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Insurance Legislation

Need for Change?

बीमा विनियामक और विकास प्राधिकरण

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From the Publisher

An insufficient understanding of the terms of a contract between two parties creates a possible misunderstanding; and in due course, the need for intervention by the courts and other redressal mechanisms. Insurance contracts are lot more difficult to comprehend and are entered into mostly to cover unforeseen calamities. They are rarely invoked as in many cases the contingencies contemplated under the contract do not arise. Hence adequate attention is not paid at the time the contract is concluded. When contingencies occur disputes do arise as there are differences in the perception of the insured and the insurer. The source of dispute is the clauses in the contract which draw their support from insurance legislation.

Insurance Act, 1938 is the main piece of insurance legislation in India and it has withstood the test of time by providing strength and wholesomeness to whatever litigation that arose. However, the face of the industry has changed a great deal over a period of time; and the Indian consumer is now exposed to a highly evolved insurance industry with a large number of multinational insurance companies operating in the country as joint venture partners with Indian promoters. As a consequence, several new products hitherto unknown in the Indian market have been introduced.

One area that continues to cause concern is the number of customer grievances in insurance, especially in a few specific classes. This calls for more transparency in designing the contract wording and on insisting that the applicant is sufficiently informed about the coverage and more particularly the exclusions. In addition, the legislation itself requires to be transformed to meet the needs of the emerging markets. The Law Commission of India which has gone extensively into the various insurance laws has submitted its report. Further, the expert committee headed by Mr. K.P. Narasimhan has also submitted its proposals requiring amendments to the laws.

'Insurance Laws' is the focus of this issue of the **Journal**. There is an increasing thrust on financial inclusion and attempts are being made to ensure that the weaker sections of the society are given sufficient attention. The rapidly expanding insurance industry is also greatly influenced by the focus on financial inclusion. 'Micro-insurance' will be the focus of the next issue of the **Journal**.

C.S. Rao

C.S. Rao

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THINKING CAP

Contracts of Insurance

Dr. G. Gopalakrishna

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ISSUE FOCUS

FOLLOW THROUGH

The Complexities of Insurance Legislation

Insurance is a domain where the incidence of consumer grievances is high. This stems mostly from the fact that insurance contracts are not well-understood, even by the formally educated elite, in some cases. While several classes of insurance business are exposed to this challenge, there are some classes that are additionally vulnerable; owing to the fact that interpretation of clauses is even more intricate. All this presupposes the existence of a legislation that can put things in the right perspective; and at the same time accomplish that delicate balance of sustained business growth and implementation of justice.

It has been mentioned *ad nauseum* that Insurance Act, 1938 is a comprehensive piece of legislation that has served the purpose for a very long period; and no denying the fact. All the same, in view of the fresh challenges that the industry has been confronted with; isn't it time we pondered over some of its contents? Insurable interest, for example, has been widely interpreted globally. Its applicability in insurance contracts needs no emphasis. However, certain verdicts given in a few cases recently have thrown new challenges in this area. Secondary trading in life insurance contracts, which challenges a puritan's understanding of insurable interest, is vastly successful in some markets; and has been upheld sporadically at home as well. Trading in life insurance contracts necessarily creates an interest for the transferee to look forward to an early death of the life assured. In a domain where the awareness levels of the nuances of insurance contracts are pretty low, this could have dangerous portends. There is need for the legislation to be very strong and specific in this aspect. Another sensitive area that has been a perennial bone of contention is the Clause of Indisputability; or Section 45 in more mundane terms. There is need to achieve better clarity in this regard as to what exactly amounts to material suppression, intent to defraud etc. In the absence of this, insurers would tend to interpret its contents to repudiate claims and on the other hand, the insured would exploit the loose ends to get cases settled in their favour. During the interregnum, however, there is need to concede the benefit of doubt in favour of the insured.

Further, the resurgent insurance market is throwing up various challenges hitherto unknown – particularly in the area of market-linked policies in the life arena and the recently detariffed classes of non-life domain. There is need to rise to the occasion and be equal to the task of being unbiased in our approach. 'Insurance Laws' is the focus of this issue of the **Journal.** We open the issue with none other than the Chairman of the Expert Committee Mr. K.P. Narasimhan who gives a vivid account of the areas that need to be revisited in light of the changing face of the insurance market. Mr. Varadarajan in his article 'Some Important Aspects of Insurance Law' takes up issues pertaining to some of the sections in the Insurance Act and discusses threadbare the way forward. In the next article by Mr. Joy Basu, you get to read about what could amount to a murder in an accident; and how insurance contracts could be the target.

Mr. S.V. Krishna Mohan delves into the details of some of the recommendations of the Law Commission and how the changes are to be interpreted to the changing needs of a more modern society. Mr. Lalit Vermani in his article 'The Changing Face of Insurance Laws' throws light on the genesis and the evolution of insurance laws in the country and how they have to be realigned to the changing needs. Ms. Sujata Punjabi takes us to the domain of the remunerations of distribution personnel and the legal provisions associated with it. Closely aligned with the legalities of a contract is an article in the 'Thinking Cap' section by Dr. G. Gopalakrishna. In the end, we have an article by Mr. Kaushalendra Maurya, in the follow-through section, which talks about the operational risk for insurers.

The micro-finance institutions have created a flutter in rural economy through a refreshingly different approach. Insurance, which has to reach the masses, sooner than later, can emulate the model and emerge successful. 'Microinsurance' will be the focus of the next issue of the **Journal.**

U. Jawaharlal

Report Card:LIFE

First Year Premium of Life Insurers for the Period Ended August, 2007

Sl No.	Insurer	Premium u/w (Rs. in Crores)			No. of Policies / Schemes			No. of lives covered under Group Schemes		
		August, 07	Up to August, 07	Up to August, 06	August, 07	Up to August, 07	Up to August, 06	August, 07	Up to August, 07	Up to August, 06
1	**Bajaj Allianz**									
	Individual Single Premium	57.07	193.51	407.95	8616	32282	18043			
	Individual Non-Single Premium	355.59	1285.57	586.97	250525	974635	353326			
	Group Single Premium	1.70	4.91	2.47	0	0	1	1022	3716	913
	Group Non-Single Premium	1.97	8.26	8.94	27	111	77	67995	231538	237937
2	**ING Vysya**									
	Individual Single Premium	1.64	6.80	15.06	116	518	1037			
	Individual Non-Single Premium	50.21	194.50	144.51	32477	117082	70893			
	Group Single Premium	0.00	0.85	2.03	0	0	0	0	168	477
	Group Non-Single Premium	1.08	2.05	3.46	1	7	21	8343	39285	6712
3	**Reliance Life**									
	Individual Single Premium	15.45	52.96	56.03	3172	10736	8710			
	Individual Non-Single Premium	105.39	360.06	148.56	52132	205693	81114			
	Group Single Premium	18.62	51.57	7.53	11	28	11	4608	41806	7880
	Group Non-Single Premium	2.36	9.62	3.20	20	114	53	34925	173007	77551
4	**SBI Life**									
	Individual Single Premium	97.06	270.73	104.37	12968	37903	13985			
	Individual Non-Single Premium	131.07	456.01	279.24	39792	152430	118435			
	Group Single Premium	17.03	74.50	74.36	0	0	2	7601	38311	47027
	Group Non-Single Premium	22.08	66.87	50.92	5	18	178	34476	155797	392966
5	**Tata AIG**									
	Individual Single Premium	2.58	10.03	2.30	439	1379	0			
	Individual Non-Single Premium	52.55	227.62	184.33	34495	168635	142523			
	Group Single Premium	4.95	27.26	21.09	0	0	3	33203	171871	115665
	Group Non-Single Premium	2.84	14.87	8.04	8	24	49	10005	76348	113713
6	**HDFC Standard**									
	Individual Single Premium	11.00	43.72	49.65	76622	139189	30166			
	Individual Non-Single Premium	152.08	607.63	337.47	45541	203619	89227			
	Group Single Premium	14.63	23.99	32.98	16	55	48	11124	56431	102752
	Group Non-Single Premium	1.83	31.21	17.93	5	16	7	4151	17851	1486
7	**ICICI Prudential**									
	Individual Single Premium	30.65	134.21	101.31	4719	21296	16110			
	Individual Non-Single Premium	440.26	1631.86	1113.84	194641	833407	509582			
	Group Single Premium	12.89	78.16	56.31	21	89	69	81780	189219	51360
	Group Non-Single Premium**	23.54	171.62	151.71	53	225	162	44520	241036	150311
8	**Birla Sunlife**									
	Individual Single Premium	0.77	9.42	11.95	6915	24711	6499			
	Individual Non-Single Premium	129.29	368.00	211.97	34221	122932	71804			
	Group Single Premium	0.30	1.53	4.50	0	3	0	333	1900	2639
	Group Non-Single Premium	2.64	28.60	34.50	12	56	25	13703	54585	18860

9	**Aviva**									
	Individual Single Premium	1.61	8.25	10.55	253	1228	810			
	Individual Non-Single Premium	69.71	275.37	220.74	27107	117011	90759			
	Group Single Premium	0.22	1.28	1.20	0	0	1	158	583	699
	Group Non-Single Premium	5.89	15.59	14.16	28	60	30	70238	267127	124500
10	**Kotak Mahindra Old Mutual**									
	Individual Single Premium	2.10	8.06	17.21	282	1004	1797			
	Individual Non-Single Premium	47.76	182.38	110.51	17464	68468	33248			
	Group Single Premium	2.00	8.17	2.01	1	1	2	10572	63667	11381
	Group Non-Single Premium	5.78	18.98	17.42	18	83	55	31319	170831	93303
11	**Max New York**									
	Individual Single Premium	16.01	78.28	0.36	1157	4983	82			
	Individual Non-Single Premium	71.02	387.20	248.99	46251	256734	186955			
	Group Single Premium	0.00	0.00	0.00	0	0	0	0	0	0
	Group Non-Single Premium	5.25	14.31	1.43	49	187	24	40338	235189	21193
12	**Met Life**									
	Individual Single Premium	2.07	10.11	1.97	348	1549	394			
	Individual Non-Single Premium	39.23	154.40	68.29	16370	59126	29046			
	Group Single Premium	0.67	4.06	0.00	1	34	0	5638	83543	0
	Group Non-Single Premium	0.00	0.00	7.30	0	0	113	0	0	258809
13	**Sahara Life**									
	Individual Single Premium	3.11	9.54	5.58	804	2484	1419			
	Individual Non-Single Premium	4.79	17.16	1.60	6713	26638	4787			
	Group Single Premium	0.00	0.00	0.00	0	0	0	0	0	0
	Group Non-Single Premium	0.00	0.00	0.94	2	2	2	52	52	103131
14	**Shriram Life**									
	Individual Single Premium	14.01	43.59	4.29	2686	8533	966			
	Individual Non-Single Premium	7.92	36.95	13.99	5697	22574	21214			
	Group Single Premium	0.00	0.00	0.00	0	0	0	0	0	0
	Group Non-Single Premium	0.00	0.00	0.00	0	0	0	0	0	0
15	**Bharti Axa Life**									
	Individual Single Premium	0.14	0.32	0.00	13	30	0			
	Individual Non-Single Premium	4.12	12.32	0.85	4182	11669	72			
	Group Single Premium	0.00	0.00	0.00	0	0	0	0	0	0
	Group Non-Single Premium	0.00	0.00	0.00	0	0	0	0	0	0
	Private Total									
	Individual Single Premium	**255.26**	**879.54**	**788.56**	**119110**	**287825**	**100018**			
	Individual Non-Single Premium	**1661.00**	**6197.03**	**3671.86**	**807608**	**3340653**	**1802985**			
	Group Single Premium	**73.01**	**276.28**	**204.48**	**50**	**210**	**137**	**156039**	**651215**	**340793**
	Group Non-Single Premium	**75.26**	**381.97**	**319.96**	**228**	**903**	**796**	**360065**	**1662646**	**1600472**
16	**LIC**									
	Individual Single Premium	1697.84	6452.19	9274.49	505712	1773279	2142152			
	Individual Non-Single Premium	3576.77	10293.88	6844.49	4212782	12304353	5683280			
	Group Single Premium	746.00	3460.59	2462.23	2259	8525	6426	3250088	8449119	5641496
	Group Non-Single Premium	0.00	0.00	0.00	0	0	0	0	0	0
	Grand Total									
	Individual Single Premium	**1953.10**	**7331.72**	**10063.05**	**624822**	**2061104**	**2242170**			
	Individual Non-Single Premium	**5237.77**	**16490.91**	**10516.35**	**5020390**	**15645006**	**7486265**			
	Group Single Premium	**819.01**	**3736.88**	**2666.71**	**2309**	**8735**	**6563**	**3406127**	**9100334**	**5982289**
	Group Non-Single Premium	**75.26**	**381.97**	**319.96**	**228**	**903**	**796**	**360065**	**1662646**	**1600472**

Note: 1. Cumulative premium upto the month is net of cancellations which may occur during the free look period.
2. Compiled on the basis of data submitted by the Insurance companies.

Encouraging the Growth of Micro-insurance

Formidable, But Essential

'THERE IS A STRONG NEED TO ENCOURAGE THE MASSES TO INCULCATE THE HABIT OF INSURING THEIR ASSETS, LIVES, HEALTH ETC. THIS IS A DAUNTING TASK THAT DEMANDS THE DEDICATION OF SEVERAL FORCES ASSOCIATED WITH THE CAUSE' OPINES **U. JAWAHARLAL.**

Despite all the economic boom that the country has been witnessing and the ever-increasing growth rate, there is no doubt that the incidence of poor population is still very high. Percentages may indicate differently but considering the huge population, even a smaller percentage would necessarily mean that the numbers are still very huge. Poverty alleviation programs have always been a priority for the policy makers of the nation. To this end, several initiatives have been taken and continue to be taken. Further, the poverty alleviation programmes have been supplemented by empowerment programs for the economically downtrodden sections of the society in order to bring them into the main stream. One should admit that several of these initiatives have yielded results and one gets to see a better standard of living which is more visible in the country-side.

Micro-finance institutions have been doing a great job towards strengthening the cause of poverty alleviation. Apart from active lending, some of the micro-finance organizations also provide other services that help in productivity enhancement and business development. All this has helped the economically downtrodden sections, especially in the rural areas, to work in a given direction and raise themselves economically. The success of the Self Help Groups (SHGs), especially in some pockets of the country, has proved that given a proper direction, even the bottom-most layers of the society can respond positively to the needs of time. It would not be an exaggeration to mention that several of these SHGs have brought in a silent revolution in the field of rural economics.

Insurance has remained low in the priorities of the economically downtrodden sections of the society, historically. But how ironical that it is these sections that are hopelessly dependent on whatever little assets that they have created over a period of time and are really in need of protecting them, apart from their own lives and health! However, it is beyond their comprehension to understand the importance of insurance; and understandably so. This emphasizes the need for making these masses understand the importance of insuring their lives, health, assets etc. and inculcate in them the habit. This is a task that demands conviction and commitment - of several stakeholders.

There have been relaxations in the regulations pertaining to micro-insurance products; and thus the process has been initiated. The insurers would do well to extend their hand in the fulfillment of this noble cause; and work in the spirit of accomplishing the task and not merely go through the motions mandatorily. The distributors should take it upon themselves the task of explaining to the masses the need for insurance in a manner that they can comprehend. In the end, it should be a combined effort of all the stakeholders to ensure that insurance is understood as a vital tool for the betterment of the living standards of the downtrodden masses.

Micro-insurance will be the focus of the next issue of the **Journal.** There will be articles by people who have associated themselves with the task of recognizing the needs of the masses by working in the domain; and providing solutions to the same.

Nurturing Microinsurance

in the next issue...

PRESS RELEASE

5 September, 2007 IRDA/Life/Dist.Channel/037/2007-08

Insurance Regulatory and Development Authority

The Authority in exercise of the powers granted to it under Section 3 of the Insurance Act, 1938 has issued certificates of registration on 4th September, 2007 to:

1. Future Generali India Life Insurance Company Limited to transact life insurance business.
2. Future Generali India Insurance Company Limited to transact general insurance business.

(C S Rao)
Chairman

CIRCULAR

21st September, 2007 IRDA/Life/Dist.Channel/037/2007-08

1. The rapid growth of insurance industry, specially in the life segment has brought to the fore a number of issues concerning the agency structure which is a vital link between the insured and insurer. In order to spread the message of insurance to the far corners of the country, the Authority had enlarged the scope of the intermediaries structure from the traditional tied individual tied individual agents to the corporate agent, micro-insurance agent, the Bancassurance mode and the referral system. Insurers have also adopted other channels of sales to suit e-selling such as computer points at convenient locations, on-line insurance purchase etc. These systems have been in place for some time now, some of them for the last eight years. Some of the practices that have crept into the system in terms of remuneration or reimbursement of expenses or incentive schemes and so on require a detailed examination to ascertain whether they are in conformity with the provisions of the Insurance Act and their impact on the acquisition cost.

   The Authority feels that there is need for a study to be undertaken to ascertain the manner in which these channels have been functioning, their efficacy, their cost effectiveness, their weaknesses and make recommendations on the changes to be made to make them effective, professional and accountable and served the interests of the insured and facilitate provision of services all over the country in a cost effective manner even for the low priced insurances.

2. In order to undertake the study, the following committee is constituted
   1. Shri NM Govardhan, Former Chairman, LIC of India - Chairman
   2. Chairman, LIC of India
   3. MD & CEO, Max New York Life Insurance Co
   4. MD & CEO, HDFC Standard Life Insurance Co
   5. MD & CEO, Met Life Insurance Co
   6. MD & CEO, Tata-AIG Life Insurance Co Ltd
   7. Chairman-cum-Managing Director, National Insurance Co Ltd
   8. MD & CEO, IFFCO Tokio General Insurance Co
   9. MD & CEO, ICICI Lombard General Insurance
   10. Shri Kunnel Prem - CSO (Life), IRDA - Convener

3. The Terms of Reference of the Committee are indicated below:
   - To review the system of licensing of corporate agents and suggest the criteria for the selection of the corporate agents and the qualifications for the functionaries of the corporate agents: in particular, consider the advisability of permitting several corporate agencies within the same group, the promoter of an insurance company also acting as its corporate agent;
   - Examine in detail the commission structure obtaining now and recommend changes, if any; in particular examine the additional payments made to intermediaries and their justification and fairness;
   - To examine the need for a system of referral providers, the guidelines in force in respect of referral system, the recommendations on the whole structure including the remuneration paid to the referral providers;
   - To examine the scope for direct marketing, e-marketing, web-enabled sales points and other innovations and recommend the terms and conditions to be prescribed for each mode of direct marketing including the remuneration structure;
   - To examine the scope of Regulation 10(ii) of Advertising & Disclosures Regulation, 2000 and suggest modifications required, if any;
   - To examine the scope of the existing micro-insurance agency system and its remuneration and suggest modifications and enlargement, if considered necessary;
   - To review the Payouts made to distribution channels and administrators of group business and suggest modifications;
   - To consider any other aspect relevant to rationalize the payments made to agents, corporate agents, micro-insurance agents and referral providers.

4. The Committee will submit its report by 31st December, 2007.

(C S Rao)
Chairman

CIRCULAR

06 September 2007 Circular No.: 032/IRDA/ACTL/FUP/VER5.0/SEP 2007

To
All Chief Executive Officers and Appointed Actuaries of Life Insurers

LIFE INSURANCE PRODUCTS – FILE AND USE PROCEDURE

1. This has reference to the File and Use Circular No.:IRDA/ACTL/FUP/VER 2.0/DEC 2001 / dated 12th December 2001, Circular No.: IRDA/ACTL/FUP/VER 2.0/DEC 2003 / dated 18th December 2003 and also Circular No.: 021/IRDA/ACTL/FUP/VER 1.0/JULY / dated 4th July 2007.
2. Under existing File and Use procedure, all life insurers are required to submit the following documents with respect to new products / riders and also in the case of modifications to the existing products / riders:
   i. File and Use Application along with all attached tables
   ii. Sales Literature along with benefit illustration
   iii. Proposal Form
   iv. Policy Document
3. In order to expedite the product approval process, it has now been decided that life insurance companies are not required to submit policy document along with the File and Use Application. However, once the products is approved, life insurance companies must ensure that the policy document to be issued to the policyholder truly reflects all ingredients of the product as elaborated / mentioned in the File and Use Application and Sales Literature. A declaration by both Chief Executive Officer and the Appointed Actuary to this effect is to be added in the certificate to be given by the life insurance companies as a part of File and Use Application to IRDA. IRDA will inspect life insurance companies and check the policy document whether they conform to what has been cleared in the File and Use Application and Sales Literature
4. It is important to note that the onus of the policy document totally rests with the life insurance company.
5. This circular comes into effect from 1st October, 2007 and this is applicable to both non-linked and linked products (including riders).

(R. KANNAN)
Member (Actuary)

CIRCULAR

September 24, 2007 38/IRDA/AGENCY/Sep 2007

Re: Publishing updated details of Individual Agents on Insurers website

To

All Insurance Companies

I am directed to instruct all Insurers to publish updated details of their Individual Agents on their website in the following format:

1	2	3	4	5	6	7	8
Coloured Scanned copy of Passport Size photograph	IRDA License No.	Insurer Agent code	DP No.	Name of Individual Agent	Father Name	Date of Birth	Tel No / Mobile

9	10	11	12	13	14
Email ID	Address	Town/City	District	State	Pin code

15	16	17	18	19	20
Insurer's Branch to which the agent is associated	Composite (Y/N)	If Composite Name of other Insurer	License issued on	Licensed valid from	Licensed valid to

The list shall be published by 15th October, 2007 positively. Updation of this list is required to be done as and when changes are made or on a monthly basis.

(V. Vedakumari)
Executive Director

Amendments to Insurance Legislation

Need for a Focused Approach

'AN INSURANCE POLICY IS NOT JUST A FINANCIAL ASSET. IN GENERAL INSURANCE CONTRACTS, INDEMNITY IS INHERENT AND NOTHING BEYOND A SUSTAINED LOSS IS PAYABLE. FURTHER, WITH THE PRACTICE OF CANCELLATION OF POLICIES MID-TERM; ASSIGNMENTS WOULD BE AGAINST PUBLIC POLICY AND INTEREST' EMPHASIZES

K.P. NARASIMHAN.

The Insurance Act, 1938 touching 70 years, is not as ancient a piece of legislation, yet extant and in force, as several others that stud our legal field. Like older heritages from the period of colonial rule and being, in fact, something of a late entrant in the resurrected form it was given in place of an earlier legislation, it has been sought to be kept appropriate for developing contemporary needs, by a lot of grafting from time to time, some of those being really major exercises.

However, a day did come when it had seemed that the relatively hoary piece of law was earmarked for a total restructuring, such as had been undertaken say with the company law or the income tax law, the latter in fact coming up apparently for a further transmogrification. This, alas, was not to be and the exercise undertaken by the Law Commission – in what was, appropriately, to be a limited role – culminating in its report of June, 2004, went only to suggest changes in specific provisions of the extant Act, indicating many others as deserving of a chop being anachronisms today, and proposing that other sections be left to a more technically expert group to do the going over. The Law Commission did of course also suggest that an effort be made to integrate the Insurance Regulatory and Development Authority Act, 1999 with the Insurance Act to make for a single piece of legislation.

The Committee that the IRDA set up in this connection, the KPN Committee, constrained itself in the consideration it did give – besides the provisions in the Insurance Act, 1938 not touched on by the

The Law Commission did of course also suggest that an effort be made to integrate the Insurance Regulatory and Development Authority Act, 1999 with the Insurance Act to make for a single piece of legislation.

The KPN Committee did also have some views to express and made its own recommendations that differed in varying measure, from what the Law Commission had proposed.

Law Commission, to those on which the Law Commission had made specific recommendations, in an exercise to provide a wider perspective to what it was doing – to couching its own recommendations as amendments to the present Act, where although the basic structure of the Act would remain, following the amendments, it could stand pruned – with the dead wood off as the Law Commission had proposed and certain added delegations/authorizations made, for coverage outside of the Act, through Rules to be framed by the Government of India or Regulations laid down by the IRDA.

Two further years on, it does seem that a total redraft be what the Government of India should direct be done, carrying provisions in the present Act as existing or as proposed for amendment but not necessarily being bound to these only, to the exclusion of what a first review could suggest. This would make perhaps for a laboured exercise again but in the end, coming up with a freshly drafted set of provisions, more elegantly related in a sequence of coverage and economical in what should make for a primary law, as an enacted piece of legislation, leaving much of detail to be covered in subordinated Rules and Regulations.

Of the provisions in the present Act, the Law Commission had particularly dealt with Sections 38, 39 and 45, dwelling at some length on them as being of application to the insured rather than to insurance companies as such. The KPN Committee did also have some views to express and made its own recommendations that differed in varying measure, from what the Law Commission had proposed.

What follows is an expression of personal opinion on the three specific sections in the present Act, having regard to the two sets of recommendations made.

Section 38 of the Insurance Act, 1938 deals with the assignments of life insurance policies. In the comments to be made, the Law Commission's specific recommendations relating to conditional assignments, carried in subsections (5) and (7), are referred, though the approach of the Commission would appear to be different in the two cases. The KPN Committee had no views to express on these.

The Law Commission did recommend additionally that the provisions of Section 38 with regard to assignments be extended to cover general insurance policies also. A basic issue that arises here is that an insurance policy is not just a financial asset, however limited its tenure and value. There is, underlying the issue of a policy, a contract of indemnity, where a payment falls to be made if an event likely to cause a loss to the insured does arise and what becomes payable again is to the extent of the actual loss suffered, an indemnification of a specific loss suffered and nothing beyond. It is with transfers of risk from the insured to another party, that a need could arise for consideration to be given to a corresponding transfer of an insurance cover thereon. Given the nature of general insurance contracts, practices exist of cancellation of an existing policy, mid term, to be replaced by a fresh policy to cover the transferred risk and, here, there could be need for fresh underwriting consideration to be given. Assignments of existing general insurance policies could seem to be inappropriate, with transfers of risk. It would be absolutely against public policy and interest to let speculative assignments be taken of the policy coverages alone.

It is this concept of indemnity as underlying a general insurance contract that could need to be translated to life insurance policies also, where insurable interest is necessary when any contract is to be entered into but apparently left out of account afterwards during the currency of the contract. Life insurance policies do build up high values over the period of their tenure and could tend to be looked upon basically as financial assets, which do make for being tradable commodities,

given the distinguishing features they do otherwise have that need to be allowed for. A market is believed to exist in some countries and there are reported trades – albeit on a minor scale – within India and a recent judicial pronouncement too on that.

It is the unique features of life insurance contracts, which form the base for the asset trading sought to be undertaken, that need particularly to be considered, to seek to distinguish life insurance policies as not really being freely transferable, in the manner of realizations thereon and the increase in value over the tenure of the policies, that make for constraints on any widespread dealings and raise issues of moral hazard such as would be against public policy to ignore.

This is where the concept of insurable interest needs to be brought in. Inasmuch as a life insurance contract seeks to provide protection in the event of a loss arising from an occurrence subject to risk and the occurrence is predicated on the life of a human being, there is necessity to see that any contract based on the life of a person is considered only when the individual seeking protection is personally likely to be affected by the occurrence to be insured against, that he has an interest in the person who is to be the subject of the contract that could be adversely affected in relation to what happens to that person, as the one on whose life the insurance is to be taken. While strict indemnity does not come in while assessing a potential or actual loss from an occurrence based on human life, a measure of it does go into the preliminary consideration before a contract is entered into by an insurer.

The life insurance policy remains contingent, through its tenure, on risks associated with a particular human life, the life assured, and this should make for any transactions relating to the contract to be subordinated to such risk, as when any dealing were to be made to lead to a transfer as it were, however partially or temporarily, of the risks associated with the life assured being transferred from the original contracting party, be it the life assured himself to another.

This being the case, with the possibility of the risks basically on which the contract is entered into being brought to change, to advance perhaps the probable date of payment on the contract and raise therefrom the value of the contract, the presence of moral hazard becomes very evident – palpably so – and any scope for its play would be against public policy and interest to countenance.

What should be particularly alarming are reports of lapsed policies being picked up, to be revived and maintained, in an expectation of returns that are seen as worth the effort to remain in touch with the life assured all the while, a return that under a contract allowed to run its course, with regular payments of premium, cannot match what alternative investments can provide.

Addressing the concerns of the IRDA, the Law Commission gave consideration to the probable consequences of unrestricted dealing in life insurance policies – through the instrument of assignments – and did suggest an amendment to Section 38 as provisos to sub-section (1), which would permit an insurer to decline to act on an endorsement of assignment on the policy document where it had reason to believe that such transfer or assignment was not *bona fide* or was not in the interest of the policyholder or in public interest, for the insurer's reasons to be recorded in writing and conveyed to the assignee, and for appeal to lie against the insurer's decision. As worded, it could be difficult to spell out how exactly a purported assignment is considered to be not genuine by the insurer, what circumstances would make for such lack of *bona fides* and how an appellate authority would deal with the matters.

The KPN Committee suggested a somewhat differently worded addition to Section 38 that would enable the IRDA to

While strict indemnity does not come in while assessing a potential or actual loss from an occurrence based on human life, a measure of it does go into the preliminary consideration before a contract is entered into by an insurer.

specify by regulations what type of assignment would be prohibited, restricted or otherwise regulated in the interests of policyholders or the general public.

A specific criterion like the need for insurable interest to be present on any transfer or assignment of a life insurance policy to a new party could lend greater strength to an insurer to turn down the recording of an assignment of interest and so also to an appellate authority. This could well mean that such transactions are restricted to cases like raising of loans by the life assured where the insurance polices could be a collateral security – specifically so, under a loan contract that provides clearly for means other than the insurance to repay the loan.

The Law Commission had felt that the present provisions in Section 39 of the Act in regard to nominations did not go far enough to ensure that settlement of claims could remain final, without a further accountability arising on the part of the nominees, receiving payment from the insurer. The Commission after noting Supreme Court judgements had considered a need to provide for individuals standing in relation of legal heirship by an amendment of the law giving an option in the proposal form to state whether a nominee would be a collector nominee or a beneficial nominee.

The KPN Committee, while noting the detailed changes to Section 39 suggested by the Law Commission only recorded some reservation on beneficial nominations extending beyond the immediate family, within the inheritance relationships.

If a parallel were to be drawn with a testamentary disposition – as is often done, particularly with respect to the manner of execution – what is to be noted is that while the provisions on inheritance/ bequest made in a will could become absolute on the grant of probate, there is a process to be gone through of inviting objections, from the immediate heirs before according approval to the testamentary dispositions.

Similar uncertainty may apply to any statutory provisions brought in for beneficial nominations being made under life insurance policies.

The Law Commission has examined in detail the provisions in Section 45 relating to voidance of policies of life insurance on grounds of misstatement or suppression of material facts and has made a number of recommendations to amend the law.

While the law Commission has referred to firmly established case laws, with several judgements of the High Court and of the Supreme Court in the interpretation to be placed in the Act provisions as they read, it has still considered changes as necessary in what could seem a misapprehension of insurer tendencies to take advantage of the Act provisions to avoid payment under life insurance policies.

There would seem again to be a misplaced perception with regard to the detailed investigation to be made after a claim had arisen that, it is considered, could have well been made at the time of the proposal for grant of insurance. What has not apparently received adequate consideration, while accepting the application of the principle of *uberrima fides* to contracts of insurance, is that (1) at the proposal stage the volume could be unmanageable to think in terms of detailed enquiry, (2) even the most arduous effort could fail to uncover information to check fully on the statements made by the proposer, and (3) time is of essence in handling new proposal and a balance has to be struck by the insurers between the advisability of a few more measures of check and the need to be speedy in the disposal of the proposals received. In striking this balance the insurers do keep in mind the application of the principle of uberrima fidae and have only very bare checks at the underwriting stage.

A specific criterion like the need for insurable interest to be present on any transfer or assignment of a life insurance policy to a new party could lend greater strength to an insurer to turn down the recording of an assignment of interest and so also to an appellate authority.

Additional medical/pathological reports do get to be asked for, having regard to the level of risk to be underwritten; but the findings of these reports could still leave uncovered any suppressed medical history. This is general practice the world over. The insurers are able to do this because they are permitted, by law, to call in question the premises on which any contract of insurance may have been entered into, should the need arise to do so. There are costs to the insurers in raising issues subsequent to having entered into contract but for the insured too, who obtain the insurance cover on terms they are not strictly entitled to on the basis of the factors that determine the particular risk they represent, costs from a possible repudiation do need to be weighed. There is an interesting paper on this, entitled "On the Role of Good Faith in Insurance Contracting", written by Avinash Dixit and Pierre Picard, appearing in a volume of essays brought out in honour of Joseph E Stiglitz, Nobel Prize Winner in Economics, titled "Economics for an Imperfect World". Applying game theory to a simplified case, the authors of the paper conclude that with the disincentives applying one could expect a degree of equilibrium to be attained, with the seekers of insurance, considered broadly as standard and non-standard risks, gravitating to the respectively appropriate terms of insurance.

In contrast to the applications for insurance that are received, a measure of instances where an insurer would need to consider checking back on the premises on which an insurance policy was issued, generally associated with early death claims, should be but a fraction of 1% of the business received and accepted. Even here, the depth of enquiry could vary, like calling for details relating to any formal treatment taken by the deceased life assured, of certificates from the medical attendant on the terminal illness or from a hospital where treatment may have been taken.

The Law Commission's recommendations include (1) making a policy of life insurance foreclosed to being declared void after it has run for five years, albeit for fraud (2) providing for a defence of 'best of knowledge and belief' against any charge of misstatement in relation to and suppression of a material fact, (3) providing a defence that the agent of the insurer had knowledge of the same, and through him of the insurer, and (4) specifying the refund of the premium received, in the event of a repudiation.

Foreclosure of action that should normally have to be considered when fraud is discovered does not appear to be in the public interest or conducive to public policy, although in individual circumstances the insurers might desist from going to that extent.

As regards the recommendation to deem that knowledge of the agent to be the knowledge of the insurer, such defence taken would remain to be established. More basically, the agent himself would deny any knowledge so sought to be attributed to him.

A number of life insurance companies submitted their views to the Law Commission on its Consultation Paper suggesting that no change was really called for in Section 45 as it stood in the background that a fair development of case law had taken place of which the insurers were aware. The view of the KPN Committee was similar.

On suppression of facts which do not amount to fraud as recommended by lower courts, there can be an apprehension that the insured would take the plea of "best knowledge and belief" in regard to which no supporting evidence can be adduced and rebuttal would in any case be based on evidence such as can be circumstantial.

If the premiums received were to be refundable, at the least, when a policy of life insurance is declared void; what it would amount to is to proclaim, more or less, that any one could try to get a policy of life insurance on false premises and if he does not ultimately get away with it,

Additional medical/pathological reports do get to be asked for, having regard to the level of risk to be underwritten; but the findings of these reports could still leave uncovered any suppressed medical history.

he or the claimant through him are none the worse since the premium paid seen possibly as a wager amount – gets to be returned.

The Law Commission had indeed suggested, though in a different context, that the insurance companies should have a high level committee to consider representations against any policy repudiation, before the insured/claimant feels driven to seek legal remedy.

A second suggestion on bringing about greater openness in regard to the record of the individual insurance companies or how they handle cases coming up for consideration under Section 45, is to have them send reports to the IRDA, carrying statistics relating to the cases. As it is, the books of Accounts, forming schedule 16 to the Report and Accounts of a life insurance company have to provide information on contingent claims not taken to the Balance Sheet and one of the areas to be covered relates to claims in dispute. This information can provide an understanding of what the company policy is in this regard.

If information were to be provided fully here, relating not to declination of claims, as such but to those where these are disputed, there would still be information enough to suggest what the company policy generally is and also possibly evaluate and make inter-company comparisons. The overt information so required to be provided might be a sort of check on company policy.

The author is a former Chairman of LIC of India. He also headed the committee set up by IRDA for suggesting further amendments to the statutory framework.

Some Important Aspects of Insurance Law

Taking a Fresh Look

D. VARADARAJAN WRITES THAT STEPS ARE AFOOT TO MODERNIZING AND STREAMLINING THE INSURANCE LAW BY REMOVING THE REDUNDANCIES AND INADEQUACIES; AND BY PUTTING IN PLACE A MODERN AND ROBUST INSURANCE LAW.

Introduction

It is trite proposition that a contract of insurance is a contract based on utmost good faith (*uberrima fide*), and, therefore, it is incumbent upon the parties to an insurance contract, i.e., the insurer and insured to observe good faith. This applies to all types of insurance. The law relating to many important and critical aspects of insurance as enacted by the statute, viz., the Insurance Act, 1938 read with the Indian Contract Act, 1872, and as expounded and evolved by the Judiciary over the years (i.e., judge-made law) is worthy of note and consideration. However, due to space constraint, it is not feasible to dwell on all critical aspects, and therefore, only a few important aspects are discussed herein.

Duty of disclosure

When proposing for a policy, it is legitimately expected that the proposer would answer all questions correctly and does not suppress or misrepresent material information. In a contract of insurance, the insured owes a duty to the insurer to disclose all material facts and information in the proposal form. Where the insured gives false answers to questions in the proposal form, and thereby induces the insurer to accept the risk; the contract is vitiated. This is the settled law. However, as can be seen later, at times, this settled position in law is not followed by Consumer Forums, perhaps with a view to moulding the relief to suit the occasion.

Section 45 of the Insurance Act, 1938

Section 45 of the Insurance Act, 1938 affords some respite and protection to the insurers carrying on life insurance business, and in the wake of rising claims, this section is increasingly resorted to for justifying repudiation of claims on the ground of mis-statements. Section 45 acts as a shield and sword for the life insurers. According to this section, no policy of life insurance shall after the expiry of two years from the date on which it was effected, be called in question by an insurer on the ground that a statement made in the proposal for insurance or in any report of a medical officer, or referee, or friend of the insured, or in any other document leading to issue of the policy, was inaccurate or false, unless the insurer shows that such statement was on a material matter or suppressed facts which it was material to disclose and that it was fraudulently made by the policyholder and that the policyholder knew at the time of making that the statement was false or that it suppressed facts which it was material to disclose. However, according to the proviso to this section, an insurer

When proposing for a policy, it is legitimately expected that the proposer would answer all questions correctly and does not suppress or misrepresent material information. In a contract of insurance, the insured owes a duty to the insurer to disclose all material facts and information in the proposal form.

shall not be prevented from calling for proof of age at any time if he is entitled to do so, and no policy shall be deemed to be called in question merely because the terms of the policy are adjusted on subsequent proof that the age of the life insured was incorrectly stated in the proposal.

From the provisions of section 45, it is clear that the same is in two parts – the first part deals with calling in question on the ground of mis-statement, etc., within a period of two years from the date of effecting the policy (popularly known as "early claims" in the insurance circles); and the second part deals with calling in question after a period of two years. Whereas the rigours of proof are lesser for an insurer in regard to calling in question policies within two years, and that the onus of proof is more in the latter category. In other words, under the second part of section 45, in addition of proving mis-statement and suppression of material information, the insurer has also to prove (which is difficult, and that too against a dead person, in case of death claims, as he would not be defending himself) that it was fraudulently made by the policyholder and that the policyholder knew at the time of making that the statement was false or that it suppressed facts which it was material to disclose.

However, the finer distinction as in-built in section 45 vis-à-vis early claims and other claims gets obliterated, if one were to go by hosts of rulings of the Consumer Forums, and, invariably rigorous tests of the second part of section 45 are pressed into service, whenever the defence of section 45 is taken by insurers. But, the starting point of this anomaly stems from the repudiation letter of the insurers. Proper care and caution are not bestowed upon while drafting the letter of repudiation. It is not infrequent to come across repudiation letters, even when policies are called in question within two years, on account of material suppression of information or mis-statement, alleging to the effect that it was fraudulently made by the policyholder and that the policyholder knew at the time of making that the statement was false or that it suppressed facts which it was material to disclose. Accordingly, the insurers help themselves in walking into their own trap in the form of repudiation letters, and are subjecting themselves to proving their own averments in courts while defending consumer cases.

In the context of repudiation of claims on account of suppression of material information, what is to be seen and considered is the nexus between the information suppressed and its materiality from the underwriting perspectives of insurers, and not the nexus between the information suppressed vis-à-vis cause of claim. This is the settled law. However, there is inconsistency in this regard among the forums deciding consumer cases, and at times, the forums are not inclined to follow their own earlier precedents. These days, it is not uncommon to notice judgments examining the nexus between the information alleged to be suppressed and the claim event (cause of death, in the case of death claims). However, it is also to be noticed that insurers also tend to thwart their liabilities under policies (especially in the case of high value policies), by trying to latch on to trivial mis-statements/suppression, which may not have material impact on underwriting or acceptance of risk at the proposal stage, but passing them off as material particulars. It is wondered whether rising competition among the insurers tends to abandon the required level of caution and conservatism at the time of examining proposals and underwriting risks, and later reading the entries in the proposal forms critically and between the lines, at the time of confronting claims. This is an important area requiring the attention of the Life Insurance Council, and the Executive Committee of that Council by virtue of the provisions of Section 64J(1)(a) of the Insurance Act, 1938, may advise and assist insurers in setting up standards of conduct and sound practice in this behalf.

The starting point of this anomaly stems from the repudiation letter of the insurers. Proper care and caution are not bestowed upon while drafting the letter of repudiation.

Whether Section 45 needs to be amended?

There has been a debate for quite sometime now that section 45 requires to be amended drastically. There are two views as regards section 45. While one school of thought considers the section to be affording undue protection to insurers and not the insured, the other school thinks otherwise. The Law Commission of India, in its Consultative Paper, and later in its recommendations to IRDA, did consider in detail the various aspects of the section. It has suggested that section 45 be amended in such a way as to preclude the insurer from calling in question any policy of life insurance beyond five years, irrespective of any reason. However, the KPN Committee has suggested that section 45, as it exists now, provides sufficient relief against any inequitable efforts by a life insurance company to avoid a policy on grounds of mis-statement or suppression of material information, and, accordingly, did not favour amendment of that section.

The latest : Initiatives of the U.K. Law Commission & Scottish Law Commission

The aforesaid Law Commissions have released a Joint Consultation Paper in July, 2007 on the topic "Insurance Law : Misrepresentation, Non-disclosure and

Where a policyholder gives a warranty about future actions, any breach will discharge the insurer from further liability, even for claims that have no connection with the breach.

Breach of Warranty", setting out provisional proposals for the reform of insurance contract law and seeking responses by 16th November, 2007.

In the context of the topic of discussion in this article, it is thought apposite to give the salient aspects and features of the proposals for reform of insurance contract law suggested by the aforesaid two Law Commissions.

The Consultation Paper concentrates on three areas:

- Misrepresentation and non-disclosure by the insured before the contract is made;
- Warranties and similar terms; and
- Cases where an intermediary was wholly or partly responsible for pre-contract misrepresentations or non-disclosures.

Dealing with the existing law of non-disclosure and misrepresentation, the paper says that the law imposes heavy duties on those applying for insurance. Potential policyholders are required to volunteer information to the insurer about anything that would influence a prudent underwriter's assessment of the risk. If the policyholder fails in this duty, and the insurer can show that, if it had been given the information it would not have agreed to the policy on the same terms (or at all), the insurer may "avoid the policy". This means that the insurer can treat the policy as if it never existed. Similarly, the insurer may avoid the policy if the policyholder makes an incorrect statement of fact that is material. It does not matter that the policyholder had no reason to know that the statement was untrue, or that it was material to the insurer.

Regarding the law of warranties, it says that the law also takes a strong approach to enforcing terms of an insurance contract known as "warranties". A warranty may refer to the future – that is, a promise that "a particular thing shall be done or shall not be done, or that some condition shall be fulfilled". Alternatively, it may apply to the past or present – where the policyholder "affirms or negatives the existence of a particular state of facts".

Warranties "must be exactly complied with, whether material to the risk or not". The insurer is not required to pay any claims that arise after the date of the breach, even if the breach is later remedied or had nothing to do with the loss in question.

Dwelling on the criticism of the law, the Paper concludes that some principles embodied are no longer appropriate to a modern insurance market, and do not meet policyholders' reasonable expectations. The main problems as identified are:

- The duty of disclosure may operate as a trap.
- Policyholders may be denied claims even when they have acted honestly and reasonably.
- The remedy for misrepresentation and non-disclosure may be overly harsh.
- Insurers may use warranties of past or present fact to add to the remedies the law already provides for misrepresentation.
- A statement on a proposal form can be converted into a warranty using obscure words that most policyholders will not understand.
- Where a policyholder gives a warranty about future actions, any breach will discharge the insurer from further liability, even for claims that have no connection with the breach.
- The policyholder often bears the consequences of mistakes or wrongdoing by intermediaries.

Underscoring the importance of law reform, the Consultation Paper says that the starting point is that the law should strike a fair balance between the interests of insurers and policyholders. It should give potential policyholders confidence in insurance by ensuring that it meets their reasonable expectations while protecting the legitimate interests of insurers and not imposing undue costs or unnecessary restrictions. It should also be coherent, clear and readily understandable. The proposed reforms deal separately with consumers and businesses. Copies of the Consultation Paper are available on the respective Law Commission's websites at http://www.lawcom.gov.uk and http://www.scotlawcom.gov.uk.

Conclusion

The Insurance Act, 1938 is modelled and moulded on the English law and practice. It is holding the field till today, *albeit* with occasional and piece-meal tinkering. Over the decades, the business of insurance has undergone tremendous metamorphosis, coupled with changing profiles and expectations of the consumers, and especially, in the context of the opening up of the insurance sector. Already, steps are afoot to modernizing and streamlining the insurance law by removing the redundancies and inadequacies; and by putting in place a modern and robust insurance law. But the underlining fact remains that whatever be the law, the letter of law alone would not suffice, unless the spirit of the law is understood unequivocally, and acted upon accordingly, by all the players and parties.

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'Murder' Which is an 'Accident'

Applicability in Insurance Contracts

'THERE IS A DELICATE LINE THAT SEPARATES EVENTS WHERE MURDERS CAN BE ACCIDENTS AND WHERE MURDERS ARE NOT ACCIDENTS' WRITES **JOY BASU.**

Personal Accident Insurance policies are gaining popularity with every passing day. As per the cover, if during the currency of the insurance policy; the insured person shall sustain any bodily injury, then the insurer is liable to pay the injured or the legal heirs (as the case may be). Accident in terms of the policy, generally "means a sudden, unforeseen and unexpected physical event caused by external, violent and visible means." An interesting question which arises in the context of the above definition of accident is whether "murder" would fall under the definition of "accident" as defined in the policy.

As has been defined above, accident is attributed to a sudden, unforeseen and unexpected event. In other words, it is an event which does not occur in the usual course of events or that could not be reasonably anticipated. Black's Dictionary defines accident as :

"An unintended and unforeseen injurious occurrence; something that does not occur in the usual course of events or that could not be reasonably anticipated."

The word accident has been in circulation in the insurance industry for a long time. The word "accident", in accident policies, means an event which takes place without one's foresight or expectation. At the same time, it has to be understood that a result, though unexpected, is not an accident, the means or cause must be accidental. Death resulting from voluntary physical exertions or from intentional acts of the insured is not accidental, but where, in the act which precedes an injury something unforeseen or unusual occurs which produces the injury, the injury results through accident.

Policies of liability insurance as well as property and personal injury insurance across the world frequently limit coverage to losses that are caused by "accident". In attempting to accommodate a layman's understanding of the term, courts have broadly defined the word to mean an occurrence which is unforeseen, unexpected, extraordinary, either by virtue of the fact that it occurred at all, or because of the extent of the damage. An accident can either be a sudden happening or a slowly evolving process like the percolation of harmful substances through the ground. Qualification of a particular incident as an accident seems to depend on two criteria:

- the degree of forseeability and
- the state of mind of the actor in intending or not intending the result.

Accident in terms of the policy, generally "means a sudden, unforeseen and unexpected physical event caused by external, violent and visible means."

"Murder" as understood in ordinary parlance is a felonious act where death is caused with intent and the perpetrators of that act have a motive against the victim for such killing. Section 300 of the Indian Penal Code, 1860, deals with murder.

Any felonious act where death is caused with intent and the perpetrators of that act normally have a motive against the victim for such killing would come within the definition of "murder". But there are also instances where murder can be by accident on a given set of facts. The difference between a "murder" which is not an accident and a "murder" which is an accident, depends on the proximity of the cause of such murder. **The Courts have been consistent in their views that if the dominant intention of the act of felony is to kill any particular person then such killing is not an accidental murder but is a "murder simplicitor". On the contrary, if the cause of murder or act of murder was originally not intended and the same was caused in furtherance of any other felonious act then such murder would come within the domain of a murder which is an accident.**

In **Challis Vs. London and South Western Railway Company, reported in 1905 (2) (Kings Bench) 154**, the Court of Appeal held where an engine driver while driving a train under a bridge was killed by a stone wilfully dropped on the train by a boy from the bridge that his injuries were caused by an accident.

An interesting point arose in a case before the Supreme Court, whether the death arising out of being run over by a Jeep amounted to a murder which was an accident. (**Vasant Vs. State of Maharashtra 1998 Criminal Law Journal 844 (Supreme Court)**). In this case, there was some heated discussion between the Appellant and the deceased and thereafter, the Appellant sat in the Jeep, took it in reverse upto the intersection which meets the national highway. The Appellant thereafter drove the vehicle at great speed on the wrong side of the road although no other vehicle or pedestrian was passing on the road and knocked down the deceased. It was observed by the Hon'ble Supreme Court :

"Once it is believed that the Appellant behaved in that manner and it is also believed that there was no other reason for the Appellant to go on the wrong side of the road, it has to be held whatever the Appellant had done was done intentionally and the incident did not happen accidentally".

A similar issue had come up before the Court of Appeal in the case of **Nisbet vs. Rayne & Burn 1910 (2) (Kings Bench) 689** where a cashier, while travelling in a railway to a colliery with a large sum of money for the payment of his employers' workmen was robbed and murdered. The Court of Appeal held :

"That the murder was an 'accident' from the standpoint of the person who suffered from it and that it arose 'out of' an employment which involved more than the ordinary risk, and consequently that the widow was entitled to compensation under the Workmen's Compensation Act, 1906".

In this case the Court followed its earlier Judgment in the case of "Challis". In the case of "Nisbet" the Court also observed that **"it is contended by the employer that this was not an 'accident' within the meaning of the Act, because it was an intentional felonious act which caused the death, and that the word 'accident' negatives the idea of intention. In my opinion, this contention ought not to prevail. I think it was an accident from the point of view of Nisbet, and that it makes no difference whether the pistol shot was deliberately fired at Nisbet or whether it was intended for somebody else and not for Nisbet."**

The aforesaid **Nisbet case (supra)** was followed by a majority Judgement of the House of Lords in the case of **Board of Management of Trim Joint District Schools Vs. Kelly (1914 Appeal Cases 667)**.

The Hon'ble Supreme Court of India had also an occasion to deal with this particular issue in the case of **Rita Devi Vs. New India Assurance Co. Ltd reported in 2000 (5) Supreme Court Cases 113.**

The Courts have been consistent in their views that if the dominant intention of the act of felony is to kill any particular person then such killing is not an accidental murder but is a "murder simplicitor".

There cannot be a generalisation to the effect that all murders would necessarily come within the ambit of the definition of accident in the insurance policy.

In this case, some unknown passengers hired an auto rickshaw which was subsequently reported stolen and the dead body of the driver of the auto rickshaw was recovered by the police on the next day. The auto rickshaw was never recovered and the claim of the owner for the loss of the auto rickshaw was accepted by the insurance company and a sum of Rs.47,220/- was settled towards the loss suffered by the owner. A claim petition thereafter was filed under the Motor Vehicles Act, 1988 claiming damages for the death caused to the driver of the vehicle.

The Hon'ble Supreme Court held that the stealing of the auto rickshaw was the object of the felony and the murder that was caused in the said process of stealing the auto rickshaw is only incidental to the act of stealing of the auto rickshaw. The Court observed finally :

"Therefore, it has to be said that on the facts and circumstances of this case, the death of the deceased (Dasarath Singh) was caused accidentally in the process of committing theft of the auto rickshaw."

The upshot of the above discussion could well lead to the conclusion that there could be instances where "murder" would fall under the definition of "accident" as defined in the policy. This would necessarily be dependent to a great extent on the given set of facts and circumstances. There could also be instances where "murder" which is not an "accident" for which again the relevant facts and circumstances have to be looked into.

There cannot be a generalisation to the effect that all murders would necessarily come within the ambit of the definition of accident in the insurance policy. It is reiterated that the facts and circumstances have to be appreciated to come to the conclusion whether it is "murder" which is an "accident" or "murder" which is not an "accident".

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Insurance Legislation in India

Ancient, Yet Modern

S.V. KRISHNA MOHAN

ARGUES THAT ALTHOUGH THE INSURANCE ACT, 1938 HAS SERVED THE INDUSTRY WELL FOR A LONG PERIOD, IT IS TIME WE TOOK A CLOSER VIEW AT SOME OF ITS CONTENTS AND REALIGN THEM TO BE IN TUNE WITH THE TIMES.

An agreement for insurance must satisfy the requirements of a valid contract in terms of sec. 10 of the Indian Contract Act, 1872. It holds good for insurance contracts also and thus, the essential requisites of a valid contract of insurance are an offer, its acceptance, consideration, capacity etc. In addition, certain specific features of a contract of insurance like existence of insurable interest and utmost good faith are also necessary.

Insurable interest consists of a legal right to the insured arising out of a financial relationship recognized between the insured and the subject matter of the insurance. The key elements of insurable interest are:

- The policyholder must have an economic interest in the subject matter of insurance.
- Such interest must be current and not merely an expectancy.
- The interest must be a legal interest.

The law requires insurable interest to prevent moral hazard which arises when the granting of insurance actually increases the likelihood of a loss occurring. As per *"Lawrene, J in Lucina Vs. Craufurd (1806)"*, to be interested in the preservation of a thing is to be so circumstanced with respect to it as to have benefit from its existence and prejudice from its destruction.

Insurable interest consists of a legal right to the insured arising out of a financial relationship recognized between the insured and the subject matter of the insurance.

Another important feature of contract of insurance is the duty of *uberrima fides* i.e. utmost good faith which is central to the buying or selling of insurance. The insurer and the person who is applying for insurance have a duty to deal honestly and openly with each other in the negotiations that culminates in the formation of a contract of insurance. This duty may also continue whilst the contract is in force.

The doctrine of utmost good faith imposes two duties on the parties to the contract.

- a duty not to misrepresent any matter relating to the insurance i.e. a duty to tell the truth
- a duty to disclose all material facts relating to the contract.

A misrepresentation in general is a false statement of fact that induces the other party to enter into the contract. To effect the validity of the agreement, the false statement must:

- be one of fact
- be made by a party to contract
- be material i.e. something which influences a reasonable person in deciding whether to enter into the agreement
- induce the contract i.e. the other party relied upon it in deciding to enter into the agreement.
- cause some loss or disadvantage to the person who relied upon it.

A material fact in insurance is what a 'prudent underwriter' would deem material rather than the opinion of the reasonable person.

In the classic judgment of Lord Mansfield in *Carter Vs. Boehm [(1758-1774) All ER Rep 183],* it was observed:

"Insurance is a contract upon speculation. The special facts, upon which the contingent chance is to be computed, lie more commonly in the knowledge of the insured only, the underwriter trusts to the insured's representation and proceeds upon the confidence that he does not keep back any circumstance in his knowledge, to mislead the underwriter into the belief that the circumstance does not exist, and to induce him to estimate the risk as if it did not exist ..... Good faith forbids the other party by concealing what he privately knows, to draw the other into a bargain from his ignorance of the fact and his believing the contrary."

Scrutton, LJ observed similarly in Rozanes Vs. Boven (1928) on the concept of utmost good faith as under:

"As the underwriter knows nothing and the man who comes to him to ask him to insure knows everything, it is the duty of the assured to make a full disclosure."

The quotations above refer to a duty on the part of the insured only to make full disclosure. However, this duty like the duty not to misrepresent, is reciprocal. It rests on both the parties i.e. the insured and the insurer. The main requirement on the part of the insurer will be to provide full and accurate information about the cover that is being offered.

The insurance industry is growing rapidly and is a major source of providing long term funds needed for infrastructure development. With the liberalization of economic policy, the insurance industry is now open for private participation, with a choice of foreign equity participation also of up to 26% of the paid-up capital. Against this background and with the introduction of new products, processes and technology; the Insurance Act, 1938 that has withstood the tests of time admirably needs a relook to make it more vibrant and responsive to the emerging needs and challenges.

The main requirement on the part of the insurer will be to provide full and accurate information about the cover that is being offered.

The Law Commission of India in its 190th Report has recommended certain important amendments in the field of law governing insurance. These include

- Repudiation of Life Insurance Policy
- Assignment & Transfer
- Nomination
- Provisions relating to penalties and
- Grievance Redressal Mechanism

Repudiation of Life Insurance Policy

Presently, under sec. 45 of the Insurance Act, 1938, a policy of insurance cannot be called in question by an insurer after the expiry of two years from the date on which it was effected on the ground that a statement made in the proposal of insurance or in any other document leading to the issue of the policy was inaccurate or false unless the following conditions are fulfilled:

- the insurer should show that such statement was on a material matter or suppressed fact which it was material to disclose
- that it was fraudulently made by the policyholder
- that the policyholder knew at the time of making it that the statement was false or that it suppressed facts which it was material to disclose.

It was held by the Hon'ble Supreme Court in *Mithoolal Nayak Vs. LIC of India (AIR 1962 SC 814)*, that after the expiry of a period of two years after the date on which a life insurance policy is effected, such policy can be repudiated by the insurer on the ground that a statement made in the proposal for insurance or in other document leading to the issue of policy was inaccurate or false only if all the three conditions enumerated in the second part of sec. 45 are satisfied conjointly.

Recommendations of the Law Commission

- With a view to balance the competing interests of the insured and the insurer, the Law Commission after detailed study has recommended in its 190th Report that the period beyond which no repudiation of the life insurance policy on any ground whatsoever can be made be fixed at five years. In the view of the Commission, this should be a sufficient period for the insurer to check the veracity of the details provided by the insured at the time of issuance of the policy. After a period of five years, no insurer can repudiate a claim thereunder on any ground whatsoever.
- Further, it recommended that there should be no unilateral repudiation of a contract of insurance by the insurer and the insurer will have to communicate in writing to the insured or his legal representatives/ nominees, the grounds and materials on which the decision of repudiation is based.
- While in the case of fraud, the claimants

will not be entitled to either the policy amount or the premium amount in case of repudiation of the policy on the ground of misstatement or suppression of material fact and not on the ground of fraud, the premium collected on the policy till the date of repudiation will be liable to be returned to the insured or his legal representative.

- Misstatement or suppression of fact will not be considered material unless it has a direct bearing on the risk undertaken by the insurer. The test is whether the insurer would have still issued the policy had he been aware of the said fact.
- No repudiation of the policy to be permitted on the ground of fraud where the insured can prove that the suppression or misstatement of the material fact made was true to the best of his knowledge and belief or that there was no deliberate intention to suppress the fact or that such misstatement or suppression of material fact was within the knowledge of the insurer or his agent.
- A person who solicits and negotiates a contract of insurance should be deemed for the purpose of formation of the contract to be the agent of insurers.
- The insurer will have to communicate in writing to the insured or his legal representatives the grounds and materials on which the decision to repudiate a policy on the ground of misstatement or suppression of a material fact is based.

While making the aforesaid recommendations, the Law Commission has done a commendable job in reconciling the apparently conflicting interests of both the policyholders and the insurers.

While fixing the period beyond which a contract of life insurance cannot be repudiated on any ground whatsoever at five years, the insurance companies are allowed sufficiently reasonable period to verify the details provided by the insured in the proposal form.

Similarly, communicating the grounds and materials based on which it is proposed to repudiate the policy will render transparency and also enable the policyholders or his legal heirs to represent against the said proposal and prevents any unilateral or arbitrary action of repudiation. Refund of premia collected in case of misstatement or suppression of material information but not amounting to fraud would provide relief to the families of deceased policyholders who may not be aware of such misstatements which are short of fraud.

Assignment and transfer: The Law Commission has recommended that a clear distinction be made between absolute and conditional assignments and also that assignments may be made applicable to all personal lines of non-life insurance business.

The Commission has also made recommendation for partial assignments of polices and in such cases the liability of the insurer shall be limited to the amount secured by the partial assignment or transfer and such policyholder shall not be entitled to further assign or transfer the residual amount payable under the same policy.

The Commission has also recommended for certain safeguards in the case of assignments and the policyholder has to disclose the reasons for assignment, the antecedents of the assignee and the exact terms on which the assignment is made. There will be an obligation upon the insurer to get the credentials of the assignee verified at the cost of the insured. If the insurer is not satisfied that the assignment is *bona fide*, he may decline to register the assignment and communicate the reasons thereto to the policyholder. Such decision of the insurer may be challenged before the proposed Grievance Redressal Authority.

Currently, no such freedom to refuse assignment exists for an insurer under sec. 38 of the Insurance Act, 1938. Sub-sec. (2) sets out that once a transfer or assignment is made in the manner prescribed by sec. 38(1) of the Insurance Act, 1938, the assignment is complete and effectual on the execution of endorsement or by a separate instrument. However, such assignment is not binding as against the insurer unless and until intimation in writing of the assignment has been delivered to the insurer in the prescribed manner. Once the notice is received by the insurer by virtue of sub-sec (4), the insurer is bound to record the fact of transfer or assignment together with the date thereof and the name of the transferee.

Hence, by operation of law, the insurer is bound to accept the transfer or assignment if notice is given to the insurer and the procedure followed. Once the transfer or assignment is effected and noted, it is the assignee alone who has complete interest.

In terms of sec. 39 (4), a transfer or assignment of a policy made in accordance with sec. 38 shall automatically cancel a nomination also.

The insurer will have to communicate in writing to the insured or his legal representatives the grounds and materials on which the decision to repudiate a policy on the ground of misstatement or suppression of a material fact is based.

In W.P. No. 2159 / 04 in Insure Policy Plus Service India Pvt. Ltd Vs. LIC, a Division Bench of the Hon'ble High Court of Bombay vide its Judgment dated 22.03.2007 has held that it is not open to the insurance company to unilaterally vary the terms of the contract by imposing conditions not forming part of the contract to the disadvantage of the insured in the matter of assignment or transfer of a policy under the guise of 'policy decision' and to refuse to register a transfer or assignment which otherwise is valid under sec. 38 of the Insurance Act, 1938. The said judgment of the Hon'ble High Court of Bombay is now under Appeal to the Hon'ble Supreme Court of India.

Nominations: There has been a demand from the industry that a provision similar to sec. 45ZA of Banking Regulation Act, 1949 be introduced in the Insurance Act, 1938 so that an insurer is discharged of his liability if the payment is made to a nominee. However, the Commission did not agree to the suggestion that a provision similar to sec. 45ZA as in the Banking Regulation Act, 1949 should be adopted (Para 7.1.12 of the Law Commission Report).

The Law Commission has recommended that an option be given to the policyholder to clearly express whether the nominee will collect the money on behalf of the legal representatives i.e. a collector nominee or whether the nominee will be the absolute owner of the moneys in which case such nominee will be the beneficial nominee.

The Commission did not agree to the suggestion made by some of the insurers that in all cases where the payment to the nominee is made, it amounts to full discharge of the insurer liability although, such practice exists in US, Canada & South Africa, as according to the Commission the social realities of our country cannot be lost sight of.

Provisions relating to Penalties: The Commission has recommended that at present, the penalties under sec. 102 - 105C be enhanced so that it is of deterrent nature and that a minimum penalty should be indicated in each of these provisions.

It is desirable to bring more violations under the regime of monetary penalties by way of adjudication and restrict the cases for suspension or cancellation of licences to more serious violations only so that there is no interruption of business while at the same time ensuring that defaulters do not go unpunished.

It also recommended that the penalties be levied after an enquiry by the adjudicating officer to be appointed by IRDA to adjudicate the violations of the Act, Rules & Regulations by insurers, intermediaries and agents with a provision for Appeal to the proposed Insurance Appellate Tribunal.

The aforesaid recommendation is grounded in practical reality. It is desirable to bring more violations under the regime of monetary penalties by way of adjudication and restrict the cases for suspension or cancellation of licences to more serious violations only so that there is no interruption of business while at the same time ensuring that defaulters do not go unpunished.

Grievance Redressal Mechanism: The Commission has recommended that the present system of insurance ombudsman be replaced by the proposed Grievance Redressal Authority and all pending disputes before the Consumer Forum should be transferred to them.

The Commission has recommended that every insurer shall set up an in-house grievance redressal mechanism under the overall supervision of the IRDA and it will be open to the claimant to approach the Grievance Redressal Authority within a period of 60 days from the date of receipt of the decision of the insurer.

However, it is not desirable to oust the jurisdiction of the Consumer Courts and vest the same with the GRA's to be set up at major cities. The District Consumer Courts are wide spread and provide an easy and cost effective remedy to the consumers.

Similarly, instead of setting up a separate Insurance Appellate Tribunal to hear the Appeals from the orders of the IRDA, it would be desirable to make use of the existing Securities Appellate Tribunal.

Conclusion

The Insurance Act, 1938 has served the industry well for almost seven decades. However, in light of the rapid changes occurring in the domain - like, for example, the introduction of market-related products in the life insurance arena and the detariffing of the major classes of non-life domain; it is felt that some amendments and augmentations to insurance legislation are overdue. Further, the market place is itself assuming a new wave of challenges that calls for a close scrutiny of the existing laws to ensure a comprehensive coverage of the possible disputes and litigation.

The author is Joint Director (Legal), IRDA. The opinions expressed in the article are personal.

The Changing Face of Insurance Laws

Going With The Times

LALIT VERMANI

OBSERVES THAT INSURANCE BUSINESS IN INDIA IS ON A TREMENDOUS GROWTH PATH; AND THAT LEGISLATION AND REGULATION SHOULD BE ON A CORRESPONDING TRAJECTORY TO BE ABLE TO COPE UP WITH THIS GROWTH.

Insurance has become a widely used financial service since first introduced in ancient Greece. But its benefits have yet to reach much of the developing world.

In India however, insurance sector has been more than upbeat these last few years. It is growing by leaps and bounds and is bound to influence all aspects of life in the near future. One can expect the subject to assume great importance in the spheres of commerce, law, management, and government.

If figures could be any indication of growth, then it would be worth looking through the following data -

- Life insurance sector for April 2007, current FY's first month, saw new businesses expand by 49%, Life insurance market in India will likely reach around Rs. 1,683 billion by the year 2009
- The total premium collected by life insurers in the year 2004-2005 is Rs. 253.43 billion compared to Rs. 34,898 crores during the year 2000-2001.
- The life insurance penetration i.e. premium as percentage of GDP has increased from 2.32% in 2000 to 2.6% in 2005 and is expected to grow to 3.7% in 2010.
- The insurance density i.e. premium per capita has increased from USD 9.90 in 2000 to USD 15.1 in 2005 and is expected to be 35.0 by 2010.

Apart from the deregulation and other factors boosting this industry, the fast paced growth India has set in the reforms of its administrative and bureaucratic structure has also attracted many foreign investors and has contributed to the growth.

Foreign insurers brought with them their experience and innovations into the market. Like Introduction of Unit Linked products, which are a mix of investment and insurance and have now become the flavor of India into the Indian market.

Other change is in the innovative means employed by the insurers in sourcing of policies. Life insurance was once sold primarily by career life agents, captive agents that represented a single insurance company, and by independent agents, who represented several insurers. But today we have alternate channels of distribution like bancassurance, brokers, and

Insurance sector has been more than upbeat these last few years. It is growing by leaps and bounds and is bound to influence all aspects of life in the near future.

corporate agents. It is also sold directly to the public by mail, telephone and through the internet.

The offshoot of growing business and the innovations would naturally be new problems, new issues in turn leading to increasing number of complaints and litigations. The industry is already facing increasing number of complaints from the unsatisfied customers.

In response to these growing complexities of the insurance industry, the laws and regulations applicable to the insurance business also require appropriate and timely changes and improvisations.

Development of Insurance Laws in India

We would all appreciate the fact that laws help individuals, businesses, and governments interact in orderly fashion. The legal system enables people and business to anticipate the outcomes of their actions with some degree of certainty, conduct their affairs with a minimum of conflict, and, when conflicts do arise, resolve them in an equitable manner.

The concept of insurance laws has been prevalent in India since ancient times. However, the first statutory measure in India to regulate life Insurance business was in 1912 with the passing of the Indian Life Assurance Companies Act, 1912. Prior to 1912, the insurance business in British India was governed by the Companies Act.

Then on January 19, 1956 nationalization of insurance industry took place. The management of life insurance business of two hundred and forty five Indian and foreign insurers and provident societies then operating in India was taken over by Central Government. Subsequently, a comprehensive legislation on insurance was introduced by enactment of the Insurance Act, 1938.

But the real breakthrough came in 1999 with the passing of the IRDA Act, 1999. This not only opened the gates for the foreign investors and private players but it also was the first concrete step taken with the view to protect the interests of the policy holders, to regulate, promote and ensure orderly growth of the insurance industry.

In addition to the specific insurance laws, various decisions passed by the judiciary bodies have also been setting the rules for the industry.

Recently the Bombay High Court has ruled that life insurance policies can be traded and assigned freely. This judgment is thought to give a boost to the growing business of assigning insurance policies. However, there have been mixed opinions on the same.

Thus, further amendments to insurance laws would be required to help bring clarity in many such issues which have arisen due to the complex nature of the business in today's world.

Learning from Others' Mistakes

Globally also, insurance laws and regulations have undergone and continue to undergo radical transformation. Most of these countries have gone through bitter experiences before transforming the laws and regulations to suit the dynamic field of Insurance.

During the 1980s and 1990s, the public trust in the life insurance industry in the developed markets faded because of some widely publicized unethical and illegal actions - policy illustrations that misled customers, prominent life insurers that became insolvent, and "vanishing premiums" that did not vanish when agents said they would.

While trust is important in all industries, the nature of the life and health insurance industry makes trust vital. When a person buys a policy, the person exchanges premium payments for the insurer's contractual promise to pay benefits if a covered loss occurs - which may be many years hence.

State insurance regulators responded promptly by enacting new market conduct laws designed to prevent such actions in future.

In addition, insurance companies worked hard to restore and maintain the public's trust and confidence by actively training employees and sales agents engaged in highest standards of ethical business conduct and decision making.

Fortunately, India has the advantage of learning from their experiences, precisely why Insurance Regulation and Development Authority (IRDA) was formed

The offshoot of growing business and the innovations would naturally be new problems, new issues in turn leading to increasing number of complaints and litigations.

We must realize that insurance market in India is still in a nascent stage. The way we see things now, we are confident that the steps taken by the Authority towards the growth of Insurance sector is in the right direction.

with the opening of the industry to the private sector.

Thanks to the foundational strength of regulatory authority i.e., IRDA; till date, we have not witnessed any similar significant episodes that would affect the trust placed on to the insurance industry.

Coping up with Fast Changing Industry

Insurance laws in India establish the framework for the regulation of an insurance business. IRDA accordingly has been very efficient and effective in releasing timely regulations and guidelines and keeping the industry in check.

It would be for sure a huge challenge for IRDA to regulate this constantly evolving insurance industry without compromising on the healthy growth of the industry. IRDA has issued many guidelines and circulars providing for issues not covered by the Acts and Regulations in the matter of Corporate Agents, Group Insurance, Anti Money Laundering etc.; and circulars which are designed to safeguard customers' interest like - currently IRDA allows insurers to show return projections of 6% and 10% only, with a clear understanding that even these returns are subject to market conditions.

At the same time IRDA had acknowledged the practical difficulties and allowed relaxations, a few of which are noted here.

To enhance the flexibility in the operation of unit-linked insurance products, IRDA decided to increase the allowable share of money market instruments to 40% from the existing 20%.

IRDA decided to provide exemption up to a total annual premium of INR10,000 on all the life insurance policies held by a single individual from the requirement of recent photograph and proof of residence.

IRDA has set up a high level committee to revisit the existing bancassurance model. The panel is expected to look into the possibilities of allowing multiple bancassurance tie-ups between insurers and banks with the possibility of allowing an insurer to tie up with two different banks, one in the urban and other in the rural areas.

The Way Forward

There is still vast scope for life insurance sector to grow and expand in India. Nearly 70% of population is still untapped. India's ratio for life Insurance premium to its GDP is expected to grow from 4% to 5.1-6.2% by 2012. Life insurance premiums are set to more than double between US$80 billion and US$100 billion by 2012 due to better penetration and higher incomes.

We must realize that insurance market in India is still in a nascent stage. The way we see things now, we are confident that the steps taken by the Authority towards the growth of Insurance sector is in the right direction.

We are proud of the strides made by the industry in the past few years. We are witnessing a demographic change in the country and the younger generation which is exposed and more favored to the outside world demands products and services which are at par with what is available in the advanced countries. This is the biggest challenge that the Indian insurance industry would face.

Sources for Stats: Swiss Re sigma Database (2004): Regulator(s) and or trade association(s): BMI research

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Distributor's Remuneration in Orphan Policies

Provisions of Insurance Act

SUJATA PUNJABI

OBSERVES THAT SEVERANCE OF ASSOCIATION WITH AGENTS COULD BE UNDER SEVERAL INSTANCES OTHER THAN A SIMPLE TERMINATION OF THE ARRANGEMENT.

For a person to be appointed as an insurance agent, he/she is required to undergo IRDA specified training and succeed in the examination prescribed by IRDA. Subsequent to the same, the Designated Official of an insurer, authorised by the IRDA, issues the agency license, which is valid for three years from the date of issuance.

As per section 40 (2A) of the Insurance Act, no insurance agent [or intermediary or insurance intermediary] should be paid or contracted to be paid by way of commission or as remuneration in any form, any amount in respect of any policy not effected through him.

A proviso to this section (deals with orphan policies) prescribes that where;

- a policy of life insurance has lapsed
- and it cannot under the terms and conditions applicable to it be revived without further medical examination of the person whose life was insured,

an insurer should give a notice in writing to the insurance agent (through whom the policy was effected) giving him an opportunity to effect the revival of such a policy within one month of receipt of such communication.

If such an agent fails to so effect the revival of the policy, the insurer may then pay to another agent who effects revival of such a policy, **an amount not exceeding half of the commission** at which the original agent would have been paid had the policy not lapsed, on the sum payable on revival of the policy on account of arrear premium (excluding any interest on such arrear premium) and also on the subsequent renewal premiums payable on the policy.

From the above, it is apparent that only in case of lapsed policies - requiring medicals for revival - and after abiding the specified conditions can an insurance agent other than one who effected such policy be remunerated to some extent, for policies not effected by him.

This provision does not take into account policies which have not lapsed and/or policies that do not require medicals for revival and as such makes the entire process of allocating such policies to another agent onerous; as a result does

It is apparent that only in case of lapsed policies - requiring medicals for revival - and after abiding the specified conditions can an insurance agent other than one who effected such policy be remunerated to some extent, for policies not effected by him.

not make it attractive for another agent to service a policy not effected by him.

The statutory provision may want to ensure that insurers do not frivolously terminate associations with agents. But it should also be noted that severance of association with agents could be under several instances other than a simple termination of the arrangement. Such events could cover, policyholder being dissatisfied with the servicing standards of his agent, death of an agent, a tied agent moving on to form a corporate agency or becoming a broker, or an agency being terminated pursuant to an agent being disqualified under section 42 D of the Insurance Act – on account of fraud/ misappropriation, insolvency, dissolution etc.

Unfortunately, section 40(2A) has a limited scope and various circumstances for change of an agent are either not perceived or not considered/dealt with. As such, where an agent is no longer on the scene and the policyholder is not happy with another agent who may have been allocated by the insurer [who clearly may not be interested in servicing such policy unless such agent is also an agent for other policies with such customer] and/or for some reasons the Company is not able to establish direct contact with such policyholder [for instance the policyholder is in a location where the original agent had his place of business but the Company has no branch in such location] then its only the customer who is at a major disadvantage.

Here, if the insurer is empowered to assign another agent to service such a policy for an agreed remuneration the same agent would be duty bound to extend necessary services and for any failure the Company and/or the policyholder could take appropriate action against such agent. This would ensure that the policyholder is being properly and suitably serviced to the insurer specified standards.

Unfortunately, section 40(2A) has a limited scope and various circumstances for change of an agent are either not perceived or not considered/dealt with.

Further, as per provisions of section 50 of the Insurance Act, where a policy were to lapse for failure to pay the insurance premiums within the specified period of three months from the premium due date, an insurer is required to issue a notice to such policyholder conveying the options available to him under such circumstances, unless these options are set forth in the policy document.

Lets take a situation where

- an agent is no longer servicing a policy,
- an insurer fails to remind the policyholder of the lapsed condition of his/her policy and
- to complicate the scenario lets say during such lapsed condition, a claim is preferred under such policy.

Here it would be proper on the part of the insurer to decline such a claim and the plea that the policyholder/claimant was not aware of the lapsed condition will not hold good.

Definitely it is not beneficial for an insurer to let the policies lapse; just the same, the insurer is not legally bound to honour a claim under a lapsed policy. Where as the Code of Conduct for an agent specifies that an agent should make every attempt to ensure remittance of premiums by policyholders within the stipulated time, by giving notice to the policyholder orally and in writing.

In the example given above, if the policy was being serviced by an agent and such agent being bound by the Code of Ethics had reminded the policyholder of the premiums due and of the condition if the premiums are not paid in time, surely the policy would not have lapsed and definitely the insurer was bound to honour the claim.

The 19th Law Commission is recommending amendments to the Insurance Act and the IRDA Act and hopefully necessary amendments to section 40 (2A) would be introduced to permit subsequent renewal commissions to an agent other than the agent who effected the policy. In the mean while the above would be the position in law.

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Contracts of Insurance

Reciprocal Obligations

DR. G. GOPALAKRISHNA

EMPHASIZES THAT UTMOST GOOD FAITH IN INSURANCE CONTRACTS SHOULD NECESSARILY BE A TWO-WAY PROCESS AND SHOULD BE OBSERVED IN THE TRUE SPIRIT OF THE TERMS OF THE CONTRACT.

General

Bunyon has defind a life assurance contract as that in which one party agrees to pay a given sum on the happening of a particular event contingent upon the duration of human life, in consideration of the immediate payment of a smaller sum or certain equivalent periodical payments by another. This definition is on the lines of the more general definition of contract by Anson as "a contract is an agreement enforceable at law made between two or more persons by whom rights are acquired by one or more to certain acts or forbearance on the part of other or others". But Salmond opines that the law of contacts is not the whole law of agreements nor is it the whole law of obligations; he feels only such agreements which create legal obligations that have their source and force in agreements. Thus, right to payment of the sum assured by insurers in certain circumstances is acquired by the assured and in consideration the assured agrees to pay the stipulated premium. Co-relating and taking essence and spirit from the Insurance Act, 1938, the business of life insurance is effecting contracts whereby a person (insurer) agrees, for a consideration (that is payment of a sum of money or a periodical payment, called the premium) to pay to another (insured or his estate) a stated sum on the happening of an event dependent on human life.

Insurance contracts are *uberrima fides*, founded upon utmost good faith and if either party fails to observe the utmost good faith, the contract may be avoided by the other. The obligation to deal fairly and honestly rests to an equal degree upon both parties to a policy.

Proposal

It is not essential, for the formation of a valid contract, that the proposal or offer must be in writing nor is it necessary to reduce a contract in writing. Though there is no legal requirement that a proposal should be in writing, it is the established commercial practice to require a proposer for life insurance to fill in a printed form, called the proposal form, giving his name, address, occupation, age, family history, etc., and indicating the type of assurance desired by him. The practice is so established that the Insurance Rules, 1939 by Rule 12 thereof, prescribe the statements which should be printed in the proposal form.

The origin of the practice of calling upon the proposer to submit a detailed proposal form may be attributed to the special features of an insurance contract and of the law governing it. The ordinary

The origin of the practice of calling upon the proposer to submit a detailed proposal form may be attributed to the special features of an insurance contract and of the law governing it.

When the intention of the parties is recorded in a written instrument, the language of that instrument is obviously the final evidence of that intention.

law relating to the formation of contracts is that each party is under a duty not to make a misrepresentation concerning the subject-matter of the contract to the other. Under the ordinary law there is no positive duty to tell the whole truth in relation to the subject-matter of a contract. There is only the negative obligation to tell nothing but the truth. In a contract of insurance, however, there is an implied condition that each party must disclose every material fact known to him. This type of contract is called *uberrima fides*, that is to say, contracts in which the utmost good faith is required.

The distinctive features of an insurance contract, namely that the insurer cannot properly assess the risk without full disclosure from the proposer makes it highly desirable if not also absolutely necessary that a written proposal is received by the insurer. The insurance companies make it a condition of the contract of insurance that the truth of every one of the statements made by the insured in the proposal, personal statement etc., constitute the basis of the contract so that there is a warranty by the insured that all statements made by him are true and if they are not true the contract is void.

Thus the introduction of the 'basis' clause into a contract of insurance makes the materiality of the assured's misstatements immaterial for the purpose of avoidance of the contract by the insurer. Thus the insurer is placed in a highly advantageous position. The great advantage the insurer derives from the 'basis' clause carries with it the plain duty on the part of the insurer to explain the implications of the clause fully to the insured and further to explain each of the questions of which the answers are sought in the personal statement. Utmost good faith and candour from the insured can only go hand in hand with fair explanation and honorable dealing from the insurer. If the insurer wants to repudiate a policy on the ground of misstatement by the insured he must establish to the satisfaction of the court that he acted fairly and honorably to the insured by explaining properly the implication of the declaration to be signed by the insured and the range or amplitude of the questions required to be answered. This is very important because very often an inaccurate and therefore 'strictly' false answer in another sense could be a true answer if considered 'fairly'.

It needs, therefore, to be agreed beyond doubt that the clauses are introduced into policies of insurance which, unless they are fully explained to the parties will lead a vast number of persons to suppose that they have made a provision for their families by an insurance on their lives, and by payment of perhaps a very considerable proportion of their income, when in point of fact, from the very commencement, the policy was not worth the paper upon which it is was written.

Such being the legal position, it was observed by Lord Shaw in a historic case AIR 1921 PC 195, *'In a contract of insurance it is a weighty fact that the questions are framed by the insurer, and that if an answer is obtained to such a question which is upon a fair construction a true answer, it is not open to the insuring company to maintain that the question was put in a sense different from or more comprehensive than the proponent's answer covered.'*

The Policy

A life insurance policy is the document which expresses the contract between the insurer and the insured. The four essentials of a contract of insurance are, (i) the definition of the risk, (ii) the duration of the risk, (iii) the premium and (iv) the amount of insurance. But the policy which is issued contains more than these essentials because it lays down and measures the rights of the parties and each side has obligations which are also defined. It is said that "A policy ought to be so framed, that he who runs can read. It ought to be framed with such deliberate care, that no form of expression by which, on the one hand, the party assured can be caught, or by which, on the other, the company can be cheated shall be found upon the face of it; and that nothing should be wanting in it, the absence of which may lead to such result".

The practice of insurers is to have standard forms of policies in respect of various plans of assurance offered by them. On the back of the policy are printed the terms and conditions which are applicable to all persons insuring under the particular plan. Any special conditions imposed on any case or any variations are indicated by endorsements. When the intention of the parties is recorded in a written instrument, the language of that instrument is obviously the final evidence of that intention.

The legal effect of the insurer declaring that a policy is indisputable does not amount to saying that the policy does not become invalid in spite of misrepresentation etc.

Policy Conditions and Privileges

An examination of a life insurance policy will show that there are some clauses in it

- which explain the nature of the contract and its legal implications, for example, the clauses relating to age, forfeiture, assignment, nomination and claims;
- some of which are in the nature of restrictive conditions, for example, in the event of suicide, taking up hazardous occupation, change of residence and travel;
- some of which are in the nature of privileges, and add to the benefits of the insurance, for example, relating to days of grace, revival of lapsed policies, non-forfeiture regulations, extended term assurance, paid-up policy, guaranteed surrender value, and loans; and
- some of which are in the nature of supplemental benefits like accident benefit, disability and extended disability benefit that can be secured by paying extra premiums.

Indisputability of the Policy – Its Nature and Effect

If the proposer at the time of proposal, has made any untrue or incorrect statements either in the proposal form or in the personal statement or he has not disclosed any material information, the policy contract becomes null and void. However, this penalty is subject to Section 45 of the Insurance Act, 1938. Under this section, a policy which has been in force for two years cannot be disputed on the ground of incorrect or false statements in the proposal and other documents, unless it is shown to be on a material matter and was fraudulently made. This provision is meant to protect policyholders from suffering for minor inaccuracies on stated facts.

It is open to the insurer to give up or waive the legal right of calling the policy in question, by making a declaration in the policy that the policy is indisputable, either from its inception or after it has remained in force for any specified period, on the ground of misrepresentation, non-disclosure or breach of warranty. The policy will then be a contract containing an absolute promise by the insurer to pay the sum assured on the happening of the event insured against, subject only to the condition that the insured pays the premiums as stipulated. In such a case, the insurer cannot rely on a breach of warranty or a mistake in filling up the proposal form by the insured as a defence to a claim on the policy.

The legal effect of the insurer declaring that a policy is indisputable does not amount to saying that the policy does not become invalid in spite of misrepresentation etc. It only deprives the insurer of the right to dispute the validity of the policy on such ground.

The indisputability clause is just one of the clauses of the contract. Hence, where the contract itself is void from its inception – for instance, on account of fraud or illegality or the insured being a minor or lack of insurable interest etc. – the indisputability clause necessarily falls within the contract of which it is a part, so that the insurer is no longer bound by the clause. Nor can the insured get the benefit of it. The indisputability clause cannot stand by itself and create a contract.

Interpretation of Policy Conditions

Life insurance polices have to be construed like other instruments. The terms and conditions have to the interpreted in a fair and reasonable manner by adopting the ordinary rules of construction. In interpreting documents relating to a contract of insurance the duty of the court is to interpret the words in which the contract is expressed by the parties, because it is not for the court to make a new contract, however reasonable, if the parties have not made it themselves. Where, however, there is any doubt as to the interpretation of a word or phrase, the one favourable to the insured will be preferred, because the policy form has been prepared by the insurer and the insured has obviously no voice in the arrangement of the words employed in the document.

In interpreting the terms of the contract of insurance, they should receive fair, reasonable and sensible construction in consonance with the purpose of the contract, as intended by the parties. Emphasis in such cases is laid, more upon

practical and reasonable, rather than, on a literal and strained construction. In interpreting the contract of insurance neither the coverage under a policy should not be necessarily broadened, nor should the policy be rendered ineffective in consequence of unnatural or unreasonable construction.

An attempt should be made to construe a contract in literal manner so as to accomplish the purpose or the object for which it is made. In the absence of ambiguity, neither party can be favoured but where the construction is doubtful, the courts lean strongly against the party, who prepared the contract. Where, in an insurance contract, there is a susceptibility of two interpretations, the one favourable to the insured is to be preferred.

The reason for this rule is that usually, the insured has no voice in the selection or arrangement of the words employed, and the language of the contract is already written out, and is selected with great care and deliberation by expert legal advisors acting exhaustively in the interest of the insurance company. This is specially so with regard to the provision of a life insurance policy, which exempts the insurer from liability under certain conditions.

Where the meaning of the language used is plain, no violence can be done to the terms of a contract by refining them away, if they convey the plain meaning of the purpose with sufficient clarity. An arbitrary, irrational, unnatural or technical construction has to be avoided in preference to fair, natural, reasonable and practical interpretation. Construction which is liberal rather than literal has to be favoured, always understanding the words and phrases in the contract in their ordinary and popular sense.

The rule of construction against the insurer and favourable to the insured stems from what otherwise is called, the rule of *contra proferentum*, which means that the words of deeds are to be taken most strongly against the party employing them. This rule will apply only where there is a real ambiguity. The spirit behind this rule is that since the language of the insurance contract is that of the insurer, it is both reasonable and just that his own words should be construed most strongly against him.

Endorsements

The terms of the policy may be varied by endorsements. The policy is a document executed by the insurer. The life assured cannot, therefore, make any endorsement, varying the terms. He may, however, make a nomination or assignment on the back of the policy in accordance with the statutory provisions. The endorsements will not attract stamp duty provided that the endorsements do not affect the original valuation of the policy for stamp duty; for instance, the sum assured cannot be increased by endorsements. Some of the alterations may be affected by endorsements on a separate sheet of paper and kept attached to the policy. Every endorsement shall be deemed part of the policy.

Mistake or Omission in Policy

Where parties have entered into a contract, but have failed to express themselves correctly in the instrument concerned, if the mistake is a real one and mutual, it may be rectified. Either party may institute a suit in such a case to have the instrument rectified.

Where a policy that is issued subsequently is not in conformity with the terms of the contract which has already been made, the insured may require the insurer to rectify it and if that is not complied with, may bring an action for rectification of the policy. Elaborating, a life insurance contract comes into existence when the proposal of a party is accepted by the insurer and the terms of acceptance are complied with by the party. The proposal is the basis of the contract. The policy is only a formal document which expresses the contract and the proposal is incorporated in it by reference. Where, therefore, there is a mistake in the policy, the mistake may be rectified so as to make the policy conformable to the real intention of the parties.

Thus, the whole discussion leads beyond doubt that insurance contracts stand truly synallagmatic with reciprocal obligations on both the parties concerned.

Construction which is liberal rather than literal has to be favoured, always understanding the words and phrases in the contract in their ordinary and popular sense.

The author is a retired Senior Officer, LIC of India.

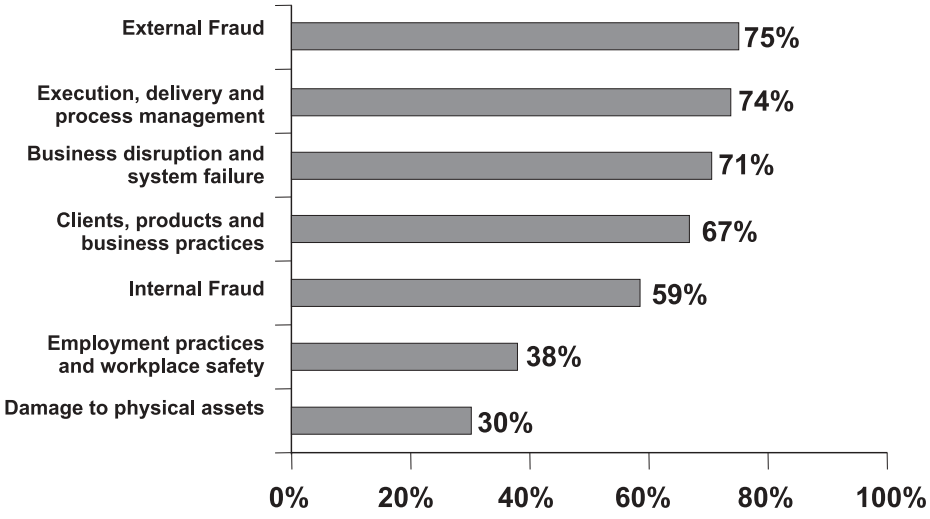
Operational Risk for Insurers

LESSONS FOR LEARNING

KAUSHALENDRA MAURYA WRITES 'IT IS ABOUT THE RIGHT TIME FOR INDIAN INSURERS TO START INTROSPECTING ON RISK WITHIN. THERE ARE SOME ACTIONABLES THAT CAN BE TAKEN UP IMMEDIATELY AND SOME CAN BE TAKEN UP AS A LONG TERM PREEMPTIVE MEASURE.'

Every organization faces operational risk. Failure assumes proportion of grave risk when it is of a composite nature i.e. stemming from more than one factor which is the case most of the times.

Basle Committee's definition of operational risk is "The risk of loss resulting from inadequate or failed internal processes, people and systems or from external events". This definition includes legal risk but excludes strategic and reputation risks. Risk Management Association (RMA) of USA in its survey brought out the following sources of operational risk (in the order of importance).



RMA Survey 2003

What if tomorrow is a bad day of failure?

Operational failures are a grim reality. Almost anything can fail – any thing in process, manpower, technology and business ethics. Although an organization puts in place many controls around causes of failures; in reality, organizations cannot stop things from failing. It may not be possible to stop things from failing due to limitation on controlling factors external to their reach.

Every organization faces operational risk. Failure assumes proportion of grave risk when it is of a composite nature i.e. stemming from more than one factor which is the case most of the times.

In the interest of people, industry and economy; insurers will have to take courage for ethical business rather than business somehow. They will have to initiate process measures to eradicate wrong practices that have come in.

The survey is based on feedback from organizations in financial service sector. However, insurance industry is a little different. We are talking about risk and failure in those entities that have the mantle of solution providers to others exposed to risk and failure. Furthermore, in life insurance industry; an insurer operates under a unique set of business economics, managing which is a challenge. Business, under a particular scheme, has to be booked today but its evaluation in terms of profit/loss can happen only after several years when claims are reported.

Life insurers in India are only about 5-6 years old, except for LIC. They have been under pressure to scale up operations in a short period of time immediately after start of business. The result is an organizational configuration wherein each operational activity is largely undertaken independently. Business Intelligence generated from insurance activities is frequently neither shared nor synthesized. However, in such a scenario, risk generated by one insurance activity shows its impact on other activities in the process flow. For example, there can be little or virtually no interaction between the underwriting and claims departments of an insurer. However, claims would always be in undue pressure for risk generated at underwriting stage. Similarly, a process snag at new business stage may put insurance investment personnel in undue risk.

Private insurers are also in pressure to snatch market from the erstwhile monopoly player and outdo each other in getting more business. More often than not, high premium income targets are met by lowering some standards and by applying work-around/shortcuts - call it a street smart selling, mis-selling or fraud. It is going to hit back on insurers in the form of very adverse claims ratio, very adverse lapse rate and/or very adverse surrender rate. Internally, management knows that in order to cover for adverse claim, lapse and surrender they will have to get New Business premium income somehow. In more recent past, NBFCs had landed up themselves in the same vicious cycle and finally the whole industry lost the trust of investors. In the interest of people, industry and economy; insurers will have to take courage for ethical business rather than business somehow. They will have to initiate process measures to eradicate wrong practices that have come in.

Therefore, it goes without saying that insurance companies in India need robust and matured processes - processes that work on checks and balances mechanism; processes that have been designed to facilitate information flow from one department to other department; processes that impose self discipline in people with the help of standards and ethics; processes that are not person-dependant.

The strength of the process and control can be seen only when controls & outputs are quantified in metrics. Metrics are an effective control measure in tracking trends and provide early warnings. Metrics developed around the following Key Risk Indicators (KRI) will help a lot in managing operational risks.

- Un-reconciled amount(s)
- Staff Turnover
- Value and Volume
- Control & Support Breaks
- Audit Points
- Customer Complaints
- Training Requirements

The metrics values recorded daily need to be compared against a baseline values for each measure. To start with, average/ mean values for each measure could be taken as baseline values. Any deviation from baseline should be corrected by process improvement exercise. Gradually, the baseline should be pushed towards the target values set by management. However, for the big leap makers starting off with ideal baseline values is not a bad idea either.

Relative importance of each of these KRIs for an insurer will depend upon the extent of loss it has brought about in the past. Therefore, insurers will have to start collecting data on loss for themselves to strategically focus their effort and resource. For perspective, some of the loss data from US Financial Sector are here (source: National Academy of Sciences www7.nationalacademies.org):

- *Business Disruption and System Failures*: Solomon Brothers - $303 million - change in computer technology resulted in "un-reconciled balances."
- *Execution, Delivery & Process Management*: Bank of America and Wells Fargo Bank - $225 million & $150 million, respectively - systems integration failures/failed transaction processing.
- *Employment Practices and Workplace Safety*: Merrill Lynch - $250 million - legal settlement regarding gender discrimination.
- *Clients, Products & Business Practices*: Household International - $484 million - improper lending practices; Providian Financial Corp. - $405 million - improper sales and billing practices.

However, risk management is far beyond a paranoid preoccupation on control. It is prudent to take failures as part of change dynamism of day to day business and put in place measures that will make a positive environment that either prevents failures or make an environment that would minimize the impact of failure. This is a whole lot more positive approach. If things do not fail, management would still reap benefits of positive approaches implanted in the environment.

Consider, what if a key employee in operation department is suddenly absent? What if two or three fellows suddenly resign? What if a sub-department has to pull off with fresher/people who lack much needed skills? What if the recruitment drive failed to bring in required manpower? What if there is sudden surge in volume of business? If company finds itself in process failure situation because of such reasons then it is time to evolve a person-independent workflow in operations. This is possible only with a help of a structured workflow management system where inter-departmental dependencies, alerts, controls, work distribution, decision-making tree and outliers/problem handling mechanism are laid down objectively before hand.

Fortunately or unfortunately, insurance industry cannot afford to have a paperless operation process in foreseeable future. Physical papers flow along with the process flow. It becomes a process snag if the two are not moving in tandem. Insurers who can invest in document scanning infrastructure, moving scanned copy of physical papers along the process flow becomes very easy. Nonetheless, it is important that a trail mark of workflow is etched on physical/scanned papers as well. Since processing an insurance proposal form is not a linear workflow always, the physical/scanned proposal form should have trail of where in the workflow that proposal resides and what is the next step in workflow for that proposal.

In service industry, operation models, methods, skills, acumen and knowledge have to flow from one person. People gather knowledge and experience over a period of time but when they have to pass it on to someone else in the organization; they have little time and little inclination to do so. A preemptive strategy is a knowledge management initiative.

Knowledge management is an organized and coherent initiative for the generation of information related to know-how and operation outputs. The information so generated is to be disseminated for developing a shared understanding of the information. The shared knowledge bank has to be accessible to every one in the department. The most important aspect is that this knowledge sharing among colleagues has to be on a daily basis.

A surge in business volume exposes operation process to risk and it can only be handled by scaling up of operations. However, a part of the routine activity in operations can be passed on to the vendors, intermediaries and customers. We know about vendorization but how about "get it done yorself" option for agents and customers. This is a strategy of routing customer service through a Self-Service Portal (web application). Self-service portals are a good means to let policy holders, agents and partners

People gather knowledge and experience over a period of time but when they have to pass it on to someone else in the organization; they have little time and little inclination to do so.

Adopting a six sigma project approach on fixing control and process breaks can bring in benefits lot more than mere fixing the broken ends.

manage their own service requests at their leisure. However, to process such service requests, business applications of the organization need to be seamlessly integrated with each other. Since Self-service portal opens operations face to customer, their reliability on carrying out transactions is very critical.

We know process review is required as frequently as possible. Adopting a six sigma project approach on fixing control and process breaks can bring in benefits lot more than mere fixing the broken ends. It will assure strategic planning to address routine process snags, improved baselines & operational efficiency and bring in 'Voice of Customer' perspective in process excellence efforts. In a decentralized set up, the six sigma approach has to include branches as well.

It may be surprising to know that Solvency Margin asked by IRDA alone would not be able to cover these risks arising from operations. Perhaps IRDA understands the nascent stage of insurance industry. So it is only a matter of time for stricter norms from the regulator. Insurance companies can no longer take comfort in covering an underwriting loss or policy service loss from investment returns or capital restructurings. A well thought out pre-emptive strategy for operation risk is crucial. With these positive vibes implanted in organization, insurers will not only be able to meet the challenges of stricter compliance (like Basle Committee and Sarbanes-Oxley also known as SOX); they will be able to readily embrace any change coming their way.

The author is a Chartered Financial Analyst, presently working with SBI Life Insurance as Manager, Business Analysis.

''ನನ್ನ ಕ್ಲೈಮಿನ ಎಲ್ಲಾ ದಸ್ತಾವೇಜುಗಳನ್ನು ಕಳುಹಿಸಿ ಈಗ ಮೂರು ವಾರಗಳಾದುವು .... ನನ್ನ ಹಣವನ್ನು ಅವರು ಬೇಗ ಕಳುಹಿಸಬಹುದೆಂದು ಆಶಿಸುತ್ತೇನೆ.''

''ಹೌದು, ಖಂಡಿತ. ಎಲ್ಲಾ ಕಾಗದ ಪತ್ರಗಳು ಸಮರ್ಪಕವಾಗಿದ್ದರೆ ಅದನ್ನು ಅವರು 30 ದಿನಗಳೊಳಗೆ ಸೆಟಲ್ ಮಾಡಲೇ ಬೇಕು. ಅದು ನಿಯಮ!''

ದ ಇನ್ ಶೂರೆನ್ಸ್ ರೆಗ್ಯುಲೇಟರಿ ಆ್ಯಂಡ್ ಡೆವಲಪ್ ಮೆಂಟ್ ಅಥಾರಿಟಿ (IRDA) ಇದು ಭಾರತದಲ್ಲಿರುವ ಇನ್ ಶೂರೆನ್ಸ್ ಕಂಪನಿಗಳ ಸುಪರ್ ವೈಸರಿ ಸಂಸ್ಥೆಯಾಗಿದ್ದು ಪಾಲಿಸಿ ಧಾರಕರ ಹಿತವನ್ನು ಸಂರಕ್ಷಿಸುವುದು. ಐ ಆರ್ ಡಿ ಎ ಅವರು ವಿಧಿಸಿರುವ ನಿಯಮಾವಳಿಗಳಲ್ಲಿ ಕೆಲವು ಹೀಗಿವೆ :

- ಸಂಬಂಧಪಟ್ಟ ಎಲ್ಲಾ ದಸ್ತಾವೇಜುಗಳನ್ನು ಸ್ವೀಕರಿಸಿದ 30 ದಿನಗಳೊಳಗೆ ಇನ್ ಶೂರೆನ್ಸ್ ಕಂಪನಿಯು ಹಣ ಪಾವತಿ ಮಾಡಬೇಕು ಅಥವಾ ವಿವಾದ ವಿದ್ದರೆ ಸಂಬಂಧಿತ ಸಮರ್ಪಕ ಕಾರಣ ನೀಡಬೇಕು.
- ಪ್ರಸ್ತಾವನೆ ಅಂಗೀಕಾರವಾದ 30 ದಿನಗಳ ಒಳಗೆ ವಿಮಾ ಕಂಪನಿಯು ಭಾವೀ ಪಾಲಿಸಿ ಧಾರಕರಿಗೆ ಪ್ರಪೋಸಲ್ ಫಾರಂನ ಒಂದು ಪ್ರತಿಯನ್ನು ಉಚಿತವಾಗಿ ನೀಡಬೇಕು.
- ಪ್ರಪೋಸಲ್ ಕೈಸೇರಿದ 15 ದಿನಗಳೊಳಗೆ ಅದನ್ನು ಪ್ರೊಸೆಸ್ ಮಾಡಬೇಕು ಮತ್ತು ಪಾಲಿಸಿ ಧಾರಕರಿಗೆ ತಿಳಿಸಬೇಕು.
- ಒಂದು ವೇಳೆ, ಎಲ್ಲಾ ದಸ್ತಾವೇಜುಗಳನ್ನು ಸಾದರ ಪಡಿಸಿದ ಬಳಿಕವೂ ಕ್ಲೈಮನ್ನು ಸೆಟಲ್ ಮಾಡುವುದರಲ್ಲಿ ವಿಳಂಭವಾದರೆ ಇನ್ ಶೂರೆನ್ಸ್ ಕಂಪನಿಯು ಒಂದು ನಿಗಧಿತ ಮೊತ್ತದ ಬಡ್ಡಿ ಕೊಡಬೇಕಾಗುತ್ತದೆ.
- ಜೀವ ವಿಮೆಯ ಪಾಲಿಸಿಧಾರಕರುಗಳಿಗೆ 15 ದಿವಸಗಳ ''ಫ್ರೀ ಲುಕ್ ಪಿರಿಯಡ್'' (ಪಾಲಿಸಿ ಕೈ ಸೇರಿದ ದಿನದಿಂದ) ಹಕ್ಕು ಇದ್ದು ಅವರು ಪಾಲಿಸಿಯನ್ನು ರದ್ದುಗೊಳಿಸಬಹುದು.
- ಪಾಲಿಸಿಧಾರಕರ ಯಾವುದೇ ನಿವೇದನೆಗೆ ಇನ್ ಶೂರೆನ್ಸ್ ಕಂಪನಿಯು 10 ದಿವಸಗಳೊಳಗೆ ಪ್ರತ್ಯುತ್ತರ ನೀಡಬೇಕು

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प्रकाशक का संदेश

दो दलों के मध्य संविदा के निबंधन तथा शर्तों की अपर्याप्त जानकारी समझदारी में भेद उत्पन्न करती है तथा समयावधि में न्यायालय तथा शिकायत निवारण तंत्र की आवश्यकता पड़ सकती है। बीमा संविदा कहीं अधिक कठिन होते है तथा इनका प्रयोग प्रदान करने के लिये किया जाता है। इनको प्रयोग में लाने की आवश्यकता प्रायः कम ही पड़ती है क्योंकि संविदा में दी गई आपदा सामने नही आती। इसलिये पर्याप्त ध्यान इस बात पर नही दिया जाता जब संविदा को बनाया जाता है। जब आपदा उत्पन्न होती है तो विवाद अवश्य उत्पन्न होते हैं क्योंकि बीमाकर्ता और बीमाकृत की दृष्टि में अंतर होता है। विवाद के मूल में धाराएं होती हैं जो अपना समर्थन बीमा अधिनियम को प्राप्त करती है। भारत में बीमा अधिनियम 1938 बीमा अधिनियम का मुख्य बिन्दु है यह समय की कसौटी पर खरा उतरा है। इसने विभिन्न विवादों के उत्पन्न होने पर अपनी संपूर्णता प्रकट की है। अब पिछले कुछ समय में उद्योग का चेहरा बदला है तथा भारतीय उपभोगिता जिसमें बड़ी संख्या में बहुदेशी कंपनियाँ प्रचलन में है तथा संयुक्त साझेदार तथा भारतीय संवर्धक भी शामिल हैं। इसके परिणामस्वरूप भारत में ऐसे कई उत्पाद पेश किये गये हैं जो पहले उपलब्ध नही थे।

एक क्षेत्र जो ग्राहकों की शिकायतों का सानी होता है वह है बीमा। विशेषतः कुछ विशेष वर्गों के लिये। इसके लिये संविदा की शब्दावली डिजाइनिंग में अधिक पारदर्शिता रखने की आवश्यकता है इस बात को मानते हुये की आवेद को उत्पाद के आवरण तथा अपवर्जनों के बारे में विशेष रूप से जानकारी दी जायेगी। इसके साथ अधिनियम को अपने आप में आवश्यकता है नये बाजारों को बदले। भारत का निधि आयोग जिसने विभिन्न बीमा अधिनियमों का अध्ययन किया है ने अपनी रिपोर्ट जमा की है। इसके अतिरिक्त श्री के पी नरसिम्हन द्वारा अध्यक्षता की गई, समिति ने भी विधि में पर्याप्त परिवर्तनों को सामने रखा है।

जर्नल के इस अंक में बीमा अधिनियम केन्द्र दृष्टि में है। वित्तिय सम्मेलन में नया जोर दिया जा रहा है तथा ऐसी कोशिश है कि समाज के कमजोर लोगों पर पर्याप्त ध्यान दिया जाये। तीव्रता से फैलता हुआ बीमा उद्योग भी बड़ी मात्रा में वित्तिय सम्मेलन से प्रभावित है। माइक्रो बीमा जर्नल के अगले अंक में केन्द्र बिन्दु में होगा।

सी. एस. राव

सी. एस. राव
अध्यक्ष

"दृष्टि कोण"

सम्मिलितकरन में आवरण मिलता है बाजार की अभिवृद्धि को तथा उन्हें जो माइक्रो बीमा को सेवा प्रदान करते हैं साथ ही विवेकपूर्ण अति दृष्टि का लाभ मिलता है।

सुश्री ब्रिगेट क्लैन

विनियमन के अध्यक्ष, पर्यवेक्षण तथा नीति, सीजीएपी कार्य दल माइक्रो बीमा पर

धन शोधन ग्लोब बाजार में हमेशा से प्रस्तुत खतरा है, उसे बिना छेड़ छाड़ के छोड़ा गया है। यह वित्तिय संस्थानों की साख को नुकसान पहुँचा सकता है। वित्तिय बाजारों की अखंडता को कम कर सकता है तथा हमारी अर्थव्यवस्था की चमक को कम कर सकता है।

श्री थरमन शणमुगरत्नम

द्वितीय वित्त मंत्री, सिंगापुर सरकार

टीआरआईए ने मदद की है आतंकवाद बीमा को सहन योग्य मूल्य पर उपलब्ध करवाने के लिये। कार्यक्रम ने कार्य किया है और यह लगातार काम कर रहा है। यदि हम ऐसे जरूरत वाले कार्यक्रम को समाप्त होने देंगे तो यह हमारी अर्थव्यवस्था को नुकसान पहुँचायेगा।

श्री बेन मेक्के

उच्च उपाध्यक्ष, संपत्ति

जब उत्पादों के न्वोन्मेष पर लगी रोक को उठा लिया जायेगा कई कंपनियाँ पोर्टफोलियो आवरण को एक पैकेज के रूप में प्रदान करेगी। लेकिन हमें डर है कि लुभावनी शर्तें मुकद्दमेबाजी में बदल जायेगी।

श्री सी एस राव

अध्यक्ष, बीमा विनियामक और विकास प्राधिकरण

भूमंडलिकरण, आर्थिक अनिश्चित्ता, परिस्थितियों में परिवर्तन तथा वित्तिय न्वोम्मेव तथा अन्य सभी पर्यवेक्षण की आवश्यकता को पुर्नस्थापित करते जिसमें इकठ्ठे कार्य करते हुये नये बाजारों के लिये सतत् मानक बनाते हुये पहुँच स्थापित हो सके।

श्री माइकेल फ्लेमीई

आईएआरएस, कार्यपालक समिति के अध्यक्ष

झंकार अर्थव्यवस्था को लिये भूमंडलीकरण अवसर लाया है, लेकिन कम लचीलों का दंड मिलता है तथा जनसंख्या आयु के कारण कल्याण योजनाओं पर दबाव है।

श्री एनगल गुरिया

महा सचिव, आर्थिक सहयोग तथा विकास संस्था (ओईसीडी)

खाद्य सुरक्षा मापदंड - खाद्य व्यवसाय की अधिसूचना देने की मांग

(केवल आस्ट्रेलिया) आस्ट्रेलिया और न्यूजीलैंड खाद्य मापदंडों की संहिता

श्री आर महेन्द्र कहते हैं कि जीवन बीमा का आधार बिमित व्यक्तियों के स्वस्थ से है तथा स्वस्थ बहुत हद तक खान पान से जुड़ा हुआ है। स्वास्थ्य बनाए रखने के लिए यह जरुरी है कि होटल और रेस्तरां में खाद्य सुरक्षा मापदंड अपनाए जाएं। भारत में अधिक लोगों को इसकी जानकारी नहीं है, अत: आस्ट्रेलिया एवं न्यूजीलैंड में इस कार्य हेतु अपनाए जाने वाले खाद्य सुरक्षा मापदंडों को उन्होंने हमें भेजा है जो स्वास्थ्य हानि को रोकने में महत्वपूर्ण भूमिका अदा कर सकते हैं। इन मापदंड की जानकारी किश्तों में आप तक पहुँचाने का हमारा प्रयत्न है।

ध्यान दें: नये खाद्य सुरक्षा मापदंड न्यूजीलैंड में लागु नहीं होते हैं। आस्ट्रेलिया और न्यूजीलैंड के मध्य खाद्य पदार्थों के मापदंड की संधि के आवेशों में खाद्य पदार्थों की स्वच्छता के मापदंड शामिल नहीं है।

अधिसूचना देने की मांग किस पर लागु होती है?

आस्ट्रेलिया में सूचना देने की मांग लगभग हर व्यवसाय पर लागु होती है। आस्ट्रेलिया में एक खाद्य व्यवसाय कोई ऐसा व्यवसाय या गतिविधि है जिसमें खाद्य पदार्थ बेचा जाता है या किसी भी प्रकार के खाद्य पदार्थ को बेचने के लिए उसके साथ काम किया जाता है, इसका अपवाद है कुछ मौलिक खाद्य उत्पादन की गतिविधियाँ।

इसका मतलब है कि सूचना देने की माँग धर्मार्थ या सामुदायिक कारणों व व्यापारिक संकटपूर्ण कार्यों और एक बार ही की जाने वाली परियोजनाओं पर, जिसमें खाद्य पदार्थ के साथ काम करना व बेचना शामिल है, लागु होती है। यह उन व्यवसायों पर भी लागु होती है जो स्वयं को खाद्य व्यवसाय नहीं मानते जैसे कि कैमिस्ट, सिनेमा, नुक्कड़ की दुकान, पेट्रोल स्टेशन और तैराकी ताल यदि ये पैकेट वाला या किसी अन्य प्रकार का खाद्य पदार्थ शामिल है तो।

अपवाद नीचे दिए गए हैं:

- फार्म, अंगूरों का बाग, फलों का बाग, मत्स्य पालन फार्म जैसे व्यवसाय बशर्ते कि इन लोगों का सीधे ही खाद्य पदार्थ बेचने या सप्लाई का काम न हो या उत्पादित खाद्य पदार्थ को संशोधित नहीं करते हैं।
- विशिष्ट खाद्य पदार्थ बेचने वाली मशीनों या केवल खाद्य पदार्थ को ढोने वाले वाहनों के लिए सूचना देने की आवश्यकता नहीं है। लेकिन जो खाद्य व्यवसाय खाद्य पदार्थ बेचने वाली मशीनों या केवल खाद्य पदार्थ को ढोने

आस्ट्रेलिया में सूचना देने की मांग लगभग हर व्यवसाय पर लागु होती है। आस्ट्रेलिया में एक खाद्य व्यवसाय कोई ऐसा व्यवसाय या गतिविधि है जिसमें खाद्य पदार्थ बेचा जाता है या किसी भी प्रकार के खाद्य पदार्थ को बेचने के लिए उसके साथ काम किया जाता है।

वाले वाहन चलाते हैं, उन्हें अपने व्यापार के लिए वांछित सूचना देनी होगी।

धर्मार्थ या सामुदायिक गुटों को सूचना देने से पहले अपनी स्थानीय क्रियान्वयन एजेंसी से परामर्श करना चाहिए क्योंकि हो सकता है कि आपके राज्य या क्षेत्र में आसान नियम ही लागु हों। एक सामान्य नियम के तौर पर यद्यपि जब भी खाद्य पदार्थ बेचने से संबंधित किसी घटना की योजना हो तो उन्हें उपयुक्त क्रियान्वयन एजेंसी को साबित करना होगा।

यदि मैं पहले से ही पंजीकृत या आज्ञा प्राप्त खाद्य व्यवसायी हूँ तो क्या करुँ?

कुछ नहीं। सूचना केवल इसलिए चाहिए कि क्रियान्वयन एजेंसियों को अपने क्षेत्र में खाद्य व्यावसायों का ज्ञान रहे और उनसे कैसे संपर्क करना है और आपके व्यवसाय से संबंधित खाद्य सुरक्षा खतरों पर दिशा निर्देश देने के लिए।

अपने राज्य या क्षेत्र में खाद्य व्यवसायों के पंजीकरण की आवश्यकताओं पर फैसला करते रहेंगें। यदि आप पंजीकरण मांग के अधीन आते हैं तो आप नई सूचना देने की मांग से प्रभावित नहीं होंगें।

सूचना देने की मांग केवल उन्हीं खाद्य व्यवसायों पर लागु होती है जो अभी पंजीकृत नहीं हैं और उन राज्यों के सभी खाद्य व्यवसायों पर जहाँ अभी खाद्य व्यवसाय पंजीकरण व्यवस्था विद्यमान नहीं है।

यदि मैं पहले से ही पंजीकृत या आज्ञा प्राप्त खाद्य व्यवसायी नहीं हूँ तो क्या करुँ?

खाद्य सुरक्षा मापदंड 3,2,2 फूड सेफ्टी प्रेक्टिसिस एण्ड जनरल रिक्वायरमेंट्स के अंतर्गत खाद्य व्यवसायों को अपने क्षेत्र में खाद्य सुरक्षा के लिए उत्तरदायी क्रियान्यवयन एजेंसी को निम्न सूचना अवश्य देनी होगी। यह सामान्यत: उनकी स्थानीय परिषद होगी या कुछ राज्यों में से क्षेत्रों में स्वास्थ्य विभाग या लोक या वातावरण स्वास्थ्य खंड होंगे, यह प्रत्येक अधिकार क्षेत्र पर निर्भर करता है।

सूचना देना एक स्वीकृति की क्रिया नहीं है और आपको कोई विशेष शर्तें पुरी नहीं करनी होती है। किन्तु आप क्रियान्वयन एजेंसी को

- अपने व्यवसाय के संपर्क का विस्तार अवश्य दें जिसमें व्यावसाय का नाम और व्यावसाय के मालिक का व्यावसायिक पता हो।
- मदद करने के लिए जानकारी दें जिससे यह आपके व्यवसाय से संबंधित खाद्य सुरक्षा खतरे को आक सके - इससे व्यवसाय के प्रकार की जैसे की परचुन निर्माता, परिवहन, भंडारी, रेस्त्रां या छोटी दुकान। और जो खाद्य पदार्थ यह बताता है या आपूर्ति करता है। व्यापार का आकार और अधिक खतरे वाले उत्पादनों की आपूर्ति से संबंधित कुछ विशेष प्रश्न और जिन लोगों को खाद्य जनित रोग होने की बहुत संभावना है, उन्हें उत्पादनों की आपूर्ति की जानकारी हासिल है, और
- क्रियान्वयन एजेंसी के क्षेत्र में आपके सभी प्रांगणों की स्थिति।

चलते फिरते खाद्य पदार्थ बेचने वालों को भी जहाँ ये काम करते हैं उन स्थानों की जानकारी देनी होगी जहाँ वे अपना वाहन रखते या खड़ा करते हैं।

सूचना देने की जरुरत कब से लागू होगी?

मापदंड 3.2.2 फूड सेफ्टी पैक्टिसस एंड जनरल रिक्वायरमेन्ट्स के अंतर्गत सूचना देने की जरूरूत फरवरी 2002 में लागू होगी। किन्तु कुछ राज्यों व क्षेत्रों में बाद की तिथि भी हो सकती है। यह निर्भर करता है कि कौन से राज्य व क्षेत्र अपने खाद्य कानून या अधिनियम नये मापदंड लागू करने के लिये बदलते हैं और क्या वे इस नई मांग के लिये बारह महीने की प्रारंभिक अवधि को चुनते हैं या इस बात के प्रारंभ की तिथि फरवरी 2002 ही रखते हैं।

स्थायी व्यवसायी के लिये इस अवधि के तीन महीने के अंदर यह सूचना देनी चाहिये। नये खाद्य व्यवसायी के लिये यह मांग उसी समय ही लागू होगी जैसे की हर राज्य व क्षेत्र में यह लागू होती है और व्यवसाय शुरू करने से पहले सूचना देनी होगी।

सूचना देने की मांग केवल उन्हीं खाद्य व्यवसायों पर लागु होती है जो अभी पंजीकृत नहीं हैं और उन राज्यों के सभी खाद्य व्यवसायों पर जहाँ अभी खाद्य व्यवसाय पंजीकरण व्यवस्था विद्यमान नहीं है।

क्या मुझे एक बार से अधिक सूचना देनी होगी ?

नहीं। एक ही बार सूचना देनी होगी- जब तक की दी गई सूचना ठीक है। किन्तु जब भी कोई परिवर्तन होता है उदाहरण के लिये व्यवसाय का नाम, पता या व्यवसाय का मालिक या यह क्या करता है और किस खाद्य पदार्थ के साथ काम करता है तब आप इन परिवर्तनों के होने से पहले क्रियान्वयन एजेंसी को अवश्य बतायें।

क्या सूचना देने का कोई प्रपत्र है?

स्थानीय क्रियान्वयन एजेंसियों के लिये सूचना देने वाले प्रपत्रों के नमूने तैयार किये गये हैं। कुछ ही रूप रेखा अलग हो सकती है। लेकिन उन सब में एक जैसी जानकारी पूछी जायेगी। एएनजैडएफए के सूचना देने वाले दस्तावेज में इस विषय पर और अधिक मार्ग प्रदर्शन है। यह दस्तावेज जून 2001 में प्रकाशित होगा। यह एएनजैडएफए की वेबसाइट पर भी मिल सकेगी। अपने क्षेत्र में सूचना प्रपत्रों के लिये अपनी स्थानीय परिषद् या लोक स्वास्थ्य खंड को सूचना देने की मांग की जानकारी के लिये संपर्क करें।

अधिक जानकारी चाहिये?

मापदंडों की प्रतियाँ, इनके निर्देश और अन्य तथ्य पत्रिकाएँ और सहायक सामग्री एएनजैडएफए की वेबसाइट पर मिल सकती है। जब यह मापदंड हर राज्य औव प्रदेश में जारी हो जायेंगे तब खाद्य व्यवसाय सीधे स्थानीय परिषद् के वातावरण स्वास्थ्य अधिकारी या अपने राज्य या प्रदेश के स्वास्थ्य या स्वास्थ्य सेवाएँ विभाग और लोक स्वास्थ्य खंडों से सलाह ले सकते हैं। राज्य और प्रदेश के स्वास्थ्य विभाग व स्थानीय परिषदों के संपर्क का ब्यौरा एक अलग तथ्य पत्रिका फूड सेफ्टी स्टैंडर्ड्स सौरासिस ऑफ इन्फोरमेशन एंड एडवाइस में है।

आपके कर्मचारी और उनके निरीक्षकों को खाद्य सुरक्षा व खाद्य पदार्थ के साथ सुरक्षित रूप से कार्य करने के तरीकों से संबंधित मामलों का पता होना चाहिये जो आपके व्यवसाय से संबंधिक है और जो काम वे आपके लिये करते हैं।

खाद्य सुरक्षा मापदंड - खाद्य पदार्थ कार्य व्यवहार का कौशल व ज्ञान

(केवल आस्ट्रेलिया) आस्ट्रेलिया और न्यूजीलैंड खाद्य मापदंडों की सहिता

ध्यान दें: नये खाद्य सुरक्षा मापदंड न्यूजीलैंड में लागू नही होते। आस्ट्रेलिया और न्यूजीलैंड के मध्य खाद्य पदार्थों के मापदंडों की संधि के आदेशों में खाद्य पदार्थों को स्वच्छता के मापदंड शामिल नही हैं।

मापदंड 3.2.2 फूड सेफ्टी पैक्टिसस एंड जनरल रिक्वायरमेन्ट्स के अंतर्गत खाद्य व्यवसायायों के मालिक इस बात के उत्तरदायी हैं कि वे निश्चित करें कि जो लोग उनके व्यवसाय में खाद्य पदार्थ या खाद्य पदार्थ के संपर्क में आने वाली सतहों के साथ काम करते हैं और जो लोग इस काम का निरीक्षण करते हैं उन्हें खाद्य पदार्थ के साथ काम करने का कौशल व ज्ञान हो।

इस मांग का केवल अपवाद है ये धर्मार्थ या सांप्रदायिक चंदा एकत्र करने के अवसर जहाँ अंभावित संकटजनक, पूर्ण रूप से पका और सीधे ही खाया जाना वाला खाद्य पदार्थ बेचा जाना है।

मापदंड में कौशल व ज्ञान की मांग यह निश्चित करने के लिये की गयी थी कि कर्मचारी खाद्य पदार्थ के साथ ठीक से काम करें और इसका चयन सुरक्षित रहे।

आपके व्यवसाय के लिये कौशल और ज्ञान का क्या अर्थ है?

कौशल आपके कर्मचारी और उनके निरीक्षक अपना काम उन तरीकों से कर सकें जिससे निश्चित हो सके कि आपका व्यवसाय सुरक्षित खाद्य पदार्थों का उत्पादन करें।

ज्ञान: आपके कर्मचारी और उनके निरीक्षकों को खाद्य सुरक्षा व खाद्य पदार्थ के साथ सुरक्षित रूप से कार्य करने के तरीकों से संबंधित मामलों का पता होना चाहिये जो आपके व्यवसाय से संबंधिक है और जो काम वे आपके लिये करते हैं।

कर्मचारी और निरीक्षकों को क्या मालूम होना चाहिये?

खाद्यकर्मियों को जिस कार्य के लिये वे उत्तरदायी है उसे करते हुये खाद्य पदार्थ को सुरक्षित रूप से कार्य करने का कौशल व ज्ञान होना चाहिये।

कर्मचारी की कुशलता व ज्ञान में खाद्य सुरक्षा व खाद्य पदार्थों की स्वच्छता के मामले शामिल होना चाहिये।

उन्हें व्यवसाय के दूसरे कामों के लिये कौशल व ज्ञान नही चाहिये। उदाहरण के लिये भंडार व्यवस्था में जो व्यक्ति सैंडविच बनाता है उसकी कुशलता व ज्ञान को जरूरत व्यवसाय के लिये सफाई करने वाले की कुशलता व ज्ञान की जरूरत से बिलकुल अलग होगी।

किन्तु यदि कोई कर्मचारी और लोगों के न होने पर दूसरे काम में मदद करें और कभी दूसरे खाद्यकर्मियों का निरीक्षण करें तो उनके पास भी इस दूसरे काम को करने की कुशलता व ज्ञान होना चाहिये और अपने नियमित कार्य के लिये भी कुशलता व ज्ञान होना चाहिये।

कर्मचारी की कुशलता व ज्ञान में खाद्य सुरक्षा व खाद्य पदार्थों की स्वच्छता के मामले शामिल होना चाहिये। कर्मचारी खाद्य पदार्थ को कैसे सुरक्षित रखे, इसका जिक्र खाद्य सुरक्षा के मामलों में है। कर्मचारी चीजों को कैसे स्वच्छ रखें ताकि खाद्य पदार्थ को दूषित न कर सके इसका जिक्र खाद्य स्वच्छता की रीतियों में है। निम्न उदाहरणों से खाद्य सुरक्षा के मामलों व खाद्य स्वच्छता की रीतियों का पता चलता है।

एक खाद्यकर्मी दुकान में साबुत मुर्गों को बनाना, भरना व पकाता है। वह कर्मचारी जो यह काम करता है उन्हें यह निश्चित करने के लिये कि मुर्गा सुरक्षित रूप से बिक्री के लिये तैयार किया गया है, उपयुक्त खाद्य सुरक्षा व खाद्य स्वच्छता का कौशल और ज्ञान होना चाहिये।

इस काम के लिये खाद्य सुरक्षा के कौशल और ज्ञान जिसमें शामिल हैं:

- यह ज्ञान कि कच्चे मुर्गों की खतरनाक बैक्टिरिया से दूषित होने की संभावना है और आप अधपका मुर्गा खाने से खाद्य पदार्थ से विषाक्त होने का रोग हो सकता है।
- पकाने के समय और तापमान के ज्ञान की जरूरत ताकि निश्चित हो सके कि मुर्गा व उसमें भरने वाला सामान पूर्णतः पके।
- मुर्गा पूरी तरह से पक गया है यह देखने की कुशलता।
- दोनों कच्चे और पके हुये मुर्गे को रखने का ठीक तापमान का ज्ञान।
- और उपकरण को ठीक तापमान पर रखने को निश्चित करने की कुशलता।

इस काम के लिये खाद्य स्वच्छता के कौशल और ज्ञान में शामिल है:

- यह ज्ञान कि हाथ, दस्ताने व उपकरण जिनका प्रयोग कच्चे मुर्गे को छूने के लिये किया जाता है वे पके हुये मुर्गे को दूषित कर सकते हैं।
- हाथ और उपकरणों को उन तरीकों से धोने की कुशलता जिनसे दूषण को रोकने की संभावना हो।
- दूसरी बातों का ज्ञान जिनसे पके हुये मुर्गे दूषित हो सकते हैं जैसेकि एक गंदे कपड़े व गंदे कार्य क्षेत्र।
- कार्य क्षेत्र को साफ रखने की कुशलता।

मैं कैसे सुनिश्चित करुँ कि कर्मचारियों को उचित कौशल व ज्ञान है?

औपचारिक प्रशिक्षण नहीं चाहिए। बहुत सी बातें हैं जो आप कर सकते हैं और बहुत से साधन हैं जो आप ध्यान में ला सकते हैं। यह सुनिश्चित करने के लिए कि कर्मचारियों के पास उनका काम करने के लिए कौशल व ज्ञान है, कुछ उदाहरण हैं:

- दूसरे कर्मचारी या व्यवसाय के मालिक द्वारा आंतरिक प्रशिक्षण
- कर्मचारियों को खाद्य सुरक्षा व खाद्य स्वच्छता सूचना पढ़ने के लिए देना
- क्रियान्वित नियम जो खाद्यकर्मियों व उनके निरीक्षकों के उत्तरदायित्व के बारे में बताता है
- दूसरे लोगों द्वारा चलाए गए खाद्य सुरक्षा पाठ्यक्रमों में कर्मचारियों को भेजना
- व्यवसाय के कर्मचारियों के लिए पाठ्यक्रम चलाने के लिए सलाहकार को भाड़े पर रखना, और
- औपचारिक व्यावसायिक प्रशिक्षण योग्यताओं वाले कर्मचारियों की नियुक्ति

व्यवसाय, जो पहुँच उनके व्यवसाय के लिए टीक है, उसे चुन सकता है बशर्ते कि वे विश्वस्त

हो सके कि उनके कर्मचारियों के पास काम करने की कुशलता व ज्ञान है।

मुझे इस मांग को कब पूरा करना है?

यह मांग फरवरी 2002 से पहले लागू नहीं होगी। कुछ राज्यों व प्रदेशों में देर से भी लागू हो सकती है। यह अपने क्षेत्राधिकार में मापदंडों को पूरी तरह से लागू करने के लिए राज्य व क्षेत्र के खाद्य संबंधित कानून व नियमों के संशोधन के समय पर निर्भर करता है। आपके राज्य व क्षेत्र में स्थिति की सूचना तथ्य पत्रिका में वर्णित है।

मैं कौशल व ज्ञान की मांगों को कैसे पूरा कर सकता हूँ?

जो व्यवसाय पहले से ही निश्चित कर लेते हैं कि उनके खाद्यकर्मियों को खाद्य पदार्थ के साथ काम करने का कौशल व ज्ञान है, जो अपने कर्मचारियों का कार्य निरीक्षण करते हैं और उन्हें नियमित रुप से सुरक्षित खाद्य पदार्थ के साथ काम करने की रितियों के बारे में याद दिलाते हैं उन्हें कौशल व ज्ञान की मांगों को पूरा करना आसान होगा।

व्यवसायों व क्रियान्वयन अधिकारियों के लिए इस मांग को शुरु करने के लिए 2001 के अर्धमान में आदेश जारी किए जाएँगें। इस बीच जो व्यवसाय इस मांग की शुरुआत के लिए तैयार है उन्हें निम्न प्रश्नों को ध्यान में रखना लाभकारी होगा:

- क्या आपने अपने व्यवसाय में खाद्य पदार्थो के साथ काम करने व सुरक्षा के खतरों को पहचाना है?
- अलग अलग कर्मचारी खाद्य पदार्थ के साथ कौन से कार्य करते हैं?
- क्या आपके व्यवसाय में कर्मचारियों को बताया या दर्शाया गया है कि वे खाद्य पदार्थ के साथ सुरक्षा से कैसे कार्य करें?
- क्या कोई व्यक्ति उत्तरदायी है यह निश्चित करने के लिए कि स्थिर कार्यप्रणाली या कानूनों का अनुसरण किया जाता है?
- क्या आपके पास वह उपकरण व स्थान है जिससे कर्मचारी कार्यक्षेत्र को साफ रख सके?

अधिक जानकारी चाहिए?

मापदंडों की प्रतियाँ, इनके निर्देश और अन्य तथ्य पत्रिकाएँ और सहायक सामग्री एएनजैडएफए की वेबसाइट पर मिल सकती है। जब यह मापदंड हर राज्य औव प्रदेश में जारी हो जायेंगे तब खाद्य व्यवसाय सीधे स्थानीय परिषद् के वातावरण स्वास्थ्य अधिकारी या अपने राज्य या प्रदेश के स्वास्थ्य या स्वास्थ्य सेवाएँ विभाग और लोक स्वास्थ्य खंडों से सलाह ले सकते हैं।

मापदंडों की प्रतियाँ, इनके निर्देश और अन्य तथ्य पत्रिकाएँ और सहायक सामग्री एएनजैडएफए की वेबसाइट पर मिल सकती है।

लेखक श्री आर महेन्द्र, सलाहकार जीवन बीमा

प्रतिस्पर्धात्मक परिदृश्य मे अभिकर्ता की भूमिका

यह सर्ववदित है कि प्रतिस्पर्धा के परिवेश में विपणनकर्ताओं के सोच, व्यवहार तथा कार्यकलापों में व्यापक परिवर्तन हो जाता है। यद्यपि भा जी बी नि के अभिकर्ता ने प्रतिस्पर्धा के वातावरण में पहले से ही कार्य किया है। निवेश के मामले में बैंक, पोस्ट ऑफिस आदि से और जीवन बीमा के क्षेत्र में अपने ही निगम के अभिकर्ता के साथियों से। बीमा में अब अन्य लगभग डेढ़ दर्जन बीमा कंपनियाँ व्यवसाय कर रही है। ग्राहक को विविध विकल्प एवँ उत्पाद उपलब्ध हैं। अभिकर्ता विशेष इस तथ्य पर विचार करें कि ग्राहक मुझसे ही बीमा क्यों खरीदे? यह बहुत ही महत्वपूर्ण तथ्य है। इस तथ्य में दर्शन समाहित है। अगर जागरूक ग्राहक के संदर्भ में इस तथ्य पर विचार किया जाये तो निम्न कसौटियों पर खरा उतरना होगा, अभिकर्ता को - 1. उसके उद्देश्य / आवश्यकता के अनुरूप बीमा योजनाओं को समझना। 2. उपयुक्त बीमा योजना के चयन में सलाहकार की भूमिका निभाना। 3. बीमा विक्रयोपरांत त्रुटिरहित, त्वरित तथा हृदयस्पर्शी बीमा सेवा प्रदान करना। निरक्षर गरीब तथा गैर जागरूक ग्राहक के संदर्भ में तो अभिकर्ता को परानुभूतिक दायित्व ज्यादा हो जाता है। उपर्युक्त कर्तव्य निगम के सभी अभिकर्ता व चैनलों पर सान रूप से लागू होता है। यदि हम स्वंय को ग्राहक के दृष्टिकोण से सोचें तो- ऐसी दुकान / संस्था से माल खरीदेंगे - 1. उत्पाद की अच्छी गुणवत्ता हो। 2. दुकानदार / विक्रेता का व्यवहार उत्तम हो। 3. स्थान / केन्द्र पर पहुँच आसान हो। 4. जगह साफ सुथरी हो तथा व्यवस्थित हो। 5. आदि-आदि। जब अनेक विक्रेताओं का व्यवहार तथा सेवा एक से बढ़कर एक तथा अनेकों का हो तो निश्चित ही विक्रेता विशेष को बेहतर और बेहतर और..और.. बनने की आवश्यकता / अनिवार्यता / अपरिहार्यता है। इसके साथ अगर जीवन बीमा जैसा उत्पाद अमूर्त, रिटर्न दीर्घावधि तथा जिसकी आवश्यकता प्रत्यक्षतः न हो। आदि-2। तो!

उक्त विवेचन तथा भावी परिदृश्य के संदर्भ में जीवन अभिकर्ता को 1. उचित स्थान पर अपना कार्यालय। 2. त्वरित पॉलिसी सेवा हेतु अद्यतन तकनीकी कंप्यूटर, लैपटॉप आदि का प्रयोग / उपयोग। 3. फार्म, अभिलेख आदि की उपलब्धता / सुलभता। 4. ग्राहक सेवा में अभिनव प्रयोग / उपयोगा / उदाहरण। 5. सभी जीवन बीमा उत्पाद का ज्ञान। 6. सॉफ्ट स्किल्स जैसे चातुर्य, तत्क्षण बुद्धि, ध्यान से सुनना, नवीन विचार, सृजनशीलता रचनात्मकता, सामंजस्यता, सहयोगात्मक दृष्टिकोण, वाक कौशल आदि का विकास एवँ प्रयोग। 7. आदि-आदि।

परिवर्तन निरन्तर चलने वाली प्रक्रिया है। अतः अभिकर्ता को वक्त के साथ अपने विचार, व्यवहार व प्रयासों के अनुरूप, सामंजस्य तथा समायोजित करना ही होगा। योग्यतम की उत्तरजीवता शाश्वत तथा सनातन है। अधिक व्यवसाय कर अहंकार से धरातल पर आ जाना, अतिनिर्भरता, व्यवसाय में रूचि न लेना तथा दिशाहीनता व्यावसायिक दुनिया में अक्षम्य है।

सुव्यवस्थित सोच, कार्यप्रणाली ग्राहक से आत्मीयता तथा व्यावसायिक ज्ञान, व्यवसाय तथा व्यवहार में पहले से बेहतर आदि व्यवसाय / व्यापार की आत्मा है। सन् 1956 की मानसिकता के साथ 21वीं सदी में व्यवसाय तथा व्यवहार कहाँ तक उचित है? जब जीवन बीमा अर्जन व्यवसाय व पेशा है तो हमारे अभिकर्ता व्यापारी तथा पेशेवर क्यों नही? (निःसंदेह कुछ अभिकर्ता पेशेवर है किन्तु कुछ प्रतिशत ही है।)

ग्राहक से नियमित संपर्क हेतु-किस्त जमा कराने हेतु स्मरण करना, शादी-जन्म (बच्चों सहित) वर्षगांठ पर बधाई, नये बीमा हेतु कहना, नये बीमा प्लान की जानकारी देना आदि अवसरों का उपयोग करना चाहिये। संपर्क व्यक्तिगत, लिखित तथा टेलीफोनिक यथा योग्य हो सकता है। कर ज्ञान, निवेश ज्ञान, प्रतिफल गणना, उत्पाद विश्लेषण, उत्पाद के विक्रययोग्य अद्वितीय पहलू, उत्पाद प्रदर्शन यथोचित करना चाहिये।

साक्षात्कार- तैयारी, ग्राहक व्यवहार ज्ञान, अन्य कंपनियों के उत्पादों का ज्ञान - विश्लेषण - तुलना आदि अपने उत्पादों की श्रेष्ठता का ज्ञान, व्यवसाय समीक्षा आदि में महारत हासिल करने का प्रयास करते रहना चाहिये।

उभरता तथा विस्तार पाता बीमा बाजार एवँ प्रतिस्पर्धा में अधिकाधिक बीमा व्यवसाय अर्जन, ग्राहकों का पीढ़ी दर पीढ़ी जुडाव, व्यवसाय के मितव्ययी संचालन तथा उच्च रिटर्न ही हमारे अस्तित्व की गारंटी है। यह निगम के प्रत्येक कर्मी पर समान रूप से लागू है।

अभिकर्ताओं को बीमा स्कूल, बीमा ग्राम, क्लब सदस्यता, एमडीआरटी, नवव्यवसाय प्रतियोगिता आदि के अंतर्गत व्यवसाय करके अपनी आय तथा प्रतिष्ठा हेतु कार्य करना चाहिये। निरंतर लक्ष्यित, पहले से ज्यादा, अपने समकक्ष अभिकर्ता से ज्यादा व्यवसाय तथा आत्मसम्मान बढ़ाने ते लिये अधिकाधिक व्यवसाय तथा आत्मसम्मान बढ़ाने के लिये अधिकाधिक व्यवसाय करते रहने को जीवन मंत्र बनाना व अपनाना चाहिये। किसी विद्वान ने सही ही कहा है - दूसरों से पहले अच्छा सोचो, अच्छा करों तथा अच्छा करते रहो।

लेखक राधेश्याम शर्मा, स प्र अधिकारी, भारतीय जीवन बीमा निगम, शाखा खुर्जा (मंडल अलीगढ)

भूल सुधार

जर्नल के सितम्बर, 2007 अंक में सैल्समैन और बीमा उत्पादों की बिक्री लेख प्रकाशित किया गया जिसके लेखक श्री अमरीश सिन्हा जो दि न्यू इंडिया एश्योरेंस कंपनी लिमिटेड, पुणे क्षेत्रिय कार्यालय में सहायक प्रबंधक (हिन्दी) के पद पर कार्यरत है का नाम प्रकाशन से रह गया जिसका हमें खेद है।

- संपादक

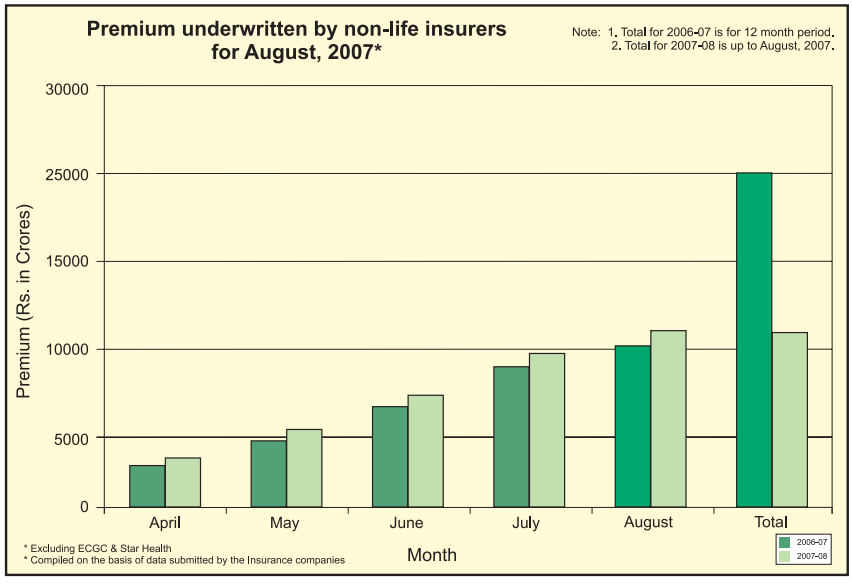
Report Card: General

GROSS PREMIUM UNDERWRITTEN FOR AND UP TO THE MONTH OF AUGUST 2007

(Rs.in Crores)

INSURER	AUGUST		APRIL - AUGUST		GROWTH OVER THE CORRESPONDING PERIOD OF PREVIOUS YEAR
	2007-08	2006-07	2007-08	2006-07	
Royal Sundaram	47.80	44.79	267.94	245.11	9.31
Tata-AIG	61.01	62.37	359.16	343.49	4.56
Reliance General	154.73	59.34	807.95	273.54	195.37
IFFCO-Tokio	61.51	82.24	458.51	570.86	-19.68
ICICI-lombard	301.74	248.06	1463.75	1284.52	13.95
Bajaj Allianz	186.76	125.41	946.50	713.57	32.64
HDFC CHUBB	26.78	15.74	97.69	76.52	27.67
Cholamandalam	40.74	23.78	226.43	128.08	76.79
New India	350.82	343.47	2194.17	2076.80	5.65
National	295.38	272.61	1666.71	1542.33	8.06
United India	293.11	260.02	1579.36	1488.98	6.07
Oriental	288.54	283.60	1712.32	1669.28	2.58
PRIVATE TOTAL	881.07	661.73	4627.93	3635.69	27.29
PUBLIC TOTAL	1227.85	1159.70	7152.56	6777.39	5.54
GRAND TOTAL	2108.92	1821.43	11780.49	10413.08	13.13
SPECIALISED INSTITUTIONS					
ECGC	54.52	47.22	258.15	238.30	8.33
Star Health & Allied Insurance	2.91	1.46	43.21	2.07	1986.08

Note: Compiled on the basis of data submitted by the Insurance companies.



IRDA Officers and Employees Association started a crèche for the benefit of the children of their officers and employees; at Basheerbagh, on 22nd August, 2007.

Photograph shows Mr. C.S. Rao, Chairman, IRDA, cutting the ribbon to mark the inauguration of the crèche. Also seen in the picture are Mr. G. Prabhakara, Member (Life), IRDA and Mr. K.K. Srinivasan, Member (Non-Life), IRDA.

National Insurance Academy (NIA), Pune conducted a two-day seminar – CD Deshmukh Seminar on Creating Consumer Awareness in Life Insurance – at NIA, Pune, on 10th and 11th September, 2007.

Photograph shows Mr. G. Prabhakara, Member (Life), IRDA lighting the lamp at the inaugural ceremony. The others in the photograph are Mr. S.V. Mony, Secretary-General, Life Insurance Council (on Mr. Prabhakara's right); and Mr. R. Venugopal, Professor (Life Insurance), NIA.

15 - 17 Oct 2007 Venue: Pune	Insurance Management Programme for Energy Risk (Oil & Gas) By *NIA Pune*
16 - 19 Oct 2007 Venue: Florida, USA	14th IAIS Annual Conference By *International Association of Insurance Supervisors (IAIS)*
18 - 21 Oct 2007 Venue: Marrakesh, Morocco	20th FAIR Conference By *Federation of Afro-Asian Insurers and Reinsurers*
25 - 27 Oct 2007 Venue: Pune	Financial Risk Insurance & Insurance Derivatives By *NIA Pune*
28 - 31 Oct 2007 Venue: Kuala Lumpur, Malaysia	23rd Pacific Insurance Conference By *Life Insurance Association of Malayasia (LIAM)*
12 - 14 Nov 2007 Venue: Pune	Multiple Distribution Channel Management By *NIA Pune*
13 - 15 Nov 2007 Venue: Mumbai	Microinsurance Conference 2007 By *CGAP Working Group & Munich Re Foundation*
19 - 20 Nov 2007 Venue: Pune	Seminar on Cyber Forensics By *NIA Pune*
26 - 27 Nov 2007 Venue: Kuala Lumpur, Malaysia	4th Asian Conference on Pensions and Retirement Planning By *Asia Insurance Review*
28 - 29 Nov 2007 Venue: Guangzhou, China	8th China Rendezvous By *Asia Insurance Review*
29 Nov 2007 Venue: New Delhi	FICCI Conference on Health Insurance By *FICCI, New Delhi.*

RNI No: APBIL/2002/9589

view point

Inclusiveness covers both the need to have markets accessible to those that microinsurance can serve as well as providing them with the benefit of prudential oversight.

Ms. Brigitte Klein
Chair of Regulation, Supervision and Policy, CGAP Working Group on Microinsurance

Money laundering is an ever-present danger in global markets. Left unhindered, it can injure the reputations of financial institutions, erode the integrity of financial markets, and weaken the resiliency of our economy.

Mr Tharman Shanmugaratnam
Second Minister for Finance, Govt. of Singapore

TRIA helped make terrorism insurance available and affordable. The program has worked, and it continues to work. It would hurt our economy if we allow this much-needed program to lapse.

Mr Ben McKay
Senior Vice President, Property Casualty Insurers' Association of America

When the freeze on product innovation is lifted, many companies will offer a portfolio of covers under one package. But we fear that fancy terms and conditions could lead to a spate of litigation.

Mr CS Rao
Chairman, Insurance Regulatory & Development Authority (IRDA)

Globalization, economic uncertainty, climate change, and financial innovation, to name a few, all reinforce the need for supervisors to work together to develop consistent standards and reach out to emerging markets.

Mr Michel Flamée
IAIS Executive Committee Chair.

Globalisation brings great opportunities for vibrant economies but punishes less flexible ones, and population ageing will put welfare systems under pressure.

Mr Angel Gurría
Secretary-General, Organization for Economic Co-operation and Development (OECD).