REGULATORY FRAMEWORK OF INSURANCE

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LEARNING OBJECTIVE

After studying this chapter, you should be able to:

- Describe the various regulatory enactments in insurance industry
- Describe in detail IRDAI and PMLA Act
- Define the key Indian and International insurance bodies
- Understand how an insurance license is issued and renewed there after
- Understand the code of conduct for an insurance agent

KEY TERMS

This chapter features these terms which you should strive to do more research about:

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<th>IRDAI</th>
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INTRODUCTION TO REGULATION RELATING INSURANCE

As the business of insurance began to grow, it was found necessary to consolidate and amend the law to safeguard the interests of the policy holders, to check the growth of insurance companies carrying on business in India. Thus, the Government enacted various Acts in order to clarify the law and to protect the interests of the policy holders.

The Regulator has the responsibility of ensuring the smooth running of the insurance sector. The Insurance Regulatory and Development Authority of India (IRDAI) is the insurance Regulator in India. The IRDAI grants licenses to insurance companies and makes sure all insurance companies are in compliance with the regulations at all times. It also has a responsibility to protect the interests of the small policyholders against the mighty insurance companies.

Insurance Act 1938

The Insurance Act, 1938 is the most important legislation passed in India relating to insurance business and, as stated in chapter 1, it came into effect from 1 July 1939. The Act consolidates the law relating to the business of insurance and it was the first piece of legislation to govern all forms of insurance, providing state control over insurance business.

The original 1938 Act was amended in 1950, 1956, 1968, 1972, and also in 1999 and 2002 following the establishment of the IRDAI (see section D). The Act broadly contains provisions relating to the:

- Registration of insurers and renewal of registration;
- Manner of investment of premium;
- Maintenance of insurers’ solvency levels (see ‘Be aware’ below);
- Appointment of staff;
- Amalgamation and transfer of insurance business;
- Assignment or transfer of policies and nominations;
- Rural and social sector;
- Control over management;
- Licensing of agents and their commission;
- Prohibition of rebates;
- Power of investigation and inspection by the regulatory authority;
- Protection of policyholders’ interests; and

Until 1999 the Controller of Insurance (a person appointed by the Central Government to exercise all the powers, discharge the functions and perform the duties of the Authority) was responsible for administration of the Insurance Act 1938. The Controller was replaced by the IRDAI.

Provisions with Specific Relevance to Agents

The following sections of the Act are particularly important for agents to understand, as they lay down the guidelines that must be followed regarding the:

- Licensing of agents;
- Commission payable to them; and
- Prohibition of rebates.

Section 40(1) – Prohibition of Payment by way of Commission or Otherwise for Procuring Business

Section 40(1) of the Insurance Act 1938 prohibits any form of remuneration for soliciting or procuring insurance business in India to any person other than a licensed insurance agent or an insurance intermediary.

No person shall after he expiry of six months from the commencement of this Act, pay or contract to pay any remuneration or reward whether by way of commission or otherwise for soliciting or procuring insurance business in India to any person except an insurance agent or an intermediary or insurance intermediary.
Example: Prashant has appeared for the prescribed pre-recruitment examination in life insurance, but has failed to score the minimum required mark to pass the examination and therefore is still not certified and still not licensed by the IRDAI to solicit or procure life insurance business. So Prashant cannot be paid for soliciting or procuring insurance business as he is neither a licensed insurance agent nor an insurance intermediary. In fact, Prashant is not authorized to solicit or procure any life insurance business for any life insurance company until he is awarded the licence to do so from the Authority.

Any person not complying with the provisions of this section shall be punishable with a fine up to Rs. 500.

Section 42 – Licensing of Insurance Agents

Section 42 of the Insurance Act 1938 stipulates the conditions for issuing a license to a person or company to act as an insurance agent for soliciting or procuring insurance business. The section covers the following:

Exhibit 5.1: Licensing of Insurance Agents

Section 44 – Prohibition of Cessation of Payments of Commission

Under section 44 of the Insurance Act 1938, no insurance agent can be refused payment of renewal commission due to him on renewal premium, in respect of life insurance business conducted in India under the agreement. Even after the termination of agency the renewal commission is payable, except for fraud.

(a) The insurance agent has served the insurer continually and exclusively in respect of life insurance business for at least five years, and policies insuring a total sum of not less than Rs. 50,000 effected through him for the insurer were in force for one year before his ceasing to act as an agent for the insurer, and that the commission on renewal premiums due to him does not exceed 4%; or

(b) The agent has served the insurer continually and exclusively for at least ten years and after his ceasing to act as an agent he does not directly or indirectly solicit or procure insurance business for any other person.
The Insurance Laws (Amendment) Act, 2015


2. The amendment Act will remove archaic and redundant provisions in the legislations and incorporate certain provisions to provide Insurance Regulatory and Development Authority of India (IRDAI) with the flexibility to discharge its functions more effectively and efficiently.

3. Provides for enhancement of the foreign investment cap in an Indian Insurance Company from 26% to an explicitly composite limit of 49% with the safeguard of Indian ownership and control. The enactment of the bill will also raise the foreign investment cap in the pension sector since it was linked to the ceiling in the insurance sector at the time of the passage of the Pension Fund Regulatory and Development Authority bill in 2013.

4. Capital Availability: It will enable capital raising through new and innovative instruments under the regulatory supervision of IRDAI. Greater availability of capital for the capital intensive insurance sector would lead to greater distribution reach to under / un-served areas, more innovative product formulations to meet diverse insurance needs of citizens, efficient service delivery through improved distribution technology and enhanced customer service standards. It would also boost infrastructure funding since only an insurance corpus can fund long-gestation public works projects.

Four public sector general insurance companies had to be 100 % government owned as per The General Insurance Business (Nationalization) Act, 1972 (GIBNA, 1972). They are now allowed to raise capital. This is due to the need for expansion of the business in the rural and social sectors, meeting the solvency margin for this purpose and achieving enhanced competitiveness. But government equity will not be less than 51% at any point of time.

5. Consumer Welfare: It will enable the interests of consumers to be better served through provisions like those

   Enabling high penalties on intermediaries / insurance companies for misconduct, misspelling and misrepresentation by agents / insurance companies

   Disallowing multilevel marketing of insurance products in order to curtail the practice of misspelling.

   This could act as a deterrent against the rampant misspelling menace which has resulted in many policyholders being duped into buying unsuitable products.

6. Empowerment of IRDAI: The Act will entrust responsibility of appointing insurance agents to insurers and provides for IRDAI to regulate their eligibility, qualifications and other aspects. It enables agents to work more broadly across companies in various business categories. The safeguard being that conflict of interest would not be allowed by IRDAI through suitable regulations.

   IRDAI is empowered to regulate key aspects of Insurance Company operations in areas like solvency, investments, expenses and commissions and to formulate regulations for payment of commission and control of management expenses.

   It empowers the Authority to regulate the functions, code of conduct, etc., of surveyors and loss assessors. It also expands the scope of insurance intermediaries to include insurance brokers, reinsurance brokers, insurance consultants, corporate agents, third party administrators, surveyors and loss assessors and such other entities.

   Further, properties in India can now be insured with a foreign insurer with prior permission of IRDAI, which was earlier to be done with the approval of the Central Government.

7. Health Insurance: The amendment Act defines ‘health insurance business’ inclusive of travel and personal accident cover and discourages non-serious players by retaining capital requirements for health insurers at the level of Rs. 100 Crore, thereby paving the way for promotion of health insurance as a separate vertical.
Promoting Reinsurance Business in India: The amended law enables foreign re-insurers to set up branches in India and re-insurance to mean “the insurance of part of one insurer’s risk by another insurer who accepts the risk for a mutually acceptable premium”. It excludes the possibility of 100% ceding of risk to a re-insurer, which could lead to companies acting as front companies for other insurers. Entry of reinsurance companies into the Indian market will bring in knowledge and expertise together with underwriting capacities. Must be wondering what re-insurance is? Re-insurance means that multiple insurance companies share risk by purchasing insurance policies from other insurers to limit the total loss the original insurer would experience in case of a disaster. By spreading risk, an individual insurance company can take on clients whose coverage would be too great of a burden for the single insurance company to handle alone.

Strengthening of Industry Councils: The Life Insurance Council and General Insurance Council have now been made self-regulating bodies by empowering them to frame by-laws for elections, meetings and levy and collect fees etc. from its members. Inclusion of representatives of self-help groups and insurance cooperative societies in insurance councils has also been enabled to broad base the representation on these Councils.

Robust Appellate Process: Appeals against the orders of IRDAI are to be preferred to SAT as the amended Law provides for any insurer or insurance intermediary aggrieved by any order made by IRDAI to prefer an appeal to the Securities Appellate Tribunal (SAT).

Thus, the amendments are in tune with the evolving insurance sector scenario and regulatory practices across the globe. The amendments will enable IRDAI to create an operational framework for greater innovation, competition and transparency, to meet the insurance needs of citizens in a more complete and subscriber friendly manner. The amendments are expected to enable the sector to achieve its full growth potential and contribute towards the overall growth of the economy and job creation.

Life Insurance Companies Act 1912

The first statutory measure in India to regulate life insurance business was introduced in 1912 when the Life Insurance Companies Act 1912 was passed. Prior to 1912, there had been no legislation to regulate insurance business in India.

As we saw before India’s life insurance business in its present form owes its origins to other countries, in particular England, and the first insurance company established in India was the Oriental Life Insurance Company in Kolkata in 1818.

However, all the insurance companies established at this time catered to the needs of the European community and Indians were charged a higher premium than other policyholders. The Indian Life Assurance Companies Act 1912 stipulated for the first time in India that premium rate tables and periodical valuations of companies had to be certified by an actuary. However the Act discriminated between foreign and Indian companies in many areas, putting the Indian companies at a disadvantage.

Life Insurance Corporation Act 1956

The Life Insurance Corporation Act 1956 was passed on 19 June 1956 and subsequently the Life Insurance Corporation (LIC) was formed on 1 September 1956.
The LIC Act was passed with the objective of nationalizing life insurance business in India and also to provide for the regulation and control of the business of the LIC and for all connected matters. Section 30 of the Act gave the LIC an exclusive privilege to transact life insurance business in India. In 1999 this exclusive privilege was revoked by way of an amendment to the Act as part of the Government’s policy of economic reforms.

**Insurance Regulatory and Development Authority (IRDAI) Act 1999**

The Insurance Regulatory and Development Authority (IRDAI) Act 1999 was passed by Parliament in December 1999. The Act provided for the establishment of the IRDAI as a corporate body:

- To protect the interest of holders of insurance policies;
- To regulate, promote and ensure orderly growth of the insurance industry; and
- For other related matters.

As mentioned in section A, the IRDAI Act 1999 led to amendments in the Insurance Act 1938, the Life Insurance Corporation Act 1956, and also the General Insurance Business (Nationalization) Act 1972. As we have seen, the IRDAI replaced the ‘Controller of Insurance’ in administering the provisions of the Insurance Act including registration, licensing and laying down regulations for the proper conduct of the business and the protection of the interests of policyholders.

Section 4 of the IRDAI Act 1999 specifies the composition of the IRDAI. It consists of a Chairperson, not more than five whole-time members and not more than four part-time members. All the members are appointed by the Government of India. Section 14 of the Act lays down the duties, powers and functions of the IRDAI.

**Prevention of Money Laundering Act (PMLA) 2002**

Before we explain the provisions of this important piece of legislation and the impact it has on life insurance agents, we shall explain what money laundering actually means.

Money laundering is the process of bringing illegal money into the financial system by hiding its illegal origin so that it appears to be legally acquired. Money laundering is the term used to describe the process of turning dirty money into clean money. Illegal or ‘dirty’ money is put through a cycle of transactions so that it comes out ‘washed’ at the other end as ‘legal’ or ‘clean’ money.

**There are three common stages of money laundering:**

![Exhibit 5.3: Common Stages of Money Laundering](image)
The Prevention of Money Laundering Act (PMLA) 2002 came into effect from 1 July 2005 to control money laundering activities as well as to combat the financing of terrorism. Guidelines on anti-money laundering (AML) for insurance companies were issued on 31 March 2006 which requires all insurers to establish an anti-money laundering program. Each company is required to have an AML policy and accordingly file a copy with the IRDAI.

Insurance companies offer a variety of products through trained agents and other intermediaries. Hence these guidelines are of importance to insurance agents to the extent indicated in the guidelines. Compliance with the PMLA is applicable to all financial institutions regulated by the Reserve Bank of India (RBI) – the banking regulator, the Securities Exchange Board of India (SEBI) – the capital markets regulator, and the Insurance Regulatory Development Authority (IRDAI) – the insurance regulator and all other financial intermediaries.

The IRDAI made it mandatory for all life insurance companies to follow the AML guidelines from 1 August 2006. The guidelines require every insurer to have an AML program which at a minimum should include:

• Internal policies, procedures and controls;
• The appointment of a principal compliance officer;
• Recruitment and training of insurance agents/employees on AML measures; and
• Internal audit/control.

Know Your Customer (KYC)

Insurers need to determine the true identity of their customers, and agents have a major role to play in this.

Agents should make sure that their clients submit the necessary identity and address proofs. KYC needs to be carried out at all stages – issue of policy, top-ups and at the time of claim payment.

Information on customers must be collected from all sources including insurance agents, and agents need to educate their clients on the importance of adhering to KYC requirements. The IRDAI has provided an indicative list of documents that can be obtained from the customer for customer identification, residence proof and income proof.

Risk Profile of the Customer: Individuals whose identity and source of funds can be easily identified are categorized as low-risk customers. However, even in such cases, if the customer profile is inconsistent with the policies/investments taken out, proper diligence is to be conducted through enquiry and by obtaining all the necessary documents.

High Net worth Individuals (HNIs), Politically Exposed Persons (PEPs), Non-Governmental Organisations (NGOs), and Non-resident Indians (NRIs) are all categorized as High-Risk Customers.

Insurance agents must be very careful while dealing with high-risk customers. Agents need to make sure proper screening of such people is carried out and that all KYC and AML requirements have been adhered to while dealing with these clients.

Low-risk customers include:
• Salaried employees; and
• Government employees

Other high-risk customers apart from the ones mentioned above include:
• Money changers
• Arms and explosives dealers
• Film presonalities
• Persons dealing with real estate
• Antique dealers
Sources of Funds: The customer’s source of funds (from which the premium is being paid) and their estimated net worth needs to be verified and properly documented. Insurance agents must obtain suitable income proofs to establish the customer’s need for insurance cover. If the customer is paying a single premium, which is of a substantial amount, insurance agents need to obtain suitable documents to establish the source of funds.

Threshold for Payment of Premium in Cash: To ensure that the premiums are being paid out of a legitimate source of funds, payment of premiums by cash cannot exceed Rs. 50,000. Premiums of Rs 50,000 and above can be paid only by cheque, demand draft, credit card or any other banking channels. Insurance agents therefore need to educate their clients about AML provisions.

- The services of defaulting agents who expose insurers to AML-related risks on multiple occasions should be terminated and details are to be reported to the IRDAI for further action.
- If faced with a non-compliant agent, the insurance company must take all necessary action to secure compliance. This can include termination of the business relationship with the agent.

Married Women’s Property (MWP) Act 1874

Section 6 of the Married Women’s Property (MWP) Act 1874 provides that a life insurance policy that has been taken out by a married man on his own life, for the benefit of his wife and children, shall be deemed to be a trust and will be outside the control of the life insured, his creditors, court attachments etc.

A trust is a legal agreement, which has three parties associated with it – a trustor, (Proposer) a trustee and a beneficiary.

- The trustor, or author of the trust, is the person who forms the trust.
- The trustee can either be a person or an entity, who/which is responsible for managing the assets, the ownership of which is entrusted to them as a ‘trust’ by the trustor.
- The beneficiary is an individual/entity who receives the benefits from the trust.

The proposer can appoint:

- A Person (or failing him, another person) as a trustee;
- Two or more persons (or survivor(s) of them) as trustees; or
- A corporate trustee, such as a bank transacting trustee business.

A trustee must be a major (18 years and above) and their consent to act as a trustee should be taken and added to the policy as an endorsement. If a trustee is not appointed or not existing, Official Trustees will be appointed by a competent Government Authority.

The beneficiaries of a life insurance policy affected by the MWP Act can be:

- The wife alone;
- One or more children; or
- The wife and one or more children jointly.

The main features of this Act are listed below:

- The proposer should be a married, divorced or widowed man. Only his wife and children can be beneficiaries. Children include sons and daughters. In the case of Hindus, adopted sons and daughters are also included.
- The policy must be in his own life.
- Each policy will remain a separate trust.
- The policy is insured as a trust. Either his wife or child (if over the age of 18) can be appointed as a trustee.

The individual has the choice of revoking the trustee(s) and appointing new ones at any time:

- Two or more trustees can be appointed.
- Insurance under the MWP Act is free from court attachments, tax attachments, and creditors, and even the life insured does not have any right to deal with the policy.
- When a claim arises, the policy monies will be paid to the trustees according to the policy. The trustees hold the policy money for the beneficiaries.
Mohammedan Law: A non-Mohammedan proposer can specify equal shares or unequal shares for the beneficiaries and provide that the benefit should go to them jointly or the survivors or survivor of them and can specify the beneficiaries by class.

In the case of Mohammedan proposers, the beneficiaries have to be named as it is ‘Persona Designata’. The name of the wife and children as beneficiaries should be stated in the policy and they must be existing at the time the policy is taken out. In circumstances where there are more than two beneficiaries, the proposer needs to mention the respective share for each beneficiary.

Other Key Legislation: We will look at other key pieces of legislation and regulations that have an impact on your role as an insurance agent in this section.

Redressal of Public Grievance Rules 1998

The Governing Body of Insurance Council (GBIC) was established under the Redressal of Public Grievances Rules 1998 (RPG rules 1998) to set up and facilitate the Institution of Insurance Ombudsman in India.

The GBIC consists of one representative each from all insurance companies. The representative should be either the Chairman or Managing Director or a Director of the company.

The RPG rules contain provisions regarding:

- The appointment and office term for the Insurance Ombudsman;
- Stipulations in respect of staffing and administration of the Ombudsman centre;
- The powers of the Ombudsman; and
- The manner of lodging complaints and disposing of complaints by the Ombudsman either by way of ‘recommendation’ or ‘award’.

Insurance Regulatory and Development Authority of India (Insurance Advertisement and Disclosure) Regulations 2000

The IRDAI (Insurance Advertisement and Disclosures) Regulations 2000 define ‘insurance advertisement’ as:

Any communication directly or indirectly related to a policy and intended to result in the eventual sale or solicitation of a policy from members of the public. It includes all forms of printed and published materials or any material using the print and/or electronic medium for public communication.

Unfair or misleading advertisement includes any advertisements that:

- Fail to be identified as an insurance product;
- Make claims beyond the ability of the policy; or
- Describe such benefits that do not match policy provisions.

Advertisement by Insurance Agents: An advertisement by an insurance agent that affects an insurer must, before it is issued, be prior approved by the insurer in writing. The insurer needs to ensure that the advertisement is not deceptive or misleading before granting such approval.

An agent is not required to obtain the prior approval of the insurer before placing an advertisement if the advertisement:

- Has been developed by the insurer itself and is provided to its agents;
- Is generic and information is limited to the agent’s name, logo, address and phone number; or
- Contains only statements that mention the experience, service and qualifications of the agent and makes no reference to specific policies, benefits or costs.

This regulation has been formulated with a view to prevent mis-selling and misleading information about the insurance products being sent to the potential clients. Some important points to be kept in mind are:
Every advertisement for insurance shall

1. State clearly and unequivocally that insurance is the subject matter of solicitation;
2. State the full registered name of the insurer/intermediary/insurance agent;
3. Every insurance company shall be required to prominently disclose in the advertisement, the full particulars of the insurance company and not merely any trade name or monogram or logo;
4. Every insurer or intermediary or insurance agent shall have a compliance officer, whose name and official position in the organisation shall be communicated to the IRDAI and he shall be responsible to oversee the advertising program;
5. Every advertisement by an insurance agent that affects an insurer must be approved by the insurer in writing prior to its issue. It shall be the responsibility of the insurer while granting such approval to ensure that all advertisements that pertain to the company or its products or performance comply with these regulations and are not deceptive or misleading.
6. Every insurer or intermediary shall follow recognized standards of professional conduct as prescribed by the Advertisement Standards Council of India (ASCI) and discharge its functions in the interest of the policyholders.

Insurance Regulatory and Development Authority (Manner of Receipt of Premium) Regulations 2002

These Regulations define the manner in which premium can be paid by a policyholder for purchasing an insurance policy as follows:

- Cash
- Any negotiable instrument such as cheques, demand draft, pay orders, bankers cheque drawn on any scheduled bank in India
- Postal money orders
- Credit or debit card held in the policyholder’s name
- Bank guarantee or cash deposits
- internet
- E-transfer
- Direct credit, via standing instructions of the proposer or the policyholder or the life insured through bank transfers; and
- Any other method of payment as may be approved by the IRDAI from time to time.

The insurer has the option to recover the collection charges of the payment instrument from the proposer.

Insurance Regulatory and Development Authority (Licensing of Corporate Agents) Regulations 2002

In October 2002 the IRDAI issued a notification under the IRDAI (Licensing of Corporate Agents) Regulations 2002. The Regulations deal with the issue of licensing and other matters related to corporate agents such as companies, firms, banks, and co-operative societies etc. who are not individuals and can still become agents.

Foreign Exchange Management (Insurance) Regulations 2000

These Regulations, notified by the Reserve Bank of India, prohibit resident Indians from taking out life/general insurance policies issued by an insurer outside India.

The Foreign Exchange Management (Insurance) (Amendment) Regulations 2002 subsequently added the following: 'Provided further that the prohibition against taking a general insurance policy issued by an insurer outside India shall not apply to a unit located in Special Economic Zone'.

Foreign Exchange Management (Insurance) Regulations 2000 – Life Insurance Memorandum (LIM)

This sets out exchange control regulations that govern issues relating to the issue of life insurance policies in Rupees and in foreign currencies to non-residents, collection of premium and settlement of claims and other related matters.

- **Issue of policy and collection of premium** – in the case of resident individuals with Indian nationality, life insurance policies can be issued in foreign currency, provided that the premium
is being paid out of remittances from foreign currency funds held by them abroad, or from their resident foreign currency accounts with authorized dealers in India.

In the case of non-residents, life insurance policies denominated in foreign currency by insurers, through their offices, either in India or abroad, provided that the premium is collected in foreign currency from abroad or out of NRE/FCNR accounts of the insured or their family members held in India.

- **Claim Settlement** – in cases where the claimant is a resident outside India, for rupee life insurance policies, payment in foreign currency will only be in proportion to the amount of premium paid in foreign currency.
  
  In the case of non-resident beneficiaries, settlement in foreign currency can be made in their NRE/FCNR account.

- **Commission to overseas agents** – commission by insurance companies can be paid to their agents who are permanently resident outside India, notwithstanding that the part of the business booked by them has been for resident Indians with premiums paid in rupees in India.

**Consumer Protection Act (COPA) 1986**

- Under this Act, a consumer, as an individual, can approach the various forums prescribed under the Act for redressal if they are not satisfied with the goods or service provided.
- COPA applies to the insurance industry as well.
- Policyholders have the right to seek redress against unfair trade practices or unsatisfactory service from insurers and from agents.
- The majority of disputes relating to insurance arise out of repudiation and delays in claims.

Consumer dispute redressal forums are established in each district and for each State. The forum at the district level will hear complaints up to the value of Rs. 20,00,000, and the forum at the State level will hear complaints up to the value of Rs. 1,00,00,000. The National Commission will attend to matters beyond the jurisdiction of the State forums and also appeals against the decisions of a State forum.

**The following are basic consumer rights:**

- Right to Protection against Marketing Goods & Services.
- Right to Information.
- Right to be Safe.
- Right to Choose.
- Right to be heard
- Right to Seek Redressal.
- Right to Consumer Education.

The complaint should be filed within two years from the date on which the cause of action has arisen, unless otherwise condoned by the competent consumer Forum.

**Protection of Policy holders Interest Regulations, 2002**

With a view to protect the end consumer, IRDAI has laid down regulations which cover the following:

Matters to be stated in life insurance policy

1. A life insurance policy shall clearly state:
   
   i. The name of the plan governing the policy, its terms and conditions;
   
   ii. Whether it is participating in profits or not;
   
   iii. The basis of participation in profits such as cash bonus, deferred bonus, simple or compound reversionary bonus;
   
   iv. The benefits payable and the contingencies upon which these are payable and the other terms and conditions of the insurance contract;
   
   v. The details of the riders attached to the main policy;
   
   vi. The date of commencement of risk and the date of maturity or date(s) on which the benefits are payable;
vii. The premiums payable, periodicity of payment, grace period allowed for payment of the premium, the date for the last installment of premium, the implication of discontinuing the payment of an installment(s) of premium and also the provisions of a guaranteed surrender value;

viii. The age at entry and whether the same has been admitted;

ix. The policy requirements for (a) conversion of the policy into paid up policy (b) surrender (c) non-forfeiture and (d) revival of lapsed policies;

x. Contingencies excluded from the scope of the cover, both in respect of the main policy and the riders;

xi. The provisions for nomination, assignment and loans on security of the policy and a statement that the rate of interest payable on such loan amount shall be as prescribed by the insurer at the time of taking the loan;

xii. Any special clauses or conditions, such as, first pregnancy clause, suicide clause etc.;

xiii. The address of the insurer to which all communications in respect of the policy shall be sent;

xiv. The documents that are normally required to be submitted by a claimant in support of a claim under the policy.

2. While forwarding the policy to the insured, the insurer shall inform through the letter forwarding the policy, that the insured has a period of 15 days from the date of receipt of the policy document to review the terms and conditions of the policy and where the insured disagrees to any of those terms or conditions, he has the option to return the policy stating the reasons for his objection, whereby he shall be entitled to a refund of the premium paid, subject only to a deduction of a proportionate risk premium for the period on cover (15 days) and the expenses incurred by the insurer on medical examination of the proposer and stamp duty charges.

3. In respect of a unit linked policy, in addition to the deductions given under (2) above, the insurer shall also be entitled to repurchase the unit at the price of the units on the date of cancellation.

4. In respect of a cover, where premium charged is dependent on age, the insurer shall ensure that the age is verified, as far as possible, before issuance of the policy document. In case where age has not been admitted by the time the policy is issued, the insurer shall make efforts to obtain proof of age and admit the same as soon as possible.

Matters to be stated in general insurance policy

1. A general insurance policy shall clearly state:
   i. The name(s) and address/es of the insured and of any bank(s) or any other person having financial interest in the subject matter of insurance;
   ii. Full description of the property or interest insured;
   iii. The location or locations of the property or interest insured under the policy and where appropriate, with respective insured values;
   iv. Period of insurance;
   v. Sums insured;
   vi. Perils covered and not covered;
   vii. Any franchise or deductible applicable;
   viii. Premium payable and where the premium is provisional subject to adjustment, the basis of adjustment of premium are stated;
   ix. Policy terms, conditions and warranties;
   x. Action to be taken by the insured upon occurrence of a contingency likely to give rise to a claim under the policy;
   xi. The obligations of the insured in relation to the subject matter of insurance upon occurrence of an event giving rise to a claim and the rights of the insurer in the circumstances;
   xii. Any special conditions attached to the policy;
   xiii. Provision for cancellation of the policy on grounds of mis-representation, fraud, nondisclosure of material facts or non-cooperation of the insured;
   xiv. The address of the insurer to which all communications in respect of the insurance contract should be sent;
   xv. The details of the riders attached to the main policy;
xvi. Proforma of any communication the insurer may seek from the policyholders to service the policy.

2. Every insurer shall inform and keep informed periodically the insured on the requirements to be fulfilled by the insured regarding lodging of a claim arising in terms of the policy and the procedures to be followed by him to enable the insurer to settle a claim early.

Claims Procedure in Respect of a Life Insurance Policy

1. A life insurance policy shall state the primary documents which are normally required to be submitted by a claimant in support of a claim.

2. A life insurance company, upon receiving a claim, shall process the claim without delay. Any queries or requirement of additional documents, to the extent possible, shall be raised all at once and not in a piece-meal manner, within a period of 15 days of the receipt of the claim.

3. A claim under a life policy shall be paid or be disputed giving all the relevant reasons, within 30 days from the date of receipt of all relevant papers and clarifications required. However, where the circumstances of a claim warrant an investigation in the opinion of the insurance company, it shall initiate and complete such investigation at the earliest. Where in the opinion of the insurance company the circumstances of a claim warrants an investigation, it shall initiate and complete such investigation at the earliest, in any case not later than 6 months from the time of lodging the claim.

4. Subject to the provisions of section 47 of the Act, where a claim is ready for payment but the payment cannot be made due to any reasons of a proper identification of the payee, the life insurer shall hold the amount for the benefit of the payee and such an amount shall earn interest at the rate applicable to a savings bank account with a scheduled bank (effective from 30 days following the submission of all papers and information).

5. Where there is a delay on the part of the insurer in processing a claim for a reason other than the one covered by sub-regulation (4), the life insurance company shall pay interest on the claim amount at a rate which is 2% above the bank rate prevalent at the beginning of the financial year in which the claim is reviewed by it.

Claim Procedure in Respect of a General Insurance Policy

1. An insured or the claimant shall give notice to the insurer of any loss arising under contract of insurance at the earliest or within such extended time as may be allowed by the insurer. On receipt of such a communication, a general insurer shall respond immediately and give clear indication to the insured on the procedures that he should follow. In cases where a survey or has to be appointed for assessing a loss/ claim, it shall be so done within 72 hours of the receipt of intimation from the insured.

2. Where the insured is unable to furnish all the particulars required by the surveyor or where the surveyor does not receive the full cooperation of the insured, the insurer or the surveyor as the case may be, shall inform in writing the insured about the delay that may result in the assessment of the claim. The surveyor shall be subjected to the code of conduct laid down by the IRDAI while assessing the loss and shall communicate his findings to the insurer within 30 days of his appointment with a copy of the report being furnished to the insured, if he so desires. In certain circumstances either due to special or complicated nature of the case, the surveyor may, under intimation to the insured, seek an extension from the insurer for submission of his report. In no case shall a surveyor take more than six months from the date of his appointment to furnish his report.

3. If an insurer, on the receipt of a survey report, finds that it is incomplete in any respect, he shall require the surveyor under intimation to the insured, to furnish an additional report on certain specific issues as may be required by the insurer. Such a request may be made by the insurer within 15 days of the receipt of the original survey report. Provided that the facility of calling for an additional report by the insurer shall not be resorted to more than once in the case of a claim.

4. The surveyor on receipt of this communication shall furnish an additional report within three weeks of the date of receipt of communication from the insurer.
5. On receipt of the survey report or the additional survey report, as the case may be, an insurer shall within a period of 30 days offer a settlement of the claim to the insured. If the insurer, for any reasons to be recorded in writing and communicated to the insured, decides to reject a claim under the policy, it shall do so within a period of 30 days from the receipt of the survey report or the additional survey report, as the case may be.

6. Upon acceptance of an offer of settlement as stated in sub-regulation (5) by the insured, the payment of the amount due shall be made within 7 days from the date of acceptance of the offer by the insured. In the cases of delay in the payment, the insurer shall be liable to pay interest at a rate which is 2% above the bank rate prevalent at the beginning of the financial year in which the claim is reviewed by it.

Policyholders’ Servicing

An insurer carrying on life or general business, as the case may be, shall at all times, respond within 10 days of the receipt of any communication from its policyholders in all matters, such as:

1. Recording change of address;
2. Noting a new nomination or change of nomination under a policy;
3. Noting an assignment on the policy;
4. Providing information on the current status of a policy indicating matters, such as, accrued bonus, surrender value and entitlement to a loan;
5. Processing papers and disbursal of a loan on security of policy;
6. Issuance of duplicate policy;
7. Issuance of an endorsement under the policy; noting a change of interest or sum assured or perils insured, financial interest of a bank and other interests; and
8. Guidance on the procedure for registering a claim and early settlement

Third Party Administrators (TPA) - Health Insurance

TPAs are licensed by IRDAI and are engaged for a fee or remuneration for the provision of health services. Health services means all the services rendered by a TPA as per the terms of agreement entered into with an insurance company in connection with health insurance business, however the services rendered will not include either insurance business or soliciting of insurance business either directly or through an intermediary. They are normally contracted by a health insurer to administer services, including claims administration, premium collection, enrollment and other administrative activities.

The license to act as TPA is granted by IRDAI only to companies which have a share capital and are registered under Companies Act, 1956. As per the memorandum of the company, the primary objective should be to carry on business in India as TPA in the health services and they are not permitted to transact any other business. The minimum capital prescribed is Rs. 1,00,00,000.

As per the act at least one of the directors should be a qualified medical doctor registered with Medical Council of India. The Chief Executive Officer (CEO) of the company has to undergo training as prescribed by the IRDAI.

The TPA can enter into agreement with more than one insurance company and the insurance companies can also deal with more than one TPA.

Code of conduct for TPA

The code of conduct for TPA has been prescribed by the Act.

TPA licensed under these regulations shall as far as possible act in the best professional manner. In particular and without prejudice to the generality of the provisions contained above, it shall be the duty of every TPA, its Chief Administrative Officer or Chief Executive Officer and its employees or representatives to:-

1. Establish its or his or their identity to the public and the insured/policyholder and that of the insurance company with which it has entered into an agreement.
2. Disclose its licence to the insured/policyholder/prospect.
3. Disclose the details of the services it is authorized to render in respect of health insurance products under an agreement with an insurance company;
4. Bring to the notice of the insurance company with whom it has an agreement, any adverse report or inconsistencies or any material fact that is relevant for the insurance company’s business;
5. Obtain all the requisite documents pertaining to the examination of an insurance claim arising out of insurance contract concluded by the insurance company with the insured/policyholder;
6. Render necessary assistance specified under the agreement and advice to policyholders or claimants or beneficiaries in complying with the requirements for settlement of claims with the insurance company;
7. Conduct it/him in a courteous and professional manner;
8. Refrain from acting in a manner, which may influence directly or indirectly insured/policyholder of a particular insurance company to shift the insurance portfolio from the existing insurance company to another insurance company;
9. Refrain from trading on information and the records of its business;
10. Maintain the confidentiality of the data collected by it in the course of its agreement;
11. Refrain from resorting to advertisements of its business or the services carried out by it on behalf of a particular insurance company, without the prior written approval by the insurance company;
12. Refrain from inducing an insured/policy holder to omit any material information, or submit wrong information;
13. Refrain from demanding or receiving a share of the proceeds or indemnity from the claimant under an insurance contract;
14. Follow the guidelines/directions that may be issued down by the IRDAI from time to time.

The Role of Government

As the ultimate source of law, the Government has a key role to play in the regulation of the insurance industry in India. It has powers to act to ensure that the industry is properly regulated and takes action from time to time to promote the spread of insurance throughout India.

Power of the Central Government to supersede the IRDAI: The IRDAI Act 1999 gives the Central Government of India the power to supersede the IRDAI by issuing a notification. The Government may exercise this power if it is of the opinion that the IRDAI is unable to discharge its functions or duties (for reasons beyond the control of the IRDAI), or that it has persistently defaulted on its duties and responsibilities, or where circumstances exist which render action necessary in the public interest.

Relationship of the Central Government with the IRDAI

The IRDAI Act specifies the role that the Central Government has in relation to the IRDAI. We can sum this up as follows:

- To issue grants to the IRDAI after due appropriation made by Parliament by law, for the IRDAI to use for the purpose of the Act.
- The annual statement of accounts of the IRDAI must be audited and certified by the Comptroller and Auditor-General of India and then forwarded to the Central Government. These account statements will then be presented before each House of Parliament by the Central Government.
- The Central Government can issue directions to the IRDAI on questions of policy, other than those relating to technical and administrative matters. The Central Government may give these directions in writing from time to time and the IRDAI is bound by them.
- The IRDAI should supply returns, statements and other particulars regarding any proposed or existing program for the promotion and development of the insurance industry to the Central Government as required.
- The Central Government has the power to make rules for carrying out the provisions of the Act, and may do this by issuing a notification.
Role of the Government in the growth of the industry: The Central Government introduces various provisions from time to time to promote the growth of the insurance industry. One of the major provisions that Central Government has made is to allow foreign investment in the insurance sector. This is known as Foreign Direct Investment (FDI).

Foreign Direct Investment (FDI)

Prior to 2000 the Life Insurance Corporation (LIC) had the exclusive privilege of transacting life insurance business in India.

Insurance is a very capital intensive business with long break-even periods and requires a great deal of expertise. When the Government wanted to open up the insurance industry to private participation, the prospective participants had neither the technical expertise nor the required capital for insurance business.

Therefore, to facilitate the smooth opening up of the insurance market to private participation, and to ensure the industry’s orderly growth, the Government allowed 26% Foreign Direct Investment (FDI) in the insurance sector.

Under prevailing FDI laws for insurance at the time of writing, domestic private companies are allowed to form joint ventures (JVs) with foreign partners, in which the foreign partner can hold a 26% stake.

Since the opening up of the insurance sector to private participation in 2000, the penetration of insurance has much improved in the country. Customers have benefitted greatly in terms of the availability of innovative and customized products which cater to their requirements and are offered at competitive premiums. In order to sustain this growth, the Government proposes to increase the FDI limit in the insurance sector to 49%. At the time of writing the Bill for this is pending approval in Parliament. Once this is approved, the foreign partners will be able to increase their ownership to 49% in the joint ventures with the private domestic players. You are encouraged to keep up to date with developments in this area.

Key Indian and International Insurance Bodies

In this section we will look at some of the key bodies that play a role in the Indian insurance industry.

Insurance Regulatory and Development Authority (IRDAI): We saw in chapter 1 that in 1999 the Insurance Regulatory and Development Authority (IRDAI) were constituted as an autonomous body to regulate and develop the insurance industry following the recommendations of the Malhotra Committee report. The key objectives of the IRDAI include promoting competition, so as to enhance customer satisfaction through increased consumer choice and competitive premiums, while
ensuring the financial security of the insurance market. The IRDAI has the duty to regulate, promote and ensure the orderly growth of insurance and reinsurance business in India.

The IRDAI was incorporated as a statutory body in April 2000.

**Life Insurance Council (LI Council):** The Life Insurance Council was constituted under section 64A of the Insurance Act 1938. It functions through the Executive Committee and several sub-committees, and includes all life insurance companies in India. It develops and coordinates all discussions on behalf of the industry with the Government, the IRDAI and the public. In short, it is the face of the life insurance industry.

The objective of the Life Insurance Council is to play a significant and complementary role in transforming India’s life insurance industry into a vibrant, trustworthy and profitable service that helps people in their journey to prosperity.

**The functions of the life insurance council are as follows:**
- Maintaining high standards of ethics and governance.
- Creating a positive image of the industry and enhancing consumer confidence.
- Promoting awareness of the role and benefits of life insurance.
- Organizing structured and proactive discussions with the government, lawmakers and regulators.
- Conducting research in life insurance and contributing to the development of the sector.
- Acting as a forum of interaction with other organisations within the financial services sector.
- Playing a leading role in insurance education, training and conferences.
- Providing help and guidance to members when necessary.
- To be an active link between the Indian life insurance industry and the global markets.

**General Insurance Council (GI Council):** The General Insurance Council represents the collective interests of the general (non-life) insurance companies in India. The Council speaks out on issues of common interest, participates in discussions related to policy formation, and acts as an advocate for high standards of customer service in the insurance industry.

**Insurance Brokers Association of India (IBAI):** The Insurance Brokers Association of India (IBAI) is the IRDAI recognized apex body for all licensed insurance brokers in India. Insurance brokers have been introduced into the Indian market by the IRDAI as professionals who represent and service the interests of insurance buyers. The insurance broker represents the insurance buyer and not the insurance company, although the broker is remunerated by the insurance company. There is no additional cost to the policyholder for placing business through an insurance broker.

**Institute of Actuaries of India (IAI):** The Institute of Actuaries of India (IAI) (formally the Actuarial Society of India – ASI) was formed in 1944 and was registered as a member of the International Actuarial Association in 1979. An actuary is an expert who applies mathematical and statistical methods for assessing the risk associated with certain events in insurance. An actuary should be a fellow of the Institute of Actuaries of India (IAI).

**The IAI was started with the objectives of:**
- Advancing the actuarial profession in India;
- Providing opportunities for interaction among members of the profession;
- Facilitating research and arranging lectures on relevant subjects; and
- Providing facilities and guidance to those studying for the actuarial exams

**Tariff Advisory Committee (TAC):** The Tariff Advisory Committee (TAC) was established by section 64U of the Insurance Act 1938 to control and regulate the rates, advantages, terms and conditions offered by insurers in respect of general insurance business. Consequently, in the past the pricing of many insurance products was based on rates prescribed by the TAC. The TAC has been designated by the IRDAI as the data repository for the non-life insurance industry. The IRDAI is in the process of implementing, in a phased manner, the de-tarification of rates; this has been completed for some classes of non-life insurance but not yet for others.
Detariffication is the process of freeing the pricing of insurance so that insurers can price their products on the basis of their risk assessment and as driven by the market, rather than having a price imposed upon them.

While the pricing of insurance products is no longer dictated by the TAC, the standard policy wordings framed by the TAC are still being used by insurers.

**Insurance Institute of India (III):** The Insurance Institute of India (III) was formed in 1955 as the Federation of Insurance Institutes, becoming the III in 1987. Its purpose is to promote insurance education and training in India, and it is closely associated with all the segments of the insurance industry, including the IRDAI and both public and private sector insurance companies.

The institute conducts examinations at various levels and works with other international insurance bodies in Canada, the USA and the UK, including the Chartered Insurance Institute.

**National Insurance Academy (NIA), Pune:** The NIA was set up in 1980 by the Government with support from the LI Council, GI Council and the four PSU general insurers. The main objective of NIA, Pune is to design, implement and operate an insurance training architecture that will engage the participating executives, faculty and staff in assisted learning, research, management and communications. It is an apex institution for research, training, education, consultancy, publication and leadership development in insurance and risk management. The NIA has produced numerous competent insurance executive practitioners through cognitive development programs.

**Chartered Insurance Institute (CII):** The Chartered Insurance Institute (CII) was formed in the UK by Royal Charter in 1912 and, with over 95,000 members in more than 150 countries and is the largest insurance and financial services professional body in the world. The CII is committed to the adoption of consistent professional global standards and works with local regulators, educational partners and industry organisations to improve the professionalism, skills and behavior of insurance and financial service staff and agents working in their local markets.

**Institute of Insurance and Risk Management (IIRM), Hyderabad:** The Institute of Insurance and Risk Management (IIRM) is an international education and research organisation. The Institute was set up jointly by the IRDAI and the State Government of Andhra Pradesh in 2002, as per the provisions of section 14(f) of the IRDAI Act 1999 for the promotion of International Post Graduate Diploma Courses in insurance and risk management (regular and distance learning courses).

The IIRM aims to serve the learning and development needs of emerging markets in the context of their contemporary challenges in the insurance sector.

**Duties, powers and functions of the IRDAI and other Regulators**

**IRDAI:** The duties, powers and functions of the IRDAI are laid down by section 14 of the IRDAI Act 1999. The IRDAI Act gives the IRDAI the power to:

(a) Issue to applicants (companies) a certificate of registration and renew, modify, withdraw, suspend or cancel such registration;

(b) Protect the interests of policyholders in matters concerning the assigning of the policy, nomination by policyholders, insurable interest, settlement of insurance claims, the surrender value of the policy and other terms and conditions of contracts of insurance;

(c) Specify the requisite qualifications, code of conduct and practical training for intermediaries and agents;

(d) Specify a code of conduct for surveyors and loss assessors;

(e) Promote efficiency in the conduct of insurance business;

(f) Promote and regulate professional organisations connected with the insurance and reinsurance business;

(g) Specify the percentage of premium income to come from insurance companies to finance schemes for promoting and regulating the professional organisations referred to in clause (f);

(h) Levy fees and other charges for carrying out the purposes of this act;
(i). call for information from, undertake the inspection of, conduct enquiries in, investigate and audit insurance companies, intermediaries and other organisations connected with the insurance business;

(j). Control and regulate the rates, advantages, terms and conditions that may be offered by insurers in respect of general insurance business that is not controlled and regulated by the Tariff Advisory Committee (TAC) under section 64U of the insurance Act 1938 (see section B6):

(k). Specify the form and manner in which books of accounts are to be maintained and the statement of accounts are to be rendered by insurance companies and intermediaries;

(l). Regulate the investment of funds by insurance companies;

(m). Regulate the maintenance of the margin of solvency the law required of each insurance company (note: the margin of solvency is the amount by which an insurance company’s assets must exceed its liabilities);

(n). Adjudicate in disputes between insurance companies and intermediaries;

(o). Supervise the functioning of the Tariff Advisory Committee (TAC) (See Section B6).

(p). Specify the percentage of life insurance business and general insurance business to be undertaken by the insurance company in the rural or social sector; and

(q). Exercise such other powers as may be prescribed.

Reserve Bank of India (RBI): The Reserve Bank of India is the Central Bank of India and was set up on 1 April 1935 in accordance with the provisions of the Reserve Bank of India Act 1934. The RBI is the regulator, supervisor and monetary authority of the financial system in India. It provides guidelines for banking operations within which the country’s banking and financial systems operate. The RBI formulates, implements and monitors the monetary policy of the country and ensures that price stability is maintained.

Securities and Exchange Board of India (SEBI): The SEBI was established on 12 April 1992 in accordance with the provision of Securities and Exchange Board of India Act 1992. The SEBI is the regulator for the securities market in India and protects the interests of all investors in the securities market. It is also responsible for promoting the development of the securities market through appropriate measures as required from time to time.

INSURANCE INTERMEDIARIES

Insurance products can be either sold directly by the licensed insurance companies or it can be marketed through intermediaries holding authorized sanction from IRDAI. With a view to ensure that the insurance policies are marketed only by licensed agents and brokers, the regulator has laid down stringent regulations for granting of license to the intermediaries.

While agents play a key role in marketing insurance products, the role played in life insurance and personal insurance by the agents is far greater than in commercial, property and liability insurance which are largely availed by corporates.

Individual Agent

As per the Licensing of Insured Agents Regulations, 2000, the agents are required to hold a license issued by IRDAI/ authorized office of the insurance company (usually the corporate office is designated as the authorized office by the insurer). The license once issued is valid for a period of three years and a license fee is applicable. On expiry of three years the license has to be renewed. The applications for renewal should reach the insurance company at least 30 days prior to the expiry of the license.

IRDAI (Licensing Of Insurance Agents) Regulations 2000

In July 2000 the IRDAI issued the Insurance Regulatory and Development Authority (Licensing of Insurance Agents) Regulations. This is a key piece of legislation for you to know about as it relates to the issue and renewal of licenses for insurance agents.

Becoming an Agent: There are a number of steps that you as an individual need to take, and a number of criteria that you will need to fulfill, if you wish to become a life insurance agent.
Exhibit 5.5: Procedure to become a Licensed Insurance Agent

**Application:** Firstly, a person who wishes to obtain a licence to act as an insurance agent must make an application, in the required format, to a designated person as specified in Regulation 3. The application must be accompanied by the fee of Rs. 250, payable to the authority as specified in Regulation 7.

**Qualification:** The applicant must possess the necessary qualification, as specified under Regulation 4, as follows.

<table>
<thead>
<tr>
<th>An applicant living in a place that has a population of 5,000 or more as per the last census:</th>
<th>An applicant living anywhere else:</th>
</tr>
</thead>
<tbody>
<tr>
<td>• A minimum 12(^{th}) Standard pass; or&lt;br&gt;• An equivalent examination provided by any recognized board or institution.</td>
<td>• A minimum 10(^{th}) Standard pass; or&lt;br&gt;• An equivalent examination provided by any recognized board or institution.</td>
</tr>
</tbody>
</table>

**Practical Training:** The applicant needs to receive practical training, as specified under Regulation 5. When seeking a licence for the first time, the applicant needs to have completed at least 50 hours (75 hours in case of a composite agency) of practical training in the life insurance business by an approved institution. However, the requirement for practical training is relaxed somewhat where the applicant has additional educational qualifications (as specified under sub-regulation (1)).

**Examination:** An applicant also needs to pass the pre-recruitment examination in life insurance business as specified under Regulation 6. The examination may be conducted by the Insurance Institute of India (III) or any other approved examination body.

**Issue of Licence**

The designated person may grant the licence on being satisfied that the applicant:

- Is in compliance with Regulation 4 (is properly qualified);
- Is in compliance with Regulation 5 (has had practical training);
- Is in compliance with Regulation 6 (has passed the necessary examination);
Has supplied an application, complete in all respects;  
Has the knowledge necessary to be able to seek and gain insurance business; and  
Is capable of providing the necessary service to policyholders.

Renewal of License: Before seeking a renewal of their licence to act as an insurance agent, the applicant needs to have completed at least 25 hours of practical training in life insurance business from an approved institution as specified in Regulation 5(3).

Cancellation of License: The designated person may cancel the licence of an insurance agent if the agent suffers from any of the disqualifications mentioned in sub-section (4) of section 42 of the Act.

The disqualifications mentioned in this sub-section that are applicable to an individual agent are as follows:

- The individual is a minor.
- The individual is found to be of unsound mind by a court of competent jurisdiction.
- The individual is found guilty of criminal misappropriation, breach of trust, cheating, forgery, or of abetting or attempting to commit such an offence by a court of competent jurisdiction.
  - However, if at least five years have passed since the completion of the sentence imposed for such an offence, ordinarily the conviction ceases to operate as a disqualification.
- The individual is found guilty of, or is found to have knowingly participated in any fraud, dishonesty or misrepresentation against an insurer or an insured.
- The individual does not possess the necessary qualifications or has not undergone the necessary training for a period not exceeding twelve months as specified by the Regulations.
- The individual has violated the Code of Conduct.

Issue of Duplicate License: The authority may issue a duplicate licence to replace a licence lost, destroyed, or mutilated on payment of a fee of Rs. 50.

Operating without a License: An individual who acts as an insurance agent without holding a licence will be fined up to Rs. 500.

Corporate Agent

The following entities can apply to become a corporate agent:

i. A firm  
ii. Company formed under the Company’s Act, 1956  
iii. Banking company  
iv. Regional Rural Bank (RRBs)  
v. Co-operative societies, Co-operative Banks  
vi. Panchayat/Local Authority  
vii. NGO as approved by the IRDAI

Code of Conduct

Every person holding a licence shall adhere to the code of conduct specified below:

1. Every insurance agent shall:

   i. Identify himself (through an identity card issued by the insurance company) and the insurance company of whom he is an insurance agent;  
   ii. Disclose his licence to the prospect on demand;  
   iii. Disseminate the requisite information in respect of insurance products offered for sale by his insurer (insurance company) and take into account the needs of the prospect while recommending a specific insurance plan;  
   iv. Disclose the scales of commission in respect of the insurance products offered for sale, if asked by the prospect;  
   v. Indicate the premium to be charged by the insurer for the insurance products offered for sale;
vi. Explain to the prospect the nature of information required in the proposal form by the insurer and also the importance of disclosure of material information in the purchase of an insurance contract;

vii. Bring to the notice of the insurer any adverse habits or income inconsistency of the prospect, in the form of a report (called “Insurance Agent’s Confidential Report”) along with every proposal submitted to the insurer and any material fact that may adversely affect the underwriting decision of the insurer as regards acceptance of the proposal, by making all reasonable enquiries about the prospect;

viii. Inform promptly the prospect about the acceptance or rejection of the proposal by the insurer;

ix. Obtain the requisite documents at the time of filing the proposal form with the insurer and other documents subsequently asked for by the insurer for completion of the proposal;

x. Render necessary assistance to the policyholders or claimants or beneficiaries in complying with the requirements for settlement of claims by the insurer;

xi. Advise every individual policyholder to effect nomination or assignment or change of address or exercise of options, as the case may be and offer necessary assistance in this behalf, wherever necessary;

xii. With a view to conserve the insurance business already procured through him, make every attempt to ensure remittance of the premiums by the policyholders within the stipulated time, by giving notice to the policyholder orally and in writing.

2. No insurance agent shall:

   i. Solicit or procure insurance business without holding a valid licence;

   ii. Induce the prospect to omit any material information in the proposal form;

   iii. Induce the prospect to submit wrong information in the proposal form or documents submitted to the insurer for acceptance of the proposal;

   iv. Behave in a discourteous manner with the prospect;

   v. Interfere with any proposal introduced by any other insurance agent;

   vi. Offer different rates, advantages, terms and conditions other than those offered by his insurer;

   vii. Demand or receive a share of proceeds from the beneficiary under an insurance contract;

   viii. Force a policyholder to terminate the existing policy and to effect a new proposal from him within three years from the date of such termination;

   ix. Have, in case of a corporate agent, a portfolio of insurance business under which the premium is in excess of fifty percent of total premium procured, in any year, from one person (who is not an individual) or one organisation or one group of organisations;

   x. Apply for fresh licence to act as an insurance agent, if his licence was earlier cancelled by the designated person and a period of five years has not elapsed from the date of such cancellation;

   xi. Become or remain a director of any insurance company;

Broking Regulations

IRDAI regulations classify brokers into three categories:

![Exhibit 5.6: Types of Brokers](image-url)
Brokers represent a client while agents represent an insurer. The direct brokers are authorized to represent clients and arrange insurance policies for them in life as well as in general insurance and can place business with any of the insurance companies. Reinsurance brokers represent direct insurers and arrange reinsurance (when an insurance company insures a part of the business underwritten by them with another insurance, it is called reinsurance) with Reinsurance companies. Composite brokers are licensed to place direct as well as reinsurance business with insurers.

The broker can be an individual, partnership firm, company or a society. The principal officer of the broker should possess the minimum qualifications prescribed in the IRDAI Act, he has to undergo 100 hours of practical training and pass the exams conducted by the National Insurance Academy (NIA) or any other body recognized by the IRDAI.

The brokers have to comply with minimum capital requirements specified by IRDAI.

**Functions of a Direct Broker**

The functions of a direct broker include any one or more of the following:

a. Obtaining detailed information of the client’s business and risk management philosophy;

b. Familiarizing himself with the client’s business and underwriting information so that this can be explained to an insurer and others;

c. Rendering advice on appropriate insurance cover and terms;

d. Maintaining detailed knowledge of available insurance markets, as may be applicable;

e. Submitting quotation received from insurer/s for consideration of a client;

f. Providing requisite underwriting information as required by an insurer in assessing the risk to decide pricing terms and conditions for cover;

g. Acting promptly on instructions from a client and providing him written acknowledgements and progress reports;

h. Assisting clients in paying premium under section 64VB of Insurance Act, 1938 (4 of 1938);

i. Providing services related to insurance consultancy and risk management;

j. Assisting in the negotiation of the claims; and

k. maintaining proper records of claims;

**Functions of a Re-insurance Broker**

The functions of a re-insurance broker include any one or more of the following:

a. Familiarizing himself with the client’s business and risk retention philosophy;

b. Maintaining clear records of the insurer’s business to assist the reinsurer(s) or others;

c. Rendering advice based on technical data on the reinsurance covers available in the international insurance and the reinsurance markets;

d. Maintaining a database of available reinsurance markets, including solvency ratings of individual reinsurers;

e. Rendering consultancy and risk management services for reinsurance;

f. Selecting and recommending a reinsurer or a group of reinsurers;

g. Negotiating with a reinsurer on the client’s behalf;

h. Assisting in case of commutation of reinsurance contracts placed with them;

i. Acting promptly on instructions from a client and providing it written acknowledgements and progress reports;

j. Collecting and remitting premiums and claims within such time as agreed upon;

k. Assisting in the negotiation and settlement of claims;

l. Maintaining proper records of claims; and

m. Exercising due care and diligence at the time of selection of reinsurers and international insurance brokers having regard to their respective security rating and establishing respective responsibilities at the time of engaging their services.

**Functions of Composite Broker**: A composite broker carries out any one or more of the functions mentioned above.
**Procedure for Licensing:** The IRDAI on being satisfied that the applicant fulfills all the conditions specified for the grant of licence, grants a licence in Form B and sends intimation thereof to the applicant mentioning the category for which the IRDAI has granted the licence. The licence shall be issued subject to the insurance broker adhering to the conditions and the code of conduct as specified by the IRDAI from time to time.

**Validity of Licence:** A licence once issued shall be valid for a period of three years from the date of its issue, unless the same is suspended or cancelled pursuant to these regulations.

**Renewal of Licence**

1. An insurance broker may, within thirty days before the expiry of the licence, make an application in Form A to the IRDAI for renewal of licence.
   
   Provided however that if the application reaches the IRDAI later than that period but before the actual expiry of the current licence, an additional fee of rupees one hundred only shall be payable by the applicant to the IRDAI. Provided further that the IRDAI may for sufficient reasons offered in writing by the applicant for a delay not covered by the previous proviso, accept an application for renewal after the date of the expiry of the licence on a payment of an additional fee of seven hundred and fifty rupees only by the applicant.

2. An insurance broker before seeking a renewal of licence, shall have completed, atleast twenty five hours of theoretical and practical training, imparted by an institution recognized by the IRDAI from time to time.

3. The IRDAI, on being satisfied that the applicant fulfills all the conditions specified for a renewal of the licence, shall renew the licence in Form B for a period of three years and send intimation to that effect to the applicant.

4. An insurance broker licensed under these regulations for a specified category may also apply for the grant of a licence by the IRDAI for any other category by fulfilling the requirements of these regulations. However, such application shall be made only after a lapse of one year from the grant of a licence in the first instance.

**Remuneration**

No insurance broker shall be paid or contracted to be paid by way of remuneration (including royalty or licence fees or administration charges or such other compensation), an amount exceeding:

1. On direct general insurance business
   i. On tariff products:
      a. 10 percent of the premium on that part of the business which is compulsory under any statute or any law in force;
      b. 12½ percent of the premium on others.
   ii. On non-tariff products:
      17½ percent of the premium on direct business.

2. On direct life insurance business -
   i. Individual insurance
      a. 30 percent of first year’s premium
      b. 5 per cent of each renewal premium
   ii. Annuity
      a. Immediate annuity or a deferred annuity in consideration of a single premium, or where only one premium is payable on the policy, 2 percent of the premium
      b. deferred annuity in consideration of more than one premium:
         i. 7½ percent of first year’s premium
         ii. 2 percent of each renewal premium

3. Group insurance and pension schemes:
i. One year renewable group term insurance, gratuity, superannuation, group savings linked insurance — 7½ percent of risk premium  
   Note: Under group insurance schemes there will be no remuneration for the savings component.

ii. Single premium - 2 percent of risk premium

iii. Annual contributions, at new business procurement stage - 5 percent of non risk premium with a ceiling of Rupees three lakhs per scheme.

iv. Single premium new business procurement stage - 0.5 percent with a ceiling of Rupees five lakhs per scheme.

v. Remuneration for subsequent servicing - one year renewable group term assurance - 2 percent of risk premium with a ceiling of rupees 50,000/- per scheme.

4. On reinsurance business
   i. As per market practices prevalent from time to time.

Professional Indemnity Insurance:

1. Every insurance broker shall take out and maintain and continue to maintain a professional indemnity insurance cover throughout the validity of the period of the licence granted to him by the IRDAI, provided that the IRDAI shall in suitable cases allow a newly licensed insurance broker to produce such a guarantee within fifteen months from the date of issue of original licence.

2. The insurance cover must indemnify an insurance broker against —
   ii. Any error or omission or negligence on his part or on the part of his employees and directors;
   iii. Any loss of money or other property for which the broker is legally liable in consequence of any financial or fraudulent act or omission;
   iv. Any loss of documents and costs and expenses incurred in replacing or restoring such documents;
   v. Dishonest or fraudulent acts or omissions by brokers’ employees or former employees.

3. The indemnity cover
   i. Shall be on a yearly basis for the entire period of licence;
   ii. Shall not contain any terms to the effect that payments of claims depend upon the insurance broker having first met the liability;
   iii. Shall indemnify in respect of all claims made during the period of the insurance regardless of the time at which the event giving rise to the claim may have occurred, provided that an indemnity insurance cover not fully conforming to the above requirements shall be permitted by the IRDAI in special cases for reasons to be recorded by it in writing.

4. Limit of indemnity for any one claim and in the aggregate for the year in the case of insurance brokers is as follows:

<table>
<thead>
<tr>
<th>Table 5.1: Categories of Insurance Brokers and their Limit of Indemnity</th>
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</thead>
<tbody>
<tr>
<td><strong>Category of Insurance Broker</strong></td>
</tr>
<tr>
<td>(i) Direct Broker</td>
</tr>
<tr>
<td>(ii) Reinsurance broker</td>
</tr>
<tr>
<td>(iii) Composite Broker</td>
</tr>
</tbody>
</table>

5. The un-insured excess in respect of each claim shall not exceed five percent of the capital employed by the insurance broker in the business.

6. The insurance policy shall be obtained from any registered insurer in India who has agreed to
   i. Provide the insurance broker with an annual certificate containing the name, address, licence number of the insurance broker, the policy number, the limit of indemnity, the
excess (i.e. the balance amount, which as per policy, has to be borne by the insured in the event of a claim) and the name of the insurer, as evidence that the cover meets the requirements of the IRDAI;

ii. Send a duplicate certificate to the IRDAI at the time the certificate is issued to the insurance broker; and

iii. Inform the insurer immediately of any case of voidance, non-renewal or cancellation of cover mid-term.

7. Every insurance broker shall
   i. Inform immediately the IRDAI should any cover be cancelled or voided or if any policy is not renewed;
   ii. Inform immediately the insurer in writing of any claim made by or against it;
   iii. Advise immediately the insurer of all circumstances or occurrences that may give rise to a claim under the policy; and
   iv. Advise the IRDAI as soon as an insurer has notified that it intends to decline indemnity in respect of a claim under the policy.

Types of Agents

Captive Agents: Owning and operating a “captive” insurance agency means working for one company. You will only have to learn one company’s products, policies and guidelines. There’s usually ample training, assistance setting up your agency, and you won’t have to worry about doing any of your own advertising and marketing because you’ll have the added benefit of a nationally recognized brand. You will also likely have a more reliable form of compensation such as a salary and benefits, plus sales bonuses depending on how well you do.

Independent Agents: Your main priority for your independent agency will be to build your own book of business and do the right thing by your customers. You can make your own hours, your own rules, and market your agency how and when you want. You’ll be able to specialize in any, and as many lines of business as you want. Best of all, you will be able to provide competitive quotes for your clients by shopping a multitude of different insurance carriers products! This means if you can’t find a suitable product with one carrier, you’re free to search out another carrier with a more suitable product line for your clients’ needs.