident companies, mutual offices and cooperative societies.

Prohibition

According to Sec. 2-c of the Act, there is prohibition of transaction of insurance business by certain persons

"Save as hereinafter provided, no person shall, after the commencement of the Insurance Act, begin to carry on any class of insurance business in India and no insurance carrying on any class of insurance business in India shall after the expiry of one year, from such commencement, continue to carry on any such business unless he is-
(a) a public company, or

(b) a society registered under the Cooperative Societies Act, 1912 or under any other law for any country outside India not being of the nature of a private company;

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

(d) every notification issued under the Sub-section shall be laid before Parliament as soon as may be after it is issued.

Every application for registration shall be accompanied by-

(a) a certified copy of the memorandum and articles of association,

(b) name, address and occupation of directors

(c) a statement of the class or classes of insurance business done or to be done.

(d) principal place of business or domicile outside India.

(e) a certified copy of the published prospectus.

(f) the receipt showing payment in the prescribed manner of the prescribed fee which shall not be more than five hundred rupees.

On receipt of an application for registration and after making such inquiry as he deems fit the controller is satisfied that –

(a) the financial condition and the general character of management of the applicant are sound.

(b) the volume of business likely to be available to, and the capital structure and earning prospects of the applicant will be adequate.

(c) the interests of the general public will be served.

The controller may register the applicant as an insurer and grant him a certificate of registration.
The controller shall withhold registration or shall cancel a registration already made if any requirement is not satisfied.

The controller shall cancel the registration of an insurer either wholly or in so far as it related to a particular class of insurance business as the case may be-

(a) Insurer fails to apply Sec. 7 or 8 of deposits.

(b) Insurer is in liquidation or adjudged an insolvent.

(c) The business has been transferred to any other insured.

(d) Deposits have been returned to insurer.

(e) When clause 9 of Section 2 related to insurer's definition ceased or cancelled or suspended.

(f) Defaults in complying with any rules.

(g) Insurer has got adequate reason to cancel.

(h) Carry any business other than insurance business or any prescribed business.

Controller will give notice of his decision not more than two months before termination.

Registration

According to section 3 of Insurance Act, 1938 no person shall after the commencement of this Act can begin to carry on any class of insurance business in India and no insurer carrying on any class of insurance business in India shall, after the expiry of three months from the commencement of this Act, continue to carry on any such business, unless he has obtained from the Authority a certificate of registration for the particular class of insurance business:

Provided that in case an insurer who was carrying on any class of insurance business in India at the commencement of this Act, failure to obtain a certificate of registration in accordance with the requirements of this clause shall not operate to invalidate any contract of insurance entered into by him unless he has obtained that certificate.
Renewal of registration

Section 3A defines the need for registration and states that an insurer who has been granted a certificate of registration under section 3 shall have the registration renewed annually for each year after that ending on the 31st day of December.

An application for the renewal of a registration for any year shall be made by the insurer to the Authority before the 31st day of December of the preceding year, and shall be accompanied by evidence of payment of the prescribed fee which may vary according to the total gross premium written direct in India, during the year preceding the year in which the application is required to be made under this section, by the insurer in the class of insurance business to which the registration relates but shall not-

(i) Exceed one-fourth of one per cent of such premium income

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

Certificate of soundness of life insurance business

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

Restriction on the name of insurer

As per section 5 of Insurance Act 1938, an insurer shall not be registered by a name identical with that by which an insurer in existence is already registered, or so nearly resembling that name as to be calculated to deceives except when the insurer in existence is in the course of being dissolved and signifies his consent to the Authority.
Further if an insurance, through inadvertence or otherwise, is without such consent as aforesaid registered by a name identical with that by which an insurer already in existence whether previously registered or not is carrying on business or so nearly resembling it as to be calculated to deceive, the first mentioned insurer shall, if called upon to do so by the Authority on the application of the second-mentioned insurer, change his name within a time to be fixed by the Authority.

**Capital**

Section 6 of the Act says that no insurer incorporated after or who contained carrying on the business of life insurance in the States whether solely or in connection with any other business after the 26th day of January, 1937, shall be registered unless he has a working capital of a net sum of not less than fifty thousand rupees excluding of the deposit to be made before registration under section 7 of this Act, and exclusive in the case of a company of any sums payable as preliminary expenses in the form of the company.

**Requirements as to capital structure**

Section 6A specifies that no public company limited by shares having its registered office in India, shall carry no life insurance business, unless it satisfies all the following conditions, namely:-

(i) that the capital of the company consists only of ordinary shares each of which has a single face value;

(ii) that, except during any period not exceeding one year allowed by the company for payment of calls on shares, the paid-up amount is the same for all shares, whether existing or new.

**Divesting excess shareholding by promoter**

Section 6AA explains that no promoter shall at any time hold more than twenty-six per cent or such other percentage as may be prescribed of the paid-up equity capital in an Indian insurance company.

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

**Deposits**

As per section 7 of the Act to prevent the growth of insurers of small financial resources or speculative concerns, the Act provided for registration of all insurers and a substantial deposit with the Reserve Bank.

Section 7 further specifies that every insurer shall, in respect of the insurance business carried on by him in India, deposit and keep deposited with the Reserve Bank of India in one of the offices in India of the Bank for and on behalf of the Central Government the amount hereafter specified, either in cash or in approved securities estimated at the market value of the securities on the day of deposit, or partly in cash and partly in approved securities so estimated-

(a) Where the business done or to be done is life insurance only, two hundred thousand rupees.

(b) Where the business done or to be done is fire insurance only, one hundred and fifty thousand rupees.

(c) Where the business done or to be done is marine insurance only, one hundred and fifty thousand rupees.

(d) Where the business done or to be done is miscellaneous insurance only, one hundred and fifty thousand rupees.

(e) Where the business done or to be done is life insurance and any one of the three classes specified in clauses (b), (c) and (d), three hundred thousand rupees of which two hundred thousand rupees shall be the deposit for life insurance business.
(f) Where the business done or to be done is life insurance and any two of the three classes specified (b), (c) and (d), four hundred thousand rupees of which two hundred thousand shall be the deposit for life insurance business.

**Reservation of deposits**

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

**Refund of deposit**

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

**Separation of accounts and funds**

Section 10 relates to separation of accounts and funds to be maintained by insurer. It specifies that in cases where the insurer carries on business of more than one of the following classes, namely, life insurance, fire insurance, marine insurance or miscellaneous insurance, he shall keep a separate account of all receipts and payments in respect of each such class of insurance business and where the insurer carries on business of miscellaneous insurance whether alone or in conjunction with business of another class, he shall, unless the Authority waives this requirement in writing, keep a separate account of all receipts and payments in respect of each of such sub-classes of miscellaneous insurance business as may be prescribed in this behalf:
Where the insurer carries on the business of life insurance all receipts due in respect of such business, shall be carried to and shall form a separate fund to be called the life insurance fund.

**Accounts and balance sheet**

Section 11 relates to accounts and balance sheet and states that every insurer, in respect of all insurance business transacted by him, and in the case of any other insurer in respect of the insurance business transacted by him in India, shall at the expiration of each calendar year prepare with respect to that year:-

(a) in accordance with the regulations contained in part I of the first schedule, a balance-sheet in the form set forth in part II of that Schedule;

(b) in accordance with the regulations contained in part I of the Second Schedule, a profit and loss account in the forms set forth in part II of that Schedule, except where the insurer carries on business of one class only of the following classes, namely, life insurance, fire insurance or marine insurance and no other business;

(c) in respect of each class or sub-class of insurance business for which he is required under section 10 to keep a separate account of receipts and payments, a revenue account in accordance with the regulations, and in the form or forms, set forth in the Third Schedule applicable to that class or sub-class of insurance business.

**Audit**

Matters relating to the audit of accounts of insurance companies have been explained in section 12 of the Insurance Act, 1938. According to it the balance-sheet, profit and loss account, revenue account and profit and loss appropriation account of every insurer in respect of all insurance business transacted by him in India, shall be audited annually by an auditor, and the auditor shall in the audit of all such accounts have the powers of, exercise the functions vested in, and discharge the duties and be subject to the liabilities and penalties imposed on, auditors of companies by section 145 of the Indian Companies Act, 1913.
Actuarial report and abstract

Section 13 says that every insurer carrying on life insurance business shall in respect of the life insurance business transacted by him in India [once, at least in every three years] cause an investigation to be made by an actuary into the financial condition of the life insurance business carried on by him, including a valuation of his liabilities in respect thereto and shall cause an abstract of the report of such actuary to be made in accordance with the regulations contained in Part I of the Fourth Schedule and in conformity with the requirements of Part II of that Schedule:

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

Register of policies and register of claims

Section 14 of Insurance Act says that every insurer shall maintain –

(a) a register or record of policies in which shall be entered, in respect of every policy issued by the insurer, the name and address of the policy-holder, the date when the policy was effected and a record of any transfer, assignment or nomination of which the insurer has notice, and

(b) a register or record of claims, in which shall be entered every claim made together with the date of claim, the name and address of the claimant and the date on which the claim was discharged, or, in the case of a claim which is rejected, the date of rejection and the ground therefor.

Submission of returns

Section 15 deals with submission of returns and specifies that

1. The audited accounts and balance sheet and actuarial report and abstract and four copies thereof shall be furnished as returns to the controller in the case of the accounts and balance sheet and the actuarial report and abstract within nine months from the end of the period to which they refer. If the principal place is outside India,

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1 Substituted with "every year" by the Insurance Regulatory and Development Authority Act, 1999.
2 Substituted for "two", Ibid.
the period of submission may be extended by three months.

2. Of the four copies so furnished, one shall be signed in the case of company by the Chairman and two directors and by the principal officer of the Company and if the company has a managing director or managing agent, by that director or managing agent, in the case of a firm, by two partners of the firm, and, in the case of an insurer being an individual by the insurer himself, and one shall be signed by the auditor who made the audit or the actuary who made the valuation, as the case may be.

3. Where the insurer's principal place of business or domicile is outside India, he shall forward to the controller, along with the documents, a certified statement showing the total assets and liabilities of the insurer at the close of the period covered by the said documents.

**Returns by insurers established outside India**

Section 16 explains that the insurer, established outside India, shall, within the time specified in Section 15, furnish to the controller four certified copies in the English language of every balance-sheet, account abstract, report and statement supplied to the public authority and in addition thereto four certified copies in the English language of each of the following statement:

(a) a statement audited by an auditor or by a person duly qualified under the law of the insurer's country showing the assets held by the insurer in India at the date, if any, balance sheet so furnished;

(b) a separate account of receipts and payments and a revenue account for the period covered by any account so furnished;

(c) a separate abstract of the valuation report in respect of all business transacted in India in each class or sub-class of insurance business; and

(d) a declaration in the prescribed form stating that all amounts received by the insurer directly or indirectly, whether from his head office or from any other source outside and have been shown in the revenue account.

**Preparation of accounts for periods prior to this Act**

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

**Furnishing reports**

As per section 18 of Insurance Act, 1938 every insurer shall furnish to the Authority a certified copy of every report on the affairs of the concern which is submitted to the members or policy-holders of the insurer immediately after its submission to the members or policy-holders, as the case may be.

**Abstract of proceedings of general meetings**

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

**Custody and inspection of documents and supply of copies**

Section 20 says that every return furnished to the Authority or certified copy thereof shall be kept by the Authority and shall be open to inspection; and any person may procure a copy of any such return, or of any part thereof, on payment of a fee of six annas for every hundred words or fractional part thereof required to be copied, any five figures being deemed equivalent to one word. A printed or certified copy of the accounts, statements and abstract furnished in accordance with the provisions of section 15 or section 16 shall, on the application of any shareholder or policy-holder made at any time within two years from the date on which the document was so furnished, be supplied to him by the insurer within fourteen days when the insurer is constituted, incorporated or domiciled in India and in any other case within one month of such application. Further, a copy of the memorandum and articles of association of the insurer, on the application of any policy-holder, be supplied to him by the insurer on payment of one rupee.
Powers of authority regarding returns

Section 21 deals with the power of Authority regarding returns furnished to him. If it appears to the Authority that any return furnished to him under the provisions of this Act is inaccurate or defective in any respect, he may-

(a) require from the insurer such further information, certified if he so directs by an auditor or actuary, as he may consider necessary to correct or supplement such return;

(b) call upon the insurer to submit for his examination at the principal place of business of the insurer in India any book of account, register or other document or to supply any statement which he may specify in a notice served on the insurer for the purpose;

(c) examine any officer of the insurer on oath in relation to the return;

(d) decline to accept any such return unless the inaccuracy has been corrected or the deficiency has been supplied before the expiry of one month from the date on which the requisition asking for correction of the inaccuracy or supply of the deficiency was delivered to the insurer or of such further time as the Authority may specify in the requisition and if he declines to accept any such return, the insurer shall be deemed to have failed to comply with the provisions relating to the furnishing of returns.

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

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

Evidence of documents

As per sector 23 of the Insurance Act 1938 every return furnished to the
Authority which has been certified by the Authority shall be deemed to be a return so furnished and shall be deemed to be a copy of that return and shall be received in evidence as if it were the original return, unless some variation between it and the original return is proved.

Return to be published in statutory forms

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

Investment of Assets

With reference to section 27 of the Act every insurer shall invest and at all times keep invested assets equivalent to not less than the sum of-

(a) the amount of his liabilities to holders of life insurance policies in India on account of matured claims, and

(b) the amount required to meet the liability on policies of life insurance maturing for payment in India,

less-

(i) the amount of premiums which have fallen due to the insurer on such policies but have not been paid and the days of grace for payment of which have not expired, and

(ii) any amount due to the insurer for loans granted on and within the surrender values of policies of life insurance maturing for payment in India issued by him or by an insurer whose business he has acquired and in respect of which he has assumed liability, in the manner following, namely, twenty-five per cent of the said sum in Government securities, a further sum equal to not less than twenty-five per cent of the said sum in Government securities or other approved securities and the balance in any of the approved investments specified as under:

(a) approved securities;

(b) securities of, or guaranteed as to principal and interest by the Government of India;
(c) debentures or other securities for money issued with the permission of the State Government by any municipality in a State;

(d) debentures or other securities for money issued by any authority constituted under any housing or building scheme approved by the Central or a State Government, or by any authority or body constituted by any Central Act of a State Legislature;

(e) first mortgage on immovable property situated in India under any housing or building scheme of the insurer approved by the Authority or a State Government;

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

(g) debentures secured by a first charge on any immovable property, plant or equipment of any company where either the book value or the market value, whichever is less, of such property, plant or equipment is more than three times the value of such debentures.

(h) first debentures secured by a floating charge on all its assets of any company which has paid dividends on its ordinary shares for the five years immediately preceding or for at least five out of the six or seven years immediately preceding.

(i) preference shares of any company which has paid dividends on its ordinary shares for the five years immediately preceding or for at least five out of the six or seven years immediately preceding;

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

(k) shares of any company which have been guaranteed by another company,
such other company having paid dividends on its ordinary shares for the
five years immediately preceding or for at least five out of the six or seven
years immediately preceding:

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

(l) shares of any company on which dividends of not less than four per cent
including bonus have been paid for the seven years immediately preceding
or for at least seven out of the eight or nine years immediately preceding:

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

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

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

Provided that the property is free of all encumbrances.

(o) loans on life interests, or on policies of life insurance within their
surrender values issued by him or by an insurer whose business he has
acquired and in respect of which business he has assumed liability;

(p) life interests;

(q) fixed deposits with banks included for the time being in the Second
Schedule to the Reserve Bank of India Act, 1934 (2 of 1934) or with
cooperative societies registered under the Indian Co-operative Societies
Act, 1912 (6 of 1212), or under any other law for the time being in force,
the primary object of which is to finance other cooperative societies
similarly registered;
(r) debentures of, or shares in co-operative societies registered under the Indian Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force;

**Statement of investment of assets**

Section 28 of the Insurance Act, 1938 says that every insurer carrying on the business of life insurance shall every year, within thirty-one days from the beginning of the year, submit to the Authority a return showing as at the 31st day of December of the preceding year the assets held invested in accordance with section 27, and all other particulars necessary to establish that the requirements of that section have been complied with, and such return shall be certified by a principal officer of the insurer. Further, every such insurer shall also furnish, within fifteen days from the last day of March, June and September, a return certified as aforesaid showing as at the end of each of said months, the assets held invested in accordance with section 27.

**Prohibition of loans**

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

**Investigation**

Section 33 says that the Central Government may, at any time, by order in writing direct the controller or any other person specified in the order to investigate the affairs of any insurer and to report to the Central Government on any investigation made by him.

**Power to appoint staff**

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

**Power of the Authority to issue directions**

Section 34 says that where the Authority is satisfied that -

(a) in the public interest; or

(b) to prevent the affairs of any insurer being conducted in a manner detrimental to the interests of the policy-holders or in a manner prejudicial to the interests of the insurer; or

(c) generally to secure the proper management of any insurer, it is necessary to issue directions to insurers generally or to any insurer in particular, he may, from time to time, issue such directions as he deems fit, and the insurers or the insurer, as the case may be, shall be bound to comply with such directions:

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

**Power of Authority to remove managerial persons from office**

Section 34B of Insurance Act says that where the Authority is satisfied that in the public interest or for preventing the affairs of an insurer being conducted in a manner detrimental to the interests of the policy-holders or for securing the proper management of any insurer it is necessary so to do, he may, for reasons to be recorded in writing, by order, remove from office, with effect from such date as may be specified in the order, any director or the chief executive officer, by whatever name called, of the insurer. However, no order shall be made unless the director or chief executive officer concerned has been given a reasonable opportunity of making a representation to the Authority against the proposed order.

Provided that if, in the opinion of the Authority, any delay would be detrimental to the interests of the insurer or his policy holders, he may, at the time of giving the opportunity aforesaid or at any time thereafter, by order direct that the director, or, chief executive officer, shall not, with effect from the date of such order –
(a) act as such director or chief executive officer of the insurer;

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

**Power of Authority to appoint additional directors**

As per section 34C if the Authority is of opinion that in the public interest or in the interest of an insurer, or his policy-holders or for securing the proper management of any insurer it is necessary so to do, he may, for reasons to be recorded in writing, appoint, with effect from such date as may be specified in the order, one or more persons to hold office as additional directors of the insurer:

Provided that the number of additional directors so appointed shall not, at any time, exceed five or one-third of the maximum strength fixed for the Board by the articles of association of the insurer, whichever is less.

Any person appointed as additional director in pursuance of this section-

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

(b) shall not incur any obligation or liability by reason only of his being a director or for anything done or omitted to be done in good faith in the execution of the duties of his office or in relation thereto; and

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

**Winding up of insurance company by the court**

Section 53 relates to winding up of insurance company by the order of the court. As per this section the court may order the winding up of any insurance company, if

(a) with the sanction of the Court previously obtained a petition in this behalf is presented by shareholders not less in number than one-tenth of the whole body of shareholders and holding not less than one-tenth of the whole capital or by not less than fifty policy holders holding policies of
life insurance that have been in force for not less than three years and are of the total value of not less than fifty thousand rupees; or

(b) the Authority, who is hereby authorised to do so, applies in this behalf to the Court on any of the following grounds, namely:

(i) that the company has failed to deposit or to keep deposited with the Reserve Bank of India the amounts required by section 7 or section 98,

(ii) that the company having failed to comply with any requirement of this Act has continued such failure or having contravened any provision of this Act has continued such contravention for a period of three months after notice of such failure or contravention has been conveyed to the company by the Authority.

(iii) that it appears from any returns or statements furnished under the provisions of this Act or from the results of any investigation made thereunder that the company is, or is deemed to be insolvent, or

(iv) that the continuance of the company is prejudicial to the interest of the policy-holders or to the public interest generally.

Voluntary winding up

As per section 54 an insurance company shall not be wound up voluntarily except for the purpose of affecting an amalgamation or a reconstruction of the company, or on the ground that by reason of its liabilities it cannot continue its business.

Valuation of liabilities

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

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

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

As per section 56 of Insurance Act in the winding up of an insurance company and in the insolvency of any other insurer the value of the assets and the liabilities of the insurer in respect of life insurance business shall be ascertained separately from the value of any other assets or any other liabilities of the insurer and no such assets shall be applied to the discharge of any liabilities other than those in respect of life insurance business except in so far as those assets exceed the liabilities in respect of life insurance business.

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

**Penalty for default in complying with provisions of the Act**

Section 102 of Insurance Act deals with penalties and states that except as otherwise provided in this Act, any insurer, principal agent, chief agent, or special agent, who makes default in complying with, or acts in contravention of, any requirement of this Act, or of any rule or order made thereunder and, where the insurer in a company, any director, managing agent, manager or other officer of the
company, or where the insurer in a firm, any partner of the firm who is knowingly a party to the default or contravention, shall be punishable with fine which may extend to one thousand rupees, and in the case of a continuing default or contravention, with an additional fine which may extend to five hundred rupees for every day during which the default or contravention continues.

(1) If any person fails to produce any book, account or other document or to furnish any statement or information which, under section 33 or under section 64UE, it is his duty to produce or furnish, or to answer any question relating to the business of an insurer which he is asked by an officer making an inspection under either of those sections, he shall be punishable with fine which may extend to two thousand rupees in respect of each failure and if the failure continues, to a further fine which may extend to one hundred rupees for each day after the first, during which such failure continues.

(2) Any provident society as defined in Part III which makes default in complying with or acts in contravention of any requirement of this Act or of any rule or order made there under and any director, managing agent, manager, secretary or other officer of the society who is knowingly a party to the default or contravention, shall be punishable with fine which may extend to five hundred rupees or in the case of a continuing default or contravention with fine which may extend to two hundred and fifty rupees for every day during which the default or contravention continues.

**Penalty for carrying on insurance business in contravention of section 3, 7 and 98**

Section 103 says that any insurer or any person acting on behalf of an insurer, who carries on any class of insurance business in contravention of any of the provisions of section 3, section 7, or section 98, or does any one or more of the acts constituting the business of insurance in relation to any insurance business carried on in contravention of any of the said sections shall be punishable with fine which may extend to two thousand rupees.

Any person knowingly taking out a policy of insurance with any insurer or person guilty an offence shall be punishable with fine which may extend to five hundred rupees:
(3) Any provident society or any person acting on behalf of a provident society who carries on any class of insurance business in contravention of any of the provisions of section 70, section 73 or section 83 or does any one or more of the acts constituting the business of insurance in relation to any insurance business carried on in contravention of any of the said sections shall be punishable with fine which may extend to one thousand rupees.

**Penalty for false statement in document**

As per section 104 of Insurance Act, whoever in any return, report, certificate, balance-sheet or other document, required by or for the purposes of any of the provisions of this Act, willfully makes a statement false in any material particular, knowing it to be false, shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to one thousand rupees, or with both.

**Wrongfully obtaining or withholding property**

Section 105 says that any director, managing agent, manager, or other officer or employee of an insurer who wrongfully obtains possession of any property of the insurer or having any such property in his possession wrongfully withholds it or willfully applies it to purposes other than those expressed or authorized by this Act shall, on the complaint of the Controller made after giving the insurer not less than fifteen days' notice of his intention, or on the complaint of the insurer or any member or any policy-holder thereof, be punishable with fine which may extend to one thousand rupees and may be ordered by the Court trying the offence to deliver up or refund within a time to be fixed by the Court any such property improperly obtained or wrongfully withheld or willfully misapplied and in default to suffer imprisonment for a period not exceeding two years.

**Offences by companies**

Section 105A explains that where any offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company shall be deemed to be guilty of the offence.
and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

Where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company/such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

**Power of Court to order restoration of property of insurer or compensation in certain cases**

As per section 106 if on the application of the Controller or an Administrator appointed under section 52A or an insurer or any policy-holder or any member of an insurance company or the liquidator of an insurance company (in the event of the insurance company being in liquidation), the Court is satisfied—

(a) that any insurer (including in any case where the insurer is an insurance company any person who has taken part in the promotion or formation of the insurance-company or any past or present director, managing agent, manager, secretary or liquidator) or any officer, employee or agent of the insurer,—

(i) has misapplied, or retained or become liable or become accountable for any money or property of the insurer; or

(ii) has been guilty of any misfeasance or breach of trust in relation to the insurer; or

(b) that any person, whether he is or has been in any way connected with the affairs of the insurer or not, is, in wrongful possession of any money or property of the insurer or having any such money or property in his possession wrongfully withholds it or has converted it to any use other than that of the insurer; or
(c) that by reason of any contravention of the provisions of this Act, the amount of life insurance fund has been diminished, the court may examine any such insurer, director, managing agent, manager, secretary or liquidator or any such officer, employee or agent of the insurer or such other person as the case may be, and may compel him to contribute such sums to the assets of the insurer by way of compensation in respect of misapplication, retainer, misfeasance or breach of trust as the Court thinks fit, or pay such amount as may be found due from him in respect of any money or property of the insurer for which he is liable or accountable or to restore any money or property of the insurer or any part thereof, as the case may be. In case where the amount of life insurance fund has been diminished by reasons of any contravention of the provisions of the Act, the Court shall have power to assess the sum by which the amount of the fund has been diminished and to order the person guilty of such contravention to contribute to the fund the whole or any part of that sum by way of compensation, and in any of the aforesaid cases the Court shall have power to order interest to be paid at such rate and from such time as the Court may deem fit.

**Power of the Authority to make regulations**

Section 114A of Insurance Act 1938 says that the Authority may, by notification in the Official Gazette, make regulations consistent with this Act and the rules made there under, to carry out the purposes of this Act. Such regulations may provide for all or any of the following matters,

- the matters including fee relating to the registration of insurers
- the manner of suspension or cancellation of registration
- such fee, not exceeding five thousand rupees, as may be determined by the regulations for issue of a duplicate certificate of registration
- the matters relating to the renewal of registration and fee thereafter
- the manner and procedure for divesting excess share capital
- the preparation of balance-sheet, profit and loss account and a separate
account of receipts and payments and revenue account

- the manner in which an abstract of the report of the actuary to be specified
- the form and manner in which the statement shall be appended;
- the time, manner and other conditions of investment of assets held by an insurer
- the minimum information to be maintained by insurer in their books, the manner in which such information should be maintained, the checks and other verifications to be adopted by insurers in that connection and all other matters incidental thereto
- the manner for making an application, the manner and the fee for issue of a license to act as an insurance agent
- the fee and the additional fee to be determined for renewal of license of insurance agent
- the requisite qualifications and practical training to act as an insurance agent
- the passing of examination to act as an insurance agent
- the fee not exceeding rupees fifty for issue of duplicate license.
- the manner and the fees for issue of a license to an intermediary or an insurance intermediary.
- the fee and the additional fee to be determined for renewal of license of intermediaries or insurance intermediaries.
- the requisite qualifications and practical training of intermediaries or insurance intermediaries.
- the examination to be passed to act as an intermediary or insurance intermediary.
- the fee for issue of duplicate license.
- matters relating to licensing of surveyors and loss assessors, their duties, responsibilities and other professional requirements.
• the valuation of assets and liabilities
• the matters relating to re-insurance
• the matters relating to redressal of grievances of policy-holders to protect their interest and to regulate, promote and ensure orderly growth of insurance industry; and
• any other matter which is to be, or may be, specified by the regulations made by the Authority or in respect of which provision is to be made or may be made by the regulations.

Every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the regulation or both Houses agree that the regulation should not be made, the regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be.