Chapter 3

Legal Aspects of Secondary Market Trading in Life Insurance Products

3.0 Introduction:

Verification of the legality of trading in life insurance products is a pre-requisite for the existence of life insurance trading in India. This chapter aims at discussing the legal status of secondary market trading in life insurance products. The purpose of this discussion is to examine the legal admissibility of the secondary market trading in India. This chapter looks for the answers to the following questions concerning legal admissibility of trading in life insurance;

1. What is the procedure of transferring the life insurance policy rights in the name of a third party?
2. Is this transaction legal?

Legal admissibility of trading in life insurance is often challenged based on the argument that it violates the principles of insurable interest and indemnity. The veterans in the industry also argue that the trading results into wagering transaction rendering the agreement null and void under the insurance act.

To verify these arguments, the study examines the nature of the contract of life insurance and the principles of insurable
interest and indemnity as applicable to life insurance. The life insurance policy once issued comes under the purview of Property Act. Hence, the transfer of property act (1882) is also examined along with the Insurance Act (1938).

Section 3.1 discusses the actual procedure of transfer of life insurance by way of absolute assignment. Section 3.2 analyses the nature of Contract of life insurance. Section 3.3 discusses the fundamental principle of insurable interest in the light of trading in life insurance. Section 3.4 examines various contentions raised against the legitimacy of trading in life insurance. Section 3.5 discusses the Bombay High Court judgement about transfer of life insurance to third party, the first legal statute in India regarding trading in life insurance. Section 3.6 concludes this discussion.

An explicit discussion of the legal aspects of secondary market trading is not available in the literature on life insurance law. Nevertheless, the legality of transfer and assignment is discussed while analyzing certain other issues such as wagering, insurable interest, and principles of insurance. Patterson (1918) provides detailed discussion of insurable interest in life insurance, with the focus on US law. Patterson states that the doctrine of insurable interest in American courts is not a single rule but is ‘a complex of rules of public policy’; the courts do not require that every life insurance contract shall have a social purpose. Vance (1922) discusses the important issue of the rights of the ‘beneficiary ‘on the policy and even more importantly, whether the insured
has right to change the beneficiary. The paper states that, ‘With practical unanimity the courts hold that the beneficiary takes only an expectancy, subject to the restrictions found in by-laws, the insured retains entire control over the contract until his death, when the right to receive payment accrues to the person ‘then’ having the designation of the beneficiary’.

Salzman (1963) examines wagering and life insurance. The paper clearly states that in UK the insurable interest is required as a matter of public policy. It also states that the insurable interest in US as well as UK is required only at the inception and is not required once the policy exists.

The legal status of Life Insurance Policies in India can be discussed based on two sources of law. One is the statute law that is the law enacted by the legislature. In India, Life Insurance is under the purview of various laws. Indian Contract Act, 1872, governs most aspects of insurance in India. The transfer of property act 1882, the Indian Succession acts and the Indian Stamp Act also govern various aspects of insurance contract. For instance,

Insurance Act 1938- is applicable at the time of issue,
Transfer of Property Act 1882 is applicable after issue of the policy,
Contract Act 1872, governs the contract through out the policy existence,
Married Women’s Property Act (1874) applies in case of policies, taken under this Act.
Indian Stamp Act- governs the policy document and the endorsement of transfer/assignment.

Second source of law concerning life insurance is the case law or Judicial Precedence. ‘According to British Law, the decision of the court has binding force while adjudicating future cases.’ (Legal Aspects of life insurance, 2000, IC 24 Insurance Institute of India) In India, the decisions of Supreme Court and High Court act as judicial precedents.

Next section examines the legal provisions regarding transfer of life insurance policy rights in India.

**3.1 The legal procedure of transfer of life insurance policy rights to third party by way of assignment:**

In India, the Insurance Act of 1938, section 38, governs the assignment of life insurance policies. This section consisting of seven subsections, elaborately presents the complete code on assignment and transfer of life insurance policies.

Assignment generally means a transfer of property by writing as against the transfer by delivery. The assignment of life insurance policy means the act of transferring the rights of property in the policy from one person to another. The person who transfers the rights is called the ‘assignor’ and the person to whom the rights are transferred is called the ‘assignee.’

There are two types of assignment,
1) Conditional Assignment: is not the transfer of all rights of the policy. The policy is assigned on the condition that, the right of the policy including receiving benefits, will be reverted to the life assured, if he survives at the time of maturity. The policy is transferred on the condition that only the amount equivalent to the liability of the insured shall be owned by the assignee. This assignment is common in case of borrowing against the policy and as collateral.

2) Absolute Assignment: An absolute assignment is the complete transfer of the policy, either by way of sale or as a gift. The assignor assigns the policy absolutely to the assignee. All interests in the policy are thereafter vested in the assignee and the assignor has no further interest in the policy. The assignee should serve the notice on the assuror and should prove his title by producing the policy and the deed of assignment. There are certain specified requirements that the assignment should be in writing with endorsement on the policy or on a separate instrument, signed by the assignor. The fact of transfer or assignment must be specifically set forth. It must be attested by at least one witness.

Once the formalities prescribed by section, 38 of the Insurance Act 1938 are completed, subject to the terms and conditions of the transfer, the insurer shall recognize the assignee as the only person entitled to the claim under the policy. The assignee steps into the shoes of the assignor, in the sense that he will not only be entitled to all the rights of the
assignor but will also be liable to all the duties of the assignor towards the insurer.

Thus section 38 of the Insurance Act, 1938, implies that the ownership rights of the life insurance policy can be legally transferred in the name of a third party in exchange for money value. The law approves the selling of insurance rights to a third party. This is an elementary requirement for existence of the secondary market.

The Bombay High court has clearly stated that the section 38 is substantive and not procedural (Judgment 2007 on Writ Petition No.2159 of 2004).

3.1.1 Absolute assignment section 38, Insurance Act 1938:

According to section 38, Insurance Act 1938,

Section 38(1) Mode of Assignment and Execution: A transfer or assignment of a policy of life insurance, whether with or without consideration, may be made only by an endorsement upon the policy itself or by a separate instrument, signed in either case by the transferor or by the assignor or his duly authorized agent and attested\(^5\) by at least one witness, specifically setting forth the fact of transfer or assignment. In India the assignment must be in a written mode.38 (1).

\(^5\) Attested as defined in the Transfer of Property Act S3, attested by two or more witnesses each of whom has seen the executant signor affix his mark on instrument or received from executant the personal acknowledgment of his sign or mark and each of whom has signed the instrument in the presence of the executant.
Attestation has special significance and is much more than merely witnessing the document, because if the assignor does not accept the execution of the document, S68 of the evidence act states that the one attesting witness is called to prove the execution.

Section 38(2) Notice of Assignment⁶:

The transfer or assignment shall be complete and effectual upon the execution of such endorsement, duly attested. However, it would not be operative until a notice in writing of the transfer or the endorsement or its certified copy is delivered to the insurer.

This notice can be given to the branch of insurers office mentioned as a principle place of business.

Section 38 (3) Notice of Assignment:

Subject to the terms and conditions of the transfer or assignment, the insurer shall, from the date of the receipt of the notice referred to in sub-section (2), recognize the transferee or assignee named in the notice as the only person entitled to benefit under the policy. The assignee shall be subject to all the liabilities and equities to which the transferor or assignor was subject at of date of the transfer or assignment and may institute any proceedings in relation to the policy without

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⁶ See Annexure 3.1 Notice of assignment.
obtaining the consent of the transferor or assignor or making him a party to such proceedings.

From the day on which notice is given to the insurer, the assignee becomes the beneficiary of the policy even though the assignment is not registered immediately.

Where there are more than one instruments of transfer the priority of claims shall be governed by the order in which the notices are delivered.

**Section 38 (4) Recognition of the assignment:**

Once the notice is received, by virtue of Sub-section (4), the insurer is bound to record the fact of transfer or assignment together with the date thereof and the name of the transferee and the assignee and on request, grant a written acknowledgment of the receipt of such notice which will be conclusive evidence that the insurer had received the notice.

**Section 38 (5) The Statute itself mandates that the insurer recognize the transferee or assignee named in the notice as the only person entitled to the benefit under the policy and such person would be subject to all liabilities and equities. The latter part of this sub-section makes it clear that once the notice is served and the company recognizes the transfer or assignment, it is the transferee or assignee who can institute any proceedings without obtaining the consent of the transferor or assignor or making him a party to the proceedings.**
Section 38 (6): Any rights and remedies of an assignee or transferee of a policy of life insurance under an assignment or transfer effected prior to the commencement of this act shall not be affected by the provisions of this section.

Section 38 (7): Conditional Assignment: This sub section renders valid any assignment made with the condition ‘that it shall be inoperative or that the interest shall pass to some other person on the happening of a specified event during the life time of the insured’.

3.1.2. Nomination and absolute assignment:

- Section 39 (4) of the Insurance Act, 1938 A transfer or assignment of a policy made in accordance with Section 38 shall automatically cancel a nomination:
- "The implication clearly is that the assignment would not be revocable and that it would create an interest in the assignee which the assignee herself would be able to assign. (Lakshmi vs. Jaswantlal Tribhuvandas and Anr., AIR (34) 1947 Bom.369)"\(^7\)
- Once an assignment is made, it cannot be cancelled at the will of the assignor. It creates a vested right in the assignee. On the contrary, the nomination unless there

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\(^7\) Bombay High Court Judgment 22, March 2007, on Civil Jurisdiction Writ Petition No.2159 of 2004.
is a special clause does not deprive the policyholder of his rights including the right to alter the beneficiary.

3.1.3. Absolute assignment with and without Consideration:

Section 38(1) mentions that the assignment can be with or without consideration. In case of without consideration, the assignment is by way of gift to the relation of blood or natural love and affection. The absolute assignment can be made for monetary consideration by way of sale or mortgage. This implies that for the assignment in favor of a third party there must be monetary consideration. The absence of consideration will render the assignment void.

3.1.4. Rights of the assignee under absolute assignment:

- By section 130 of the transfer of property act and section 38 of the Insurance Act, all the rights and duties of the assignor are transferred to the assignee by way of absolute assignment.
- The absolute assignment is irrevocable.
- The assignor has the right to determine the wording of the letter of assignment.\(^8\)

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\(^8\) Annexure 3.2 Generalized format of letter of assignment.
The transfer of rights is effectuated as soon as the notice of assignment is received by the insurer but the assignee can procure the policy document from the assignor for the purpose of ensuring that the policy is not assigned earlier and to verify the record.

On receipt of the notice of assignment, it is binding on the insurer to register the assignment if the requirements according to S38 are obliged. The insurer cannot decline the request to register the assignment.

The assignee steps into the shoes of the policyholder after the absolute assignment. The insurer should treat the assignee as the policyholder.

The assignee can modify the mode of payment of premiums, surrender the policy, borrow against the policy, or further assign it without the consent of the assignor or original policyholder.

In case of the revival of lapse policy, the original policyholder is required to revive the policy. Nevertheless, according to the Bombay High Court Judgment, for the insurer is not concerned with, who is paying the premium as far as the policy conditions regarding revival are satisfied.
Box 3.1

Steps in legal transfer of the policy rights to third party

1. The assignee verifies the policy document for whether it is already assigned, mortgaged.

2. Assignor insured signs the notice of assignment mentioning the money value for which the policy is transferred and the acknowledgement of the receipt is procured by the assignee. At this stage, the policy rights are legally transferred from the assignor to the assignee.

3. The letter of assignment worded by the assignee is attached to the policy document or its valid copy for endorsement by the insurer. The signatures of the assignor, one witness and the assignee or his authority are required on the letter of assignment.

4. The document including the policy, and the letter of assignment, is sent to the insurer for endorsement

5. The insurer endorses the policy and the notice of assignment by stamping it.
3.1.5 Assignment immediately after the issue:

In life insurance, where the beneficiary makes the insurance and the life insured assigns it to the beneficiary soon after the issue of the policy, the court can go behind the wording of the policy and ascertain the real nature of the transaction. (Mc’Farlane v. Royale London Friendly Society (1886) 2 TIR 755)

However, in case of absolute assignment the policy can become void if the absolute assignment in the name of third party is made with monetary consideration, soon after the issue of the policy. How soon is not mentioned it is discretionary depending upon the consideration of the policy and the nature of assignment. (M.N. Sriniwasan,2003). In case of conditional assignments, the assignment as a mortgage against loan can effected legally.

In case of the secondary market trading, the regulators, have to determine this aspect to prevent the wagering where the third party firms finance the purchase of the policy, and immediately assign it after the issue.

3.1.6 Transfer of property act 1882:

The Indian Law adopts the division of property into movable and immovable property. The policy of life insurance is a movable property but it is an actionable claim. Life Insurance is an actionable claim. Once issued life insurance
policy is governed by the transfer of property act. According to section 130, Chapter VIII of the transfer of Property Act, according to this except marine and fire insurance the rights and duties of the transferor shall be vested in the transferee once the notice is signed.

To present section 130, Chapter VIII, in verbatim,

“(1) The transfer of an actionable claim whether with or without consideration shall be effected only by the execution of an instrument in writing signed by the transferor or his duly authorized agent, shall be complete and effectual upon the execution of such instruments, and thereupon all the rights and remedies of the transferor, whether by way of damages or otherwise, shall vest in the transferee, whether such notice of the transfer as is hereinafter provided be given or not: Provided that every dealing with the debtor other actionable claim by the debtor or other person from or against whom the transferor would, but for such instrument of transfer as aforesaid, have been entitled to recover or enforce such debt or other actionable claim, shall (save where the debtor or other person is a party to the transfer or has received express notice thereof as hereinafter provided) be valid as against such transfer.

(2) The transferee of an actionable claim may, upon the execution of such instrument of transfer as aforesaid, sue or institute proceedings for the same in his own name without
obtaining the transferor's consent to such suit or proceeding and without making him a party thereto.

Exception: Nothing in this section applies to the transfer of a marine or fire policy of insurance or affects the provisions of section 38 of the Insurance Act, 1938 (4 of 1938).

Thus, Section 130, of the transfer of Property Act deals with the transfer of actionable claim. Since enactment of Insurance act 1938, the transfer or assignment of the life insurance policy is governed by section 38 of Insurance act and not by the property act. (IC 24, 2000) It is specially mentioned in the section 130, Transfer of Property Act, that nothing in that section affects the provisions of section 38 Insurance Act 1938.

3.2 The Contract of Life Insurance:

Insurance has been defined as a contract by which one party (the insurer) in consideration of a premium, undertakes to indemnify another (the insured) against loss. (Hodgin Ray, 2002)

“A contract is an agreement enforceable at law made between two or more persons, by which rights are acquired by one or more to certain acts or forbearance on the part of other or others.” (Anson, 1895)

Contract of insurance is governed by rules, which form a part of the general law of contract. In a contract of insurance, one party agrees to indemnify loss that would be sustained by
another. The first party is bound to pay money or to provide it’s equivalent if any uncertain event occurs. The other party, namely, insured must have an insurable interest in the property, life, or liability, which is subject of insurance.

In India, contracts are largely of the simple contract variety. They have to be supported by consideration in order to make them legally enforceable.

The expression of life insurance as defined in Section 2(11) of the Insurance Act, 1938, comprises any contract in which one party agrees to pay a given sum upon happening of a particular event contingent upon the duration of human life. (LIC of India Vishwanath Verma, AIR 1995 SC 189:1994 Supp(3)SCC 569,1995)

The terms of the contract are ascertained from the document embodying the contract. In life insurance, the policy is the document expressing the contract between the insurer and the insured. The contract comes into existence when the insurer accepts the proposal from the party and the terms of acceptance are complied by the party.

Once the life insurance contract comes into existence it is governed by the property act as an actionable claim. The insured can continue, transfer (S-38 Insurance act 1938) or surrender (S-113 Insurance act 1938) the policy rights according to the policy conditions, he can also take loan against the policy mortgage (S-27- A, Insurance act 1938). The contract has to be interpreted according to the policy document though in certain circumstances life assured may
rely on the prospectus supplied by the insurer. As inferred from the above terms of the life insurance contract, the nature of life insurance contract is different to an extent from the nature of general insurance contract. Life insurance contract is not a contract of indemnity, it is only partly executory, and it is personal. This has a strong bearing on legality of the transfer of policy rights in the name of third party for monetary consideration.

3.3 Principle of insurable interest and secondary market trading:

The principles of life insurance define the character of the Life Insurance contract. These principles are universally applicable. Nevertheless, there are important distinctions between the principles of general insurance and the principles of life insurance. Failure to recognize these differences, leads to the confusion regarding the tradability of life insurance. The interviews with the life insurance personnel and experts revealed that secondary market trading is regarded as illegal and void on the plea that it violates the principle of insurable interest.

The study finds that this argument is based on the confusion between the application of the principle of insurable interest in life insurance and general insurance.
In life insurance, the policy is purchased in two situations:
1) The situation where one applies for insurance on his or her own life;
2) The situation where one applies for insurance on the life of someone else. (IC 24, 2000, p 19)

Everyone has unlimited insurable interest in his own life. The insurable interest requirement is automatically met in this situation.

When one applies for insurance on the life of another for his own benefit, however, he must have an insurable interest in the life of that person. This means an expectation of benefit from the continued life of the proposed insured, but not necessarily the pecuniary benefit. The general rule is that love and affection by blood or marriage is sufficient to prove the insurable interest. In absence of such close relation, the beneficiary must show an insurable interest of a pecuniary nature in the life to be insured.

One has no risk of loss in the death of the person or any motive to support a person’s life. If so, why should one have a right to insure that life, and get a chance to recover on the termination of that life and thereby make an unlawful gain?

No insurance on lives shall be valid unless an insurable interest can be shown. In order to render a policy of insurance valid.
Box 3.2

Principles of insurance contract

Broadly speaking a contract of insurance is:-

‘Uberrima fides’ - It is the contract of ‘Good Faith’, each party relies on the representation provided by the other.
Aleatory- it depends upon a contingency; one party may receive much more than the other depending on chance circumstances.
Voluntary- parties acting in good faith incorporate certain provisions and conditions not prohibited by law.
Executory- Life insurance contracts are executory in a limited sense. On payment of premium it is deemed as executed by the insured. However, in case of insurer it is executed only after the payment of sum as per conditions agreed upon.
Synallagmatic- It imposes reciprocal obligations on both the parties.
Conditional – It depends upon compliance of certain conditions as payment of premium, avoidance of misrepresentations or communications of material facts.
Personal- Life insurance contract is personal in the sense that it is based on benevolent motives to secure to the family of the insured a support on the death of the insured.
The party for whose benefit it is effected must have a pecuniary interest in the life insured. The principle of insurable interest protects the insured against the ‘wagering ‘against his life by a stranger.

The insurable interest is established in following cases:

- Every man has insurable interest in his own life.
- A woman has insurable interest in her husband’s life since the husband is obliged to support his wife.
- Law recognizes the insurable interest by a man in his wife whether or not she is earning.
- A creditor has insurable interest in the life of his debtor (but not vice-versa).
- An insurance company has insurable interest on the lives assured sufficient to support a reassurance.
- An employer has an insurable interest in the life of his employees.
- A partner has an insurable interest in respect of capital contracted to be brought in by his copartner.
- Insurable interest is pecuniary interest according to British law. This means that affection between father and son does not imply that the father has insurable interest in son’s life.

In the United States, the assignee is the beneficiary when the policy matures provided the policy has been initially taken out in good faith in the first instance with
no idea of assigning immediately after initiation and afterwards in good faith the policy is assigned for valuable consideration to one who has no insurable interest in the life of the insured. (Armstrong, 2002)

The validity of such assignments is regularly recognized in USA, even where all the formalities required by the third party firm for effecting the assignment have not been observed. (Luxton v. State Farm Life Insurance Co., 89 AFTR 2d 2002-866 (D. Minn. 2002))

American law will not permit an assignee to recover the proceeds of a policy on the life of an insured in respect of which he holds no insurable interest if evidence shows that assignment of the policy occurred contemporaneously with its issuance or later with a wagering intent. Such an assignment might either invalidate the policy or alter the identity of the party entitled to recover the proceeds on maturity.

Finnie v. Walker, 257 F. 698 (2nd Cir. 1919) holds that the contemporaneous assignment is a wagering contract, that the invalidity of the assignment does not void the policy, and that the assignee must account as trustee to the estate of the insured.

In general insurance, insurable interest may or may not exist at the time of inception of the policy. (In vehicle insurance it does not exist for third party insurance), but it must exist at the time of claim settlement. In life insurance, the principle applies differently.
At the time of termination of the policy or settling the claim of life insurance, the insurable interest is not mandatory.

3.3.1 Life ‘Assurance’: A non-indemnity contract:

Fire, marine, motor, and other accident insurances, except life and personal accident insurances are contracts of indemnity. This means that the insured in case of a loss against which the policy has been made shall be fully indemnified (compensated in money terms), but shall never be more than fully indemnified. The object of these contracts is to place the insured in the same position in which he would be if the event causing the loss had not occurred. Life insurance is not the contract of indemnity, but a contract to pay a stated sum. Neither the doctrine of subrogation nor the doctrine of contribution applies to life insurance. A person who has insured life with more than one insurer has right to recover the sum assured under all the policies. (Doctrine of contribution not applicable.) Even where a third party causes an insured’s death, the insurer has no right to proceed against the third party (Doctrine of subrogation not applicable.)

The most fundamental difference between life insurance and property insurance is that the subject matter of life insurance is human life. It is largely a contract of investment which enables the insured to raise funds for himself or for the benefit of dependents. This non-indemnity nature of life insurance makes trading possible as the contract has a pre-specified value.
Indian Contracts Act (1872) defines a contract of indemnity as a contract by which one party promises to save other party from loss caused to him by conduct of himself or by conduct of any other person. Insurance contracts are not contracts of indemnity as defined by the Indian Contract Act, but the principles of indemnity apply to insurance contract except for life and accident insurance.

In the life insurance contract, the amount mentioned in the policy is not the estimation of the value of life because human life cannot be estimated in value correctly. Loss or damage caused by the death of a human being is incapable of exact estimation. The value of life insurance policy is based on the capacity to pay premiums.

This non-indemnity nature of life insurance makes trading possible as the contract has a pre-specified value. It facilitates the price determination of the tradable policies. Because of non-indemnity nature of life insurance, the insurer promises to pay a pre-specified value on the termination of the policy or in the event of uncertain event (death in case of term and whole life policies, and survival in case of endowment policies). This value enables the insurer to calculate the cash surrender value. The cash surrender value acts as a benchmark for pricing of tradable policies.
3.3.2 Insurable Interest in India:

Insurable interest in case of life insurance must exist at the time of inception of the policy. That means a policy cannot be issued to a person who has no insurable interest in the insured’s life. However, at the time of termination of the policy or settling claim the insurable interest is not mandatory. The claims are settled in favor of the legal heir\(^9\) or the assignee, in case of an assigned policy. This implies that returns or benefits of life insurance can accrue to the third party who is an assignee. This makes the trading feasible.

Insurable interest in life Insurance is required by statute in England, by the Life Insurance act, 1774, while in America and India, it is not required by any statute but as a matter of public policy.

In the absence of statutory provision in India on insurable interest, one has to draw upon the principles underlying the decisions of the foreign courts in UK and USA. Section 30 of the contract act is the only express statutory provision having bearing on insurable interest.

In the light of Life Insurance Act 1774, the courts of UK held that insurable interest should exist at the date of the contract and not at the date of death. (Dalby v. India and London Assurance Co.) The principle of the decision in above case is taken to be the law in India.

\(^9\) Nominee is not necessary the legal heir. Legal heir is the person financially dependent on the insured.
The insurable interest is applied at the time of inception in life insurance to protect the insured from others betting against his life. In early days, absence of insurable interest led to gambling in England. Third parties insured the lives of prominent persons. The Life Insurance Act was enacted to make the insurable interest mandatory for inception of the life insurance policy.

Even though Insurance Act 1938, does not define insurable interest, it has been stated by the Bombay High Court that in India, an insurance for a term of years on a life of a person in which the person effecting the insurance has no interest, is void as a wagering contract under Section 30 of the Indian Contract Act.

As the life insurance is not a contract of indemnity, the existence of insurable interest and the amount thereof will have to be considered at the time of effecting the contract, since lack of such interest would render the contract void. If insurable interest existed at the inception of the policy, the contract would be enforceable, even though such interest might cease to exist later. (Madhyastah, BalChandra, Diwan, 2000)

A commonly expressed argument against secondary market trading in life insurance is that it is a wagering agreement since the third party is benefiting from the speculation about the death of the policyholder.

Since the earlier provisions in India on the matter of insurable interest are not statutory and are ambiguous, the
recent Bombay High Court Judgment provides the much-needed judicial comment.

3.4 Analysis of the legal status of trading in life insurance products:

The following contentions discussed are the arguments put forward by the life insurance experts, trainers, insurance officers, and actuaries, in opposition of trading in life insurance during the interviews conducted by this researcher. These arguments are analyzed in this section based mainly on the statute law (Insurance act 1932, Contract act 1882, Transfer of Property Act) and the Judicial Precedence (Case law in UK, US and discussion in the Bombay high court Judgment).

Contention 1: Insurable interest required at the time of issue of the policy must exist at the time of assignment and if it does not exist, such transaction amounts to wager and is therefore against the public policy. Section 30 of the Indian Contract Act declares wagering as void contract.

This contention is the most important, widely raised contention against the trading in life insurance by the most knowledgeable persons and noted actuaries in this field, during the interview sessions.
The study examines this issue in detail referring to the case law, in India and abroad, life insurance law and Bombay High court judgment.

As discussed in section 3.2 insurable interest in life insurance is required at the time of entering the life insurance contract and not at the time of termination of the contract.

**Is trading null and void if it is a wagering contract?**

An integrated law on Wagering contract in India does not exist (Bombay High Court, 2007). Referring to the supreme Court Judgment, (Gherulal Parakh v. Mahadeodas Maiya and others, AIR 1959 SC 781) the wagering contract is defined as the contract entered into terms where the performance of the contract is not demanded but only difference in the prices should be paid.

The Supreme Court (1959) quoted Sir William Anson (1895) with approval for the definition of ‘wager’ "as a promise to give money or money’s worth upon the determination or ascertainment of an uncertain event" and held that it accurately brings out the concept of wager declared void by Section 30 of the Contract Act.

However, an interesting question considered was, ‘whether what is void could be equated with what is forbidden by law’.

The Supreme Court once again quoted from Sir William Anson’s on law of contract as under:- "....the law may either actually forbid an agreement to be made, or it may merely say
that if it is made the Courts will not enforce it. In the former case it is illegal, in the later only void; but inasmuch as illegal contracts are also void, though void contracts are not necessarily illegal, the distinction is for most purposes not important, and even Judges seem sometimes to treat the two terms as inter-changeable."

**Insurable Interest is not required for assignment and claim settlement in life insurance:**

In the U.S. Supreme Court (in Grigsby vs. Russell, 222, US 149) noted that life insurance has become one of the best-recognized forms of investment and self-compelling saving and as far as reasonable safety permits, it is desirable to give to life policies the ordinary character of property. Further dealing with the issue of insurable interest, the Court held: - "To deny the right to sell except to persons having such an interest is to diminish appreciably the value of the contract in the owner’s hand". The law in the U.S.A. ever since from Grigsby is, that though there has to be an insurable interest when the policy is taken out, there is no requirement of insurable interest at the time of transfer of assignment. This view has been followed ever since.

As the Bombay High Court (2007) states, “Considering the law in India and England as noted in Gherulal Parakh (Gherulal Parakh v. Mahadeodas Maiya and others, AIR 1959 SC 781) wagering contracts have been held not to be against the public policy and in the United States it has been held after
Grisby (Grigsby vs. Russell, 222, US 149) that insurable interest must exist when the initial contract is entered into, but for subsequent assignments there is no requirement of insurable interest”.

The contention, therefore, that assignment of life insurance policy amounts to waging as there is no insurable interest and, therefore, against public policy has to be rejected.

**Contestation 2:** The benefits of the policy should not go to the third party because the policy is ‘widow’s trust’.

This argument is commonly raised against the secondary market trading in life insurance products. Though this argument is a moral argument it points toward an important legal issue of whether the insured has the right to make decisions about the policy without consulting the beneficiary? The legality of this question is important for practical workability of the trading because there is a possible threat of the beneficiaries opposing the assignee third party firms claiming the benefits. What is the legal status of the assignee vis a vis the beneficiaries?

The law in US as well as UK states clearly that the insured owns the policy. It is the property of the insured and not of the beneficiary. (Vance, 1922)

The Legislature when it provided for transfer or assignment has not treated it as a security for protection of widows or dependents of the life assured. On the contrary, an Insurance policy as understood both in this Country and other
countries following the common law as well as the U.S. is that the life insurance has become one of the best-recognized forms of investment and self-compelled saving. It has been held to be property. (Bombay High Court Judgment 2007)

In Bai Lakshmi vs. Jaswantlal Tribhuvandas and Anr. AIR (34) 1947 Bom.369 the learned Division Bench was pleased to observe as under: - "The implication clearly is that the assignment would not be revocable and that it would create an interest in the assignee which the assignee herself would be able to assign."

**Contention 3:** Revival of the assigned/transferred policies would be illegal: The revival of the policy is based on the terms of the contract. Even though it is at the discretion of the insurer, it has to be subject to a uniform rule and should not be ‘arbitrary or unreasonable based on extraneous conditions’. (Bombay High Court, 2007)

According to general conditions of life insurance contract, the insured only can revive the policy, if he otherwise complies with the requirements of the policy. The lapsed policy necessarily cannot be transferred or assigned, until it is revived. Until the policy is revived, it will have only a surrender value.

In this case, the insurers argue that the third party firms revive the policies putting insured, as a front. The insurer has to revive the policy and bear the burden of claims rather than advising the insured about the surrender.
This argument is also more of a moral sort than legal; because as the insured applies for the revival the insurer has to abide by the request in case of all other conditions being fulfilled. The revival should not be affected by ‘extraneous’ conditions such as whether the third party is financing the revival. It should be treated as the decision made by the insured regarding the revival.

**Contention 4:** Even if the insured expired, the policy in the hands of the transferee would be allowed to run up to its maturity and it would confer on the Third Party Firms, unjust monetary gains at the expenses of families of the lives assured. The assignee is subject to the terms and conditions of the policy.

If the assignee continues with the policy, even after the death of the policy holder; the assignee is only entitled to the benefits as on the day of the death of the original policyholder when the policy becomes payable in terms of the contract.

The life insurance policy is treated as the property of the insured. Law has accepted that once the contract of life insurance exists, it is the property of the insured and the insured has complete right to transfer sale or surrender the policy according to the policy conditions.

**Contention 5:** The life insurance products, issued by the Life Insurance Corporation of India are for social security. However, persons trading in life insurance policies will not
only derive windfall gains from such trading but will also claim exemption from Income Tax.

There are two arguments based on the provisions of Section 6, 24, 26, 28 and 37 of the Life Insurance Act as also Section 10(1)(d) of the Income Tax Act, 1971.

a) It is argued that the surplus should be distributed among the policyholders according to Section 28 of the L.I.C. Act, 95% of any surplus which merges as a result of the investigation undertaken under Section 26, shall be allocated to or reserved for the life insurance policy holders. After meeting the liabilities of the Corporation under Section 9, the reminder shall be paid to the Central Government or if the Government so directs, utilized for such purpose and in such manner, as the Central Government may determine.

b) The sum received under a life insurance policy, including a sum allocated by way of bonus on such policy is exempt from Income Tax (Section 10(1)(d) of the Income Tax Act, 1971). This is a benefit given to insured persons or their dependents in furtherance of the intention to treat life insurance policies as a measure of social security

However, persons trading in life insurance policies will not only derive windfall gains from such trading but will also claim exemption from Income Tax.

The provisions of Section 10(10D) of the Income Tax Act and Section 60(kb) of the Code of Civil Procedure, 1908 are not specially applicable to Life Insurance Corporation of India only but apply for life insurance policies issued by the
private sector also, that and those policy holders and assignees derive the same benefit.

There is a need to look at this trade as a long-term wider market phenomenon rather than a struggle between the ‘incumbent public sector insurer’ and a private sector profit making third party firm. The profits in the competitive market depend on the government regulatory policies. Hence, if and when the trade starts the third party firms may gain from early entry into the market from the existing conditions like the income tax exemptions. However, eventually, the laws may change eliminating the abnormal profits to third party firms.

Interestingly, the Bombay High court has stated that the business of Life Insurance Corporation of India is similar to any other life insurance company and cannot be treated as a measure of social security after the section 30(A)\(^{10}\) introduced into the Life Insurance Act 1956.

To quote the judgment,“ Consequent to private entry in the business of life insurance it will no longer be possible to contend that the Corporation carries on business of issuing policies as a measure of social security. Like other companies in the business, it is carrying on business, though it may issue policies, whose coverage may be for sections of society, to whom the Private Companies may not pander. …. After Section 30A being introduced into the Life Insurance Act, and

\(^{10}\) In 1999, the amendment of the, allowed the private firms in life insurance, s 30 A exclusive privilege of carrying on life insurance business in India shall cease on and from commencement of Insurance Regulatory and Development Authority Act 1999 LIC shall thereafter carry the business acc to the provisions of the Insurance act 1938.
coming into force of the Insurance Regulatory Act, business of Life Insurance can be carried on by any company or corporation in terms of the Insurance Regulatory Act. It cannot, therefore, be said that the policies issued by Respondent No.1 (LIC of India) are as a measure of social security. “(Bombay High court Judgment, 2007)

3.5 Bombay High Court Judgment on the Transfer of Life Insurance Policies in the name of Third Party:

On 22 March 2007, Bombay High Court gave a judgment on the secondary market trading in India. This historical judgment is the first legal document on this issue in India. It unambiguously expresses the stance of judiciary as well as the insurance regulator, IRDA on the matter of life insurance trading in India. The judgment by the Jury consisting of F I Rebello and Anoop Mehta analyses at length the issues of insurable interest and wagering.

Insure Policy Plus Services Pvt.Ltd., a registered firm engaged in ‘the business of assigning the life insurance policies’ in India filed a writ petition against the Life Insurance Corporation of India for declining the assignment of life insurance policies by issuing a circular (LIC circular,Dtd.22ndOctober,2003) refusing to assign life insurance policies to ‘Third Party Trading Firms’.

The judgment and the arguments put forward by LIC of India, IPPS Pvt.Ltd. and the IRDA prove to be a classic source
of discussion on this subject. The summary of the judgment is provided in this section.

3.5.1 Summary of IPPS petition:

To summarize the IPPS petition:

1. The LIC of India has agreed that the assignment of life insurance policy is permissible under Section 38 of the Insurance Act, 1938.

2. In spite of this on 22nd October, 2003 the LIC of India issued a Circular, directing that the assignment in favor of companies trading in insurance policy should be declined.

3. Apart from the provisions of Section 38 of the Insurance Act, it is set out that the policy is movable property and the policy holder being the sole owner of that property, has right to deal with it in any manner which benefits him/his family. The policyholder enjoys full ownership and control over the Life Insurance Policy and the assignment can be way of purchase, sale or natural love and affection.

4. The IRDA by letter of 3rd March 2004 after examining the provisions of the Insurance Act, 1938, has opined, that the LIC of India should register the assignment of policies.
5. The petitioner’s case is that, merely because the petitioners have no insurable interest in the life of the assured, does not make the assignment in favor of the petitioners bad in law. The LIC of India permits assignment of life insurance policies in favor of banks and financial institutions, which hold it as a security. The banks and financial institutions do not have any insurable interest in the life of the assured.

   The life insurance policy, once issued, is governed by the property act. It is regarded as the property owned by the insured it is transferable by way of sale and purchase for a money value. The rights to the life insurance contract can be transferred by way of assignment. It is also pointed out that insurer is only a registering authority which registers the assignment of life insurance policies.

   The arguments are representative of the arguments of the third party trading firms for legality of the trade.

3.5.2 Summary of LIC of India’s Response:

   Mr. Sudhanshu Shekhar, Assistant Secretary (Marketing/CRM) filed the reply on behalf of LIC of India.

   To summarize the LIC of India’s reply,

   1. As per the petitioners’ own admission, the purported transfers/assignments are sought only with a view to
further transfer and assign the said policies and, therefore, it is evident that the petitioners do not have any insurable interest in the life insured, which is the essence of a valid contract of a life insurance policy.

2. A pecuniary interest arising from the relationship of the party obtaining the insurance, either as creditor or security for the assured, or from ties of blood or marriage to him as will justify a reasonable expectation of advantage or benefit from the continuance of his life or a loss arising out of the extinction of such life. Every contract of life insurance must have a reasonable ground founded upon the relations of parties to each other, to expect some benefit or advantage from the continuance of the life of the assured. In the absence of such reasonable ground, the contract is a mere wager as such policies have a tendency to create a desire for the event and, therefore, independently of any statute on the subject, ought to be condemned as being against the public policy. The assignments, which the petitioners seek to register, are mere wagering contracts in the absence of any insurable interest in the lives assured and such contracts are expressly declared null and void under Section 30 of the Indian Contract Act.

3. The major distinguishing factor is risk of loss. In insurance, the assured is moved to effect a policy by the risk of loss and does not create the risk of loss by the contract itself, as in the case of a pure wager. The sole
objective of the 1st petitioner in seeking registration of the assignment is to trade in the policy further, by selling, assigning and transferring the policy.

4. Life insurance Corporation of India’s stand is similar to the response of insurers to the secondary market trading in other countries. However, the objective of LIC being the public interest, it weighs differently and it cannot be called an ‘incumbent firm’ (Doherty and Singer, 2003).

For example, in its response LIC states clearly that, “The challenge to the scheme dated 22nd January, 2003 and also subsequent Circular it is submitted, is misconceived as such circular has been issued by the LIC of India in exercise of its powers, duties and functions to safeguard the interests of the policy holders, which is a statutory obligation cast upon it. Implementing public policy and laws enforced in India in discharge of the LIC’s statutory obligations for the protection of the policyholders cannot be the subject matter of any challenge as formulated by the petitioners”

3.5.3 Reply by IRDA:

No reply has been filed by IRDA in this case. However, learned Counsel has submitted written submissions and contended that he would address the Court based on the documents which are on record. The stand of IRDA from the written submissions is that,
1. Under the law as it stands, the insurance policies are assignable and the law does not lay down any limitation on such assignments and does not prohibit trading of life insurance policies by way of assignment of policies. If any change has to be brought about, it should be by amending Section 38 of the Insurance Act.

2. Assignment of policy it is submitted considering Section 30 of the Indian Contract Act cannot be termed as a wagering contract.

3. “The issue was discussed as an agenda item in a meeting of the Executive Committee of Life Insurance Council held on 9th January, 2004 which was attended amongst others by the M.D. of the LIC of India where most members felt that free trading of policy should be allowed as in U.K. and Australia and if any restrictions are to be brought on such assignments, the same has to be by way of amendment to Section 38 of the Insurance Act. In fact, the respondent No.1 by communication of 29th March, 2004 has sought amendment to the provisions of various Acts. This, it is submitted, is an acknowledgement by Respondent No.1, that the law as of today is that the policies are assignable”\textsuperscript{11}.

\textsuperscript{11} In the High Court of Judicature at Bombay Ordinary Original Civil Jurisdiction Writ Petition No.2159of 2004.p12
3.5.4 The judgment summary:

1. After Section 30A being introduced into the Life Insurance Act 1956, and coming into force of the Insurance Regulatory Act, business of Life Insurance can be carried on by any company or corporation in terms of the Insurance Regulatory Act. It cannot, therefore, be said that the policies issued by LIC of India are as a measure of social security.

2. Considering the law in India and England as noted in Gherulal Parakh (supra), wagering contracts have been held not to be against the public policy and in the United States it has been held after Grisby (supra) that insurable interest must exist when the initial contract is entered into, but for subsequent assignments there is no requirement of insurable interest.

3. Importantly, quoting the judgment of Supreme Court\textsuperscript{12} in the Bombay High Court Judgment states that,” In practice, though gambling is controlled in specific matters, it has not been declared illegal and there is no law declaring wagering illegal. Indeed, some of the gambling practices are a perennial source of income to the State. In these circumstances the Court observed that it is not possible to hold that there is any definite head or principle of public policy evolved by Courts or laid

\textsuperscript{12} Gherulal Parakh v. Mahadeodas Maiya and others, AIR 1959 SC 781.
down by precedents which would directly apply to wagering contracts”.

4. The contention, that assignment of life insurance policy amounts to wager as there is no insurable interest and, therefore, against public policy has to be rejected.

5. The Insurance Act treats the assignee as the policyholder if the policy is assigned once and for all. The provisions of the Section leave no doubt that the insurer has no choice but to accept the transfer or assignment as the case may be if the procedure required by Section 38 has been followed, but subject to the terms of the policy.

6. Section 38 is substantive and not procedural.

7. Once the notice is received, by virtue of Sub-section (4), the insurer is bound to record the fact of transfer or assignment together with the date thereof and the name of the transferee and the assignee and on request, grant a written acknowledgment of the receipt of such notice which will be conclusive evidence that the insurer had received the notice. The only limitation evidenced by the said Section to transfer is the terms and conditions of the transfer and necessarily the terms of policy itself.

8. The assignment becomes binding on the insurer recording the fact of such transfer or assignment. It is true that the effect of the transfer or assignment would be a novation of the contract, but law expressly recognizes such a novation. By operation of law, the insurer is bound to accept the transfer and/or
endorsement, if notice is given to the insurer and the procedure followed. Considering the terminology of the Section, it is not open to the insurer, to dispute the right of the insured to transfer or assign the policy and/or the right of the assignee pursuant to the transfer or assignment to have interest in the policy.

9. In the words of the judgment, “It is further made clear that the insurance policies issued by respondent No.1 are transferable and assignable in accordance with the provisions of the Insurance Act, 1938.”

3.6 Comments:

From the discussion, it is clear that, the transfer in the name of third party for monetary consideration, according to the section 38 of the Insurance Act 1938 is legal. The legality of the transfer is also endorsed by the Bombay High Court judgment. The court states that this cannot be challenged but it can only be changed or amended\(^\text{13}\). The amendment of Insurance Act 1938 can be affected only by the parliament, as it is the legal statute on the Central Government subject.

The major contentions against the trading in life insurance have been, that it is a wagering transaction and hence null and

\(^{13}\text{Incidently, even after the Bombay high court Judgment, Life insurance Corporation of India, has attached a questionnaire and a declaration along with the notice of assignment form, requiring the assignee to declare that he is not a ‘third party firm’ and does not assign the policy for trading purpose.}
void. The Bombay High Court categorically states based on Supreme Court Judicial precedent that wagering is not illegal. It is in some cases declared void in interest of the public policy. Hence, the discussion suddenly pops up the interesting question of what exactly is in the interest of public policy.

The answer may be found in what Patterson (1918) discusses in his paper on insurable interest, “The courts do not require that every contract, certainly not that every life insurance contract, should manifest a social purpose. On the other hand, in applying the principle of exclusion, the court looks not at the purpose or tendency of the individual contract; but at the tendency of the contracts of that class. The test of harmfulness is empirical, and the results of its application may vary with the changing state of society itself.”
Annexure 3.1
Notice of Assignment (LIC of India)

Life Insurance Corporation of India

FORM OF ASSIGNMENT OF POLICY FOR VALUABLE CONSIDERATION

NOMINANT (S) FULL NAME

INSTRUCTIONS FOR INSTRUCTIONS TO EXECUTORS OF AN ASSIGNMENT:

The receipt of which hereby acknowledge, do hereby as beneficial owner assign unto the said _______ years his Heirs, Executors, Administrators and Assigns the Policy of Assurance on the life of myself granted to me by the Life Insurance Corporation of India, assuring the sum of Rupees _______ and numbered __________ and bearing date the __________ day of __________.

The receipt above signed hereby acknowledged, and the sum assured thereby and all other monies and benefits and advantages to be received thereunder.

The above signed _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ _______ 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Annexure 3.1 (Continued)

Notice of Assignment

INSTRUCTIONS

(1) The full name, age, occupation and address of the Assignor must be stated.

(2) The actual consideration for the assignment received from the assignee should be written in words, not in figures.

(3) The Assignor must affix his signature to the Assignment in the presence of a witness other than the Assignee if the Assignor is not conversant with English; he must sign the Assignment before an English knowing person and if he be illiterate, he must affix his thumb impression to the Assignment before Magistrate S. E. M. or Gazetted Officer. The witness in such cases should certify as follows:

"I hereby certify that the contents of the above Assignment were explained by me to the Assignor.

(4) Signature in vernacular and that he affixed his signature / Left thumb impression thereto in my presence after thoroughly understanding the same."

(5) Signature or any other matter in vernacular should have the English translation thereon written beneath the same.

(6) The assignee must also affix his signature to the Assignment in the presence of a witness other than the Assignor if the Assignor is not conversant with English; he must sign the Assignment before an English knowing person and if he be illiterate, he must affix his thumb impression to the Assignment before Magistrate S. E. M. or Gazetted Officer. The witness in such cases should certify as follows:

"I hereby certify that the contents of the above Assignment were explained by me to the Assignor.

(7) When the Policy is to be assigned by way of Security or mortgage only & not absolutely it is advisable to consult a Legal adviser as to the form of assignment to be used, amount of stamp duty, etc.
Annexure 3.2

Generalized Format of the Letter of Absolute Assignment

ABSOLUTE ASSIGNMENT OF POLICY

THIS ASSIGNMENT made at __________ on this ________ day of ________ 20__
between Insure Policy Plus Services (India) Pvt. Ltd., a company Registered under the Companies Act
1956, having its registered office at 173, Patel House, 26th Road, TFS III, Bandra (W), Mumbai - 400 050.
(herein after called “the Assignor”) of ONE PART and Shri ________________
5/o Shri ____________________ aged ______ years, resident of ________________
(Hereinafter called “the Assignee”) of the OTHER PART.

WHEREAS

The assignor do hereby as beneficial owner has agreed to assign the policy of insurance in favour of the
said __________________________ issued by the Life Insurance Corporation of India in the name of
(name of the original policy holder) __________________________, assuring a sum of
Rs. __________/- policy No. __________________ Bearing Dated __________ and thus sum assured
thereby to be paid on maturity or to his successors nominee, heirs, executors, administrators, legal
representatives or assigns.

NOW THIS DEED WITNESSES AS FOLLOWS:

In consideration of sum of Rs. __________/- paid by the said
Mr. ___________________________ (the receipt whereof the said “Assignee” Insure Policy
Plus Services (India) Pvt. Ltd.), does hereby admit and acknowledge, to the said Assignor as the
beneficial owner hereby transfer and assign unto and to the use and for the benefit of the assignee the
above policy together with the benefits thereby assured together with bonus, benefits, obligations and
other moneys thereof to be had, recovered or obtained under the said policy. TO HAVE AND TO HOLD
the same unto and to the use of assignee absolutely and the assignor hereby covenant with the assignee
that the said policy is now valid and the Assignor shall not do, execute or perform or knowingly suffer
anything whereby the said policy may become void or voidable or the assignee or his heirs, executors,
administrators, legal representatives, or assigns may be prevented from receiving the moneys thereby
assured or any bonus, benefits and other sums thereunder.

IN WITNESS WHEREOF, the assignor and the assignee have executed this deed of assignment on the
date and year first above mentioned.

Assignor

Assignee

WITNESSES

1.

2.

Date __________

Place __________
Annexure 3.3
A Copy of Newly issued Questionnaire and Declaration enclosed with the Notice of Absolute Assignment

PS.VVT

DECLARATION TO BE SIGNED BY THE ASSIGNEE

I / WE HEREBY DECLARE THAT THE ANSWERS OVERLEAF ARE TRUE AND CORRECT TO MY/OUR INFORMATION, KNOWLEDGE AND BELIEF. I / WE FURTHER DECLARE THAT I / WE ARE NOT IN THE BUSINESS OF TRADING OF LIFE INSURANCE POLICIES AND THAT THE PROPOSED ASSIGNMENT IS NOT IN THE NATURE OF TRADING. I / WE FURTHER DECLARE AND AGREE THAT ANY FURTHER DEALINGS UNDER THIS POLICY IN WHATSOEVER MANNER WILL BE CARRIED OUT ONLY AFTER THE EXPRESS CONSENT IN WRITING FROM LIFE ASSURED AND L.I.C. OF INDIA. I / WE FURTHER DECLARE THAT UPON THE LIFE ASSURED DISCHARGING ALL HIS / HER OBLIGATIONS TOWARDS ME, THE AMOUNTS RECEIVABLE UNDER THE POLICIES SHALL BE REASSIGNED TO THE LIFE ASSURED. I / WE FURTHER DECLARE AND AGREE THAT IN THE EVENT OF MATURITY OR DEATH CLAIM OF THE POLICY, THE AMOUNTS DUE TO US SHALL BE ADJUSTED FROM THE PROCEEDS THEREOF AND BALANCE AMOUNT/SURPLUS, IF ANY, SHALL BE REFUNDED TO THE CLAIMANT/NOMINEE UNDER THE POLICY OR TO THE LIFE ASSURED AS THE CASE MAY BE.

PRIVILEGES TO THE POLICYHOLDERS
1. ASSIGNEE CAN RECEIVE THE PREMIUM NOTICE AND PAY THE PREMIUM TO KEEP THE POLICY IN FORCE UNLESS THE CONDITIONS OF ASSIGNMENT PROVIDE OTHERWISE.
2. LIFE ASSURED CAN REDEEM THE POLICY ON DISCHARGING HIS PART OF OBLIGATION.
3. LIFE ASSURED SHOULD BE CONSULTED AND HIS / HER CONSENT TAKEN BEFORE THE ASSIGNEE DEALS WITH THE POLICY IN ANY MANNER.
4. LIFE ASSURED CAN RECEIVE THE BALANCE AMOUNT, IF ANY, FROM THE POLICY PROCEEDS AFTER THE RECOVERY OF THE DUES OF THE ASSIGNEE.

DATED AT PUNE THIS 1ST DAY OF 2007

WITNESS

NAME

DESIGNATION

SIGNATURE AND SEAL OF SIGNATORY

NAME
Annexure 3.3 (Continued)

PS. VVT

ASSIGNMENT QUESTIONNAIRE

POLICY NO. NAME

1. Whether the policy that is being assigned is the only security which assignees holds? YES / NO

2. What is the consideration amount for the assignment? RS.

3. Whether memorandum of association of assignee contains a clause permitting assignee to advance/lend amounts against policies of L.I.C. of India as security. YES / NO

4. Whether the assignee has right to further assign policies to any third party without consent of life assured. YES / NO

5. Whether the assignee has complete control over the policy proceeds accruing during the tenure of the policy including periodical payments and the manner of appropriating the same. YES / NO

6. Whether the assignee retains control to the exclusion of life assured over any surplus amount accruing under the policy whether on maturity or otherwise after the adjustment of any amount outstanding to the assignee? YES / NO

7. Whether premium notice is to be sent to the assignee alone? YES / NO

8. Whether the assignee alone shall be responsible for future premiums under the policy? YES / NO

9. Whether the assignee is entitled to recover from life assured, which is going to be paid by the assignee? YES / NO

10. If the policy is under salary savings scheme, will the life assured be absolved of any responsibility for payment of future premium? YES / NO

11. Whether the assignee has submitted any other policies to the corporation for registration of whether any assignments have already been registered in favour of the assignee, with particulars thereof. YES / NO

12. Whether any assignment/s has/have been declined in past in the case of present assignee, if so particulars of the same. YES / NO

DATED AT THIS TH DAY OF 2007.

WITNESS SIGNATURE AND SEAL WITH NAME OF THE OFFICIAL

745615A