

The Insurance Laws (Amendment) Ordinance, 2014

The President promulgated the Insurance Laws (Amendment) Ordinance, 2014 on December 26, 2014. The Ordinance amends the Insurance Act, 1938 (the Act), the General Insurance Business (Nationalisation) Act, 1972 and the Insurance Regulatory and Development Authority (IRDA) Act, 1999. The Insurance Laws (Amendment) Bill, 2008 was introduced in Rajya Sabha on December 22, 2008. The Bill was referred to the Standing Committee on Finance. The Standing Committee submitted its recommendations on the Bill on December 13, 2011.

The government circulated some amendments to the Bill on July 30, 2014, which were referred to the Select Committee in Rajya Sabha. The Select Committee report was tabled in Rajya Sabha on December 10, 2014. The Select Committee's recommendations included a draft Insurance Laws (Amendment) Bill, 2014. The provisions of the the Ordinance are similar to the recommendations of the Select Committee.

This note compares the provisions of the Act and the Bill, with Standing Committee recommendations, and proposed amendments and the Ordinance.^{1,2,3,4,5}

Clause (in the Act)	Act (as amended in 2002) and Bill (as introduced in 2008)	Standing Committee recommendation (in 2011)	2014 amendment(s)	Select Committee Recos./ 2014 Ordinance
Foreign shareholding				
Clause 2 (7A)(b)	Act: Shareholding by a foreign company (direct and indirect) should not exceed 26% of paid-up capital of an Indian insurance company. Bill: Changed this limit to 49%.	Hike in FDI may not be in the interest of the Indian insurance industry. The government should consider tapping domestic capital markets for raising the capital required.	Adds that the company should be Indian owned and controlled as per the prescribed manner.	The Ordinance: (i) raises this cap to 49%, (ii) makes the cap inclusive of foreign portfolio investments, and (iii) states that the companies should be Indian owned and controlled. Control has been defined as the right to appoint a majority of the directors or control the management or policy decisions of the company.
Collector nominee				
Clause 39	Act: No provision for collector nominee. Bill: Defines 'collector nominee' as a nominee other than a beneficiary nominee who is liable to make payment of the benefits arising out of the policy to the beneficiary nominee or legal heirs of policy-holders or representative, in accordance with the regulations made by the Insurance Regulatory and Development Authority (IRDA).	No recommendation.	Removes the requirement that such payments have to be made in accordance with the regulations made by IRDA.	The distinction between two types of nominees is removed, and the requirement to adhere to IRDA's regulations is not mentioned. The holder of a life insurance on his own name may nominate a person or persons to whom the money secured by the policy shall be paid, at any time before the policy matures for payment.

Clause (in the Act)	Act (as amended in 2002) and Bill (as introduced in 2008)	Standing Committee recommendation (in 2011)	2014 amendment(s)	Select Committee Recos./ 2014 Ordinance
Power of insurer to call a life insurance policy into question				
Clause 45	Act: No life insurance policy can be called into question after 2 years on the ground of mis-statement. Bill: No life insurance policy can be called into question after 5 years on any ground.	The period in which the policy can be questioned should be reduced to three years.	A life insurance policy may be called in question within 3 years on the same grounds.	Same as 2014 amendments.
Shareholding by an Indian promoter in excess of 26%				
Clause 6AA	Act: Indian promoters will have to reduce their shareholding in insurance companies to 26% within 10 years. The government/IRDA can make rules/regulations regarding such excess shareholding. Bill: The provision mandating Indian promoters to reduce shareholding to 26% is deleted. The government/IRDA's power was left intact.	The requirement of Indian promoters having to reduce their stake to 26% within 10 years should be retained. The divestment of shares may be done even before 10 years.	The government/IRDA's power to make rules/regulations is being deleted. Instead the government will have the power to make rules regarding the manner of ownership and control of Indian insurance company.	The clause regarding Indian promoters and excess shareholding has been removed.
Definition of health insurance business				
Clause 2	Act: No separate definition. Bill: Defines "health insurance business" as that which provides for sickness benefits or medical, surgical or hospital expense benefits, whether in-patient or out-patient on an indemnity, reimbursement, service, prepaid, hospital or other plans basis including assured benefits, long term care, overseas travel cover and personal accident cover.	The term "health insurance business" should be revised to state that health insurance policies would cover sickness benefits for domestic as well as international travel.	"Health insurance business" has been defined as that which provides for sickness benefits or medical, surgical or hospital expense benefits, including in-patient and out-patient travel cover and personal accident cover.	Same as 2014 amendments.
Operation of foreign insurers in India				
	Act: Section 25 of the General Insurance Business (Nationalisation) Act, 1972 states that foreign insurers cannot issue insurance policies in India without prior government permission. Bill: The Bills creates an exception for properties situated in SEZs.	The Standing Committee suggested removal of the exception given to properties insured in SEZs.	Foreign insurers cannot issue insurance policies in India without prior IRDA permission.	Section 25 of the Act has been omitted.
Clause 62, 63, 64	Act: The Act has certain provisions regarding foreign insurers operating in India, e.g. reciprocal regulations, furnishing of documents to IRDA and maintenance of books of account, registers etc. Bill: The Bill deletes these provisions.	No recommendation.	The amendment does not delete the provisions of the Act.	Same as 2014 amendments.

Clause (in the Act)	Act (as amended in 2002) and Bill (as introduced in 2008)	Standing Committee recommendation (in 2011)	2014 amendment(s)	Select Committee Recos./ 2014 Ordinance
IRDA's power to withhold or cancel registration of an insurer				
Clause 3 (3)	Act: IRDA shall cancel registration of a foreign insurer if he has been debarred by law or practice of his country to carry on insurance business. Bill: IRDA may <i>withhold</i> or cancel registration of an insurer if his foreign partner in a joint venture has been debarred by law or practice of its country to carry on insurance business.	IRDA should be allowed to decide on cancellation by taking into consideration facts of individual cases.	Same as the Bill, except that IRDA may <i>not</i> cancel registration already made.	IRDA may <i>withhold</i> a registration already made, of an insurer if his foreign partner in a joint venture has been debarred by law or practice of its country. This provision also includes any foreign company engaged in re-insurance business through a branch established in India.
Clause 3 (4)	Act: IRDA shall withhold or cancel registration of an insurer if his business has been transferred to another person or amalgamated with any other insurer. Bill: IRDA may suspend or cancel registration of an insurer, <i>completely or in part</i> , if he has transferred or amalgamated any part of his business with another insurer.	No recommendation.	Retains the provisions of the Act.	Same as 2014 amendments, except that IRDA can suspend or cancel registration <i>wholly or in part</i> , when the transfer or amalgamation has happened without the approval of the authority.
Capital requirements				
Clause 6	Act: The minimum equity capital requirement is Rs 100 crore for life insurance or general insurance and Rs 200 crore for a person exclusively in the business of re-insurance. Bill: The minimum equity capital requirement is Rs 50 crore for a person exclusively in the business of health insurance.	The minimum paid up capital for a person exclusively in the business of health insurance should be increased to Rs 100 crore.	Same as Bill.	Minimum paid- up equity capital requirement for a person exclusively in the health insurance business is Rs 100 crore. An insurer in order to be registered has to have net owned funds of at least five thousand crore rupees.
Clause 6	Act: The statutory deposits with RBI and preliminary excluded expenses incurred in the formation and registration of the company shall be <i>excluded</i> in calculation of paid-up equity capital of an insurer. Bill: The preliminary expenses and statutory deposits shall be <i>included</i> while calculating the equity capital of any insurer.	Preliminary expenses incurred in the formation and registration of the company shall be <i>excluded</i> in calculation of paid-up equity capital of an insurer.	Incorporates Standing Committee recommendation and excludes expenses in calculation of paid-up equity capital.	Same as 2014 amendments.
Clause 6A	Act: A life insurer, which is a public limited company, cannot have or issue any shares other than ordinary equity shares of single face value and equal voting rights. Bill: An insurer, which is a public limited company, can have or issue equity shares of single face value or other forms of capital (as specified by regulations).	The prohibition on life insurers to issue shares other than ordinary equity shares should be removed.	Same as the Bill.	Same as 2014 amendments.

Clause (in the Act)	Act (as amended in 2002) and Bill (as introduced in 2008)	Standing Committee recommendation (in 2011)	2014 amendment(s)	Select Committee Recos./ 2014 Ordinance
Appeals against IRDA decisions				
Clause 6B	Act: The government can appoint an officer to ensure compliance of a life or general insurer with capital structure requirements. This decision can be appealed in the High Court within whose jurisdiction insurer's registered office is situated. Bill: IRDA can appoint an officer to ensure compliance of an insurer with capital structure requirements. This decision can be appealed in the High Court.	The appeals against the officer's decision should lie with the Securities Appellate Tribunal.	IRDA can appoint an officer to ensure compliance of an insurer with capital structure requirements. The decision of such an officer can be appealed in the Securities Appellate Tribunal.	Same as 2014 amendments.
Clause 33	Act: IRDA may conduct an investigation into the affairs of an insurer. Bill: IRDA may also conduct an investigation into the affairs of an insurer's intermediary.	The Bill should provide a system of appeal for the aggrieved parties in such cases.	IRDA may also conduct an investigation into the affairs of an insurer's intermediary. All such decisions can be challenged in the Securities Appellate Tribunal.	Same as 2014 amendments.
Accounts, funds and records				
Clause 11	Act: An insurer should create separate accounts and funds for receipts due in each class of his insurance business. Bill: A <i>general</i> insurer should create separate accounts and funds for receipts due in each class of his insurance business.	The Committee recommended that the provision be made applicable to all insurers.	Same as the Bill.	Every insurer will create a separate account of receipts and payments, as specified by regulations.
Clause 13 (3)	Act: A life insurer's actuarial report should contain a certificate signed by its principal officer that full and accurate particulars of every policy have been furnished to the actuary. Bill: The Bill proposed to remove this provision.	The Committee recommended that the provision as provided in the Act, be retained.	The amendment retains the provision of the Act .	Same as 2014 amendments.
Clause 14	Act: Every insurer has to maintain records of all policies and claims. Bill: Same as the Act.	Insurers should not be mandated to maintain the records in electronic form only.	An insurer can maintain records of policies and claims in electronic form (as allowed by IRDA). Each insurer shall also try to issue policies above a specified threshold in electronic form.	Same as 2014 amendments.

Clause (in the Act)	Act (as amended in 2002) and Bill (as introduced in 2008)	Standing Committee recommendation (in 2011)	2014 amendment(s)	Select Committee Recos./ 2014 Ordinance
Investment of assets				
Clause 27A	Act: Investments in immovable property outside India shall be excluded from the calculation of statutory investments to be made by an insurer, in order to meet his liabilities on account of matured claims on life insurance policies. Bill: Investments in immovable property outside India shall be excluded from the calculation of statutory investments to be made by a life insurer or general insurer.	No specific recommendation.	Same as Bill.	Any insurers carrying on general or life insurance business may not invest their assets in any but the approved investments, as may be specified by regulations subject to such limitations, conditions and restrictions therein.
Assignment and transfer of insurance policies				
Clause 38	Act: A transfer or assignment of a life insurance policy needs to be communicated to the insurer. The insurer cannot reject a transfer or assignment. Bill: The insurer may reject a transfer or assignment if it believes that the transfer or assignment is: (i) not bona fide, or (ii) is not in the interest of the policy-holder, or (iii) is not in public interest.	The Bill should specifically debar speculative assignments of policies instead of leaving it to the discretion of insurers.	The amendments retain the provisions of the Bill, and add a clause: (iv) is for the purpose of trading of insurance policy, as a criterion for rejecting a transfer or assignment.	Same as 2014 amendments.
Management expenses and rebates				
Clause 40	Act: An insurer's annual management expenses should be within the prescribed limits. Life insurers have to furnish details of expenses to the Controller of Insurance. Bill: Each insurer should submit details of management expenses to IRDA.	The Bill should incorporate suitable provisions empowering IRDA to specify the limit on management expenses of insurance companies.	Each insurer should keep annual management expenses below the limit set by IRDA and submit details of such expenses to IRDA.	Same as 2014 amendments.
	Act: Each insurer should re insure a minimum percentage of their exposure with Indian re-insurers, as specified by IRDA. Bill: Same as the Act.	No recommendation.	No insurer shall receive reimbursement of expenses or commission on this mandatory re-insurance from Indian re-insurers.	Same as the Act.

Clause (in the Act)	Act (as amended in 2002) and Bill (as introduced in 2008)	Standing Committee recommendation (in 2011)	2014 amendment(s)	Select Committee Recos./ 2014 Ordinance
Clause 41 (1)	Act: The Act prohibits offering of unauthorised rebates on commission or premium for a policy. A defaulter could be punished with a fine up to Rs 500. Bill: The Bill proposes to raise this fine to Rs 5 lakh.	Agreed with the proposal of the Bill to increase penalty to Rs 5 lakh.	The amendment raises the fine to Rs 10 lakh.	The Ordinance increases this penalty to extend up to Rs 10 lakh.
Agents, intermediaries and surveyors and loss assessors				
Clause 42	Act: IRDA has the power to issue licenses to insurance agents. There was no restriction on the number of insurers for whom a person could be an agent. Bill: The requirement of licensing of agents by IRDA will be removed; instead insurers can appoint agents. No person can be an agent for more than one life insurer and one general insurer.	IRDA's present role in licensing of insurance agents should not be eliminated.	No person can be an agent for more than one life insurer and one general or health insurer.	Same as 2014 amendments. In addition, a person can be an agent for one of each of the other mono-line insurers in the manner specified by regulations.
	Act: No existing provision. Bill: No provision.	No recommendation.	Insurers shall be responsible for all the acts and omissions of their agents including violation of code of conduct. They shall be liable to a penalty of up to Rs 1 crore for such acts and omissions of their agents.	Same as 2014 amendments.
Clause 42A	Act: The Act provides for the registration of principal agents, special agents and chief agents for the purpose of insurance business. Bill: The Bill deletes these provisions but does not address the case of such agents who are currently in operation.	The Bill should incorporate appropriate provisions to discourage use of multi-level marketing schemes.	Employment of such agents as mentioned in the Act is prohibited. In addition, the operation of insurance business through multi-level marketing schemes is also not allowed.	Same as 2014 amendments.
Clause 42D	Act: The Act specifies a fine for operating as an intermediary without a license, but does not specify the quantum of fine. Bill: Same as the Act.	The fine applicable on insurance intermediaries and companies for acting as or appointing intermediary without license should be addressed in the Bill.	The amendment specifies a maximum fine of Rs 5 lakh for the intermediary and Rs 1 crore for the insurer and additionally, Rs 10 lakh for every officer of the company who is knowingly a party to such a contravention.	Same as 2014 amendments.
Clause 43	Act: Every insurer must maintain a register of the name and address of his insurance agents, the date on which the agent's appointment began and ceased. Bill: Such record should be maintained for a period of five years.	The Bill should specify that the records of agents are to be maintained for a period of five years from the date of cessation of the engagement of an agent.	Retains provision of the Act. Further propose that such record should be maintained as long as the agent is in service and for a further period of five years after the end of his appointment.	Same as 2014 amendments.

Clause (in the Act)	Act (as amended in 2002) and Bill (as introduced in 2008)	Standing Committee recommendation (in 2011)	2014 amendment(s)	Select Committee Recos./ 2014 Ordinance
Clause 64UM	Act: No person shall act as a surveyor or loss assessor for general Insurance business unless licensed by IRDA. Bill: The requirement of licensing will be removed. Surveyors and loss assessors for general insurers can only operate in accordance with relevant IRDA regulations.	The provisions should be modified to provide for only independent and licensed surveyors to practice the profession. Further, measures need to be taken to strengthen the Indian Institute of Loss Assessors and Surveyors, to function as the regulator for this profession.	Surveyors and loss assessors must: (i) possess academic qualifications as may be specified by regulations, (ii) be a member of the IISLA, and (iii) adhere to a code of conduct as may be laid down by regulation.	Same as 2014 amendments.
IRDA's power to make regulations				
Clause 114A	Act: IRDA can make regulations regarding certain subjects. Bill: IRDA can make regulations regarding various matters, including the manner of payment of benefits to the nominee.	IRDA's power to make regulations regarding qualifications, practical training or examination to be passed for appointment as an insurance agent should be maintained.	IRDA's power regarding manner of payment to the nominee is removed. It is permitted to make regulations regarding determination of preliminary expenses, maintenance of records of policies and claims, code of conduct for insurance agents, etc.	Retains 2014 amendments. Certain matters have been added under IRDA's ambit of making regulations, separation of accounts of all receipts and payments, manner and form of issuance of policies in electronic form, and the norms for surrender value of life insurance policy, among others.
Raising of capital by public sector general insurers				
	Act: No existing provision. Bill: The Bill permits the General Insurance Corporation and other public sector general insurers to raise capital to increase their business in rural and social sectors, to meet solvency margin and for other purposes.	The provision should specify that government's shareholding would not be allowed to decline below 51%.	Retains provision of Bill, and incorporates recommendation of Standing Committee.	Same as 2014 amendments.

Other provisions of the Ordinance:

- The Ordinance amends the definition of an Indian insurance company to include the health insurance business as one of its businesses. It also amends the definition of an actuary, and adds definitions of “regulations”, “re-insurance”, and “Securities Appellate Tribunal”.
- Penalties for various offenses, such as payment or receiving of a remuneration or reward for soliciting or procuring insurance business to anyone but an insurance agent, acting as an insurance agent without registration, etc. have been significantly increased.

¹ “The Insurance Laws (Amendment) Bill, 2008”, Rajya Sabha, December 22, 2008, http://www.prsindia.org/uploads/media/1230002517/1230002517_Insurance_Bill.pdf.

² “Notice of amendments, The Insurance Laws (Amendment) Bill, 2008”, Rajya Sabha, July 30, 2014, <http://www.prsindia.org/uploads/media/Insurance/Official%20Amendments%20as%20on%2030%20july%202014.pdf>.

³ “Notice of amendments, The Insurance Laws (Amendment) Bill, 2008”, Rajya Sabha, August 2, 2013, <http://www.prsindia.org/uploads/media/Insurance/Official%20amendments%20Insurance%20Laws%20Amendment%20Bill.pdf>.

⁴ “41st report: The Insurance Laws (Amendment) Bill, 2008”, Standing Committee on Finance, December 13, 2011, <http://www.prsindia.org/uploads/media/1230002517/SCR%20Insurance%20Laws%20Bill.pdf>.

⁵ “The Insurance Laws (Amendment) Ordinance, 2014, December 26, 2014, <http://www.prsindia.org/uploads/media/Ordinances/Insurance%20Laws%20Ordinance,%202014.pdf>.

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