

भारत का राजपत्र
The Gazette of India

असाधारण

EXTRAORDINARY

भाग II—खण्ड 2

PART II—Section 2

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं० 22] नई दिल्ली, सोमवार, अप्रैल 8 1968/चैत्र 19, 1890

N]. 22] NEW DELHI, MONDAY, APRIL 8, 1968/CHAITRA 19, 1890

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed
as a separate compilation.

LOK SABHA

The following Bill was introduced in Lok Sabha on the 8th April, 1968:—

BILL No. 31 of 1968

A Bill further to amend the Insurance Act, 1938, so as to provide for the extension of social control over insurers carrying on general insurance business and for matters connected therewith or incidental thereto and also to amend the Payment of Bonus Act, 1965.

Be it enacted by Parliament in the Nineteenth Year of the Republic of India as follows:—

1. (1) This Act may be called the Insurance (Amendment) Act, Short
1968. title and

5 (2) It shall come into force on such date as the Central Govern- com-
ment may, by notification in the Official Gazette, appoint in this mence-
behalf and different dates may be appointed for different provisions ment.
of this Act.

(323)

Amend-
ment of
section 3.

2. In section 3 of the Insurance Act, 1938 (hereinafter referred to as the principal Act), in sub-section (4),—

4 of 1988.

(i) in clause (d), the words "a class of" shall be omitted,

(ii) after clause (e), the following clause shall be inserted, namely:—

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"(ee) if the Central Government so directs under sub-section (4) of section 33;"

Amend-
ment of
section 3A.

3. In section 3A of the principal Act, in sub-section (2), for the words "which shall not exceed one thousand rupees for each class of insurance business, but may vary according to the volume of business done by the insurer in India in each class of insurance business to which the registration relates", the words "which may vary according to the total premiums during the year preceding the year in which the application is required to be made under this section (including consideration for annuities, if any, less re-insurances), of the insurer in the class of insurance business in India to which the registration relates but shall not—

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(i) exceed one-fourth of one per cent. of such premium income,

(ii) be less, in any case, than five hundred rupees for each class of insurance business" shall be substituted.

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Amend-
ment of
section 6A.

4. In section 6A of the principal Act after sub-section (10), the following sub-section shall be inserted, namely:—

"(11) The provisions of this section shall, on and from the commencement of the Insurance (Amendment) Act, 1968, also apply to insurers carrying on general insurance business subject to the modification that references in sub-sections (1), (3), (5), (6) and (7) to the Insurance (Amendment) Act, 1950, shall be construed as references to the Insurance (Amendment) Act, 1968."

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47 of 1950.

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Amend-
ment of
section 6B.

5. In section 6B of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely:—

"(4) The provisions of this section shall, on and from the commencement of the Insurance (Amendment) Act, 1968, also apply to insurers carrying on general insurance business

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6. In section 7 of the principal Act,—

Amendment
section "

(a) in sub-section (1),—

(i) for the words "the amount hereafter specified", the words "a sum of two million rupees" shall be substituted;

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(ii) clause (a) to (i) shall be omitted;

(iii) in the proviso, for the words "ten thousand rupees", the words "one hundred thousand rupees" shall be substituted;

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(b) after sub-section (1), the following sub-sections shall be inserted, namely:—

(1A) An insurer, who holds immediately before the commencement of the Insurance (Amendment) Act, 1968, a valid certificate of registration in respect of any class of insurance business and who has deposited and kept deposited a sum which is less than the sum required to be deposited under sub-section (1) may make deposit of the sum which is equal to the difference between the sum already deposited and kept deposited and the sum required to be deposited under sub-section (1), in not more than four instalments, of which—

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(a) the first shall be not less than one-fourth of the said sum and shall be paid before the expiry of one year from such commencement,

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(b) the second shall be not less than one-third of the balance left after making the deposit under clause (a) and shall be paid before the expiry of two years from such commencement,

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(c) the third shall be not less than one-half of the residue and shall be paid before the expiry of three years from such commencement, and

(d) the balance shall be paid before the expiry of four years from such commencement.

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(1B) Notwithstanding anything contained in sub-section (1), it shall be sufficient compliance with the provisions of sub-section (1) in the case of a group of insurers operating in India as a group (hereafter in this Act referred to as a group) if the total amount of the deposits made by all the insurers in the group is not less than the

amount which a single insurer would have been required to deposit under sub-section (1):

Provided that the deposit made by each insurer in the group is not less than that proportion of the total deposit required to be made under sub-section (1) as the proportion of his share of the risk on each policy issued by the group bears to the total risk on that policy. 5

Explanation.—For the purposes of this section, a “group” shall be deemed to be operating as such in India if the following conditions are fulfilled, namely:— 10

(a) no insurer in the group has commenced carrying on insurance business in India after the commencement of the Insurance (Amendment) Act, 1968;

(b) all the insurers in the group are registered for the same class or classes of insurance business; 15

(c) there is an agreement between all the insurers in the group to function as a group and such agreement provides that the proportionate share of each insurer in the total risk on every policy issued by the group shall be such as may be mentioned therein and that such proportion shall be the same for all policies in all the classes of insurance policies issued by the group; 20

(d) the agreement referred to in clause (c) has been filed with the Controller within thirty days from the date of its execution: 25

Provided that if the Controller is satisfied that any insurer was prevented by sufficient cause from filing such agreement within the specified time, he may, by order, allow the insurer to file such agreement within a period of thirty days from the date of his order; 30

(e) every policy issued by the insurers in the group mentions, on the face of the policy, the names of all the members of the group and the proportion of the risk for which each member is liable;

(f) the insurers in the group function with common offices, common officers, not being directors or members of any Board of management, and common staff within India; 35

(g) all the expenses in India of the insurance business (but excluding expenses solely relating to any Board of management, whether set up for the purpose of managing the insurance business or not,) are shared by the insurers in the group in the proportion in which the risks are shared by and between them.

(1C) When a group of insurers ceases to be a group, every insurer in that group who continues to carry on any class of insurance business in India shall comply with the requirements of sub-section (1) as if he had not been an insurer in any group at any time and he shall pay, within a period of six months from the date of cessation of the group, in a lump sum, the amount of the instalments of deposit which he would have been required to make under sub-section (1A) before the date of cessation of the group had he not been an insurer in any group at any time, reduced by the amount of deposit, if any, made by him after the commencement of the Insurance (Amendment) Act, 1968.

(1D) The Central Government may, at its discretion, extend the time for making any deposit or instalment of deposit required to be made by any insurer under the provisions of sub-sections (1), (1A), (1B) and (1C) by a period of not more than six months at a time:

Provided that not more than two extensions shall be given in respect of any deposit or instalment of deposit required to be made by an insurer.;

(c) in sub-section (2), the words "any class of" and the words "as the deposit for that class of insurance business" shall be omitted;

(d) for sub-sections (3), (4), (5) and (6) the following sub-sections shall be substituted, namely:—

"(3) Where the deposit is to be made by an insurer not carrying on insurance business in India immediately before the commencement of the Insurance (Amendment) Act, 1968, the deposit shall be made in full before the application for registration is made.

(4) An insurer shall not be registered for any class of insurance business in addition to the class or classes for

which he is already registered until the full deposit required under sub section (1) has been made.

(5) Where an insurer who intends to become a member of a group, does not carry on all the classes of insurance business carried on by the other insurers in such group, or, where out of the several insurers who desire to form themselves into a group, any insurer does not carry on all the classes of insurance business carried on by the other insurers who desire to form themselves into the group, such insurer may be registered for that class or those classes of insurance business which is or are carried on by all the members of the group, and where any application for registration is made by any such insurer, the Controller may, notwithstanding anything contained in sub-section (4), register such insurer for one or more additional classes of insurance if the following conditions are fulfilled, namely:—

(a) the Controller is satisfied that registration for the proposed one or more additional classes of insurance business would qualify the insurer to become a member of a group;

(b) agreements have been executed by all the insurers in the group or proposed group, as the case may be, and such agreements in the opinion of the Controller, satisfy the requirements of the *Explanation* to sub-section (1B); and

(c) the insurer has, after the commencement of the Insurance (Amendment) Act, 1968, made deposit of a sum not less than the total of all the instalments of deposit which he would have been required to make after such commencement till the date of his becoming a member of the group, had he been a member of the group from such commencement.

(6) The Controller shall cancel the registration made in pursuance of the provisions of sub-section (5), if the insurer referred to therein fails to become, within a period of three months from the date of such registration, a member of the group or proposed group, as the case may be, and, where such registration has been cancelled, the provisions of this Act shall apply to the insurer as if he had not been registered for the class or classes of insurance business in relation to which his registration has been cancelled”.

7. For section 9 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 9.

5 "9. Where an insurer has ceased to carry on in India all classes of insurance business, and his liabilities in India in respect of all classes of insurance business have been satisfied or are otherwise provided for, the court may, on the application of the insurer, order the return to the insurer of the deposit made by him under this Act."

Refund of deposit.

8. In section 10 of the principal Act, in sub-section (1),—

Amendment of section 10.

10 (i) for the words, brackets, letters and figures "classes specified in clauses (a), (b), (c) and (d) of sub-section (1) of section 7", the words "following classes, namely, life insurance, fire insurance, marine insurance or miscellaneous insurance" shall be substituted;

15 (ii) for the words brackets and letter "the class specified in clause (d) of that sub-section", the words "miscellaneous insurance" shall be substituted;

20 (iii) for the words, brackets and letter "each such sub-class of the class specified in clause (d)", the words "each of such sub-classes of miscellaneous insurance business" shall be substituted.

(iv) in the proviso, for the words, brackets, letter and figures "the class of insurance business specified in clause (d) of sub-section (1) of section 7", the words "miscellaneous insurance business" shall be substituted.

25 9. In section 11 of the principal Act, in sub-section (1), in clause (b), for the words, brackets, letters and figures "the classes specified in clauses (a), (b) and (c) of sub-section (1) of section 7", the words "the following classes, namely, life insurance, fire insurance or marine insurance" shall be substituted.

Amendment of section 11.

30 10. In section 21 of the principal Act, in sub-section (1), in clause (d), after the words, figures and letter "or section 23A", the words, figures and letters "or section 28B or section 64VA" shall be inserted.

Amendment of section 21.

Insertion
of new
section
27B.

Further
provi-
sions re-
garding
invest-
ments.

11. After section 27A of the principal Act, the following section shall be inserted, namely:—

‘27B. (1) No insurer carrying on general insurance business shall, after the commencement of the Insurance (Amendment) Act, 1968, invest or keep invested any part of his assets other- 5 wise than in any of the following approved investments, namely:—

(a) the investments specified in clauses (a) to (f), (i) to (n), (q) and (s) of sub-section (1) of section 27A;

(b) debentures secured by a first charge on any im- 10 movable property, plant or equipment of any company where either the book value or the market value, whichever is less, of such property, plant or equipment is more than twice the value of such debentures;

(c) first debentures secured by a floating charge on all 15 its assets or by a fixed charge on fixed assets and floating charge on all other assets of any company which has paid dividends on its equity shares for the five years immediately preceding or for at least five out of the six or seven years immediately preceding the date of the investment; 20

(d) such other investments as the Central Government may, by notification in the Official Gazette, declare to be approved investments for the purposes of this section.

(2) Any prescribed assets shall, subject to such conditions, if any, as may be prescribed, be deemed to be assets invested 25 or kept invested in approved investments specified in sub-section (1).

(3) Notwithstanding anything contained in sub-section (1), an insurer being a company may, subject to the provisions contained in the next succeeding sub-sections, invest or keep in- 30 vested any part of his assets otherwise than in an approved investment, if,—

(i) after such investment, the total amounts of all such investments of the insurer do not exceed twenty-five per cent. of his assets, and

(ii) the investment is made, or, in the case of any investment already made, the continuance of such investment is with the consent of all the directors present at a meeting and eligible to vote, special notice of which has been given

5 to all the directors then in India, and all such investments, including investments in which any director is interested, are reported without delay to the Controller with full details of the investments and the extent of the director's interest in any such investment.

(4) An insurer shall not invest or keep invested any part of his assets in the shares of any one banking company or investment company more than—

(a) ten per cent. of his assets, or

10 (b) two per cent. of the subscribed share capital and debentures of the banking company or investment company concerned,

whichever is less.

15 (5) An insurer shall not invest or keep invested any part of his assets in the shares or debentures of any one company other than a banking company or investment company more than—

(a) ten per cent. of his assets, or

20 (b) ten per cent. of the subscribed share capital and debentures of the company,

whichever is less:

25 Provided that nothing in this sub-section shall apply to any investment made with the previous consent of the Controller by an insurer, being a company, with a view to forming a subsidiary company carrying on insurance business.

(6) An insurer shall not invest or keep invested any part of his assets in the shares or debentures of any private company.

30 (7) Where an investment is in partly paid-up shares, the uncalled liability on such shares shall be added to the amount invested for the purpose of computing the percentages referred to in clause (a) of sub-section (4) and clause (a) of sub-section (5).

35 (8) Notwithstanding anything contained in sub-sections (4) and (5), where new shares are issued to the existing shareholders by a company, the existing shares of which are covered by clause (i) or clause (k) or clause (l) of sub-section (1) and of which an insurer is already a shareholder, the insurer may subscribe to such new shares:

Provided that the proportion of new shares subscribed by him does not exceed the proportion which the paid-up amount on the shares held by him immediately before such subscription bears to the total paid-up capital of the company at the time of such subscription.

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(9) If, on an application submitted to the Controller, he is satisfied that special grounds exist warranting such exemption, he may, for such period, to such extent and in relation to such particular investments and subject to such conditions as may be specified by him in this behalf, exempt an insurer from all or any of the provisions of sub-sections (4), (5) and (8).

(10) An insurer shall not keep more than ten per cent. of his assets in fixed deposit or current deposit, or partly in fixed deposit and partly in current deposit, with any one banking company or with any co-operative society registered under the Co-operative Societies Act, 1912 or under any other law for the time being in force and doing banking business:

15 2 of 1912

Provided that in applying this sub-section to the amount in deposit with a banking company on any day, all the premiums collected by that company on behalf of the insurer during the preceding thirty days shall be excluded.

(11) All assets shall (except for a part thereof not exceeding one-tenth of the total assets in value which may, subject to such conditions and restrictions as may be prescribed, be offered as security for any loan taken for purposes of any investment) be held free of any encumbrance, charge, hypothecation or lien.

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(12) If at any time the Controller considers any one or more of the investments constituting an insurer's assets to be unsuitable or undesirable, he may, after giving the insurer an opportunity of being heard, direct the insurer to realise the investment or investments, and the insurer shall comply with the direction within such time as may be specified in this behalf by the Controller.

30

(13) Every insurer in existence at the commencement of the Insurance (Amendment) Act, 1968, whose investments or any part thereof at such commencement do or does not fulfil the requirements of this section, shall, within ninety days from such com-

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mencement, submit to the Controller a report specifying all such investments, and, if the Controller is satisfied that it will not be in the interest of the insurer or any class of insurers generally to realise any such investments, he may, by order,
5 direct that the provisions of this section, other than the provisions contained in sub-section (12), shall not apply in relation to any such investments or to any class of investments generally for such period or periods as may be specified in the order.

(14) Without prejudice to the powers conferred on the Controller by sub-section (12), nothing contained in this section shall
10 be deemed to require any insurer to realise any investment made in conformity with the provisions of sub-section (1) after the commencement of the Insurance (Amendment) Act, 1968, which, after the making thereof, has ceased to be an approved investment
15 within the meaning of this section.

(15) Nothing contained in this section shall be deemed to affect in any way the manner in which any moneys relating to the provident fund of any employee or to any security taken from any employee or other moneys of a like nature are required to be held by or under any Central, Provincial or State Act.
20

(16) In this section, unless the context otherwise requires, "assets" means—

(a) in the case of an insurer carrying on life insurance business in India, all his assets required to be shown under the column "Other Classes of Business" in the balance-sheet
25 in Form A, in Part II of the First Schedule, but excluding any items against the head "Other Accounts (to be specified)";

(b) in the case of an insurer specified in sub-clause (a),
30 (ii) or sub-clause (b) of clause (9) of section 2, who is not carrying on life insurance business in India, all his assets required to be shown in the balance-sheet in Form A in Part II of the First Schedule but excluding any items against the head "Other Accounts (to be specified)"; and

(c) in the case of any other insurer, the assets required to be shown in the statement in Form AA, in Part II of the First Schedule, but excluding office furniture;
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but does not include any assets specifically held against any fund or portion thereof in respect of which the Controller is satisfied

that such fund or portion thereof, as the case may be, is regulated by the law of any country outside India or in respect of which the Controller is satisfied that it would not be in the interest of the insurer to apply the provisions of this section.'

Insertion
of new
section
28B.

12. After section 28A of the principal Act, the following section shall be inserted, namely:—

Returns
of invest-
ments
relating
to the
assets and
changes
therein.

"28B. (1) Every insurer carrying on general insurance business, shall every year, within thirty-one days from the beginning of the year, submit to the Controller a return in the prescribed form showing as at the 31st day of December of the preceding year the investments made out of his assets referred to in section 27B, and every such return shall be certified by a principal officer of the insurer. 10

(2) Every insurer referred to in sub-section (1) shall also submit to the Controller a return in the prescribed form showing all the changes that occurred in the investments aforesaid during each of the quarters ending on the last day of March, June, September and December within thirty-one days from the close of the quarter to which it relates, and every such return shall be certified by a principal officer of the insurer. 20

(3) Every insurer shall submit, along with the returns referred to in sub-sections (1) and (2), a statement, where any part of the assets are in the custody of a banking company, from that company, and in any other case, from the Chairman, two directors and a principal officer, if the insurer is a company, or from a principal officer of the insurer, if the insurer is not a company, specifying the assets, which are subjected to a charge and certifying that the other assets are held free of any encumbrance, charge, hypothecation or lien, and every such statement after the first shall also specify the charges created in respect of any of those assets since the date of the statement immediately preceding, and, if any such charges have been liquidated, the date on which they were so liquidated." 30

Amend-
ment of
section 30

13. In section 30 of the principal Act, after the word, figures and letter "section 27A", the word, figures and letter "section 27B" shall be inserted. 35

14. In section 31A of the principal Act, in clause (vii) of the proviso to sub-section (1), the words “, such bonus, in the case of any employee, not exceeding in amount the equivalent of his salary for a period which, in the opinion of the Central Government, is reasonable having regard to the circumstances of the case” shall be omitted.

Amend-
ment of
Section
31A.

15. In section 33 of the principal Act,—

(i) after sub-section (1), the following sub-section shall be inserted, namely:—

Amend-
ment of
section 33.

1 of 1956.

10 “(1A) Notwithstanding anything to the contrary
contained in section 235 of the Companies Act, 1956 the
Controller may, at any time, and shall, on being directed
so to do by the Central Government, cause an inspection to
be made by one or more of his officers of any insurer and
15 his books and accounts; and the Controller shall supply to
the insurer a copy of his report on such inspection.”;

(ii) in sub-section (2), after the words, brackets and figure
“under sub-section (1)”, the words, brackets, figure and letter
“, or inspection under sub-section (1A),” shall be inserted;

20 (iii) in sub-section (3), after the words, brackets and figure
“under sub-section (1)”, the words, brackets, figure and letter
“or inspection under sub-section (1A)” shall be inserted;

(iv) after sub-section (3), the following sub-section shall
be inserted, namely:—

25 “(3A) The Controller shall, if he has been directed by
the Central Government to cause an inspection to be made,
and may, in any other case, report to the Central Govern-
ment on any inspection made under this section.”;

30 (v) in sub-section (4), after the words, brackets and figure
“under sub-section (1)”, the words, brackets, figure and letter
“or under sub-section (3A)” shall be inserted;

(vi) after sub-section (4), the following sub-sections shall
be inserted, namely:—

35 “(4A) The Central Government may, after giving reason-
able notice to the insurer, publish the report submitted by
the Controller under sub-section (3A) or such portion there-
of as may appear to it to be necessary.

(4B) The Central Government may prescribe the minimum information to be maintained by insurers in their books, the manner in which such information should be maintained, the checks and other verifications to be adopted by insurers in that connection and all other matters incidental thereto as are, in its opinion, necessary to enable the Controller to discharge satisfactorily his functions under this section. 5

Explanation.—For the purposes of this section, the expression “insurer” shall include— 10

(i) in the case of an insurer incorporated outside India, all his branches in India, and

(ii) in the case of an insurer incorporated in India—

(a) all his subsidiaries formed for the purpose of carrying on the business of insurance exclusively outside India; 15
and

(b) all his branches whether situated in India or outside India.’

Inser-
tion of
new sec-
tions 34,
34A, 34B,
34C, 34D,
34E, 34F,
34G and
34H.

16. After section 33 of the principal Act, the following headings and sections shall be inserted:— 20

“POWER TO ISSUE DIRECTIONS

Power of
the Con-
troller to
issue dir-
ections.

34. (1) Where the Controller is satisfied that—

(a) in the public interest; or

(b) to prevent the affairs of any insurer being conducted in a manner detrimental to the interests of the policy- 25

holders or in a manner prejudicial to the interests of the insurer; or

(c) generally to secure the proper management of any insurer,

5 it is necessary to issue directions to insurers generally or to any insurer in particular, he may, from time to time, issue such directions as he deems fit, and the insurers or the insurer, as the case may be, shall be bound to comply with such directions.

10 (2) The Controller may, on representation made to him or on his 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 he thinks fit, subject to which the modification or cancellation shall have effect.

CONTROL OVER MANAGEMENT

15 34A. (1) In the case of an insurer,—

(a) no amendment made after the commencement of the Insurance (Amendment) Act, 1968, of any provision relating to the appointment, re-appointment, termination of appointment or remuneration of a managing director or any other director, whole-time or otherwise, or of a manager or 20 a chief executive officer, by whatever name called, or secretary, accountant or underwriter, whether that provision be contained in the insurer's memorandum or articles of association, or in an agreement entered into by him, or in any resolution passed by the insurer in general meeting or 25 by his Board of directors shall have effect unless approved by the Controller;

Amendment of provisions relating to appointments of managing directors, etc., to be subject to previous approval of the Controller.

30 (b) no appointment, re-appointment or termination of appointment, made after the commencement of the Insurance (Amendment) Act, 1968, of a managing director or any other director, whole-time or otherwise, or of a manager or a chief executive officer, by whatever name called, or secretary, accountant or underwriter shall have effect unless such appointment, re-appointment or termination of 35 appointment is made with the previous approval of the Controller.

Explanation.—For the purposes of this sub-section, any provision conferring any benefit or providing any amenity or perquisite, in whatever form, whether during or after the termination of the term of office of the manager or the chief executive

officer, by whatever name called, or secretary, accountant or underwriter or the managing director, or any other director, whole-time or otherwise, shall be deemed to be a provision relating to his remuneration.

(2) Nothing contained in sections 268 and 269, the proviso to sub-section (3) of section 309, sections 310 and 311, the proviso to section 387, and section 388 (in so far as section 388 makes the provisions of sections 310 and 311 apply in relation to the manager of a company) of the Companies Act, 1956, shall apply to any matter in respect of which the approval of the Controller has to be obtained under sub-section (1). 1 of 1956.

(3) No act done by a person as a managing or whole-time director or a director not liable to retire by rotation or a manager or a chief executive officer, by whatever name called, or by a secretary, accountant or underwriter shall be deemed to be invalid on the ground that it is subsequently discovered that his appointment had not taken effect by reason of any of the provisions of this Act; but nothing in this sub-section shall be construed as rendering valid any act done by such person after his appointment has been shown to the insurer not to have had effect.

Power of Controller to remove managerial and other persons from office.

34B. (1) Where the Controller is satisfied that in the public interest or for preventing the affairs of an insurer being conducted in a manner detrimental to the interests of the policy-holders or for securing the proper management of any insurer it is necessary so to do, he may, for reasons to be recorded in writing, by order, remove from office, with effect from such date as may be specified in the order, any director, chief executive officer, by whatever name called, or other officer or employee of the insurer.

(2) No order under sub-section (1) shall be made unless the director or chief executive officer or other officer or employee concerned has been given a reasonable opportunity of making a representation to the Controller against the proposed order:

Provided that if, in the opinion of the Controller, any delay would be detrimental to the interests of the insurer or his policy-holders, he may, at the time of giving the opportunity aforesaid or at any time thereafter, by order direct that, pending the consideration of the representation aforesaid, if any, the director

or, as the case may be, chief executive officer or other officer or employee, shall not, with effect from the date of such order,—

(a) act as such director or chief executive officer or other officer or employee of the insurer;

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

10 (3) (a) Any person against whom an order of removal has been made under sub-section (1) may, within thirty days from the date of communication to him of the order, prefer an appeal to the Central Government.

15 (b) The decision of the Central Government on such appeal, and subject thereto, the order made by the Controller under sub-section (1), shall be final and shall not be called into question in any court.

20 (4) Where any order is made in respect of a director or chief executive officer or other officer or employee of an insurer under sub-section (1), he shall cease to be a director or, as the case may be, chief executive officer or other officer or employee of the insurer and shall not, in any way, whether directly or indirectly, be concerned with, or take part in, the management of any insurer for such period not exceeding five years as may be specified in the order.

25 (5) If any person in respect of whom an order is made by the Controller under sub-section (1) or under the proviso to sub-section (2) contravenes the provisions of this section, he shall be punishable with fine which may extend to two hundred and fifty rupees for each day during which such contravention continues.

30 (6) Where an order under sub-section (1) has been made, the Controller may, by order in writing, appoint a suitable person in place of the director or chief executive officer or other officer or employee who has been removed from his office under that sub-section, with effect from such date as may be specified in the order.

35 (7) Any person appointed as director or chief executive officer or other officer or employee under this section shall,—

(a) hold office during the pleasure of the Controller and subject thereto for a period not exceeding three years or

such further periods not exceeding three years at a time as the Controller may specify;

(b) not incur any obligation or liability by reason only of his being a director or chief executive officer or other officer or employee 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. 5

(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. 10

Power of
Controller
to appoint
addi-
tional
direc-
tors.

34C. (1) If the Controller is of opinion that in the interests of an insurer, or his policy-holders it is necessary so to do, he 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 insurer: 15

Provided that the number of additional directors so appointed shall not, at any time, exceed five or one-third of the maximum strength fixed for the Board by the articles of association of the insurer, whichever is less. 20

(2) Any person appointed as additional director in pursuance of this section,—

(a) shall hold office during the pleasure of the Controller, and subject thereto for a period not exceeding three years or such further periods not exceeding three years at a time as the Controller may specify; 25

(b) shall not incur any obligation or liability by reason only of his being a director or for anything done or omitted to be done in good faith in the execution of the duties of his office or in relation thereto; and 30

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

(3) For the purpose of reckoning any proportion of the total number of directors of the insurer, any additional director appointed under this section shall not be taken into account. 35

1 of 1956.

5

34D. Any appointment or removal of a director, chief executive officer or other officer or employee in pursuance of section 34B or section 34C shall have effect notwithstanding anything to the contrary contained in the Companies Act, 1956, or any other law for the time being in force or in any contract or any other instrument.

Sections
34B and
34C to
over-ride
other
laws.

34E. (1) The Controller may,—

Further
powers
of Con-
troller
and Cent-
ral Govern-
ment.

10

(a) caution or prohibit insurers generally or any insurer in particular against entering into any particular transaction or class of transactions, and generally give advice to any insurer;

15

(b) at any time, if he is satisfied that in the public interest or in the interests of the insurer or for preventing the affairs of the insurer being conducted in a manner detrimental to the interests of the insurer or his policyholders, it is necessary so to do, by order in writing and on such terms and conditions as may be specified therein,—

20

(i) require the insurer to call a meeting of his directors for the purpose of considering any matter relating to or arising out of the affairs of the insurer;

25

(ii) depute one or more of his officers to watch the proceedings at any meeting of the Board of directors of the insurer or of any committee or of any other body constituted by it; require the insurer to give an opportunity to the officers so deputed to be heard at such meetings and also require such officers to send a report of such proceedings to the Controller;

30

(iii) require the Board of directors of the insurer or any committee or any other body constituted by it to give in writing to any officer specified by the Controller in this behalf at his usual address all notices of, and other communications relating to, any meeting of the Board, committee or other body constituted by it;

35

(iv) appoint one or more of his officers to observe the manner in which the affairs of the insurer or of his offices

SECRETARIAT LIO

or branches are being conducted and make a report thereon;

(v) require the insurer to make, within such time as may be specified in the order, such changes in the management as the Controller may consider necessary.

5

(2) The Central Government or the Controller may appoint such staff and at such places as it or he may consider necessary for the scrutiny of the returns, statements and information furnished by insurers under this Act, and generally to ensure the efficient performance of the functions of the Controller under 10 this Act.

Power of
Controller
to
issue
direc-
tions re-
garding
re-insur-
ance trea-
ties, etc.

34F. (1) Without prejudice to the generality of the powers conferred by sub-section (1) of section 34, the Controller may, if he is of opinion that the terms or conditions of any re-insurance treaty or other re-insurance contract entered into by an insurer 15 are not favourable to the insurer or are detrimental to the public interest, he may, by order, require the insurer to make, at the time when the renewal of such treaty or contract becomes next due, such modifications in the terms and conditions of such treaty or contract as he may specify in the order or not to renew such 20 treaty or contract, and, if the insurer fails to comply with such order, he shall be deemed to have failed to comply with the provisions of this Act.

(2) The Controller may, if he has reason to believe that an insurer is entering into or is likely to enter into re-insurance 25 treaties or other re-insurance contracts which are not favourable to the insurer or are detrimental to the public interest, he may, by order, direct that the insurer shall not enter into such re-insurance treaty or other re-insurance contract unless a copy of such treaty or contract has been furnished to him in advance 30 and the terms and conditions thereof have been approved by him and if the insurer fails to comply with such order he shall be deemed to have failed to comply with the requirements of this Act.

Power of
Control-
ler to
order
closure of
foreign
branches.

34G. (1) Without prejudice to the generality of the powers 35 conferred by sub-section (1) of section 34, the Controller may, if he has reason to believe that the working of any branch outside India of an insurer being an insurer specified in sub-clause (b) of clause (9) of section 2, is generally resulting in a loss or that the

affairs of that branch are being conducted in a manner prejudicial to the interests of the policy-holders or the public interest, he may, after giving an opportunity to the insurer of being heard, direct that the insurer shall cease, within such period, not being less than one year, as may be specified in the order, to carry on insurance business in the country in which such branch is situated and if the insurer fails to comply with such order he shall be deemed to have failed to comply with the provisions of this Act.

(2) Any insurer aggrieved by an order made by the Controller under sub-section (1) may, within a period of two months from the date of receipt by him of the order, prefer an appeal to the Central Government and the decision of the Central Government thereon shall be final.

34H. (1) Where the Controller, in consequence of information in his possession, has reason to believe that,—

Search
and
seizure

(a) any person who has been required under sub-section (2) of section 33 to produce, or cause to be produced, any books, accounts or other documents in his custody or power has omitted or failed to produce, or cause to be produced, such books, accounts or other documents, or

(b) any person to whom a requisition to produce any books, accounts or other documents as aforesaid has been or might be issued will not, or would not, produce or cause to be produced, any books, accounts or other documents which will be useful for, or relevant to, an inspection under that sub-section, or

(c) a contravention of any provision of this Act has been committed or is likely to be committed by an insurer, or

(d) any claim which is due to be settled by an insurer, has been or is likely to be settled at a figure higher than a reasonable amount, or

(e) any claim which is due to be settled by an insurer, has been or is likely to be rejected or settled at a figure lower than a reasonable amount, or

(f) any illegal rebate or commission has been paid or is likely to be paid by an insurer, or

(g) any books, accounts, receipts, vouchers, survey reports or other documents, belonging to an insurer are likely to be tampered with, falsified or manufactured,

he may authorise any subordinate officer of his, not lower in rank than an Assistant Controller of Insurance (hereafter referred to as the authorised officer) to—

(i) enter and search any building or place where he has reason to suspect that such books, accounts or other documents, or any books or papers relating to any claim, rebate or commission or any receipts, vouchers, reports or other documents are kept; 5

(ii) break open the lock of any door, box, locker, safe, almirah or other receptacle for exercising the powers conferred by clause (i) where the keys thereof are not available; 10

(iii) seize all or any such books, accounts or other documents, found as a result of such search;

(iv) place marks of identification on such books, accounts or other documents or make or cause to be made extracts or copies therefrom. 15

(2) The authorised officer may requisition the services of any police-officer or of any officer of the Central Government, or of both, to assist him for all or any of the purposes specified in sub-section (1) and it shall be the duty of every such officer to comply with such requisition. 20

(3) The authorised officer may, where it is not practicable to seize any such book, account or other document, specified in sub-section (1), serve an order on the person who is in immediate possession or control thereof that he shall not remove, part with or otherwise deal with it except with the previous permission of such officer and such officer may take such steps as may be necessary for ensuring compliance with this sub-section. 25 30

(4) The authorised officer may, during the course of the search or seizure, examine on oath any person who is found to be in possession or control of any books, accounts or other documents, and any statement made by such person during such examination may thereafter be used in evidence in any proceeding under this Act. 35

(5) The books, accounts, papers, receipts, vouchers, reports, or other documents seized under sub-section (1) shall not be retained by the authorised officer for a period exceeding one hundred and eighty days from the date of the seizure unless the 40

reasons for retaining the same are recorded by him in writing and the approval of the Controller for such retention is obtained:

5 Provided that the Controller shall not authorise the retention of the books, accounts, papers, receipts, vouchers, reports, or other documents for a period exceeding thirty days after all the proceedings under this Act for which the books, accounts, papers, receipts, vouchers, reports, or other documents are relevant are completed.

10 (6) The person from whose custody any books, accounts, papers, receipts, vouchers, reports, or other documents are seized under sub-section (1) may make copies thereof, or take extracts therefrom, in the presence of the authorised officer or any other person empowered by him in this behalf at such place and time as the authorised officer may appoint in this behalf.

15 (7) If a person legally entitled to the books, accounts, papers, receipts, vouchers, reports, or other documents seized under sub-section (1) objects for any reason to the approval given by the Controller under sub-section (5), he may make an application to the Central Government stating therein the reasons for such objection and requesting for the return of the books, accounts, 20 papers, receipts, vouchers, reports, or other documents.

(8) On receipt of the application under sub-section (7), the Central Government may, after giving the applicant an opportunity of being heard, pass such orders as it thinks fit.

5 of 1898. 25 (9) The provisions of the Code of Criminal Procedure, 1898, relating to searches and seizures shall apply, so far as may be, to every search and seizure made under sub-section (1).

30 (10) The Central Government may make rules in relation to any search or seizure under this section; in particular, and without prejudice to the generality of the foregoing power, such rules may provide for the procedure to be followed by the authorised officer,—

(i) for obtaining ingress into such building or place to be searched where free ingress thereto is not available;

35 (ii) for ensuring safe custody of any books, accounts, papers, receipts, vouchers, reports, or other documents seized under this section."

Inser-
tion
of new
section
37A.
Power of
Control-
ler to
prepare
scheme of
amalgama-
tion.

17. After section 37 of the principal Act, the following section shall be inserted, namely:—

“37A. (1) If the Controller is satisfied that—

(i) in the public interest; or

(ii) in the interests of the policy-holders; or 5

(iii) in order to secure the proper management of an insurer; or

(iv) in the interests of the insurance business of the country as a whole,

it is necessary so to do, he may prepare a scheme for the amal- 10 gamation of that insurer with any other insurer (hereafter referred to in this section as the transferee insurer).

(2) The scheme aforesaid may contain provisions for all or any of the following matters, namely:—

(a) the constitution, name and registered office, the 15 capital, assets, powers, rights, interests, authorities and privileges, and the liabilities, duties and obligations of the transferee insurer;

(b) the transfer to the transferee insurer of the business, properties, assets and liabilities of the insurer on such terms 20 and conditions as may be specified in the scheme;

(c) any change in the Board of directors, or the appointment of a new Board of directors of the transferee insurer and the authority by whom, the manner in which, and the other terms and conditions on which, such change or appoint- 25 ment shall be made and, in the case of appointment of a new Board of directors or of any director, the period for which such appointment shall be made;

(d) the alteration of the memorandum and articles of association of the transferee insurer for the purpose of alter- 30 ing the capital thereof or for such other purposes as may be necessary to give effect to the amalgamation;

(e) subject to the provisions of the scheme, the conti- 35 nation by or against the transferee insurer, of any actions or proceedings pending against the insurer;

(f) the reduction of the interest or rights which the shareholders, policy-holders and other creditors have in or

against the insurer before the amalgamation to such extent as the Controller considers necessary in the public interest or in the interests of the shareholders, policy-holders and other creditors or for the maintenance of the business of the insurer;

(g) the payment in cash or otherwise to policy-holders and other creditors in full satisfaction of their claim,—

(i) in respect of their interest or rights in or against the insurer before the amalgamation; or

(ii) where their interest or rights aforesaid in or against the insurer has or have been reduced under clause (f), in respect of such interest or rights as so reduced;

(h) the allotment to the shareholders of the insurer for shares held by them therein before the amalgamation [whether their interest in such shares has been reduced under clause (f) or not] of shares in the transferee insurer and where any shareholders claim payment in cash and not allotment of shares, or where it is not possible to allot shares to any shareholders the payment in cash to those shareholders in full satisfaction of their claim—

(i) in respect of their interest in shares in the insurer before the amalgamation; or

(ii) where such interest has been reduced under clause (f) in respect of their interest in shares as so reduced;

(i) the continuance of the services of all the employees of the insurer (excepting such of them as not being workmen within the meaning of the Industrial Disputes Act, 1947, are specifically mentioned in the scheme) in the transferee insurer at the same remuneration and on the same terms and conditions of service, which they were getting or, as the case may be, by which they were being governed, immediately before the date of the amalgamation:

Provided that the scheme shall contain a provision that the transferee insurer shall pay or grant not later than the expiry of the period of three years, from the date of the amalgamation, to the said employees the same remuneration and the same terms and conditions of service as are applicable to the other employees of corresponding rank or status of the transferee insurer subject to the qualifications

and experience of the said employees being the same as or equivalent to those of such other employees of the transferee insurer;

Provided further that if in any case any doubt or difference arises as to whether the qualification and experience of any of the said employees are the same as or are equivalent to the qualifications and experience of the other employees of corresponding rank or status of the transferee insurer, the doubt or difference shall be referred to the Controller whose decision thereon shall be final;

(j) notwithstanding anything contained in clause (i), where any of the employees of the insurer not being workmen within the meaning of the Industrial Disputes Act, 1947, are specifically mentioned in the scheme under clause (i) or where any employees of the insurer have by notice in writing given to the insurer or, as the case may be, the transferee insurer at any time before the expiry of one month next following the date on which the scheme is sanctioned by the Central Government, intimated their intention of not becoming employees of the transferee insurer, the payment to such employees of compensation, if any, to which they are entitled under the Industrial Disputes Act, 1947, and such pension, gratuity, provident fund or other retirement benefits ordinarily admissible to them under the rules or authorisations of the insurer immediately before the date of the amalgamation;

(k) any other terms and conditions for the amalgamation of the insurer;

(l) such incidental, consequential and supplemental matters as are necessary to secure that the amalgamation shall be fully and effectively carried out.

(3) (a) A copy of the scheme prepared by the Controller shall be sent in draft to the insurer and also to the transferee insurer and any other insurer concerned in the amalgamation, for suggestions and objections, if any, within such period as the Controller may specify for this purpose.

(b) The Controller may make such modifications, if any, in the draft scheme as he may consider necessary in the light of the suggestions and objections received from the insurer and also from the transferee insurer, and any other insurer concerned in the amalgamation and from any shareholder, policy-holder or

other creditor of each of those insurers and the transferee insurer.

5 (4) The scheme shall thereafter be placed before the Central Government for its sanction and the Central Government may sanction the scheme without any modification or with such modifications as it may consider necessary; and the scheme as sanctioned by the Central Government shall come into force on such date as the Central Government may specify in this behalf:

10 Provided that different dates may be specified for different provisions of the scheme.

15 (5) The sanction accorded by the Central Government under sub-section (4) shall be conclusive evidence that all the requirements of this section relating to amalgamation have been complied with and a copy of the sanctioned scheme certified in writing by an officer of the Central Government to be a true copy thereof, shall, in all legal proceedings (whether in appeal or otherwise) be admitted as evidence to the same extent as the original scheme.

20 (6) The Controller may, in like manner, add to, amend or vary any scheme made under this section.

25 (7) On and from the date of the coming into operation of the scheme or any provision thereof, the scheme or such provision shall be binding on the insurer or, as the case may be, on the transferee insurer and any other insurer concerned in the amalgamation and also on all the shareholders, policy-holders and other creditors and employees of each of those insurers and of the transferee insurer, and on any other person having any right or liability in relation to any of those insurers or the transferee insurer.

30 (8) On and from such date as may be specified by the Central Government in this behalf, the properties and assets of the insurer shall, by virtue of and to the extent provided in the scheme, stand transferred to, and vest in, and the liabilities of the insurer shall, by virtue of and to the extent provided in the scheme, stand transferred to and become the liabilities of, the transferee insurer.

40 (9) If any difficulty arises in giving effect to the provisions of the scheme the Central Government may by order do anything not inconsistent with such provisions which appears to it necessary or expedient for the purpose of removing the difficulty.

(10) Copies of every scheme made under this section and of every order made under sub-section (9) shall be laid before each House of Parliament, as soon as may be, after the scheme has been sanctioned by the Central Government, or, as the case may be, the order has been made.

5

(11) Nothing in this section shall be deemed to prevent the amalgamation with an insurer by a single scheme of several insurers.

(12) The provisions of this section and of any scheme made under it shall have effect notwithstanding anything to the contrary contained in any other provisions of this Act or in any other law or any agreement, award or other instrument for the time being in force.

(13) The provisions of section 37 shall not apply to an amalgamation given effect to under the provisions of this section."

Amend-
ment of
section
40A.

18. In section 40A of the principal Act,—

(i) in sub-section (3)—

(1) for the words, brackets and figures "Insurance (Amendment) Act, 1950", the words, brackets and figures 20 47 of 1950 "Insurance (Amendment) Act, 1968" shall be substituted;

(2) for clauses (a) and (b), the following clauses shall be substituted, namely:—

"(a) where the policy relates to fire insurance—

(i) if the policy relates to a period of a year, 25 ten per cent. of the first fifty thousand rupees, five per cent. of the next one hundred thousand rupees and nil thereafter of the premium payable on the policy;

(ii) if the policy (hereafter in this clause 30 referred to as the relevant policy) relates to a period other than a year, such percentage of the premium payable on the relevant policy as the commission

5 computed in accordance with sub-clause (i) on a corresponding annual policy would bear to the premium on such annual policy (the premium on the annual policy being taken as the same proportion of the premium on the relevant policy as the period of one year bears to the period of the relevant policy);

10 (b) where the policy relates to miscellaneous insurance, fifteen per cent. of the premium payable on the policy, and

 (c) where the policy relates to marine insurance, ten per cent. of the premium payable on the policy.”;

 (ii) after sub-section (3), the following sub-sections and *Explanation* shall be inserted, namely:—

15 “(3A) Where any person applies for a policy relating to fire insurance in respect of any property, he shall declare in the proposal form whether any other policy has been taken by him in respect of such property or any part thereof in relation to any part of the period to which the
20 proposal relates, and if he has taken out any such policy, he shall state the particulars thereof in the proposal form.

 (3B) Where it appears from the proposal form that there is already in existence one or more policies relating to fire insurance in respect of the property, or any part
25 thereof, the insurer shall take into account the total amount of the premium relating to all such policies for the period or any part thereof for which the proposal has been made for the purpose of determining the amount of commission on the premium payable on the policy proposed to be taken
30 out from him.

Explanation.—For the purposes of clause (a) of sub-section (3), all the policies relating to a single property comprising building, machinery, goods and contents therein and to all other buildings and goods appertaining to that property and under the same ownership shall be deemed to be
35 a single policy notwithstanding that such property might

be insured in parts under more than one policy or insured with different insurers."

Amend-
ment of
section
40C.

19. In section 40C of the principal Act, in clause (b) of the *Explanation*, after the words "in India during the year", the following shall be inserted, namely:—

5

"but in computing the expenses of management in India the following, and only the following, expenses may be excluded, namely:—

(i) in the case of an insurer having his principal place of business in India, a share of head office expenses in respect of general insurance business transacted by him outside India not exceeding such percentage of his gross direct premium written outside India as may be prescribed,

(ii) any expenses debited to profit and loss account relating exclusively to the management of capital, and dealings with shareholders and a proper share of managerial expenses calculated in such manner as may be prescribed, and

(iii) any expenses debited to claims in the revenue account in Form F of Part II of the Third Schedule".

20

Amend-
ment of
section
42.

20. In section 42 of the principal Act,—

(a) in sub-section (1), for the words "ten rupees", the words "twenty-five rupees" shall be substituted;

(b) in sub-section (3), for the words "ten rupees", the words "twenty-five rupees" and for the words "three rupees", the words "ten rupees" shall be substituted;

25

(c) in the proviso to sub-section (3A), for the words "thirty rupees", the words "seventy-five rupees" shall be substituted.

Omis-
sion of
section
48C.

21. Section 48C of the principal Act shall be omitted.

22. After section 52G of the principal Act, the following heading and sections shall be inserted, namely:—

Insertion of new sections 52H, 52I, 52J, 52K, 52L and 52M.

'ACQUISITION OF THE UNDERTAKINGS OF INSURERS IN CERTAIN CASES

5 **52H. (1) If, upon receipt of a report from the Controller, the Central Government is satisfied that an insurer,—**

Power of Central Government to acquire undertakings of insurers in certain cases.

(a) has persistently failed to comply with—

(i) any direction given to him under section 34, section 34F or section 34G, or

(ii) any order made under section 34E; or

10 (b) is being managed in a manner detrimental to the public interest or to the interests of his policy-holders, or shareholders,

and that—

(i) in the public interest, or

15 (ii) in the interests of the policy-holders or shareholders of such insurer,

20 it is necessary to acquire the undertaking of such insurer, the Central Government may, by notified order, acquire the undertaking of such insurer (hereafter in this section and in sections 52I and 52J and in the Eighth Schedule referred to as the acquired insurer) with effect from such date as may be specified in the order (hereafter in this section and in sections 52I and 52J and in the Eighth Schedule referred to as the appointed day):

25 Provided that no undertaking of an insurer shall be so acquired unless such insurer has been given a reasonable opportunity of showing cause against the proposed action.

Explanation.— For the purposes of this section and of sections 52I to 52M—

30 (a) "notified order" means an order published in the Official Gazette,

(b) "undertaking", in relation to an insurer incorporated outside India, means the undertaking of the insurer in India.

(2) Subject to the other provisions contained in this section and in sections 52I to 52M, on the appointed day, the undertaking of the acquired insurer and all the assets and liabilities of the acquired insurer shall stand transferred to, and vest in, the Central Government.

(3) The undertaking of the acquired insurer and its assets and liabilities shall be deemed to include all rights, powers, authorities and privileges and all property, whether movable or immovable, including, in particular, cash balances, reserve funds, investments, deposits and all other interests and rights in, or arising out of, such property, as may be in the possession of, or held by, the acquired insurer immediately before the appointed day and all books, accounts and documents relating thereto, and shall also be deemed to include all debts, liabilities and obligations, of whatever kind, then existing of the acquired insurer.

(4) Notwithstanding anything contained in sub-section (2), the Central Government may, if it is satisfied that the undertaking of the acquired insurer and all his assets and liabilities should, instead of vesting in the Central Government, or continuing to so vest, vest in a corporation or company, whether established under the scheme or not (hereafter in this section and in sections 52I to 52M and in the Eighth Schedule referred to as the acquiring insurer), that Government may, by order, direct that the said undertaking, including the assets and liabilities thereof shall vest in the acquiring insurer, either on the publication of the notified order or on such other date as may be specified in this behalf in the direction.

(5) Where the undertaking of the acquired insurer and the assets and liabilities thereof vest in an acquiring insurer under sub-section (4), the acquiring insurer shall, on and from the date of such vesting, be deemed to have become the transferee of the acquired insurer and all the rights and liabilities in relation to the acquired insurer shall, on and from the date of such vesting, be deemed to have been the rights and liabilities of such acquiring insurer.

(6) Unless otherwise expressly provided by or under this section or sections 52I to 52M, all contracts, deeds, bonds, agreements, powers of attorney, grants of legal representation and other instruments of whatever nature subsisting or having effect immediately before the appointed day and to which the acquired insurer is a party or which are in favour of the acquired insurer shall be of as full force and effect against or in favour of the

Central Government or, as the case may be, of the acquiring insurer, and may be enforced or acted upon as fully and effectually as if in the place of the acquired insurer the Central Government or the acquiring insurer had been a party thereto or as if they had been issued in favour of the Central Government or the acquiring insurer, as the case may be.

(7) If, on the appointed day, any suit, appeal or other proceeding, of whatever nature, is pending by or against the acquired insurer, 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 insurer or of anything contained in this section or in sections 52I to 52M, but the suit, appeal or other proceeding may be continued, prosecuted and enforced by or against the Central Government or the acquiring insurer, as the case may be.

52L. (1) The Central Government may make a scheme for carrying out the purposes of sections 52H and 52J to 52M (both inclusive) in relation to the acquired insurer.

Power
of Central
Govern-
ment to
make
scheme.

(2) In particular, and without prejudice to the generality of the foregoing power, the said scheme may provide for all or any of the following matters, namely:—

(a) transfer of the undertaking, including the property, assets and liabilities of the acquired insurer to an acquiring insurer, and the capital, constitution, name and office of the acquiring insurer;

(b) the constitution of the first Board of management (by whatever name called) of the acquiring insurer and all such matters in connection therewith or incidental thereto as the Central Government may consider to be necessary or expedient;

(c) the continuance of the services of all the employees of the acquired insurer (excepting such of them as, not being workmen within the meaning of the Industrial Disputes Act, 1947, are specifically mentioned in the scheme) in the Central Government or in the acquiring insurer, as the case may be, on the same terms and conditions, so far as may be, as are specified in clauses (i) and (j) of sub-section (2) of section 37A so far as they may apply;

(d) the continuance of the rights of any person who, or the appointed day, is entitled to, or is in receipt of, a pension or other superannuation or compassionate allowance or benefit from the acquired insurer or any provident, pension or other fund or any authority administering such fund 5 to be paid by, and to receive from the Central Government or the acquiring insurer, as the case may be, or any provident, pension or other fund or any authority administering such fund, the same pension, allowance or benefit so long as he observes the conditions on which the pension, allowance 10 or benefit was granted, and if any question arises whether he has so observed such conditions, the question shall be determined by the Central Government and the decision of the Central Government thereon shall be final;

(e) the manner of payment to the shareholders of the 15 acquired insurer in full satisfaction of their claim of the compensation payable in accordance with the provisions of section 52J;

(f) the provision, if any, for completing the effectual transfer to the Central Government or the acquiring insurer 20 of any asset or liability which forms part of the undertaking of the acquired insurer in any country outside India;

(g) such incidental, consequential and supplemental matters as may be necessary to secure that the transfer of the undertaking, property, assets and liabilities of the acquir- 25 ed insurer to the Central Government or the acquiring insurer, as the case may be, is effectual and complete.

(3) The Central Government may, by notification in the Official Gazette, add to, amend or vary any scheme made under this section. 30

(4) Every scheme made under this section shall be published in the Official Gazette.

(5) Copies of every scheme made under this section shall be laid before each House of Parliament as soon as may be after it is made. 35

(6) The provisions of sections 52H and 52J to 52M and of any scheme made under this section shall have effect notwithstanding anything to the contrary contained in any other provisions of this Act or in any other law or any agreement, award or other instrument for the time being in force. 40

52J. (1) Every person who, immediately before the appointed day, is registered as a holder of shares in the acquired insurer shall be given by the Central Government or the acquiring insurer, as the case may be, such compensation in respect of the transfer of the undertaking of the acquired insurer as is determined in accordance with the principles contained in the Eighth Schedule.

Compensation to be given to the shareholders of the acquired insurer.

(2) Nothing contained in sub-section (1) shall affect the rights inter se between the holder of any shares in the acquired insurer and any other person who may have any interest in such shares and such other person shall be entitled to enforce his interest against the compensation awarded to the holder of such shares, but not against the Central Government or the acquiring insurer.

(3) The amount of compensation to be given in accordance with the principles contained in the Eighth Schedule shall be determined, in the first instance, by the Central Government or the acquiring insurer, as the case may be, in consultation with the Controller, and shall be offered by it to all those to whom compensation is payable under sub-section (1) in full satisfaction thereof.

(4) If the amount of compensation offered in terms of sub-section (3) is not acceptable to any shareholder of the acquired insurer, such shareholder may, before such date as may be notified by the Central Government in the Official Gazette, request the Central Government in writing to have the matter referred to the Tribunal constituted under section 52K.

(5) If before the date notified under sub-section (4) the Central Government receives requests in terms of that sub-section from not less than one-fourth in number of all shareholders, being shareholders holding not less than one-fourth in value of the paid-up share capital of the acquired insurer, the Central Government shall have the matter referred to the Tribunal for decision.

(6) If before the date notified under sub-section (4) the Central Government does not receive requests as provided in sub-section (5), the amount of compensation offered under sub-section (3), or 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 the parties concerned.

(7) Where the Central Government does not receive requests as provided in sub-section (5), the compensation payable in pursuance of the provisions of this section shall become due 5 for payment on the expiry of one year from the appointed day, and where a reference has been made to the Tribunal under sub-section (5), the amount determined by the Tribunal as compensation shall become due for payment on the expiry of one year from the appointed day or on the date of decision of the 10 Tribunal, whichever is earlier.

(8) If between the appointed day and the date on which the compensation becomes due in pursuance of sub-section (7), any facts come to light which call for revision of the amount of the compensation, the necessary modification of the amount 15 of the compensation shall be made and the amount of the compensation so determined shall be the compensation payable in pursuance of sub-section (1).

(9) There shall also be paid simple interest at the rate of three per cent. per annum on the amount of the compensation 20 for the period from the appointed day to the date on which payment of the compensation becomes due.

**Constitution
of the
Tribunal**

52K. (1) The Central Government may, for the purposes of sections 52H to 52J, constitute a Tribunal which shall consist of a Chairman and two other members. 25

(2) The Chairman shall be a person who is, or has been, a Judge of a High Court or of the Supreme Court and of the two other members, one shall be a person who, in the opinion of the Central Government, has had experience of matters connected with general insurance and the other shall be a person who is a 30 chartered accountant within the meaning of the Chartered Accountants Act, 1949.

38 of 1949.

(3) If, for any reason, a vacancy occurs in the office of the Chairman or any other member of the Tribunal, the Central Government may fill the vacancy by appointing another person there- 35 to in accordance with the provisions of sub-section (2), and any proceeding may be continued before the Tribunal so constituted from the stage at which the vacancy occurred.

(4) The Tribunal may, for the purpose of determining any compensation payable under section 52J, choose one or more 40

persons having special knowledge or experience of any relevant matter to assist it in the determination of such compensation.

5 of 1908. 5 52L. (1) The Tribunal shall have the powers of a Civil Court, while trying a suit, under the Code of Civil Procedure, 1908, in respect of the following matters, namely:—
 (a) summoning and enforcing the attendance of any person and examining him on oath;
 (b) requiring the discovery and production of documents;
 10 (c) receiving evidence on affidavits;
 (d) issuing commissions for the examination of witnesses or documents.

Tribunal to have powers of Civil Court.

15 (2) Notwithstanding anything contained in sub-section (1) or in any other law for the time being in force, the Tribunal shall not compel the Central Government or the Controller—

(a) to produce any books of account, or other documents which the Central Government or the Controller claims to be of a confidential nature;
 (b) to make any such books or documents a part of the record of the proceedings before the Tribunal;
 20 (c) to give inspection of any such books or documents to any party before it and to any other person.

45 of 1860. 25 (3) Any proceeding before the Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code and the Tribunal shall be deemed to be a civil court for the purposes of section 195 and Chapter XXXV of the Code of Criminal Procedure, 1898.

5 of 1898.

52M. (1) The Tribunal shall have power to regulate its own procedure.
 30 (2) The Tribunal may hold the whole or any part of its inquiry *in camera*.

Procedure of the Tribunal.

35 (3) Any clerical or arithmetical error in any order of the Tribunal or any error arising therein from any accidental slip or omission may, at any time, be corrected by the Tribunal either of its own motion or on the application of any of the parties.'

23. In section 53 of the principal Act, in sub-section (2),—

(a) in sub-clause (iii) of clause (b)—

(i) for the words "the returns", the words "any returns or statements" shall be substituted;

Amendment of section 53.

(ii) for the words "company is insolvent", the words "company is, or is deemed to be, insolvent" shall be substituted;

(b) in sub-clause (iv) of clause (b), after the words "interests of the policy-holders", the words "or to public interest generally" shall be inserted.

Amendment of section 58.

24. In section 58 of the principal Act, sub-section (5) shall be omitted.

Amendment of section 64E.

25. In section 64E of the principal Act, the words ", the Tariff Committee and the other Committee thereof" shall be omitted. 10

Amendment of section 64L.

26. In section 64L of the principal Act, to sub-section (2), the following proviso shall be, and shall be deemed always to have been, added, namely:—

"Provided that if the General Insurance Council thinks fit, it may, by a resolution passed by it, waive the collection of the prescribed fees for any year and where any such resolution has been approved by the Central Government, the Executive Committee of the General Insurance Council shall not collect any fees in relation to that year." 15

Omission of sections 64O to 64Q.

27. Sections 64O to 64Q of the principal Act shall be omitted. 20

Amendment of section 64R.

28. In section 64R of the principal Act, in sub-section (2), the words "or the Tariff Committee appointed under section 64O" shall be omitted.

Insertion of new Parts IIB and IIC.

29. After Part IIA of the principal Act, the following Parts shall be inserted, namely:— 25

PART IIB

TARIFF ADVISORY COMMITTEE AND CONTROL OF TARIFF RATES

Establishment of Tariff Advisory Committee.

64U. (1) With effect from the commencement of the Insurance (Amendment) Act, 1968, there shall be established a Committee, to be called the Tariff Advisory Committee (hereafter in this Part referred to as the Advisory Committee) to control and regulate the rates, advantages, terms and conditions that 30

may be offered by insurers in respect of general insurance business.

- 5 (2) The Advisory Committee shall be a body corporate having perpetual succession and a 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 may, by the said name, sue and be sued.

64UA. (1) The Advisory Committee shall consist of the following members, namely:—

- 10 (a) the Controller of Insurance, *ex-officio*, who shall be the Chairman;

(b) a senior officer of the office of the Controller nominated by the Controller, who shall be the Vice-Chairman;

- 15 (c) not more than eight representatives of Indian insurers, elected (in their individual capacities) by such insurers in such manner, from such areas and from among such insurers or groups of insurers as may be prescribed;

- 20 (d) not more than six representatives of insurers incorporated or domiciled elsewhere than in India but registered in India, elected (in their individual capacities) by such insurers in such manner, and from among such insurers or groups of insurers as may be prescribed.

- 25 (2) The Secretary to the Advisory Committee shall be an officer of the Central Government, nominated by that Government.

64UB. (1) The Central Government may make rules to carry out of the purposes of this Part.

- 30 (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the functions to be discharged by the Advisory Committee;

- 35 (b) the term of office of the members of the Advisory Committee, the procedure for their election and the manner of filling casual vacancies in the Advisory Committee;

(c) the travelling and other allowances payable to the members of the Advisory Committee;

(d) the procedure for holding the meetings of the Advisory Committee and for transaction of business thereat.

(3) The Advisory Committee may, with the previous approval of the Central Government, make regulations for all or any of the following matters, namely:—

(a) the constitution, powers and duties of Regional Committees and of sub-committees constituted thereunder; 5

(b) the method of election of candidates for Regional Committees and sub-committees thereunder, their eligibility, term of office and method of filling casual vacancies;

(c) the procedure for convening meetings and transaction of business by Regional Committees and sub-committees 10 thereunder;

(d) the appointment of officers and other employees of the Advisory Committee and of Regional Committees or sub-committees constituted by or under the Advisory Committee or any Regional Committee and the terms and conditions of their service including travelling and other allowances; 15

(e) such other matters pertaining to procedure as are not inconsistent with the provisions of this Act or of rules made thereunder, 20

and may, from time to time, with the previous approval of the Central Government, add to, amend or vary any such regulations.

(4) The regulations made by the Tariff Committee of the General Insurance Council under section 64O as they were in force immediately before the commencement of the Insurance (Amendment) Act, 1968, shall, after such commencement, continue to be in force until rules are made by the Central Government under sub-section (1) and immediately after such rules have come into effect, the regulations aforesaid shall cease to be 25 30 valid.

(5) The Controller of Insurance shall be in direct charge of the establishment of the Advisory Committee and the Secretary of the Advisory Committee shall work under his direction and control. 35

Power of
the Advisory
Committee to

64UC. (1) The Advisory Committee may, from time to time and to the extent it deems expedient, control and regulate the rates, advantages, terms and conditions that may be offered by

5 insurers in respect of any risk or of any class or category of risks, the rates, advantages, terms and conditions of which, in its opinion, it is proper to control and regulate, and any such rates, advantages, terms and conditions shall be binding on all insurers: regulate rates, advantages, etc.

10 Provided that the Advisory Committee may, with the previous approval of the Central Government, permit any insurer to offer, during such period (being not more than two years but which may be extended by periods of not more than two years at a time) and subject to such conditions as may be specified by that Committee, rates of premium different from those fixed by it in respect of any particular category of risks, if it is satisfied that such insurer generally issues policies only to a restricted class of the public or under a restricted category of risks.

20 (2) In fixing, amending or modifying any rates, advantages, terms or conditions, relating to any risk, the Advisory Committee shall try to ensure, as far as possible, that there is no unfair discrimination between risks of essentially the same hazard, and also that consideration is given to past and prospective loss experience:

25 Provided that the Advisory Committee may, at its discretion, make suitable allowances for the degree of credibility to be assigned to the past experience, including allowances for random fluctuations and may also, at its discretion, make suitable allowances for future fluctuations and unforeseen future contingencies, including hazards of conflagration or catastrophe or both.

30 (3) Every decision of the Advisory Committee shall be valid only after and to the extent it is ratified by the Controller, and every such decision shall take effect from the date on which it is so ratified by the Controller, or, if the Controller so orders in any case, from such earlier date as he may specify in the order.

(4) The decisions of the Advisory Committee in pursuance of the provisions of this section shall be final.

35 (5) Where an insurer is guilty of breach of any rate, advantage, term or condition fixed by the Advisory Committee, he shall be deemed to have contravened the provisions of this Act

Transi-
tional pro-
visions.

64UD. (1) Notwithstanding anything contained in this Part, until the names of the members of the Advisory Committee elected for the first time after the commencement of the Insurance (Amendment) Act, 1968, are notified, the Tariff Committee of the General Insurance Council appointed under regulations made under sub-section (2) of section 64O as it was in force immediately before the commencement of the Insurance (Amendment) Act, 1968, and in existence on such commencement (hereafter in this Part referred to as the Tariff Committee) shall continue to function and shall be deemed to be the Advisory Committee duly elected under this Part and the Controller of Insurance shall become the Chairman of that Committee with effect from the commencement of the Insurance (Amendment) Act, 1968, and function as such, and any Chairman of the Tariff Committee holding office immediately before such commencement shall cease to be the Chairman thereof from the date of such commencement but shall continue to be an ordinary member of the Advisory Committee.

(2) Notwithstanding anything contained in this Part, the constitutions of the Regional Councils established under section 64P, as in force immediately before the commencement of the Insurance (Amendment) Act, 1968 (hereafter referred to as the Regional Councils), and of the Sectional Committees formed thereunder, existing immediately before such commencement, shall continue to be in full force and be of full effect until the regulations made by the Advisory Committee for the first time under section 64UB come into effect and as soon as such regulations have come into effect such constitutions shall cease to have effect.

(3) Notwithstanding anything contained in this Part, until the Secretary to the Committee is nominated under sub-section (2) of section 64UA, the Secretary to the Tariff Committee holding office immediately before the commencement of the Insurance (Amendment) Act, 1968, shall function as the Secretary and shall be deemed to have been duly nominated under this Part.

(4) All rates, advantages, terms and conditions fixed by the Tariff Committee or the Regional Councils prior to the commencement of the Insurance (Amendment) Act, 1968 and in force immediately before such commencement shall continue, except to such extent as they may be altered, replaced or abolished by the Advisory Committee, to be valid and fully in force as if they were rates, advantages, terms and conditions fixed by the Advisory Committee.

64UE. (1) The Advisory Committee may require, by notice in writing, any insurer to supply to it such information or statements, periodical or *ad hoc*, as it may consider necessary to enable it to discharge its functions under this Part and every insurer shall comply with such requirements within such period as may be specified by the Advisory Committee in this behalf, failing which the insurer shall be deemed to have contravened the provisions of this Act.

Power, of the Advisory Committee to require information, etc.

(2) Any information supplied under this section shall be certified by a principal officer of the insurer and if the notice so requires, also by an auditor.

(3) The Controller may, at any time, in writing, depute any subordinate of his, to make a personal inspection of the books of account, ledgers, policy-registers and other books or documents of any insurer to verify the accuracy of any return or statement furnished by him under sub-section (1), or to verify that full particulars have been supplied by him in respect of all policies issued by him, and the insurer shall provide all facilities for such inspection, and make available to such person all the books of account, ledgers, policy-registers and other books or documents of the insurer which might be needed by him for such verification and the person deputed may himself extract from out of the books and records of the insurer such information as may be needed to fill up or complete the returns required to be submitted to the Advisory Committee under this section.

(4) The Advisory Committee may, at any time, on the application of an insurer, make arrangements for the inspection of an organisation which is concerned with the inspection of risks, adjustment of losses or fire fighting appliances, and may, whenever necessary, advise insurers about the adequacy of the arrangements for the inspection of risks and adjustment of losses or the suitability of such appliances:

Provided that no such inspection shall be made without the written permission of the concerned organisation.

64UF. (1) On the commencement of the Insurance (Amendment) Act, 1968, all the assets and liabilities of the General Insurance Council appertaining to its Tariff Committee and to its Regional Councils and their Sectional Committees existing on that day shall be transferred to, and vest in, the Advisory Committee.

Assets and liabilities of the General Insurance Council to

(2) The assets appertaining to the Tariff Committee, the Regional Councils, and their Sectional Committees shall be

vest in
the Ad-
visory
Com-
mittee.

deemed to include all rights and powers and all property, whether, movable or immovable, including, in particular, cash balances, reserve funds, investments, deposits and all other interests and rights in, or arising out of, such property as may be in the possession of the Tariff Committee, Regional Councils and their Sectional Committees and all books of account or documents thereof; and liabilities shall be deemed to include all debts, liabilities and obligations of whatever kind existing and appertaining to the work of the Tariff Committee, the Regional Councils and their Sectional Committees.

(3) Where the General Insurance Council has established a provident or superannuation fund or any other fund for the benefit of the employees of its Tariff Committee or Regional Councils and constituted a trust in respect thereof (hereafter in this section referred to as an existing trust), the monies standing to the credit of any such fund at the commencement of the Insurance (Amendment) Act, 1968, shall, subject to the provisions of sub-section (4), stand transferred to, and vest in, on such commencement, the Advisory Committee.

(4) Where any employee of the Tariff Committee, or the Regional Councils, of the General Insurance Council does not become an employee of the Advisory Committee, the monies and other assets appertaining to any fund referred to in sub-section (3) shall be apportioned between the trustees of the fund and the Advisory Committee in the prescribed manner; and in case of any dispute regarding such apportionment, the decision of the Central Government thereon shall be final.

(5) The Advisory Committee shall as soon as may be after the commencement of the Insurance (Amendment) Act, 1968, constitute in respect of the monies and other assets which are transferred to and vested in, it under sub-section (3), one or more trusts having, as far as practicable, objects similar to the objects of the existing trust.

(6) Where all the monies and other assets belonging to an existing trust are transferred to, and vested in, the Advisory Committee under sub-section (3), the trustees of such trust shall, on the commencement of the Insurance (Amendment) Act, 1968, be discharged from the trust except as respects things done or omitted to be done by them before such commencement.

Con-
tracts,
etc., to

64UG. (1) Unless otherwise expressly provided by or under this Act, all contracts, agreements and other instruments of whatever nature subsisting or having effect immediately before

the commencement of the Insurance (Amendment) Act, 1968, and to which the Tariff Committee, or any Regional Council is a party or which is in favour of that Committee or that Council, shall be of as full force and effect against or in favour of the Advisory Committee or that Regional Council, as the case may be, and may be enforced or acted upon as fully and effectually as if, instead of the Tariff Committee, or the Regional Council, the Advisory Committee had been a party thereto or as if they had been entered into or issued in favour of the Advisory Committee.

be effec-
tive by
or
against
the Ad-
visory
Com-
mittee.

(2) If, at the commencement of the Insurance (Amendment) Act, 1968, any suit, appeal or other legal proceeding of whatever nature is pending by or against the Tariff Committee, or any Regional Council then it shall not abate, be discontinued or in any way be prejudicially affected by reason of the transfer to the Advisory Committee of the assets and liabilities of the Tariff Committee, and the Regional Councils or of anything done under this Act, but the suit, appeal or other proceeding may be continued, prosecuted or enforced by or against the Advisory Committee.

64UH. (1) Every whole-time employee of the Tariff Committee, or the Regional Councils who was employed by that Committee or those Councils wholly or mainly in connection with its or their statutory duties immediately before the commencement of the Insurance (Amendment) Act, 1968, shall, on and from such commencement, become an employee of the Advisory Committee and shall hold his office in it by the same tenure, at the same remuneration, and upon the same terms and conditions and with the same rates and privileges as to pension, gratuity and other matters as he would have held on such commencement if this Part had not been enacted, and shall continue to do so until his employment under the Advisory Committee is terminated or until his remuneration, terms and conditions, are duly altered by the Advisory Committee:

Emple-
yees, etc.,
to con-
tinue.

Provided that nothing contained in this sub-section shall apply to any employee who has given notice to the Central Government in writing either prior to or within two months from the commencement of the Insurance (Amendment) Act, 1968, intimating his intention of not becoming an employee of the Advisory Committee.

(2) Where the Central Government is satisfied that for the purpose of securing uniformity in the scales of pay, remuneration and other terms and conditions of service applicable to

employees of the Tariff Committee, or the Regional Councils, it is necessary so to do, or that a reduction in the remuneration payable or revision of the other terms and conditions of service applicable to employees or any class of them is called for, the Central Government may, notwithstanding anything contained 5
in sub-section (1), or in the Industrial Disputes Act, 1947, or in 14 of 1947.
any other law for the time being in force or in any award, settlement, or agreement for the time being in force, alter (whether by way of reduction or otherwise) the remuneration and other terms and conditions of service to such extent and in such 10
manner as it thinks fit; and if the alteration is not acceptable to any employee, the Advisory Committee may terminate his employment by giving him compensation equivalent to three months' remuneration, unless the contract of service with such 15
employee provides for a shorter notice of termination.

Explanation.—The compensation payable to an employee under this sub-section shall be in addition to, and shall not affect any pension, gratuity, provident fund money or any other benefit to which the employee may be entitled under his contract of service. 20

(3) If any question arises as to whether any person was a whole-time employee of the Tariff Committee, or the Regional Council, on the commencement of the Insurance (Amendment) Act, 1968, or as to whether any employee was employed wholly or mainly in connection with the statutory duties of the Tariff 25
Committee, or any Regional Council, immediately before such commencement, the question shall be referred to the Central Government whose decision thereon shall be final.

(4) Notwithstanding anything contained in the Industrial Disputes Act, 1947, or in any other law for the time being in 30 14 of 1947.
force, the transfer of the services of any employee of the Tariff Committee, or the Regional Councils, to the Advisory Committee shall not entitle any such employee to any compensation under that Act or other law, and no such claim shall be entertained by any court, Tribunal or other authority. 35

Duty of person having custody or control of property of deliver such.

64UL. (1) Where any property of the Tariff Committee, or the Regional Councils (appertaining to its or their statutory duties) has been transferred to, and vested in, the Advisory Committee, then,—

(a) every person in whose possession, custody or control 40
any such property may be, shall deliver the property to the Advisory Committee forthwith;

(b) any person, who, on the commencement of the Insurance (Amendment) Act, 1968, has in his possession, custody or control any books, documents and other papers relating to the Tariff Committee, or the Regional Councils, shall be liable to account for the said books, documents and papers to the Advisory Committee and shall deliver them to the Advisory Committee or to such person as that Committee may direct.

Property
to the
Advisory
Committee.

(2) Without prejudice to the provisions contained in this section, it shall be lawful for the Advisory Committee to take all necessary steps for securing possession of all properties which have been transferred to, and vested in, it under this Act.

64UJ. (1) The Advisory Committee may constitute such Regional Committees as and when it deems fit for one or more of the prescribed regions.

Power
of the
Advisory
Committee
to constitute
regional
committees.

(2) Each Regional Committee shall consist of not more than seven persons elected by such groups of insurers carrying on general insurance business in the region as may be prescribed.

(3) For the purpose of enabling it effectively to discharge its duties, any Regional Committee may constitute, in the prescribed manner, such sub-committees as it may think fit, whether consisting of members of the Regional Committee or not.

(4) It shall be the duty of every Regional Committee to advise the Advisory Committee on any question connected with the fixation of rates, advantages, terms and conditions for risks in its region which may be referred to it by the Advisory Committee for advice, and in addition, every Regional Committee shall perform such other functions as may be delegated to it by the Advisory Committee by regulations made by it with the previous approval of the Central Government.

(5) Where, in the exercise of any functions delegated to it under this section, any Regional Committee or any sub-committee thereof restrains an insurance agent from procuring or causing to be procured general insurance business in any area, such agent may prefer an appeal to the Central Government against such order within thirty days from the date of service of that order on him and the Central Government may, after giving such agent an opportunity of being heard, pass such orders thereon as it may think fit and the orders made by the Central Government on such appeal shall be final.

(6) Notwithstanding anything contained in this section, every Regional Council and every Sectional or other Committee of such Regional Council, in existence immediately before the commencement of the Insurance (Amendment) Act, 1968, shall until it is abolished by the Advisory Committee, be deemed to be a Regional Committee or sub-committee as the case may be, established in accordance with the provisions of this section and shall function as such and shall have all the powers and responsibilities which it had immediately before such commencement, and if the term of any such Council or committee expires before Regional Committees constituted under sub-section (1) and sub-committees constituted under sub-section (3) come into existence, such terms shall be deemed to have been validly extended up to the time when such Regional Committees and sub-committees are established.

Levy of fees by the Advl. sory Committee.

64UK. (1) Every insurer shall annually before the prescribed date make payment to the Advisory Committee in the prescribed manner of such fees, not exceeding one-third of one per cent. of the premium income, net of re-insurances of the insurer, in the preceding year, as may be specified by the Advisory Committee for the purposes of this Part.

(2) If an insurer fails to make payment within the prescribed date of any fee required to be paid under sub-section (1) he shall be deemed to have failed to comply with the provisions of this Act.

(3) The Controller may, so long as an application to the Court under sub-section (5D) of section 3 has not been made, revive the registration which might have been cancelled for failure to make payment of the fee required to be made under sub-section (1), if the insurer makes payment of such fee together with such penalty not exceeding the actual amount of fee payable as the Controller may require.

Power to remove difficulties.

64UL. If any difficulty arises in giving effect to the provisions of this Part, the Central Government may, by order, make such provisions or give such directions not inconsistent with the provisions of this Act as may appear to it to be necessary or expedient for the removal of the difficulty:

Provided that no such power shall be exercised after the expiry of a period of four years from the commencement of this Part.

Power of Controller to

64UM. (1) The Controller shall, after consultation with the Advisory Committee, prepare and maintain a list of persons who are approved by him to function as surveyors and loss assessors

(hereinafter referred to as approved surveyors or loss assessors) and shall publish the list of approved surveyors and loss assessors, as on the 1st day of January of each year, in the Official Gazette.

prepare
and
maintain
list of
surveyors
and
loss assessors.

(2) No claim requiring to be paid or settled in India equal to or exceeding twenty thousand rupees in value on any policy of insurance, arising or intimated to an insurer at any time after the expiry of a period of one year from the commencement of the Insurance (Amendment) Act, 1968, shall, unless otherwise directed by the Controller, be admitted for payment or settled by the insurer unless it has been certified by an approved surveyor or loss assessor.

(3) The Controller may, at any time, in respect of any claim of the nature referred to in sub-section (2), call for an independent certificate from any other approved surveyor or loss assessor specified by him and such surveyor or loss assessor shall furnish such certificate to the Controller within such time as may be specified by the Controller or if no time limit has been specified by him within a reasonable time and the cost of, or incidental to, such certificate shall be borne by the insurer.

(4) The Controller may, on receipt of a certificate referred to in sub-section (3), issue such directions as he may consider necessary with regard to the settlement of the claim including any direction to settle a claim at a figure less than, or more than, that at which it is proposed to settle it or it was settled and the insurer shall be bound to comply with such directions:

Provided that where the Controller issues a direction for settling a claim at a figure lower than that at which it has already been settled, the insurer shall be deemed to comply with such direction if he satisfies the Controller that all reasonable steps, with due regard to the question whether the expenditure involved is not disproportionate to the amount required to be recovered, have been taken with due despatch by him:

Provided further that no direction for the payment of a lesser sum shall be made where the amount of the claim has already been paid and the Controller is of opinion that the recovery of the amount paid in excess would cause undue hardship to the insured:

Provided also that nothing in this section shall relieve the insurer from any liability, civil or criminal, to which he would have been subject but for the provisions of this sub-section.

(5) Any insurer aggrieved by any direction made by the Controller under sub-section (4) may, within thirty days from the date of such direction, prefer an appeal to the Central Government against such direction and the Central Government may after giving the insurer a reasonable opportunity of being heard, confirm, modify or reverse the direction made by the Controller.

(6) No insurer shall, after the expiry of a period of one year from the commencement of the Insurance (Amendment) Act, 1968, pay to any person any fee or remuneration for surveying, verifying or certifying a claim of loss under a policy of insurance unless the person making such survey, verification or certification is an approved surveyor or loss assessor.

(7) If the Controller is satisfied that an approved surveyor or loss assessor has been guilty of wilfully making a false statement knowing it to be false or of being knowingly a party to the settlement of claim in a fraudulent manner, he may, after giving such surveyor or loss assessor an opportunity of being heard, remove his name from the list of approved surveyors and loss assessors with effect from such date as may be specified by him and shall notify such removal in the Official Gazette.

(8) Any surveyor or loss assessor whose name has been removed under sub-section (7) from the list of approved surveyors and loss assessors shall not be eligible for the inclusion of his name in the list of approved surveyors and loss assessors for a period of three years from the date on which the removal of his name is notified in the Official Gazette.

(9) The Controller may in respect of any claim of value of less than twenty thousand rupees on an insurance policy, if the claim has not been or is not proposed to be certified by a surveyor or loss assessor, direct that such claim shall be certified by an approved surveyor or loss assessor and where the Controller makes such direction, the provisions of sub-sections (3) and (4) shall apply in respect of such claim.

PART IIC

SOLVENCY MARGIN, ADVANCE PAYMENT OF PREMIUM AND RESTRICTIONS ON THE OPENING OF A NEW PLACE OF BUSINESS

Sufficiency of assets.

84VA. (1) An insurer shall, at all times, maintain an excess of the value of his assets over the amount of his liabilities of not less than two million rupees or twenty per cent. of his total premium income, less re-insurances, during the preceding twelve months, whichever is greater:

Provided that where a number of insurers occupying the status of parent and subsidiary companies prepare, under the

laws of origin of the parent company, a consolidated balance-sheet, the provisions of this sub-section shall apply to such of them as are not members of any group as if they constituted a single insurer, with the modification that the amount of two million rupees shall be construed as a sum equal to the number of such insurers multiplied by two million rupees:

Provided further that if in respect of any insurer the Central Government is satisfied that either by reason of an unfavourable claim experience or because of a sharp increase in the volume of new business, or for any other reason, compliance with the provisions of this sub-section would cause undue hardship to the insurer, it may direct that for such period and subject to such conditions as it may specify, the provisions of this sub-section shall apply to that insurer with the modification that instead of the proportion of twenty per cent. mentioned herein, such other percentage being not less than ten per cent. as may be specified by that Government shall be applicable to that insurer:

Provided also that in the case of an insurer carrying on insurance business at the commencement of the Insurance (Amendment) Act, 1968, it shall be sufficient compliance with the provisions of this sub-section until the 31st December, 1972 or until such subsequent date, not being later than 31st December, 1976, as the Central Government may, at its discretion, allow for any particular insurer, if he progressively brings up the excess of the value of his assets over the amount of his liabilities, in such manner as may be prescribed, to the required amount or percentage, as the case may be.

(2) An insurer who does not comply with the provisions of sub-section (1) shall be deemed to be insolvent and may be wound up by the court.

(3) If at any time the value of the assets of an insurer does not exceed the amount of his liabilities by the amount or percentage, as the case may be, specified in sub-section (1), the Controller, shall, after giving the insurer a reasonable opportunity of being heard, cancel, without prejudice to his right to apply to court under clause (b) of sub-section (2) of section 53, for the winding of the insurer, the registration of such insurer.

(4) The provisions of this section shall not apply to an insurer specified in sub-clause (c) of clause (9) of section 2.

(5) The provisions of sub-section (1) shall apply to any insurer who is a member of a group subject to the modification that the amount of two million rupees specified in that sub-section shall be construed as a sum equal to that proportion of two million rupees as the share of the risk on each policy borne by such insurer bears to the total risk on the policy.

(6) The Central Government may, by rules, reduce the sum of two million rupees referred to in sub-section (1) to a lower figure not less than one hundred thousand rupees in respect of a country craft insurer or in respect of an insurer not having a share capital and operating only among a restricted portion of, and not with, the general public.

(7) For the purpose of ascertaining compliance with the provisions of this section,—

(i) assets shall be valued subject to any reserves or depreciation funds relating thereto, at values not exceeding their market or realisable value and the assets hereafter mentioned shall be excluded to the extent indicated, namely:—

(a) agents' balances and outstanding premiums in India, to the extent they are not realised within a period of thirty days;

(b) agents' balances and outstanding premiums outside India, to the extent they are not realisable, unless they are adequately covered by bad or doubtful debts reserves;

(c) sundry debts, to the extent they are not realisable unless they are adequately covered by bad or doubtful debts reserves;

(d) advances of an unrealisable character;

(e) furniture, fixtures, dead stock and stationery;

(f) deferred expenses;

(g) profit and loss account balance and any fictitious assets other than prepaid expenses;

(ii) a proper value shall be placed on every item of liability and liabilities in respect of share capital, general reserve, and investment reserve, reserve for bad and doubtful debts, and depreciation fund except in respect of such

items which are taken credit for as "assets" shall be excluded and liabilities hereafter mentioned shall be included to the extent indicated, namely:—

(a) provision for dividends and unpaid dividends in full;

(b) reserves for unexpired risks in respect of—

(i) fire and miscellaneous business, 40 per cent.,

(ii) marine cargo business, 40 per cent., and

(iii) marine hull business, 100 per cent.,

of the premium, net of re-insurances, during the preceding twelve months;

(c) outstanding claims in full;

(d) amount due to insurance companies carrying on insurance business in full;

(e) amounts due to sundry creditors, in full;

(f) provision for taxation, in full.

Explanation.—If in respect of marine insurance business an insurer prepares the marine insurance business account on a three year basis and the provisions for unexpired risks and outstanding claims are included in the marine insurance business account it shall be sufficient compliance with the provisions of sub-clauses (b) and (c) of clause (ii) in respect of marine insurance business, if the marine insurance business account is more than the total premium income, less re-insurances, during the preceding twelve months in respect of marine insurance business.

(8) Every insurer shall furnish to the Controller with his returns under section 15 or section 16, as the case may be, a statement, certified by an auditor, of his assets and liabilities assessed in the manner required by this section as on the 31st day of December of the preceding year.

64VB. (1) No insurer shall assume any risk in India in respect of any insurance business on which premium is not ordinarily payable outside India unless and until the premium payable is received by him or is guaranteed to be paid by such person in such manner and within such time as may be prescribed or unless and until deposit of such amount as may be prescribed, is made in advance in the prescribed manner.

No risk to be assumed unless premium is received in advance.

(2) For the purposes of this section, in the case of risks for which premium can be ascertained in advance, the risk may be assumed not earlier than the date on which the premium has been paid in cash or by cheque to the insurer.

Explanation.—Where the premium is tendered by postal money order or cheque sent by post, the risk may be assumed on the date on which the money order is booked or the cheque is posted, as the case may be.

(3) Any refund of premium which may become due to an insured on account of the cancellation of a policy or alteration in its terms and conditions or otherwise shall be paid by the insurer directly to the insured by a crossed or order cheque or by postal money order and a proper receipt shall be obtained by the insurer from the insured, and such refund shall in no case be credited to the account of the agent.

(4) Where an insurance agent collects a premium on a policy of insurance on behalf of an insurer, he shall deposit with, or despatch by post to, the insurer, the premium so collected in full without deduction of his commission within twenty-four hours of the collection excluding bank and postal holidays.

(5) The Central Government may, by rules, relax the requirements of sub-section (1) in respect of particular categories of insurance policies.

64VC. (1) No insurer shall, after the commencement of the Insurance (Amendment) Act, 1968, open a new place of business in India or change otherwise than within the same city, town or village, the location of an existing place of business situated in India without obtaining the prior permission of the Controller.

(2) The Controller may grant permission under sub-section (1) subject to such conditions as he may think fit to impose either generally or with reference to any particular case.

(3) Where, in the opinion of the Controller, an insurer has, at any time, failed to comply with any of the conditions imposed on him under this section, the Controller may, by order in writing and after affording reasonable opportunity to the insurer for showing cause against the action proposed to be taken against him, revoke any permission granted under this section.

Explanation.—For the purposes of this section, “place of business” includes a branch, sub-branch, inspectorate, organisation office and any other office, by whatever name called.’

30. In section 96 of the principal Act, the words "Mutual Insurance Companies and" shall be omitted.

Amendment of section 96.

31. In section 97 of the principal Act, for the words and figures "No Mutual Insurance Company incorporated after the 26th day of January, 1937, and no Co-operative Life Insurance Society registered after that date", the words and figures "No Co-operative Life Insurance Society registered after the 26th day of January, 1937" shall be substituted.

Amendment of section 97.

32. In section 98 of the principal Act,—

Amendment of section 98.

(a) in sub-section (1), the words "Mutual Insurance Company and every" shall be omitted;

(b) in sub-section (3), the words "a Mutual Insurance Company and" shall be omitted.

33. After section 101B of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 101C.

"101C. The Controller may, at any time,—

(a) call upon an insurer to submit for his examination at the principal place of business of the insurer in India all re-insurance treaties and other re-insurance contracts entered into by the insurer;

Examination of re-insurance treaties.

(b) examine any officer of the insurer on oath in relation to any such document as is referred to in clause (a) above; or

(c) by notice in writing, require any insurer to supply him with copies of any of the documents referred to in clause (a), certified by a principal officer of the insurer."

34. In section 102 of the principal Act, after sub-section (1), the following sub-section shall be inserted, namely:—

Amendment of section 102.

"(1A) If any person fails to produce any book, account or other document or to furnish any statement or information which, under sub-section (2) of section 33A or under sub-section (3) of section 64UE, it is his duty to produce or furnish, or to answer any question relating to the business of an insurer which he is asked by an officer making an inspection under either of those sections, he shall be punishable with fine which may

extend to two thousand rupees in respect of each failure and if the failure continues, to a further fine which may extend to one hundred rupees for each day after the first, during which such failure continues.”.

Insertion
of new
section
107A.

35. After section 107 of the principal Act, the following section shall be inserted, namely:—

Chair-
man, etc.,
to be
public
servants.

“107A. Every Chairman, director, auditor, liquidator, manager and any other employee of an insurer shall be deemed to be a public servant for the purposes of Chapter IX of the Indian Penal Code.”.

Amend-
ment of
section
109.

36. Section 109 of the principal Act shall be re-numbered as sub-section (1) thereof, and after sub-section (1) as so re-numbered, the following sub-section shall be inserted, namely:—

“(2) No court shall take cognizance of any offence punishable under sub-section (5) of section 34B or sub-section (1A) of section 102 except upon complaint in writing made by an officer of the Central Government generally or specially authorised in writing, in this behalf by the Controller, and no court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any such offence.”.

Insertion
of new
sections
110D, 110E
and 110F.

37. After section 110C of the principal Act, the following sections shall be inserted, namely:—

Certain
claims
for com-
pensation
barred.

“110D. No person shall have any right, whether in contract or otherwise, to any compensation for any loss incurred by reason of the operation of any of the provisions contained in section 34 or 34A or 34E or 37A or by reason of the compliance by an insurer with any order or direction given to him under this Act.

Sections
27B, 28B,
33A, etc.,
to apply
to gene-
ral insur-
ance busi-
ness of
the Life
Insurance
Corpora-
tion of
India.

110E. Notwithstanding anything contained in the Life Insurance Corporation Act, 1956, the provisions of sections 27B, 28B, 33A, 34, clauses (a) and (b) of sub-section (1) of section 34E, section 34F, sections 64U to 64UM (both inclusive), sections 64VA, 64VB, 64VC and section 101C, shall also apply, so far as may be, to and in relation to the general insurance business carried on by the Life Insurance Corporation of India

and the provisions of section 37A shall also apply to that Corporation if it becomes an acquiring insurer.

110F. The provisions of sections 27B, 28B, 33A, 34, clauses (a) and (b) of sub-section (1) of section 34E, section 34F, sections 64U to 64UM (both inclusive), sections 64VA, 64VB, 64VC and section 101C shall, notwithstanding any exemption granted under section 118, also apply, so far as may be, to and in relation to the general insurance business carried on by the Central Government or a State Government or a Government company as defined in section 617 of the Companies Act, 1956." Provisions applicable to State Governments, etc.

38. In section 116A of the principal Act, for the word, figures and letter "section 28A", the words, figures and letters "section 28A or section 28B" shall be substituted. Amendment of section 116A.

39. For clause (a) under Notes, below Form F of Part II of the Third Schedule, the following shall be substituted, namely:— Amendment of Form F in Third Schedule.

"(a) This item must include all expenses directly incurred in relation to assessment of claims of the nature of survey fees, fees for police reports, legal fees, court expenses and other similar charges, but should not include any establishment or administration expenses."

40. After the Seventh Schedule to the principal Act, the following Schedule shall be inserted, namely:— Insertion of Eighth Schedule.

"THE EIGHTH SCHEDULE

(See section 52J)

PRINCIPLES OF COMPENSATION

The compensation to be given under section 52J shall be an amount equal to the value of the assets of the acquired insurer as on the day immediately before the appointed day, computed in accordance with the provisions of Part I of this Schedule less the total amount of liabilities thereof as on that day, computed in accordance with the provisions of Part II of this Schedule.

PART I

Assets

For the purposes of this Part "assets" means the total of the following:—

- (a) the market value of any land or buildings; 5
- (b) the market value of any securities, shares, debentures, bonds and other investments, held by the acquired insurer. 5

Explanation.—For the purposes of this clause,—

(i) securities of the Central and State Governments [other than the securities specified in sub-clauses (ii) and (iii) of this Explanation] maturing for redemption within five years from the appointed day shall be valued at the face value or the market value, whichever is higher; 15

(ii) securities of the Central Government, such as Post Office Certificates and Treasury Savings Deposit Certificates and any other securities or certificates issued or to be issued under the Small Savings Scheme of the Central Government, shall be valued at their face value or the encashable value as on the appointed day, whichever is higher; 20

(iii) where the market value of any Government security such as the zamindari abolition bonds or other similar security, in respect of which the principal is payable in instalments, is not ascertainable or is, for any reason, not considered as reflecting the fair value thereof or as otherwise appropriate, the security shall be valued at such an amount as is considered reasonable, having regard to the instalments of principal and interest remaining to be paid, the period during which investments are payable, the yield of any security, issued by the Government to which the security pertains and having the same or approximately the same maturity, and other relevant factors; 30 35

(iv) where the market value of any security, share, debenture, bond or other investment is not considered reasonable by reason of its having been affected by abnormal factors, the investment may be valued on the

basis of its average market value over any reasonable period;

5 (v) where the market value of any security, share, debenture, bond or other investment is not ascertainable, only such value, if any, shall be taken into account as is considered reasonable, having regard to the financial position of the issuing concern, the dividend paid by it during the preceding five years and other relevant factors;

10 (c) the total amount of the premiums paid by the acquired insurer in respect of all leasehold properties, reduced in the case of each such premium by an amount which bears to such premium the same proportion as the expired term of the lease in respect of which such premium
15 shall have been paid bears to the total term of the lease;

(d) the written down value as per books, or the realisable value, as may be considered reasonable, of all furniture, fixtures and fittings;

20 (e) the amount of debts due to the insurer, whether secured or unsecured, to the extent to which they are reasonably considered to be recoverable;

(f) the amount of cash held by the insurer whether in deposit with a bank or otherwise;

25 (g) the market or realisable value, as may be appropriate, of other assets appearing on the books of the insurer, no value being allowed for capitalised expenses, such as share selling commission, organisational expenses and brokerage, losses incurred and similar other items.

PART II

30 *Liabilities*

The total amount of the liabilities of the insurer shall include—

35 (i) Reserves for unexpired risk being not less than 50 per cent. of the premiums, less re-insurances received during the period of twelve months, immediately preceding.

(ii) the total amount of all other liabilities of the insurer existing on the appointed day, including all contingent liabilities which the Central Government or the acquiring insurer may reasonably be expected to be required to meet out of its own resources on or after the appointed day. 5

COMPENSATION PAYABLE TO SHAREHOLDERS

Every shareholder of the acquired insurer shall be given such amount as compensation as bears to the total compensation calculated in accordance with the provisions of paragraph 10 1 the same proportion as the amount of paid-up capital of the shares held by that shareholder bears to the total paid-up capital of the acquired insurer.

CERTAIN DIVIDENDS NOT TO BE TAKEN INTO ACCOUNT

No separate compensation shall be payable for any 15 profits or any dividend in respect of any period immediately preceding the appointed day, for which, in the ordinary course, profits would have been transferred or dividend declared after the appointed day.'

**Amend-
ment of
Act 21
of 1965.**

41. In section 32 of the Payment of Bonus Act, 1965, in clause 20 (i), the words "employees employed by any insurer carrying on general insurance business and the" shall be omitted.

STATEMENT OF OBJECTS AND REASONS

With a view to promoting the development of general insurance business on sound lines and to eliminate undesirable practices in the business, this Bill provides for more effective supervision and control over insurers. The main provisions are:—

- (a) Restriction on shareholding and voting rights.
- (b) Regulation of investments.
- (c) Increase in the deposit to Rs. 20 lakhs for one or more classes of insurance business.
- (d) Maintenance by insurers of minimum solvency margin.
- (e) Power to the Controller of Insurance to carry out routine or surprise inspections and issue directions
- (f) Power to the Controller of Insurance to appoint Directors on the Board of Directors or Observers.
- (g) Power to the Controller of Insurance to enforce amalgamations of insurers.
- (h) Power to the Central Government to take over an insurer.
- (i) Power to the Controller of Insurance to regulate and fix premium rates and for that purpose placing the Tariff Committee of the General Insurance Council under him.
- (j) Requirement that all claims above a certain limit should be surveyed by approved surveyors.
- (k) Requirement that the appointment or removal of principal officers should be approved by the Controller of Insurance.
- (l) Reduction of agents' commission in Fire business.

A few other amendments of an urgent nature are also incidentally included.

The Notes on clauses explain briefly the reasons for the various provisions in the Bill.

NEW DELHI;
The 11th March, 1968.

MORARJI DESAI.

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF
THE CONSTITUTION OF INDIA

[Copy of letter No. 51(23)-INS, I/67 dated the 11th March, 1968 from Shri Morarji Desai, Deputy Prime Minister and Minister of Finance to the Secretary, Lok Sabha.]

The President having been informed of the subject of the proposed Insurance (Amendment) Bill, 1968, recommends the introduction of the Bill in the Lok Sabha under clause (1) of article 117 and its consideration under clause (3) of article 117 of the Constitution.

Notes on Clauses

Clause 2 is consequential to the amendments proposed under clauses 6 and 15.

Clause 3 provides for increase of the fee for renewal of registration so as to cover part of the increased cost of administration consequent to the implementation of the proposals contained in this Bill.

Clauses 4 and 5 provide for the application of sections 6A and 6B relating to restrictions on shareholding and voting rights to insurers carrying on general insurance business also.

Clause 6 seeks to increase the deposit to be made by an insurer to rupees two millions for one or more classes of general insurance business and permits existing insurers to make the deposit in instalments. It also provides that insurers operating in a group need only make the deposit as a single insurer. The conditions to be fulfilled by a group for this purpose are also set out.

Clauses 7, 8 and 9 are consequential to the changes proposed to be made in section 7 under which the deposit will be the same for one or more classes of insurance business.

Clause 10—Consequential.

Clause 11.—The new section 27B is on the same lines as the existing section 27A with appropriate modifications and seeks to make the provisions of that section applicable to insurers, carrying on general insurance business. The new section provides that the investments of the assets of general insurers carrying on general insurance business should be made only in approved investments except for 25 per cent. or in certain special cases.

Clause 12 is consequential to clause 11 and provides for the furnishing of returns by insurers to the Controller of Insurance to enable the latter to verify compliance with the requirements of that section.

Clause 13.—Consequential.

Clause 14 seeks to omit, from the seventh proviso to sub-section (1) of section 31A, the discretion now vested in the Central Government to decide the maximum bonus which an insurer can give to his employees. The object is to bring the matter of bonus within the jurisdiction of Industrial Tribunals. This amendment has been necessitated by a decision of the Supreme Court in 1960.

Clause 15 inserts provisions in the existing section 33 to empower the Controller to carry out inspections of insurers whether on his own initiative or on the direction of the Central Government with provision for cancellation of the registration or applying for winding up in certain circumstances.

Clause 16 inserts new provisions. These are—

(i) power to the Controller to give directions to an insurer in the public interest or in the interests of better management,

(ii) restrictions on appointment, removal or on remuneration of certain officers and directors of an insurer,

(iii) power to the Controller to remove managerial and other persons from office in certain circumstances,

(iv) power to the Controller to appoint additional directors on the Board of an insurer,

(v) power to the Controller to caution insurers, to prohibit particular transactions or to render advice to insurers, to appoint observers to watch the proceedings at Board Meetings and to require the insurer to take certain steps considered necessary,

(vi) power to the Controller to issue certain directions regarding re-insurance treaties,

(vii) power to the Controller to order closure of uneconomic or prejudicially operating foreign branches, and

(viii) power to the Controller to search premises and seize books of accounts and other records belonging to an insurer in certain special circumstances.

Clause 17 inserts provisions to empower the Controller if he is satisfied that it is necessary to do so on certain grounds, to prepare a scheme for the amalgamation of an insurer with another insurer and after securing the suggestions or objections from both the insurers concerned, to place the scheme before the Central Government. When the Central Government approves the scheme it shall be final and legally binding and shall take effect from the date specified by the Central Government.

Clause 18 seeks to reduce the commission payable to an insurance agent on a fire insurance policy to 10 per cent. on the first rupees 50,000 of the premium, 5 per cent. on next rupees 1 lakh and nil thereafter. Safeguards are incorporated to ensure that this provision is not got round by splitting a single policy between different agents or between different insurers.

Clause 19 is intended to clarify a doubt in regard to the interpretation of section 40C; the amendment seeks to define more pre

cisely the expenses which need not be treated as expenses of management for the purposes of the limitations imposed by the section.

Clause 20 raises the fees for licence of an insurance agent to rupees 25 for a period of 3 years. The increase is intended to cover part of the additional cost of administration which will result as a consequence of the implementation of the proposals contained in this Bill. The other changes made by the clause are minor.

Clause 21 seeks to delete section 48C of the principal Act which has been rendered superfluous by the provisions now being enacted through clause 16.

Clause 22 empowers the Central Government to acquire the business of an insurer on payment of compensation. The circumstances in which the business may be acquired, the basis on which compensation shall be paid, and provisions for setting up a Tribunal to resolve any dispute in regard to the amount of compensation are also set out.

Clause 23 adds "the public interest generally" as a ground for the Controller to apply for winding up an insurer. Also the Controller is being empowered to apply for winding up if the required solvency margin is not maintained.

Clause 24.—Consequential to the provisions of clause 6.

Clause 25.—Consequential to the provisions in clause 29.

Clause 26 is intended to clarify a doubt as to whether the Executive Committee of the General Insurance Council has the power to waive the collection of fees. The provision is being given retrospective effect.

Clauses 27 and 28.—Consequential.

Clause 29.—Two new Parts IIB and IIC are now being inserted. The former makes provisions for the setting up of a Statutory Body by the name of the Tariff Advisory Committee and for transferring thereto all the assets and liabilities of the existing Tariff Committee of the General Insurance Council. The new Committee will continue the work which the Tariff Committee has been doing, but the Controller, as the Chairman, will now have the deciding voice in regard to the rate finally fixed. Fees will be collected for running the Advisory Committee as the Tariff Committee has so far been doing. The factors to be given weight in fixing the rates are laid down. Provisions are also included to empower the Controller to

maintain a pannel of approved surveyors and loss assessors. Every claim over rupees twenty thousand in value will have to be valued by a surveyor or loss assessor in the panel. The new Part IIC seeks to give statutory effect to certain salutary provisions now being observed by the insurers on a voluntary basis under a code of conduct. The most important provision being inserted in this Part is the requirement that every insurer shall maintain an excess of assets over liabilities to the extent of two million rupees or twenty per cent. of the net premium income, whichever is higher, failing which the insurer will be deemed to be insolvent. Existing insurers are, however, given time to make up the required excess progressively. It is also being provided that the premium should be received in advance before a risk is undertaken. Another provision is that the opening of a new branch will now require the prior permission of the Controller.

Clauses 30, 31 and 32 contain formal amendments of a verbal nature only. The references to Mutual Insurance Companies in sections 96, 97 and 98 are being omitted, with the object of making quite clear, what is even now true, that such companies carrying on general insurance business have to comply with the deposit requirements under section 7.

Clause 33 empowers the Controller to collect information about re-insurance treaties.

Clause 34 lays down the penalty for certain offences committed in respect of the new provisions being inserted under this Bill.

Clause 35 seeks to make the employees of insurers public servants for the purposes of Chapter IX of the Indian Penal Code.

Clause 36 makes provision in regard to cognizance of offences and competency of courts.

Clause 37.—A new section which is being added disallows compensation for the operation of some of the newly added provisions. Two other sections are added which make some of the main provisions now being inserted applicable to the general insurance business carried on by the Life Insurance Corporation of India and by the State Governments.

Clause 38 —Consequential.

Clause 39 makes an amendment to the Revenue Account in Form F for the same reason as that mentioned in clause 19.

Clause 40 inserts a new Schedule which sets out the method of arriving at the amount of compensation payable to the shareholders of an acquired insurer.

Clause 41 seeks to make an amendment to section 32 of the Payment of Bonus Act, 1965 whereby the provisions of that Act are made applicable to the employees of general insurance companies. This is consequential to the provisions contained in clause 14.

FINANCIAL MEMORANDUM

The proposed amendments, particularly those relating to inspections and regulation of the premium structure, in clauses 15 and 29 would throw considerable additional burden on the Controller of Insurance whose office will have to be substantially augmented. The financial implication of the augmentation of the office of the Controller of Insurance would be finalised later, but the additional cost may be about rupees 25 lakhs per annum.

2. The additional cost is proposed to be met as under:

(a) The maximum fee leviable on an Insurance Agent is now Rs. 10 for three years. It is proposed to increase the maximum to Rs. 25. Having regard to the number of active agents of the Life Insurance Corporation and those in general insurance business elsewhere, this is expected to yield an additional amount of about rupees 10 lakhs per annum.

(b) The maximum fee now leviable on insurers for renewal of registration is rupees 1,000 for each class of business. It is proposed to increase this to one quarter per cent. of the net premium income, which is expected to yield an additional amount of rupees 17 lakhs per annum.

3. Clause 22 of the Bill seeks to empower the Central Government to acquire the undertaking of an insurer in certain circumstances on payment of compensation. These provisions are however only permissive and not mandatory. It is not possible to indicate at this stage the recurring and non-recurring expenditure arising out of these provisions. According to tentative estimates based on available information relating to the existing Indian insurers, the total amount of compensation payable in accordance with the principles set out in the Schedule in the event of all these insurers being taken over will be approximately rupees 30 crores. As regards the expenditure on the setting up of a Tribunal, this is likely to be incurred only if such a Tribunal is set up in the event of a specified percentage of shareholders of the acquired insurer not accepting the compensation. If the Tribunal is set up in respect of an acquired insurer, and is able to finish the work, within about six months, the non-recurring expenditure may not be in excess of rupees 1,50,000 and no recurring expenditure will be involved.

4. It is not possible at this stage to indicate when any insurer will be taken over under the provisions of the Bill. It will be necessary to watch, after the Bill has been passed into law, how far the insurers are working in accordance with the directions issued thereunder, and it will also be necessary to give to any individual insurer adequate opportunity to show cause before it is taken over. It is therefore unlikely that any insurer will be taken over in the current financial year or during the year 1968-69 and no recurring and non-recurring expenditure on this account is therefore anticipated during the current financial year or during 1968-69. The provisions which will have to be made in any of the financial years 1969-70 onwards cannot also be settled or anticipated. In any case, no such expenditure will be incurred by the Central Government without due appropriation made by Parliament from time to time in this behalf.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 11 seeks to empower the Central Government to prescribe the assets which, subject to such conditions as may be prescribed, will be deemed to be approved investments.

Clause 12 seeks to give power to the Central Government to prescribe the form in which the returns of investments made under Section 27B are to be furnished.

Clause 15 seeks to give discretion to the Controller of Insurance to inspect insurers and also power to the Central Government to order an inspection by the Controller in special cases. The minimum information to be maintained by insurers for the purpose of facilitating such inspections may be prescribed by the Central Government.

Clause 16 inter alia seeks to empower the Controller to search premises and seize records relating to the transactions of an insurer in certain circumstances. In this connection power is sought to be vested in the Central Government to make rules with regard to the procedure for entering into any premises and for the safe custody of seized records.

Clause 17 seeks to empower the Controller to make a scheme with the approval of the Central Government for amalgamation of one insurer with another.

Clause 19 seeks to clarify the items of expenses which may be excluded for the purpose of ascertaining compliance with the provisions of section 40C of the Act. In that context it seeks to provide that the percentage of gross direct premium which may be excluded on account of head office expenses and the method of calculating the proper share of managerial expenses to be excluded may be prescribed by the Central Government.

Clause 22 seeks to insert provisions for the acquisition of the undertakings of insurers in certain cases and for the transfer of the undertaking of the acquired insurer to any corporation or company. The clause also seeks to empower the Central Government to make a scheme for carrying out the purposes of such acquisition, and transfer the acquired insurer, if necessary, to a corporation or company.

Clause 29 seeks to provide for the formation of a Tariff Advisory Committee which will take over all the functions of the existing Tariff Committee of the Central Insurance Council. For this purpose, power is sought to be vested in the Central Government to make rules with regard to a number of matters of procedural detail.

The clause also seeks to empower the Tariff Advisory Committee to make rules, with the previous approval of the Central Government on certain matters of procedural detail.

The clause further seeks *inter alia* to enact provisions for maintenance of a minimum solvency margin and for advance payment of premiums before risks are assumed and to empower the Central Government to make rules with regard to these matters.

All these are matters of procedural detail. The delegation or legislative power is, therefore, of a normal character.

S. L. SHAKDHER,
Secretary.

