

### **Insurance Act 1938:**

The Insurance Act, 1938, broadly provides the ground rules for the operating insurance companies in India. The Act provides for the following: The Insurance Act is the parent legislation which aimed at consolidating and amending the law relating to the business of insurance in February 1938, when, during the British Rule in India, there were many insurance companies which were operating. The Insurance Act, 1938, broadly provides the ground rules for the operating insurance companies in India.

### **Incorporation of insurance companies, issue of licence and renewal of licence (Sections 2C to 5)**

Every insurer who proposes to do insurance business has to register with IRDA and obtain a licence before they start doing insurance business. Three lines of businesses recognised within insurance – Life insurance, Non-life insurance and Standalone Health insurance. Currently only one Reinsurer GIC is licensed in India as the National Reinsurer. Separate companies will have to be formed for doing Life, Non-Life and Standalone Health insurance business. Such companies cannot transact any business other than the insurance business for which the licence is issued. All companies formed for the purpose of doing insurance business shall carry the suffix “Assurance” or “Insurance” in their names to enable anyone to recognise that they are engaged in insurance business.

A Public company is first incorporated under the Companies Act, 1956, with the primary object of engaging in the business of life or non-life or standalone health insurance business. Applicants for insurance licence will have to submit, among other things, certified true copy of memorandum and articles of association, list of directors, certain affidavits and undertakings from Promoters and the fees required for registration. I

IRDA is vested with powers under the Act to cancel the registration of insurers on certain grounds such as default in complying with the provisions of the Act or Regulations passed thereunder, carrying on business other than insurance business etc.

(b) Requirements as to Capital, Transfer of shares, Voting Rights etc.(Sections 6, 6A to 6C)

Every insurer carrying on insurance business shall have a minimum paid up equity capital of ₹100 Crores for life insurance and general insurance business and ₹200 crores for an insurer carrying on reinsurance business.

The Act also provides for restrictions on transfer of shares in an insurance company. Before an insurance company can put through transfer of shares in excess of the following limits, prior approval of IRDA is required:

### **Deposits with Reserve Bank of India (Sections 7 to 9)**

Section 7 mandates that every life insurance company shall maintain a sum equivalent to 1% of the total gross premium written in India in any financial year commencing after 31 day of March 2000, but not exceeding `10 Crores with the Reserve Bank of India in the form of Cash or approved securities. In respect of general insurance business, a sum equivalent to 3% of the total gross premium written in India in any financial year commencing after 31 day of March 2000, but not exceeding `10 Crores is required to be maintained. For reinsurance companies, a flat sum of `20 Crores has been prescribed.

### **(d) Accounts, Audit and Actuarial report and Abstract (Sections 10, 11, 12)**

Separate books of account are required to be maintained for each class of business. Since separate companies will have to be formed for Life, Non-Life or Reinsurance, this provision is automatically taken care for formation of separate companies and consequent maintenance of separate books of account. Further a separate fund called Life insurance fund shall be formed, the assets of which shall be separate and distinct from all other assets of the insurer. By virtue of the powers given under Section 11, IRDA have framed Regulations for Financial Statements which provides for forms of Revenue Account, Profit and Loss Account and Balance Sheet alongwith the form of Management Report and some of the documents annexed to the financial statements.

The accounts and the statements referred to in Section 11 shall be signed by the Chairman of the Board of the Insurance company and two other Directors, Section 12 provides for audit of the financial statements shall be audited by an auditor. Detailed guidelines have been framed by IRDA on the qualifications of persons who can be appointed as Statutory Auditors of the Company.

### **(e) Provisions Relating to Investments (Sections 27, 27A, 27B, 27E)**

The manner in which the investment is required to be made is – not less than 50% in Government and Approved securities (out of which 25% only in Government securities) and the balance in Approved investments as specified in Section 27A. The deposits made with Reserve Bank of India under Section 7 are deemed to be Government Securities for this purpose.

### **Investment in “Other investments”**

Any investment in other than Approved Investments as above is allowed upto 15% of the sum specified in Section 27, provided such investments are made with the consent of all the directors present at a Board meeting and eligible to vote, in respect of which a special notice has been given to all the Directors in India.

### **Prohibited Investments (Section 27A(5) and 27C)**

Investments in the shares or debentures of a Private Limited Company and investments out of Policyholders funds outside India are prohibited.

### **Prohibition of Loans**

Section 29 prohibits grant of any loans or temporary advances to any Director, Actuary or Auditor of the insurance company or to any company or firm in which any such Director, Actuary or Auditor holds the position of a Director, Actuary or partner. This prohibition is not applicable to:

### **Minimum insurance business under Rural and Social Sectors**

Section 32B and 32C requires every insurer to undertake such minimum percentage of the insurance business for covering risks associated with persons forming part of rural or social sector, workers in the unorganized or informal sector or economically vulnerable or backward classes of society or such classes as prescribed by IRDA.