



Chapter

8

# MISCELLANEOUS ACTS

### **Banking [Sec. 5(b)]**

- “Banking” means the accepting.
- for the purpose of lending or investment.
- of deposit of money
- from the public,
- repayable on demand or otherwise,
- and withdrawable by cheque, draft, order or otherwise.

### **Banking Company [Sec. 5(c)]**

- “Banking Company” means any company
- Which transacts the business of banking in India.

Explanation :

- Any Company which is engaged in the manufacture of goods or carries on any trade
- and which accepts deposits of money from the public.
- merely for the purpose of financing its business as such manufacturer or trader
- shall not be deemed to transact the business of banking
- within the meaning of this clause.

### **Secured loan or advances [Sec. 5(n)]**

- “Secured loan or advances” means
- a loan or advance
- made on the security of assets
- the market value of which is not at anytime less than the amount of such loan or advance;
- and “unsecured loan or advance” means a loan or advance not so secured.

### **Small-scale industrial concern [Sec. 5(na)]**

- “Small-scale industrial concern” means
- an industrial concern
- in which the investment in plant and machinery is not in excess of Rs. 7.5 Lakh
- or such higher amount, not exceeding Rs. 20 lakh,
- as CG may, by notification in the Official Gazette, specify in this behalf,
- having regard to the trends in industrial development and other relevant factors.

### **Substantial interest [Sec. 5(ne)]**

- “Substantial interest”
  - (i) • in relation to a company, means
    - the holding of a beneficial interest
    - by an individual or his spouse or minor child,
    - whether singly or taken together
    - in the shares thereof.
    - the amount paid-up on which
    - exceeds
    - Rs. 5 Lakh or 10% of the paid-up capital of the company,
    - whichever is less;

- (ii) • in relation to a firm, means
  - the beneficial interest
  - held therein by an individual or his spouse or minor child,
  - whether singly or taken together,
  - which represents more than
  - 10% of the total capital subscribed by all the partners of the said firm.

### Form and Business in which Banking Companies May Engage

#### Forms of business allowed for a Banking Company [Sec. 6(1)]

- Borrowing of money.
- Lending or advancing of money either upon or without security.
- Drawing, making, accepting, discounting, collecting and dealing in bills of exchange, hundies, promissory notes, drafts, etc.
- The granting and issuing of letters of credit and travellers' cheques.
- The buying and selling off foreign exchange.
- Receiving bonds or scrips for safe custody or otherwise.
- Providing safe deposit vaults.
- Acquiring and holding and generally dealing with any property or any right, title or interest in any such property which may form the security or part of the security for any loans or advances or when may be connected with any such security.
- Undertaking and executing trusts.
- Undertaking the administration of estates as executor.
- Acquisition, construction, maintenance and alteration of any building or works necessary or convenient for the purpose of the company.
- Doing all such other things as are incidental or conducive to the promotion or advancement of the business of the company.
- Any other form of business which CG may, by notification in the Official Gazette, specify as a form of business in which it is lawful for a banking company to engage.

#### Other business prohibited [Sec. 6(2)]

- No banking company shall engage in any form of business
- other than those referred to in Sec. 6(1).

#### Use of words "bank", "banker", "banking" or "banking company"

##### Prohibition on Companies

- No Company
- other than a banking Company
- shall use as part of its name or, in connection with its business
- any of the words "bank", "banker" or "banking"
- and no company shall carry on the business of banking in India
- unless it uses as part of its name at least one of such words.

**Prohibition on others [Sec. 7(2)]**

- No firm, individual or group of individuals shall,
- for the purpose of carrying on any business,
- use as part of its or his name
- any of the words “bank”, “banking” or “banking company”

**No restriction on Association off Banks [Sec. 7(3)]**

- Nothing in this section shall apply
- to any association of banks
- formed for the protection of their mutual interestts and registered under Section 25 of the Companies Act, 1956 (Corresponding to Sec. 8 of the Companies Act, 2013)

**Disposal of Non-Banking Assets**

- Maximum period for which any immovable property (howsoever acquired) cab be held : 7 years
- Extension of period : By RBI, on case to case basis, for maximum 5 years.
- If property is held for own use : Condition for disposal within 7 years and extension upto 5 years is not applicable.

**Board of Directors to include persons with professional or other experience (Sec. 10a)**

**51% or more directors to be specialised in certain specified areas [Sec. 10A(2)]**

- Not less than 51% of the total number of members of the Board of Directors of a banking company.
- Shall consist of persons, who shall have special knowledge or practical experience
- In respect of one or more of the following matters, namely :
  - agriculture and rural economy,
  - Co-operation,
  - Small-scale industry,
  - Accountancy,
  - Banking,
  - Economics,
  - Finance,
  - Law,
  - any other matter the special knowledge of and practical experience, which would, in the opinion of RBI, be useful to the banking company.

**Minimum 2 directors to be specialised in certain specified areas [Proviso to Sec. 10A(2)]**

- It shall also be ensured that out of the aforesaid number of Directors,
- Not less than 2 shall be persons having special knowledge or practical experience in respect of agriculture and rural economy, co-operation or small scale industry.

**Reconstitution of Board if requirements not fulfilled [Sec. 10A(3)]**

- It, in respect of any banking company,
- the requirements, as laid down in sub-section (2),
- are not fulfilled at any time.
- the Board of Directors of such banking company shall re-constitute such Board

- so as to ensure that the said requirements are fulfilled.

#### **Retirement of directors by lots to ensure reconstitution [Sec. 10A(4)]**

- If, for the purpose of re-constituting the Board under sub-section (3),
- It is necessary to retire any Director or Directors,
- the Board may,
- by lots drawn in such manner as may be prescribed,
- Decide which Director or Directors shall cease to hold office
- and such decision shall be binding on every Director of the Board.

#### **Election of New Directors**

##### **Direction to elect fresh directors [Sec. 12A(1)]**

- RBI may, by order, require any banking company to call a general meeting of the shareholders of the company
- Within such time, not less than 2 months from the date of the order, as may be specified in the order or within such further time as the Reserve Bank may allow in this behalf.
- to elect fresh directors.
- and the banking company shall be bound to comply with the order.

##### **Period of office [Sec. 12A(2)]**

- Every director elected under Section 12A(1) shall hold office
- Until the date up to which his predecessor would have held office,
- If the election had not been held.

##### **Validity of election [Sec. 12A(3)]**

- Any election duly held under Section 12A shall not be called in question in any court.

#### **Reserve Fund**

##### **Manner of creation of reserve fund**

- Transfer of profits from P & L A/c to Reserve Fund.
- Amount of transfer : Minimum 20% of profits before declaration of dividend.

##### **Exemption**

- CG may grant exemption to any banking company.
- Conditions for grant of exemption :

(a) RBI recommends to CG to grant such exemption

(b) CG shall pay due regard to the adequacy of paid up capital and reserves in relation to the deposit liabilities.

(c) Amount in the Reserve fund together with the amount in the share premium account is not less than the paid up capital.

(d) The order of CG shall specify the period of exemption.

#### **26.8 CASH RESERVE**

##### **Time limit and amount of cash reserve [Sec. 18(1)]**

- Every banking company shall maintain on a daily basis by way of cash reserve or by way of balance in a current account with RBI,

- a sum equivalent to such percent of the total of its demand and time liabilities
- as on the last Friday of the second preceding fortnight
- as RBI may specify, by notification in the Official Gazette, from time to time, having regard to the needs of securing the monetary stability in the country
- and shall submit to RBI
- before the 20th day of every month
- a return showing the amount so held
- on alternate Fridays during a month
- with particulars of its demand and time liabilities
- on such Friday
- or if any such Friday is a public holiday under the Negotiable Instruments Act, 1881, at the close of business on the preceding working day.

### **Meaning of fortnight**

'Fortnight' means the period from Saturday to the second following Friday, both days inclusive, if the balance held by a banking company at the close of business on any day is below the minimum specified u/s 18(1).

Penal interest payable for failure to maintain cash reserve [Sec. 18(1A) (JIB) and (1C)]

### **When is interest \ payable?**

"If the balance held by a banking company at the close of business on any day is below the minimum specified u/s 18(1).

### **Rate of interest**

- In respect of that day, penal interest at a rate of 3% above the bank rate shall be payable.
- If the shortfall continues further, the penal interest at a rate of 5% above the bank rate shall be payable in respect of each subsequent day during which the default continues.

### **Waiver of interest**

If RBI is satisfied, on an application in writing by the defaulting banking company, that such defaulting banking company had sufficient cause for such failure, it may not demand the payment of the penal interest.

### **Exemption**

RBI may, for such period and subject to such conditions as may be specified, grant to any banking company such exemptions from the provisions of this section as it may think fit.

### **POWER OF RBI TO CONTROL ADVANCES BY BANKING COMPANIES (Sec. 21)**

Formulation of policy by RBI in relation to advances [Sec, 21(1)]

- Where RBI is satisfied that it is necessary or expedient
- in the public interest or in the interests of depositors or banking policy so to do,
- it may determine the policy in relation to advances to be followed
- by banking companies generally
- or by any banking company in particular,
- and when the policy has been so determined.
- all banking companies or the banking company concerned, as the case may be,
- shall be bound to follow the policy as so determined.

**Directions by RBI to banking companies [Sec. 21(2)]**

- Without prejudice to the generality of the power vested in RBI u/s 21(1),
- RBI may give directions to banking companies,
- either generally or to any banking company or group of banking companies in particular,
- as to -
  - (a) the purposes for which advances may or may not be made;
  - (b) the margins to be maintained in respect of secured advances;
  - (c) the maximum amount of advances or other financial accommodation which may be made by that banking company to any one company, firm, association or persons or individual;
  - (d) the maximum amount up to which guarantees may be given by a banking company on behalf of any one company, firm, association of persons or individual; and
  - (e) the rate of interest and other terms and conditions on which advances or other financial accommodation may be made or guarantees may be given.

**Binding effect of directions of RBI [Sec. 21(3)]**

- Every banking company shall be bound
- to comply with any directions given to it under this section.

**RATE OF INTEREST CHARGED BY BANKING COMPANIES NOT (Sec. 21A)****TO BE SUBJECT TO SCRUTINY BY COURTS**

- Notwithstanding anything contained in any law relating to indebtedness in force in any State,
- a transaction between a banking company and its debtor
- shall not be reopened by any Court
- on the ground that the rate of interest charged by the banking company in respect of such transaction is excessive.

**ACCOUNTS AND BALANCE-SHEET (Sec. 29)****Nature and Form**

B/S and P&L A/c shall be prepared as on the last working day of the Accounting Year, in the Forms set out in the Third Schedule.

**Signing of B/S and P&L A/C**

- By the manager or the principal officer of the company.
- If there are more than 3 directors, by at least 3 of those directors.
- If there are not more than 3 directors, by all the directors.

**Applicability of Companies Act**

The requirements of Schedule VI of the Companies Act, 1956 (corresponding to Schedule III to the Companies Act, 2013) shall, in so far as they are not inconsistent with this Act, apply to the BS and P&L A/c of a banking company.

**AUDIT (Sec. 30)****Order of audit of co-operative bank by RBI [Sec. 30(1)]**

- (a) RBI may make an order for an additional audit of any co-operative bank,
- (b) RBI may make such an order if it is satisfied that such audit is necessary - (i) in the public interest; or (ii) in the interest of the co-operative bank; or (iii) in the interest of its depositors.

- (c) The order of RBI may provide for audit of any such transactions or class of transactions or for such period or periods as may be specified in the order.
- (d) The audit shall be conducted by a person duly qualified under any law for the time being in force to be an auditor of companies.
- (e) The auditor shall comply with such directions as may be given to him by RBI from time to time
- (f) The auditor shall make an audit report to RBI and forward a copy thereof to the cooperative bank.

#### **Expenses of audit [Sec. 30(2)]**

The expenses of or incidental to, the additional audit shall be borne by the co-operative bank.

#### **Powers, functions, duties and liabilities of the auditor [Sec. 30(3)]**

The auditor shall have such powers, exercise such functions, and discharge such duties and be subject to such liabilities and penalties as are imposed on auditors of companies u/s 227 of the Companies Act, 1956 (corresponding to section 143 of the Companies Act, 2013).

#### **Disclosures in audit report [Sec. 30(4)]**

The auditor shall state in his report all such matters as he is directed by RBI to state in his report. In addition, the auditor shall state in his report -

- (a) whether or not the information and explanation required by him have been found to be satisfactory;
- (b) whether or not the transactions of the co-operative bank which came to his notice are within the powers of the co-operative bank;
- (c) whether or not the returns received from branch offices of the co-operative bank have been found adequate for the purpose of his audit;
- (d) whether the profit and loss accounts, shows a true balance or profit or loss for the period covered by such account;
- (e) any other matter which he considers should be brought to the notice of RBI and the shareholders of the co-operative bank.

#### **SUBMISSION OF RETURNS (Sec. 31)**

Time period and manner of submission of accounts, balance sheet etc. (Sec. 31)

- The accounts and balance-sheet referred to in Sec. 29
- together with the auditor's report
- shall be published in the prescribed manner
- and 3 copies thereof shall be furnished as returns to RBI
- within 3 months from the end of the period to which they refer.

#### **Extension of period (Proviso to Sec. 31)**

- RBI may in any case extend the said period of 3 months
- for the furnishing of such returns
- by a further period not exceeding 3 months.

#### **COPIES OF BALANCE-SHEETS AND ACCOUNTS TO BE SENT TO REGISTRAR (Sec. 32)**

- Where a banking company in any year furnishes its accounts and balance-sheet
- in accordance with the provisions of Sec. 31,
- it shall at the same time send to the registrar
- 3 copies of such accounts and balance-sheet and of the auditor's report,



- and where such copies are so sent,
- it shall not be necessary to file with the registrar, in the case of a public company, copies of the accounts and balance-sheet and of the auditor's report,
- and, in the case of a private company, copies of the balance-sheet and of the auditor's report
- as required by Sec. 220(1) of the Companies Act, 1956 (corresponding to Sec. 137 of the Companies Act, 2013);
- and the copies so sent shall be chargeable with the same fee and shall be dealt with in all respects
- as if they were filed in accordance with that section.

### **INSPECTION (Sec. 35)**

Order by RBI for inspection of books, suo motu or on a direction by CG [Sec. 35(1)]

- RBI may, at any time,
- and on being directed so to do by CG shall,
- cause an inspection to be made
- by one or more of its officers
- of any banking company and its books and accounts;
- and RBI shall supply to the banking company
- a copy of its report on such inspection.

### **Duties of the directors, officers and employees of the banking company [Sec.'35(2)]**

- It shall be the duty of every director or other officer or employee of the banking company
- to produce to any officer making an inspection under sub-section (1),
- all such books, accounts and other documents in his custody or power
- and to furnish him with any statements and information relating to the affairs of the banking company
- as the said officer may require of him
- within such time as the said officer may specify.

### **Examination on oath [Sec. 35(3)]**

- Any person making an inspection under sub-section (1)
- may examine on oath
- any director or other officer or employee of the banking company.

### **Report on inspection to be furnished to CG [Sec 35(4)]**

- RBI shall,
- if it has been directed by CG to cause an inspection to be made, and
- may, in any other case,
- report, to CG on any inspection or scrutiny made under this section.

### **Action by CG [Sec. 35(4)]**

- If, after considering the report.
- CG is of the opinion that the affairs of the banking company are being conducted to the detriment of the interests of its depositors,
- it may,
- after giving such opportunity to the banking company to make a representation in connection with the

report as, in the opinion of CG, seems reasonable, by order in writing -

- (a) prohibit the banking company from receiving fresh deposits;
- (b) direct the Reserve Bank to apply under section 38 for the winding up of the banking company.

### **POWER OF RBI TO GIVE DIRECTIONS (Sec. 35A)**

Purpose of giving directions {Sec. 35A(1)}

- Where RBI is satisfied that —
  - (a) in the public interest; or
  - (aa) in the interest of banking policy; or
  - (b) to prevent the affairs of any banking company being conducted in a manner detrimental to the interests of the depositors or in a manner prejudicial to the interests of the banking company; or
  - (c) to secure the proper management of any banking company generally,
- it is necessary to issue directions
- to banking companies generally or to any banking company in particular,
- it may, from time to time,
- issue such directions as it deems fit,
- and the banking companies or the banking company, as the case may be,
- shall be bound to comply with such directions.

### **Modification or cancellation of directions already given [Sec. 35A(2)]**

- RBI may,
  - on representation made to it
  - or on its own motion,
  - modify or cancel any direction issued under sub-section (1),
  - and in so modifying or cancelling any direction
  - may impose such conditions as it thinks fit.
- subject to which the modification or cancellation shall have effect.

### **AMENDMENTS OF PROVISIONS RELATING TO APPOINTMENTS OF MD, ETC., TO BE SUBJECT TO PREVIOUS APPROVAL OF RBI (Sec. 35B)**

In the case of a banking company—

- no amendment of any provision
- relating to the maximum permissible number of directors
- or the appointment or re-appointment or termination of appointment
- or remuneration
- of a chairman, a managing director or any other director, whole-time or otherwise or of a manager or a chief executive officer by whatever name called,
- whether that provision be contained in the company's memorandum or articles of association, or in an agreement entered into by it, or in any resolution passed by the company in GM or by its Board of directors
- shall have effect unless approved by RBI;
- no appointment or re-appointment or termination of appointment
- of a chairman, a managing or whole-time director, manager or chief executive officer by whatever name called,



- shall have effect
- unless such appointment, re-appointment or termination of appointment is made
- with the previous approval of RBI.

#### **POWER OF RBI TO REMOVE MANAGERIAL AND OTHER PERSONS FROM OFFICE (Sec. 36AA)**

Report on inspection to be furnished to CG [Sec 35(4)]

- Where RBI is satisfied that
  - in the public interest; or
  - for preventing the affairs of a banking company being conducted in a manner detrimental to the interests of the depositors; or
  - for securing the proper management of any banking company
- it is necessary so to do,
- RBI 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 chairman, director, chief executive officer (by whatever name called) or other officer or employee of the banking company.

#### **Issue of show cause notice before removal [Sec. 36AA(2)]**

- No order u/s 36AA( 1) shall be made
- unless the chairman, director or chief executive officer or other officer or employee concerned
- has been given a reasonable opportunity of making a representation to RBI against the proposed order,

#### **Appeal against order of RBI [Sec. 36AA(3)(a)]**

- Any person against whom an order of removal has been made u/s 36AA(1) may,
- within 30 days from the date of communication to him of the order,
- prefer an appeal to CG.

#### **Order of CG to be final [Sec. 36AA(3)(b)]**

- The decision of CG on such appeal -
  - shall be final; and
  - shall not be called into question in any court.

#### **Vacation of office and disqualification as a result of removal [Sec. 36AA(4)]**

- Where any order is made in respect of a chairman, director or chief executive officer or other officer or employee of a banking company u/s 36AA(1),
- he shall cease to be a chairman or, as the case may be, a director, chief executive
- officer or other officer or employee of the banking company, and
- shall not, in any way, whether directly or indirectly, be concerned with, or take part in the management of, any banking company
- for such period not exceeding 5 years as may be specified in the order,

#### **Appointment in place of person removed [Sec. 36AA(6)]**

- Where an order u/s 36AA(1) has been made,
- RBI may appoint a suitable person in place of the person who is removed from his office
- with effect from such date as may be specified in the order.

#### **Period of office of person appointed by RBI [Sec. 36AA(7)]**

- Any person appointed as chairman, director or chief executive officer or other officer or employee under this section shall, -
  - (a) hold office for a period not exceeding 3 years or such further periods not exceeding 3 years at a time as RBI may specify;
  - (b) not incur any obligation or liability for anything done or omitted to be done in good faith.

#### **No compensation for termination of office [Sec. 36AA(8)]**

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

#### **POWER OF RBI TO APPOINT ADDITIONAL DIRECTORS (Sec. 36AB)**

##### **Appointment at the discretion of RBI [Sec. 36AB(1)]**

- If RBI is of the opinion that
  - in the interest of banking policy; or
  - in the public interest; or
  - in the interests of the banking company or its depositors
- it is necessary so to do,
- it may, from time to time by order in writing,
- appoint,
- with effect from such date as may be specified in the order,
- one or more persons to hold office as additional directors of the banking company.

##### **Terms and conditions of appointment of additional directors [Sec. 36AB(2)]**

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

- shall hold office during the pleasure of RBI
- and subject thereto for a period not exceeding 3 years
- or such further periods not exceeding 3 years at a time
- as RBI may specify;
- 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
- shall not be required to hold qualification shares in the banking company.

##### **Additional director not to be counted in total number of directors [Sec. 36AB(3)]**

- For the purpose of reckoning
- any proportion of the total number of directors of the banking company,
- any additional director appointed under this section
- shall not be taken into account.

**POWER OF CG TO ACQUIRE UNDERTAKINGS OF BANKING COMPANIES IN CERTAIN CASES (Sec. 36AE)**

Conditions for acquisition of any undertaking of a banking company [Sec. 36AE(1)]

- If, upon receipt of a report from RB1,
- CG is satisfied that a banking company -
  - (a) • has,
    - on more than one occasion,
    - failed to comply with the directions given to it u/s 21 or u/s 35 A,
    - in so far as such directions relate to banking policy, or
  - (b) • is being managed in a manner detrimental to the interests of its depositors,
    - and that -
      - (i) in the interests of the depositors of such banking company, or
      - (ii) in the interest of banking policy, or
      - (iii) for the better provision of credit generally or of credit to any particular section of the community or in any particular area,
- it is necessary to acquire the undertaking of such banking company,
- CG may, after such consultation with RBI as it thinks fit,
- by notified order,
- acquire the undertaking of such company
- (hereinafter referred to as the acquired bank)
- with effect from such date as may be specified in this behalf by CG
- (hereinafter referred to as the appointed day).

**No acquisition unless opportunity to show cause given [Proviso to Sec. 36AE(1)]**

- No undertaking of any banking company shall be acquired
- unless such banking company has been given
- a reasonable opportunity of showing cause against the proposed action.

**Vesting of undertaking in CG [Sec. 36AE(2)]**

- On the appointed day,
- the undertaking of the acquired bank
- shall stand transferred to, and vest in, CG.

**Meaning of 'undertaking' [Sec. 36AE(3)]**

- The undertaking of the acquired bank shall be deemed to include -
  - (a) all rights, powers and privileges and all property, whether movable or immovable, immediately before the appointed day, and,
  - (b) all debts, liabilities and obligations, of whatever kind.

**Vesting of undertaking in company, etc. [Sec. 36AE(4)]**

- CG may direct that the undertaking of the acquired bank shall vest
- in any company or corporation (hereinafter referred to as the transferee bank).

**Effect on rights and liabilities [Sec. 36AE(5)]**

- Where the undertaking of the acquired bank vest in the transferee bank,
- all the rights and liabilities of the acquired bank
- shall be deemed to have been the rights and liabilities of the transferee bank.

**Effect on agreements etc. [Sec. 36AE(6)]**

- All contracts, agreements, powers of attorney and other instruments
- having effect immediately before the appointed day SSeA
- to which the acquired bank is a party
- shall have effect against or in favour of CG / the transferee bank.

**Continuation of suits and other proceedings [Sec.36AE(7)]**

- If, on the appointed day,
- any suit, appeal or other proceeding of whatever nature is pending by or against the acquired bank,
- the same shall not abate, be discontinued or be, in any way, prejudicially affected
- by reason of the transfer of the undertaking of the acquired bank,
- but the suit, appeal or other proceeding may be continued, prosecuted and enforced by or against CG.

**COMPENSATION TO BE GIVEN TO SHAREHOLDERS OF THE (Sec. 36AG) ACQUIRED BANK Compensation to whom, and amount of compensation (Sec. 36AG(1))**

- Every person who,
- immediately before the appointed day,
- is registered as a holder of shares in the acquired bank,
- shall be given by CG such compensation
- in respect of the transfer of the undertaking of the acquired bank
- as is determined in accordance with the principles contained in the Fifth Schedule.

**Determination of compensation by CG [Sec. 36AG(3)]**

- The amount of compensation to be given in accordance with the principles contained in the Fifth Schedule
- shall be determined in the first instance by CG
- in consultation with RBI,
- and shall be offered by it to all those to whom compensation is payable u/s 36AG(1)
- in full satisfaction thereof.

**Request to the CG for re-determination of compensation [Sec. 36AG(4)]**

- If the amount of compensation offered is not acceptable
- to any person to whom the compensation is payable,
- such person may,
- before such date as may be notified by CG in the Official Gazette,
- request CG in writing,
- to have the matter referred to the Tribunal constituted u/s 36AH,

**Duty of CG to refer the matter to Tribunal [Sec. 36AG(5)]**

- If, before the date notified under sub-section (4),
- CG receives requests,
- in terms of that sub-section,
- from not less than 1/4th in number of the shareholders holding not less than 1/4th in
- value of the paid-up share capital of the acquired bank,
- CG shall have the matter referred to the Tribunal for decision.

**Compensation to be final and binding on all parties concerned [Sec. 36AG(4)]**

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

**DEFINITIONS (Sec. 2)**

Authority

“Authority” means the Insurance Regulatory and Development Authority of India established

Intermediary or insurance intermediary

‘Intermediary’ or ‘insurance intermediary’ includes -

- insurance brokers,
- re-insurance brokers,
- insurance consultants.
- corporate agents,
- third party administrator,
- surveyors and loss assessors and
- such other entities, as may be notified by the Authority from time to time.

Member

- “Member” means a whole-time or a part time member of the Authority
- and includes the Chairperson.

**ESTABLISHMENT OF AUTHORITY (Sec. 3)**

- With effect from such date
- as CO may, by notification, appoint.
- there shall be established, for the purposes of this Act,
- an Authority to be called “the Insurance Regulatory and Development Authority of India” (hereafter referred to as the ‘Authority’).
- The authority shall be a body corporate by the name aforesaid
- having perpetual succession and common seal
- with power, subject to the provisions of this Act,
- to acquire, hold and dispose of property, both movable and immovable, and to contract and shall, by the said name, sue or be sued.

**COMPOSITION OF AUTHORITY (Sec. 4)**

- The Authority shall consist of the following members, namely:—
  - (a) a Chairperson;
  - (b) not more than 5 whole time members;

- (c) not more than 4 part-time members,
- to be appointed by CG
- from amongst persons of ability, integrity and standing
- who have knowledge or experience
- in life insurance, general insurance, actuarial science, finance, economics, law, accountancy, administration
- or any other discipline which would, in the opinion of CG, be useful to the Authority.

**Requirement as to specialised areas [Sec. 4(2)]**

- CG shall,
- while appointing the Chairperson and the whole-time members,
- ensure that at least one person each
- is a person having knowledge or experience
- in life insurance, general insurance or actuarial science, respectively.

**TERM OF OFFICE OF CHAIRPERSON AND MEMBERS OF AUTHORITY (Sec. 5)**

Term of office of Chairperson and whole time members [Sec. 5(1)]

- The Chairperson and every other whole-time member shall hold office
- for a term of 5 years
- from the date on which he enters upon his office
- and shall be eligible for reappointment.
- Maximum age of Chairperson –
  - No person shall hold office as such Chairperson
  - after he has attained the age of 65 years.
- Maximum age of wholetime members –
  - No person shall hold office as such whole-time member
  - after he has attained the age of 62 years.

**Term of office of part time members Removal and resignation [Sec. 5(2)]**

- A part-time member shall hold office
- for a term not exceeding 5 years
- from the date on which he enters upon his office.

**Term of office of part time members Removal and resignation [Sec. 5(3)]**

Notwithstanding anything contained in Sec. 5(1) or 5(2), a member may—

- (i) • relinquish his office
  - by giving in writing to CG
  - notice of not less than 3 months; or
- (ii) • be removed from his office
  - in accordance with the provisions of Sec. 6.

**REMOVAL FROM OFFICE OF CHAIRPERSON AND OTHER MEMBERS (Sec. 6)**

Situations in which a member may be removed [Sec, 6(1)]

CG may remove from office any member who—

- (a) • is, or at any time has been,



- adjudged as an insolvent; or
- (b) • has become physically or mentally incapable > of acting as a member; or
- (c) • has been convicted of any offence
  - which in the opinion of CG, involves moral turpitude; or
- (d) • has acquired such financial or other interest
  - as is likely to affect prejudicially his functions as a member; or
- (e) • has so abused his position
  - as to render his continuation in office detrimental to the public interest.

#### **SCN before removal [Sec. 6(2)1**

- No such member shall be removed under clause (d) or clause (e) of Sec. 6(1)
- unless he has been given a reasonable opportunity of being heard in the matter.

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#### **RESTRICTION ON EMPLOYMENT OF CHAIRPERSON AND OTHER MEMBERS IN CERTAIN CASES (Sec. 8)**

##### **Restrictions on whom Nature of restriction**

- Chairperson and Whole Time Members Not to accept –
  - (a) any employment either under CO or under any SG; or
  - (b) any appointment in any company in the insurance sector.

##### **Time period of restriction**

- 2 years from date of cessation of office.

#### **MEETINGS OF THE AUTHORITY (Sec. 10)**

##### **Number of meetings and procedure for meetings [Sec. 10(1)]**

- The Authority shall meet at such times and places
- and shall observe such rules and procedures in regard to transaction of business at its meetings
- (including quorum at such meetings) as may be determined by regulations.

##### **Effects of absence of Chairperson [Sec. 10(2)]**

- The Chairperson,
- or if for any reason he is unable to attend a meeting of the Authority,
- any other member chosen by the members present from amongst themselves at the meeting
- shall preside at the meeting.

##### **Decisions by majority [Sec. 10(3)]**

- All questions which come up before any meeting of the Authority
- shall be decided by a majority of votes
- by the members present and voting,
- and in the event of an equality of votes.
- the Chairperson, or in his absence, the person presiding
- shall have a second or casting vote.

### **VACANCIES, ETC., NOT TO INVALIDATE PROCEEDINGS (Sec. 11)**

Situations in which a member may be removed [Sec, 6(1)]

No act or proceeding of the Authority shall be invalid merely by reason of –

- (a) • any vacancy in,
  - or any defect in the constitution of,
  - the authority; or
- (b) • any defect in the appointment of a person
  - acting as a member of the Authority; or
- (c) • any irregularity in the procedure of the Authority
  - not affecting the merits of the case.

### **POWER OF CG TO SUPERSEDE AUTHORITY (Sec. 19)**

#### **Reasons for supersession [Sec. 19(1)]**

CG may supersede the Authority if it is of the opinion -

- (a) • that,
  - on account of circumstances beyond the control of the Authority.
  - it is unable to discharge the functions or perform the duties imposed on it; or
- (b) • that the Authority has persistently defaulted
  - in complying with any direction given by CG under this Act or in the discharge of the functions or performance of the duties imposed on it
  - and as a result of such default the financial position of the Authority or the administration of the Authority has suffered; or
- (c) • that circumstances exist
  - which render it necessary in public interest to supersede the Authority.

#### **Conditions for making an order of supersession [Sec. 19(1) and Proviso to Sec. 19(1)]**

- (a) • CG shall be required to issue a notification stating therein
  - the reasons for supersession
  - and the period of supersession, which shall not exceed 6 months.
- (b) • Before issuing any such notification,
  - CG shall give a reasonable opportunity to the Authority to make representations against the proposed supersession
  - and shall consider the representations, if any, of the Authority.
- (c) • CG shall appoint a person to be the Controller of Insurance u/s 2B of the Insurance Act, 1938.

#### **Effects of supersession [Sec. 19(2)]**

Upon the publication of notification u/s 19(1) superseding the Authority,—

- (a) • the Chairperson and other members shall,
  - as from the date of supersession,
  - vacate their offices as such;
- (b) • all the powers, functions and duties
  - which may be exercised or discharged by or on behalf of the Authority
  - shall, until the Authority is reconstituted u/s 19(3),

- be exercised and discharged by the controller of Insurance; and
- (c) • all properties owned or controlled by the Authority
  - shall, until the Authority is reconstituted u/s 19(3),
  - vest in CG.

#### **Reconstitution of Authority [Sec. 19(3)]**

- On or before the expiration of the period of supersession
- specified in the notification issued u/s 19(1)
- CG shall reconstitute the Authority
- by a fresh appointment of its Chairperson and other members
- and in such case any person who had vacated his office u/s 19(2)(a)
- shall not be deemed to be disqualified for reappointment

#### **DEFINITIONS (Sec. 2)**

##### **Actuary [Sec. 2(1A)]**

- “Actuary” means an actuary
- as defined in Sec. 2(1)(a) of the Actuaries Act, 2006.

##### **Authority [Sec. 2(1A)]**

- “Authority” means the Insurance Regulatory and Development Authority of India
- established u/s 3(1) of the Insurance Regulatory and Development Authority Act, 1999.

##### **Health Insurance business [Sec 2(6C)]**

- “Health insurance business” means the effecting of contracts
- which provide for sickness benefits or medical, surgical or hospital expense benefits,
- whether in-patient or out-patient travel cover and personal accident cover.

##### **Indian insurance company [Sec. 2(7A)]**

- “Indian insurance company” means any insurer.
- being a company which is limited by shares, and,
  - (a) • which is formed and registered under the Companies Act, 2013
    - as a public company or
    - is converted into such a company
    - within 1 year of the commencement of the Insurance Laws (Amendment) Act, 2015;
  - (b) • in which the aggregate holdings of equity shares by foreign investors, including portfolio investors,
    - do not exceed 49% of the paid up equity capital of such Indian insurance company,
    - which is Indian owned and controlled, in such manner as may be prescribed. Explanation. For the purposes of this sub-clause,
      - the expression “control” shall include
      - the right to appoint a majority of the directors or to control the management or policy decisions
      - including by virtue of their shareholding or management rights or shareholders agreements or voting agreements.
  - (c) • whose sole purpose is to carry on life insurance business or general insurance business or re-insurance business or health insurance business.

**Insurer [Sec. 2(9)]**

“Insurer” means –

- (a) an Indian Insurance Company, or
- (b) a statutory body established by an Act of Parliament to carry on insurance business, or
- (c) an insurance co-operative society, or
- (d) a foreign company engaged in re-insurance business through a branch established in India.

**Re-insurance [Sec. 2(16B)]**

- > “Re-insurance” means the insurance of part of one insurer’s risk by another insurer
- > who accepts the risk for a mutually acceptable premium

**INSURANCE OF PROPERTIES IN INDIA [Sec. 2CB]**

Properties in India not to be insured with foreign insurers [Sec 2CB(1)]

- No person shall take out or renew any policy of insurance in respect of
- any property in India or
- any ship or other vessel or aircraft registered in India
- with an insurer whose principal place of business is outside India
- save with the prior permission of the Authority.

**Penalty [Sec. 2CB(2)]**

- If any person contravenes the provision of sub-section (1),
- he shall be liable to a penalty which may extend to Rs. 5 crore.

**REQUIREMENT AS TO CAPITAL (Sec. 6)**

**Minimum paid up capital required**

No insurer carrying on the business of life insurance, general insurance, health insurance or re-insurance in India, shall be registered unless he has, –

- (i) a paid-up equity capital of Rs. 100 crore, in case of a person carrying on the business of life insurance or general insurance; or
- (ii) a paid-up equity capital of Rs, 100 crore, in case of a person carrying on exclusively the business of health insurance: or
- (iii) a paid-up equity capital of Rs. 200 crore, in case of a person carrying on exclusively the business as a re-insurer.

**Minimum net owned funds required for foreign insurer**

- No insurer, as defined in sub-clause (d) of clause (9) of section 2 (viz. a foreign company engaged in re-insurance business through a branch established in India) shall be registered > unless he has net owned funds of not less than Rs. 5,000 crore.

**REQUIREMENTS AS TO CAPITAL STRUCTURE AND VOTING RIGHTS (Sec. 6A)**

Requirements as to capital structure [Sec. 6A(1)]

- No public company limited by shares having its registered office in India,
- shall carry on life insurance business or general insurance business or health insurance business or re-insurance business,
- unless it satisfies the following conditions:

- (i) That the capital of the company consists of equity shares each having a single face value and such other form of capital, as may be specified by the regulations.
- (ii) That the voting rights of shareholders are restricted to equity shares, (iii) That, except during any period not exceeding 1 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.

#### **Requirements as to voting rights [Sec. 6A(2)]**

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

#### **AUDIT (Sec. 12)**

- 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.
- shall
- unless they are subject to audit under the Companies Act, 2013,
- 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 147 of the Companies Act, 2013.

#### **ACTUARIAL REPORT AND ABSTRACT (Sec. 13)**

##### **Annual investigation of financial condition of insurer [Sec. 13(1)]**

- Every insurer carrying on life insurance business shall,
- once at least every year
- cause an investigation to be made by an actuary
- into the financial condition of the life insurance business carried on by him,
- including a valuation of his liabilities in respect thereto and
- shall cause an abstract of the report of such actuary to be made in accordance with the regulations.

##### **Relaxation by Authority [First Proviso to Sec. 13(1)]**

- 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 2 years from the date as at which the previous investigation was made.

##### **Abstract of Report [Second Proviso to Sec. 13(1)]**

- Every insurer shall cause an abstract of the report of the actuary to be made
- in such manner as may be specified by the regulations.

**Statement to be appended to Abstract [Sec, 13(4)]**

- There shall be appended to every such abstract
- a statement prepared in such form and in such manner as may be specified by the regulations.

**Relaxation w.r.t. appending Statement [Proviso to Sec. 13(4)]**

- If the investigation is made annually by any insurer,
- the statement need not be appended every year
- but shall be appended at least once in every 3 years.

**RECORD OF POLICIES AND CLAIMS (Sec. 14)**

**Particulars to be contained in records of policies and claims (Sec. 14(1))**

Every insurer, in respect of all business transacted by him, shall maintain –

- (a) • a record of policies
    - in which shall be entered,
    - in respect of every policy issued by the insurer,
    - the name and address of the policyholder.
    - the date when the policy was effected and
    - a record of any assignment or nomination of which the insurer has notice;
  - (b) • a record of claims,
    - every claim made
    - together with the date of the claim,
    - the name and address of the claimant and
    - the date on which the claim was discharged, or,
    - in the case of a claim which is rejected,
    - the date of rejection and the grounds thereof; and
  - (c) • a record of policies and claims in accordance with clauses (a) and (b) may be maintained
    - in any such form, including electronic mode,
    - as may be specified by the regulations made under this Act.
- Every insurer shall,
- in respect of all business transacted by him, endeavour to issue policies
  - above a specified threshold in terms of sum assured and premium in electronic form,
  - in the manner and form to be specified by the regulations made under this Act.

**SUBMISSION OF RETURNS (Sec. 15)**

**Submission of accounts, statements and abstract to Authority [Sec. 15(1)]**

- The audited accounts and statements referred to in section 11 or sub-section (5) of section 13 and
- the abstract and statement referred to in section 13
- shall be printed,
- and four copies thereof shall be furnished as returns to the Authority within 6 months
- from the end of the period to which they refer.

**Signing [Sec. 15(2)]**

- Of the four copies so furnished,
- one shall be signed
- in the case of a company
- by the chairman and two directors and by the principal officer of the company and,
- if the company has a managing director by that managing director and
- one shall be signed by the auditor who made the audit or the actuary who made the valuation, as the case may be.

**INVESTMENT OF ASSETS (Sec. 27)**

Investment of certain sum by an insurer carrying on life insurance business [Sec. 27(1)]

- Every insurer shall
- invest and at all times keep invested
- assets equivalent to not less than the sum of-
  - (a) • the amount of his liabilities to holders of life insurance policies in India
    - on account of matured claims, and
  - (b) • the amount required to meet the liability on policies of life insurance maturing for payment in India, less -
    - (i) • the amount of premiums which have fallen due to the insurer on such policies
      - but have not been paid and the days of grace for payment of which have not expired, and
    - (ii) • any amount due to the insurer
      - for loans granted on and within the surrender values of policies of life insurance maturing for payment in India
        - issued by him or by an insurer whose business he has acquired and in respect of which he has assumed liability in the following manner :
- (a) • 25% of the said sum in Government securities,
  - a further sum equal to not less than 25% of the said sum in Government securities or other approved securities; and
- (b) • the balance in any of the approved investments,
  - as may be specified by the regulations
  - subject to the limitations, conditions and restrictions specified therein.

**Investment of certain sum by an insurer carrying on general insurance business [Sec. 27(2)]**

- In the case of an insurer carrying on general insurance business,
- 20% of the assets
- in Government Securities,
- a further sum equal to not less than 10% of the assets
- in Government Securities or other approved securities and
- the balance in any other investment in accordance with the regulations of the Authority and
- subject to such limitations, conditions and restrictions as may be specified by the Authority in this regard.

#### **FURTHER PROVISIONS REGARDING INVESTMENTS (Sec. 27A)**

- No insurer carrying on life insurance business
- shall invest or keep invested any part of his controlled fund and
- no insurer carrying on general insurance business
- shall invest or keep invested any part of his assets
- otherwise than in any of the approved investments
- as may be specified by the regulations
- subject to such limitations, conditions and restrictions therein.

#### **PROVISIONS REGARDING INVESTMENTS OF ASSETS OF INSURER CARRYING GENERAL INSURANCE BUSINESS (Sec. 27B)**

- All assets of an insurer carrying on general insurance business shall,
- subject to such conditions, if any, as may be prescribed,
- be deemed to be assets invested or kept invested in approved investments specified in section 27.

#### **INVESTMENT BY INSURER IN CERTAIN CASES (Sec, 27C)**

- An insurer may invest not more than 5% in aggregate of his controlled fund or assets as referred to in sub-section (2) of section 27.
- in the companies belonging to the promoters.
- subject to such conditions as may be specified by the regulations.

#### **22.13 PROHIBITION OF LOANS (Sec. 29)**

##### **Prohibition on loans to certain persons [Sec. 29(1)]**

- No insurer shall grant loans or temporary advances
- either on hypothecation of property or on personal security or otherwise,
- except loans on life insurance policies issued by him within their surrender value,
- to any director, manager, actuary, auditor or officer of the insurer,
- to any other company or firm in which any such director, manager, actuary or officer holds the position of a director, manager, actuary, officer or partner,

##### **No prohibition on loans to a banking company [First Proviso to Sec. 29(1)]**

- Nothing contained in Sec. 29(1) shall apply
- Nothing contained in Sec. 29(1) shall apply to such loans,
- Nothing contained in Sec. 29(1) shall apply made by an insurer to a banking company,
- as may be specified by the Authority.

##### **No prohibition on loans to subsidiary of holding company [Second Proviso to Sec. 29(1)]**

- Nothing in Sec. 29 shall prohibit a company
- from granting such loans or advances
- to a subsidiary company or
- to any other company of which the company granting the loan or advance is a subsidiary company
- if the previous approval of the Authority is obtained for such loan or advance.



**Non-applicability of Sec. 185 of the Companies Act, 2013 [Sec 29(2)]**

- The provisions of section 185 of the Companies Act, 2013
- shall not apply to a loan granted to a director of an insurer being a company,
- if the loan is one
- granted on the security of a policy
- on which the insurer bears the risk and
- the policy was issued to the director on his own life,
- and the loan is within the surrender value of the policy.

**LIABILITY OF DIRECTORS, ETC., FOR LOSS DUE TO CONTRAVENTION OF Sec. 27, 27 A, 27B, 27C, 27D OR SEC. 29 (Sec. 30)**

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

**22.15 OBLIGATION OF INSURER IN RESPECT OF INSURANCE BUSINESS IN THIRD PARTY RISKS OF MOTOR VEHICLES (Sec. 32D)****Mandatory underwriting w.r.t. third party risks [Sec. 32D]**

- Every insurer carrying on general insurance business shall,
- after the commencement of the Insurance Laws (Amendment) Act, 2015,
- underwrite such minimum percentage of insurance business in third party risks of motor vehicles

**Exemption by Authority [Proviso to Sec. 32D]**

- The Authority may, by regulations,
- exempt, any insurer who is primarily engaged in the business of health, re-insurance, agriculture, export credit guarantee, from the application of Sec. 32D.

**POWER OF INVESTIGATION AND INSPECTION BY AUTHORITY (Sec. 33)****Order of investigation by Authority [Sec. 33(1)]**

- The Authority may, at any time,
- if it considers expedient to do so by order in writing,
- direct any person (herein referred to as "Investigating Officer")
- specified in the order
- to investigate the affairs of any insurer or intermediary or insurance intermediary,
- as the case may be,
- and to report to the Authority
- on any investigation made by such Investigating Officer.

**Assistance of auditor or actuary [Proviso to Sec: 33(1)]**

- The Investigating Officer may, wherever necessary,
- employ any auditor or actuary or both
- for the purpose of assisting him in any investigation under this section,

### **Inspection of books of account [Sec. 33(2)]**

- Notwithstanding anything to the contrary contained in section 210 of the Companies Act, 2013,
- the Investigating Officer may, at any time, and
- shall, on being directed so to do by the Authority,
- cause an inspection to be made by one or more of his officers
- of the books of account of any insurer or intermediary or insurance intermediary, as the case may be, and
- the Investigating Officer shall supply to the insurer or intermediary or insurance intermediary, as the case may be,
- a copy of the report such inspection.

### **Duties of officers of insurer and others [Sec. 33(3)]**

- It shall be the duty of every manager, managing director or other officer of the insurer including a service provider, contractor of an insurer where services are outsourced by the insurer, or intermediary or insurance intermediary, as the case may be,
- to produce before the Investigating Officer directed to make the investigation under sub-section (1), or inspection under sub-section (2),
- all such books of account, registers, other documents and the database in his custody or power and
- to furnish him with any statement and information relating to the affairs of the insurer or intermediary or insurance intermediary, as the case may be,
- as the Investigating Officer may require of him
- within such time as the said Investigating Officer may specify.

### **Power to examine on oath [Sec. 33(4)]**

- Any Investigating Officer, directed to make an investigation under sub-section (1),
- or inspection under sub-section (2),
- may examine on oath.
- any manager, managing director or other officer of the insurer including a service
- provider or contractor where the services are outsourced by the insurer or
- intermediary or insurance intermediary, as the case may be,
- in relation to his business.

### **Powers of the Authority on receipt of Report [Sec. 33(6)]**

- The Investigating Officer shall,
- if he has been directed by the Authority to cause an inspection to be made,
- make a report to the Authority on such inspection.
- On receipt of any report under sub-section (1) or sub-section (5),
- the Authority may,
- after giving such opportunity to the insurer or intermediary or insurance intermediary, as the case may be,
- to make a representation in connection with the report as. in the opinion of the Authority, seems reasonable,
- by order in writing, –
- (a) • require the insurer,
  - to take such action in respect of any matter arising out of the report
  - as the Authority may think fit; or

- (b) • cancel the registration of the insurer or intermediary or insurance intermediary, as the case may be; or
- (c) • direct any person
  - to apply to the court for the winding up of the insurer or intermediary or insurance intermediary, as the case may be,
  - if it is a company,
  - whether the registration of the insurer or intermediary or insurance intermediary, as the case may be, has been cancelled under clause (b) or not.

#### **Expenses of investigation [Sec. 33(9)]**

- All expenses of, and incidental to, any investigation made under this section
- shall be defrayed by the insurer or intermediary or insurance intermediary, as the case may be,
- shall have priority over the debts due from the insurer and
- shall be recoverable as an arrear of land revenue,

#### **PROHIBITION OF PAYMENT BY WAY OF COMMISSION OR OTHERWISE FOR PROCURING BUSINESS (Sec. 40)**

##### Prohibition on payment of remuneration [Sec. 40(1)]

- No person shall,
- pay or contract to pay any remuneration or reward,
- whether by way of commission or otherwise
- for soliciting or procuring insurance business in India
- to any person
- except an insurance agent or an intermediary or insurance intermediary
- in such manner as may be specified by the regulations.

##### **Receipt of remuneration by insurance agent or intermediary or insurance intermediary [Sec. 40(2)]**

- No insurance agent or intermediary or insurance intermediary shall
- receive or contract to receive commission or remuneration in any form
- in respect of policies issued in India,
- by an insurer
- in any form
- in respect of policies issued in India,
- by an insurer
- except in accordance with the regulations specified in this regard.

#### **APPOINTMENT OF INSURANCE AGENTS (Sec. 42)**

##### **Appointment of insurance agent [Sec, 42(1)]**

- An insurer may appoint any person,
- who does not suffer from any of the disqualifications mentioned in sub-section (3),
- to act as insurance agent
- for the purpose of soliciting and procuring insurance business.

**Prohibition on acting as agent [Sec. 42(2)]**

- No person shall act as an insurance agent
- for more than one life insurer, one general insurer, one health insurer and one of each of the other mono-line insurers.

**No conflict of interest of agent [Proviso to Sec. 42(2-)]**

- The Authority shall,
- while framing regulations,
- ensure that no conflict of interest is allowed to arise for any agent
- in representing two or more insurers for whom he may be an agent.

**Disqualifications for appointment as insurance agent [Sec. 42(3)]**

For appointment as an insurance agent, a person shall be disqualified, if-

- (a) he is a minor;
- (b) he is found to be of unsound mind by a court of competent jurisdiction;
- (c) he has been found guilty of cheating or forgery or an abetment of or attempt to commit any such offence by a court of competent jurisdiction:  
Provided that where at least 5 years have elapsed since the completion of the sentence imposed on any person in respect of any such offence, the Authority shall ordinarily declare in respect of such person that his conviction shall cease to operate as a disqualification under this clause;
- (d) that in the course of any judicial proceeding relating to any policy of insurance or the winding up of an insurer or in the course of an investigation of the affairs of an insurer, it has been found that he has been guilty of or has knowingly participated in or connived at any fraud, dishonesty or misrepresentation;
- (e) that in the case of an individual, who does not possess the requisite qualifications or practical training, as may be specified by the regulations;
- (f) that he has not passed such examination as may be specified by the regulations;
- (g) that he has violated the code of conduct as may be specified by the regulations.

**Penalty where a person who is disqualified acts as an insurance agent (Sec. 42(4))**

- Any person who acts as an insurance agent in contravention of the provision of this Act, shall be liable to a penalty which may extend to Rs. 10,000 and
- any insurer or any person acting on behalf of an insurer,
- who appoints any person as an insurance agent not permitted to act as such or
- transacts any insurance business in India through any such person
- shall be liable to penalty which may extend to Rs. 1 crore.

**Liability of insurer for acts of agent [Sec. 42(5)]**

- The insurer shall be responsible for all the acts and omissions of its agents
- including violation of code of conduct and
- liable to a penalty which may extend to Rs. 1 crore

**PROHIBITION OF INSURANCE BUSINESS THROUGH PRINCIPAL AGENT, SPECIAL AGENT AND MULTILEVEL MARKETING (Sec. 42A)**

**Prohibition on appointment of certain agents [Sec. 42A(1)]**

- No insurer shall,
- on or after the commencement of the Insurance Laws (Amendment) Act, 2015,

- appoint any principal agent, chief agent, and special agent and
- transact any insurance business in India through them.

**Prohibition on multilevel marketing scheme [Sec. 42A(2)]**

- No person shall allow or offer to allow,
- either directly or indirectly,
- as an inducement to any person
- to take out or renew or continue an insurance policy
- through multilevel marketing scheme.

**Complaint to police authorities by Authority [Sec.42A(3)]**

- The Authority may,
- through an officer authorised in this behalf,
- make a complaint to the appropriate police authorities
- against the entity or persons involved in the multilevel marketing scheme.

**Meaning of 'multilevel marketing scheme' [Explanation to Sec.42A(3)]**

- For the purpose of this section 'multilevel marketing scheme' means
- any scheme or programme or arrangement or plan (by whatever name called)
- for the purpose of soliciting and procuring insurance business through persons not authorised for the said purpose
- with or without consideration of whole or part of commission or remuneration earned through such solicitation and procurement and
- includes enrolment of persons into a multilevel chain for the said purpose
- either directly or indirectly.

**POLICY NOT TO BE CALLED IN QUESTION ON GROUND OF MIS- STATEMENT AFTER THREE YEARS (Sec. 45)**

1. Policy not to be questioned after 3 years [Sec. 45(1)]

- No policy of life insurance shall be called in question
- on any ground whatsoever
- after the expiry of 3 years from the date of the policy.

2. Policy may be questioned within 3 years [Sec, 45(2)]

- A policy of life insurance may be called in question
- at any time within 3 years from the date of the policy,
- on the ground of fraud,
- subject to the condition that the insurer shall communicate in writing to the insured or the legal representatives or nominees or assignees of the insured the grounds and materials on which such decision is based,

3. Meaning of 'fraud' [Explanation I to Sec. 45(2)]

- For the purposes of this sub-section,
- the expression 'fraud' means any of the following acts committed by the insured or by his agent,
- with intent to deceive the insurer or to induce the insurer to issue a life insurance policy:
  - (a) The suggestion, as a fact of that which is not true and which the insured does not believe to be true.
  - (b) The active concealment of a fact by the insured having knowledge or belief of the fact,

- (c) Any other act fitted to deceive,
  - (d) Any such act or omission as the law specially declares to be fraudulent.
4. Whether silence amounts to 'fraud'? [Explanation II to Sec. 45(2)]
- Mere silence as to facts
  - likely to affect the assessment of the risk by the insurer is not fraud,
  - unless the circumstances of the case are such that regard being had to them,
  - it is the duty of the insured or his agent keeping silence, to speak, or
  - unless his silence is, in itself, equivalent to speak.
5. Rights of insured protected in case misstatement or suppression is bonafide [Sec. 45(3)]
- Notwithstanding anything contained in sub-section (2),
  - no insurer shall repudiate a life insurance policy
  - on the ground of fraud
  - if the insured can prove
  - that the misstatement of or suppression of a material fact was true to the best of his knowledge and belief or
  - that there was no deliberate intention to suppress the fact or
  - that such misstatement of or suppression of a material fact are within the knowledge of the insurer.
6. Right of insurer to call for proof of age [Sec. 45(5)]
- Nothing in this section shall prevent the insurer
  - from calling for proof of age at any time, and
  - no policy shall be deemed to be called in question
  - merely because the terms of the policy are adjusted
  - on subsequent proof that the age of the life insured was incorrectly stated in the proposal.

#### **INSURANCE AGENT OR INTERMEDIARY OR INSURANCE INTERMEDIARY NOT TO BE DIRECTOR (Sec. 48A)**

##### **Agent not be director [Sec. 48A(1)]**

- No insurance agent or intermediary or insurance intermediary
- shall be eligible to be or remain a director in insurance company.

##### **Transitional period of 6 months for existing directors [First Proviso to Sec. 48A(I)]**

- Any director holding office
- at the commencement of the Insurance Laws (Amendment) Act, 2015
- shall not become ineligible to remain a director by reason of this section
- until the expiry of 6 months from the date of commencement of the said Act.

##### **Agent may be a director with the permission of Authority [Second Proviso to Sec. 48/(I)]**

- The Authority may permit an agent or intermediary or insurance intermediary
- to be on the Board of an insurance company
- subject to such conditions or restrictions as it may impose
- to Protect the interest of policyholders or to avoid conflict of interest.

**22.22 PROHIBITION OF BUSINESS ON DIVIDING PRINCIPLE (Sec. 52)****Prohibition On business on dividing principle [Sec 52]**

- No insurer shall commence any business upon the dividing principle,
- that is to say,
- on the principle that the benefit secured by a policy is not fixed but depends either wholly or partly on the result of a distribution of certain sums amongst policies becoming claims within certain time-limits, or
- on the principle that the premiums payable by a policyholder depend wholly or partly on the number of policies becoming claims within certain time-limits.

**No prohibition on allocation of bonus [Proviso to Sec. 52]**

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

**COUNCILS OF LIFE INSURANCE AND GENERAL INSURANCE (Sec. 64C)**

- On and from the date of commencement of this Act,
  - (a) the existing Life Insurance Council, a representative body of the insurers, who carry on the life insurance business in India; and
  - (b) the existing General Insurance Council, a representative body of insurers, who carry on general, health insurance business and re-insurance business in India,
- shall be deemed to have been constituted as the respective Councils under this Act,.

**SURVEYORS OR LOSS ASSESSORS (Sec. 64UM)****Legal requirements for acting as a surveyor or loss assessor [Sec. 64UM(1)]**

- Save as otherwise provided in this section,
- no person shall act as a surveyor or loss assessor
- in respect of general insurance business
- after the expiry of a period of 1 year from the commencement of the Insurance Laws (Amendment) Act, 2015,
- unless he -
  - (a) possesses such academic qualifications as may be specified by the regulations made under this Act; and
  - (b) is a member of a professional body of surveyors and loss assessors, namely, the Indian Institute of Insurance Surveyors and Loss'Assessors.

**Position in case of a firm or company [Proviso to Sec. 64UM(1)]**

- In the case of a firm or company,
- all the partners or directors or other persons, who may be called upon to make a survey or assess a loss reported, as the case may be,
- shall fulfil the requirements of clauses (a) and (b).

**Compliance of code of conduct etc. [Sec. 64UM(2)]**

- Every surveyor and loss assessor
- shall comply with the code of conduct in respect of his duties, responsibilities and other professional requirements,
- as may be specified by the regulations made under the Act.

## **ASSETS AND LIABILITIES HOW TO BE VALUED (Sec. 64V)**

### **Valuation of assets [Sec. 64V(1)]**

- For the purpose of ascertaining compliance with the provisions of section 64VA,
- assets shall be valued at value not exceeding their market or realisable value and
- certain assets may be excluded by the Authority
- in the manner as may be specified by the regulations made in this behalf.

### **Valuation of liabilities [Sec. 64V(2)]**

- A proper value shall be placed on every item of liability of the insurer
- in the manner as may be specified by the regulations made in this behalf.

### **Certified statement of assets and liabilities to be furnished by insurer to Authority [Sec. 64V(3)]**

- Every insurer shall furnish to the Authority
- along with the returns required to be filed under this Act,
- a statement,
- certified by
- an Auditor, approved by the Authority, in respect of general insurance business
- an actuary approved by the Authority in respect of life insurance business,'
- as the case may be,
- of his assets and liabilities
- assessed in the manner required by this section
- as on the 31st day of March of each year
- within such time as may be specified by the regulations.

## **SUFFICIENCY OF ASSETS (Sec. 64VA)**

### **Assets to be in excess of liabilities by 50% [Sec. 64VA(1)]**

- Every insurer and re-insurer shall
- at all times
- maintain an excess of value of assets over the amount of liabilities of,
- not less than 50% of the amount of minimum capital as stated u/s 6 and
- arrived at in the manner specified by the regulations.

### **Effect of non-compliance [Sec. 64VA(2)]**

- An insurer or re-insurer, as the case may be,
- who does not comply with subsection (1),
- shall be deemed to be insolvent and
- may be wound-up by the court on an application made by the Authority.

### **Control level of solvency [Sec. 64VA(3)]**

- The Authority shall
- by way of regulations made for the purpose,
- specify a level of solvency margin known as control level of solvency
- on the breach of which the Authority shall act in accordance with the provisions of sub-section (4)
- without prejudice to taking of any other remedial measures as deemed fit.





**Effects of non-maintenance of control level of solvency [Sec. 64VA(4)]**

- If, at any time,
- an insurer or re-insurer does not maintain the required control level of solvency margin,
- he shall,
- in accordance with the directions issued by the Authority,
- submit a financial plan to the Authority,
- indicating a plan of action to correct the deficiency
- within a specified period not exceeding 6 months.

### **Substitution of new sections for sections 38, 39 and 40**

For sections 38, 39 and 40 of the Insurance Act, the following sections shall be” substituted, namely: —

#### **“38. Assignment and transfer of insurance policies**

- (1) A transfer or assignment of a policy of insurance, wholly or (n part, whether with or without consideration, may be made only by an endorsement upon the policy itself or by a separate instrument, signed in either case by the transferor or by the assignor or his duly authorised agent and attested by at least one witness, specifically setting forth the fact of transfer or assignment and the reasons thereof, the antecedents of the assignee and the terms on which the assignment is made.
- (2) An insurer may, accept the transfer or assignment, or decline to act upon any endorsement made under sub-section (IX where it has sufficient reason to believe that such transfer or assignment is not bonafide or is not in the interest of the policy-holder or in public interest or Is tor the purpose of trading of insurance policy
- (3) The insurer shall, before refusing to act upon the endorsement, record in writing the reasons for such refusal and communicate the same to the policy holder not later than thirty days from the date of the policy holder giving notice of such transfer or assignment.
- (4) Any person aggrieved by the decision of an insurer to decline to act upon such transfer or assignment may within a period of thirty days from the date of receipt of the communication from the insurer containing reasons for such refusal, prefer a claim to the Authority.
- (5) Subject to the provisions in sub-section (2), the transfer or assignment shall be complete and effectual upon the execution of such endorsement or instrument duly attested but except, where the transfer or assignment is in favour of the insurer, shall of the operative as against an insurer, and shall not confer upon the transferee or assignee, or his legal representative, any right to sue for the amount of such policy or the moneys secured thereby until a notice in writing of the transfer or assignment and either the said endorsement or instrument itself or a copy thereof certified to be correct by both transferor and transferee or their duly authorised Agents have been delivered to-the insurer:

PROVIDED that where the insurer maintains one or more places of business in India, such notice shall be delivered only at the place where ‘the policy is being serviced.

- (6) The date on which the notice referred to in sub-section (5) is delivered to the insurer shall regulate the priority of all claims under a transfer or assignment as between persons interested in the policy; and where there is more than one instrument of transfer or assignment the priority of the claims under such instruments shall be governed by the order in which the notices referred to in sub-section (5) are delivered:

PROVIDED that if any dispute as to priority of payment arises as between assignees, the dispute shall be referred to the Authority.

- (7) Upon the receipt of the notice referred to in sub-section (5), the insurer shall record the fact of such transfer or assignment together with the date thereof and the name of the transferee or the assignee and shall, on the request of the person by whom the notice was given, or of the transferee or assignee, on payment of such fee as may be specified by the regulations, grant a written acknowledgement of the receipt of such notice; and any such acknowledgement shall be conclusive evidence against the insurer that he has duly received the notice to which such acknowledgement relates.
- (8) 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 (5), recognise the transferee or assignee named in the

notice as the absolute transferee or assignee entitled to benefit under the policy, and such person shall be subject to all liabilities and equities to which the transferor or assignor was subject at the date of the transfer or assignment and may institute any proceedings in relation to the policy, obtain a loan under the policy or surrender the policy without obtaining the consent of the transferor or assignor or making him a party to such proceedings.

**Explanation :** Except where the endorsement referred to in sub-section (1) expressly indicates that the assignment or transfer is conditional in terms of sub-section (10) hereunder, every assignment or transfer shall be deemed to be an absolute assignment or transfer and the assignee or transferee, as the case may be, shall be deemed to be the absolute assignee or transferee respectively.

- (9) 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 the Insurance Laws (Amendment) Act, 2015 shall not be affected by the provisions of this section.
- (10) Notwithstanding any law or custom having the force of law to the contrary, an assignment in favour of a person made upon the condition that—
- (a) the proceeds under the policy shall become payable to the policy holder or the nominee or nominees in the event of either the assignee or transferee predeceasing the insured; or
  - (b) the insured surviving the term of the policy, shall be valid:
- PROVIDED that a conditional assignee shall not be entitled to obtain a loan on the policy or surrender a policy.
- (11) In the case of the partial assignment or transfer of a policy of insurance under sub-section (1), the liability of the insurer shall be limited to the amount secured by partial assignment or transfer and such policy holder shall not be entitled to further assign or transfer the residual amount payable under the same policy.

