

# ACT No. XX of 1940.

[PASSED BY THE INDIAN LEGISLATURE]

(Received the assent of the Governor General on the  
10th April, 1940)

An Act further to amend the Insurance Act, 1938.

**W**HEREAS it is expedient further to amend the  
Insurance Act, 1938, for the purposes here-  
inafter appearing ;

It is hereby enacted as follows :—

1. This Act may be called the Insurance (Amend- short title.  
ment) Act, 1940.

2. To clause (3) of section 2 of the Insurance Act, <sup>Amendment of</sup>  
1938 (hereinafter referred to as the said Act), the follow- <sup>section 2,</sup>  
ing words shall be added, namely :— <sup>Act IV of</sup>  
<sup>1938.</sup>

“ and any security issued by the Government of  
an Indian State and specified as an approved  
security for the purposes of this Act by the  
Central Government by notification in the  
official Gazette ”.

3. In section 3 of the said Act,—

(a) in sub-section (1), for the word “ insurer ”, <sup>Amendment of</sup>  
where it occurs for the first time, the word “ person ”, <sup>section 3,</sup>  
shall be substituted, and to the sub-section the follow- <sup>Act IV of</sup>  
ing provision shall be added and shall be deemed always <sup>1938.</sup>  
to have been added, namely :—

“ Provided that in the case of an insurer who was  
carrying on any class of insurance business  
in British India at the commencement of  
this Act, failure to obtain a certificate of  
registration in accordance with the require-  
ments of this sub-section shall not operate  
to

Applied to the partially excluded areas of the district of  
Mensingh and to the district of Darjeeling, see Notn. No.  
22-Com, s d/ 10th May 1940 in Calcutta Gazette d/16.5.40.

Applied to British Baluchistan, see Notn. No. 103-1,  
dated 17.10.40, Gaz. of India, 1940, Pt. I, p. 1478.

to invalidate any contract of insurance entered into by him if before the expiry of one month from the commencement of the Insurance (Amendment) Act, 1940, he has obtained that certificate.”;

(b) in clause (e) of sub-section (2), and in sub-section (3), for the words “British India” the word “India” shall be substituted;

(c) for sub-section (4) the following sub-section shall be substituted and shall be deemed always to have been substituted, namely:—

“(4) The Superintendent of Insurance shall cancel the registration of an insurer either wholly or in so far as it relates to a particular class of insurance business, as the case may be,—

(a) if the insurer fails to comply with the provisions of section 7 or section 98 as to deposits, or

(b) if the insurer is in liquidation or is adjudged an insolvent, or

(c) if the business or a class of the business of the insurer has been transferred to any person or has been transferred to or amalgamated with the business of any other insurer, or

(d) if the whole of the deposit made in respect of a class of insurance business has been returned to the insurer under section 9.”;

(d) in sub-section (5), for the word, brackets and figure “sub-section (4)” the words, brackets, letter and figure “clause (a) of sub-section (4)” shall be substituted and shall be deemed always to have been substituted;

(e) after sub-section (5) the following sub-sections shall be inserted and shall be deemed always to have been inserted, namely:—

“(5A) When the Superintendent of Insurance cancels any registration under clause (b),  
clause

clause (c) or clause (d) of sub-section (4) the cancellation shall take effect on the date on which notice of the order of cancellation is served on the insurer.

(5B) When a registration is cancelled the insurer shall not, after the cancellation has taken effect, enter into any new contracts of insurance, but all rights and liabilities in respect of contracts of insurance entered into by him before such cancellation takes effect shall, subject to the provisions of sub-section (5D), continue as if the cancellation had not taken place.

(5C) Where a registration is cancelled under clause (a) of sub-section (4), the Superintendent of Insurance may at his discretion revive the registration, if the insurer within six months from the date on which the cancellation took effect makes the deposits required by section 7 or section 98, as the case may be, and complies with any directions which may be given to him by the Superintendent of Insurance.

(5D) Where a registration is cancelled under sub-section (4) and the insurer is a company incorporated under the Indian Companies Act, 1913, or under the Indian Companies Act, 1882, or under the Indian Companies Act, 1866, or under any Act repealed thereby, the Superintendent of Insurance shall, as soon as may be after the expiry of six months from the date on which the cancellation took effect, apply to the Court for an order to wind up the insurance company, or to wind up the affairs of the company in respect of a class of insurance business, unless the registration of the insurance company has been revived under sub-section (5C) or an application for winding up the company has been already presented to the Court. The Court may proceed as if an application

under

under this sub-section were an application under sub-section (2) of section 53, or sub-section (1) of section 58, as the case may be.”;

(f) in sub-section (6), for the words “the Act” the words “this section” shall be substituted, and for the words “grant the insurer” the words “register the insurer and grant him” shall be substituted.

Amendment of  
section 7,  
Act IV of  
1938.

4. In section 7 of the said Act,—

(a) in sub-section (1),—

(i) for the words “cash or approved securities estimated at the market value of the securities on the day of deposit of the amount hereafter specified, namely,” the words “the amount hereafter specified, either in cash or in approved securities estimated at the market value of the securities on the day of deposit, or partly in cash and partly in approved securities so estimated” shall be substituted and shall be deemed always to have been substituted;

(ii) in clause (d), for the words “is accident and miscellaneous insurance including workmen’s compensation and motor car insurance” the following shall be substituted and shall be deemed always to have been substituted, namely :—

“is miscellaneous insurance only, that is to say, insurance which is not in the opinion of the Central Government principally or wholly of any kind or kinds included in clauses (a), (b), or (c)”;

(iii) in clauses (e), (f), (g), (h) and (i), for the word “includes” the word “is” shall be substituted;

(iv) the word “and” at the end of clause (i) and the whole of clause (j) shall be omitted;

(v) the following proviso shall be added to the sub-section, namely :—

“Provided that, where the business done or to be done is marine insurance only and  
relates

relates exclusively to country craft or its cargo or both, the amount to be deposited under this sub-section shall be ten thousand rupees only.”;

(b) in sub-section (7), for the words “ on the day of the first deposit made in compliance with this Act ” the words “ as at the date of the commencement of this Act ” and for the words “ in respect of the life insurance business of the insurer ” the words “ as the instalment or as part of the instalment to be made under the foregoing provisions of this section before the application for registration is made whether any such application is or is not in fact made ” shall be substituted and shall be deemed always to have been substituted, respectively ;

(c) in sub-section (8), after the words “ to the credit of the insurer and shall ” the words “ except to the extent, if any, to which the cash has been invested in securities under sub-section (9A) ” shall be inserted and shall be deemed always to have been inserted ;

(d) for sub-section (9) the following sub-sections shall be substituted and shall be deemed always to have been substituted, namely :—

“ (9) The insurer may at any time replace any securities deposited by him under this section with the Reserve Bank of India either by cash or by other approved securities or partly by cash and partly by other approved securities, provided that such cash, or the value of such other approved securities estimated at the market rates prevailing at the time of replacement, or such cash together with such value, as the case may be, is not less than the value of the securities replaced estimated at the market rates prevailing when they were deposited.

(9A) The Reserve Bank of India shall, if so requested by the insurer,—

(a) sell any securities deposited by him with the Bank under this section and hold the cash realised by such sale as deposit, or

(b) invest

(b) invest in approved securities specified by the insurer the whole or any part of a deposit held by it in cash or the whole or any part of cash received by it on the sale of or on the maturing of securities deposited by the insurer, and hold the securities in which investment is so made as deposit.

(9B) Where sub-section (9A) applies,—

(a) if the cash realised by the sale of or on the maturing of the securities (excluding in the former case the interest accrued) falls short of the market value of the securities at the date on which they were deposited with the Bank, the insurer shall make good the deficiency by a further deposit either in cash or in approved securities estimated at the market value of the securities on the day on which they are deposited, or partly in cash and partly in approved securities so estimated, within a period of two months from the date on which the securities matured or were sold or where the securities matured or were sold before the 21st day of March 1940, within a period of four months from the commencement of the Insurance (Amendment) Act, 1940; and unless he does so the insurer shall be deemed to have failed to comply with the requirements of this section as to deposits; and

(b) if the cash realised by the sale of or on the maturing of the securities (excluding in the former case the interest accrued) exceeds the market value of the securities at the date on which they were deposited with the Bank, the Central Government may, if satisfied that the full amount required to be deposited under sub-section (1) is in deposit, direct the Reserve Bank to return the excess.”;

(c) in

(e) in sub-section (10), after the words "approved securities" the words "estimated at the market value of the securities on the day of deposit, or partly in cash and partly in such securities," shall be inserted.

5. In the proviso to sub-section (3) of section 27 of the said Act, for the words "commencement of this Act" the figures and words "30th day of June, 1939," shall be substituted.

Amendment of section 27, Act IV of 1938.

6. In section 28 of the said Act,—

Amendment of section 28, Act IV of 1938.

(a) in sub-section (1), after the word and figure "section 27" the words "and all other particulars necessary to establish that the requirements of that section have been complied with" shall be inserted;

(b) in sub-section (2),—

(i) after the word and figure "section 27" the following shall be inserted, namely:—

"or for the purpose of securing the particulars necessary to establish that the requirements of that section have been complied with";

(ii) for the words "and the insurer shall comply with all requisitions made by the Superintendent in that behalf" the following shall be substituted, namely:—

"The insurer shall comply with any requisition made in this behalf by the Superintendent of Insurance, and if he fails to do so within two months from the receipt of the requisition he shall be deemed to have made default in complying with the requirements of this section."

7. In section 35 of the said Act,—

Amendment of section 35, Act IV of 1938.

(a) in sub-section (1), after the words "shall be transferred to" the words "any person or transferred to" shall be inserted and for the words "insurers concerned" the words "parties concerned" shall be substituted;

(b) in sub-section (3), for clauses (b) and (c) the following shall be substituted, namely:—

"(b) balance-sheets in respect of the insurance business of each of the insurers concerned in such amalgamation or transfer, prepared

in

in the Form set forth in Part II of the First Schedule and in accordance with the regulations contained in Part I of that Schedule ;

- (c) actuarial reports and abstracts in respect of the life insurance business of each of the insurers so concerned, prepared in conformity with the requirements of Part II of the Fourth and Fifth Schedules and in accordance with the regulations contained in Part I of the Schedule concerned ;
- (d) a report on the proposed amalgamation or transfer, prepared by an independent actuary who has never been professionally connected with any of the parties concerned in the amalgamation or transfer at any time in the five years preceding the date on which he signs his report ;
- (e) any other reports on which the scheme of amalgamation or transfer was founded.

The balance-sheets, reports and abstracts referred to in clauses (b), (c) and (d) shall all be prepared as at the date at which the amalgamation or transfer if sanctioned by the Court is to take effect, which date shall not be more than twelve months before the date on which the application to the Court is made under this section :

Provided that if the Central Government so directs in the case of any particular insurer there may be substituted respectively for the balance-sheet, report and abstract referred to in clauses (b) and (c) prepared in accordance with this sub-section certified copies of the last balance-sheet and last report and abstract prepared in accordance with sections 11 and 13, if that balance-sheet is prepared as at a date not more than twelve months, and that report and abstract as at a date not more than five years, before the date on which the application to the Court is made under this section."

8. To



8. To section 36 of the said Act the following words shall be added, namely:—

Amendment of section 36, Act IV of 1938.

“ and shall make such consequential orders as are necessary to give effect to the arrangement, including orders as to the disposal of any deposit made under section 7 or section 98”.

9. In sub-section (3) of section 42 of the said Act,—

(a) for the words “ shall expire on the 31st day of March in each year ” the words “ shall remain in force for a period of twelve months only from the date of issue ” shall be substituted ;

Amendment of section 42, Act IV of 1938.

(b) to the sub-section the following provisos shall be added, namely:—

“ Provided that when any licence is issued or renewed within the year beginning on the day on which the Insurance (Amendment) Act, 1940, came into operation, the Superintendent of Insurance may specify the date, not being earlier than one year nor later than two years from the date of issue or renewal, on which the licence shall cease to be in force :

“ Provided further that the Central Government may, by notification in the official Gazette, make provision in respect of licences in force at the commencement of the Insurance (Amendment) Act, 1940, extending the period for which they are to remain in force by a term of from one to eleven months ”.

10. For sections 65 and 66 of the said Act the following sections shall be substituted and shall be deemed always to have been substituted, namely:—

Substitution of new sections for sections 65 and 66, Act IV of 1938.

‘ 65. (1) In this Part “ provident society ” means, a person who, or a body of persons (whether corporate or unincorporate) which, not being an insurer registered for the time being under Part II of this Act, carries on the business of insuring the payment, on the happening of any of the contingencies mentioned in sub-section (2), of—

Definition of “ provident society ”.

(a) an annuity of or equivalent to fifty rupees or less, payable for an uncertain period, or

(b) a gross

- (b) a gross sum of five hundred rupees or less, whether paid or payable in a lump sum or in two or more instalments over a certain period,

exclusively in both cases (a) and (b) of any profit or bonus not being a guaranteed profit or bonus.

*Explanation.*—For the purposes of this sub-section, a period is “certain” if its duration is ascertainable in advance and “uncertain” if its duration is not so ascertainable.

(2) The contingencies referred to in sub-section (1) are the following, namely:—

- (a) the birth, marriage or death of any person or the survival by a person of a stated or implied age or contingency;
- (b) failure of issue;
- (c) the occurrence of a social, religious or other ceremonial occasion;
- (d) loss of or retirement from employment;
- (e) disablement in consequence of sickness or accident,
- (f) the necessity of providing for the education of a dependent;
- (g) any other contingency which may be prescribed or which may be authorised by the Provincial Government with the approval of the Central Government.

(3) For the purposes of sub-sections (1) and (2)—

- (a) contracts entered into before the commencement of this Act shall not be taken into account;
- (b) two or more policies issued to one person shall, for the purposes of determining whether the limits fixed by sub-section (1) have or have not been exceeded, be deemed to be one policy if the contingencies on the happening of which the sums are payable under the policies (whether the contingencies be the same

same or different) relate to one person only, whether he be the policy-holder or some other person.

V of 1912.

(4) Every person or body of persons for the time being registered as a provident society under the Provident Insurance Societies Act, 1912, and every person or body of persons for the time being registered as a provident society under this Act shall be deemed to be a provident society for all the purposes of this Act.

(5) If any question arises whether any person or body of persons is or is not a provident society within the meaning of this section, the Superintendent of Insurance shall decide the question and his decision shall be final.

66. No provident society shall undertake any form of insurance not falling within the limits fixed by sub-section (1) of section 65, nor shall any provident society be eligible to be registered under section 3.

Restrictions on provident societies.

11. In sub-section (2) of section 73 of the said Act, after the brackets and figure "(9)" the brackets, figures and letters "(9A), (9B)" shall be inserted, and after the word and figure "section 8" the words and figure "and of section 9" shall be inserted.

Amendment of section 73, Act IV of 1938.

12. In section 84 of the said Act, before the word and figure "section 65" the words, brackets and figure "sub-section (2) of" shall be inserted.

Amendment of section 84, Act IV of 1938.

13. In section 85 of the said Act—

Amendment of section 85, Act IV of 1938.

(a) in sub-section (3)—

(i) for the words "any director or officer of the society" the words "any director, manager, managing agent, auditor, actuary, officer or partner of the society" shall be substituted;

(ii) for the words "a director or officer of the society is a director or partner" the following words shall be substituted, namely:—

"a director, manager, managing agent, actuary, officer or partner of the society is a director, manager, managing agent, actuary, officer or partner";

(b) after

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

“(3A) Any loan prohibited under sub-section (3), made before and outstanding at the commencement of the Insurance (Amendment) Act, 1940, shall be repaid before the 1st day of January, 1941, and in case of default the director, manager, managing agent, auditor, actuary, officer or partner who has received the loan or is connected with the concern which has received the loan, as the case may be, shall cease to hold office in or be a partner of the society and shall be ineligible to hold office in or be a partner of the society until the loan is repaid.”;

(c) in sub-section (4), for the words “or officer” the words “manager, managing agent, auditor, actuary, officer or partner” shall be substituted.

Insertion of new section 106A in Act IV of 1938.

Notice to and hearing of Superintendent of Insurance.

14. After section 106 of the said Act the following section shall be inserted, namely:—

“106A. (1) When application is made to the Court for the making of any order to which this section applies the Court shall, unless the Superintendent of Insurance has himself made the application or has been made a party thereto, send a copy of the application together with intimation of the date fixed for the hearing thereof to the Superintendent of Insurance, and shall give him an opportunity of being heard.

(2) The orders to which this section applies are the following, namely:—

- (a) an order for the attachment in execution of a decree of any deposit made under section 7 or section 98;
- (b) an order under section 9 or section 59 for the return of any such deposit;
- (c) an order under section 36 sanctioning any arrangement for the transfer or amalgamation of life insurance business or any order consequential thereon;
- (d) an order for the winding up of an insurance company or a provident society;

(e) an

(e) an order under section 58 confirming a scheme for the partial winding up of an insurance company ;

(f) an order under section 89 reducing the amount of the insurance contracts of a provident society."

15. After section 110 of the said Act the following sections shall be inserted, namely :—

Insertion of new sections 110A and 110B in Act IV of 1938.

"110A. The Superintendent of Insurance may by general or special order delegate any of his powers or duties under this Act to any person subordinate to him. The exercise or discharge of any of the powers or duties so delegated shall be subject to such restrictions, limitations and conditions, if any, as the Superintendent of Insurance may impose, and shall be subject to his control and revision.

Delegation of powers and duties of Superintendent of Insurance.

110B. Every document which is required by this Act or by any rule made thereunder to be signed by the Superintendent of Insurance or by any person subordinate to him or by any officer authorised by him under sub-section (1) of section 42 shall be deemed to be properly signed, if it bears a facsimile of the signature of such Superintendent, person or officer printed, engraved, lithographed or impressed by any other mechanical process approved by the Central Government."

Signature of documents.

16. In section 114 of the said Act,—

Amendment of section 114, Act IV of 1938.

(a) in sub-section (2),—

(i) in clause (h), before the word and figure "section 65" the words, brackets and figure "sub-section (2) of" shall be inserted;

(ii) the word "and" at the end of clause (k) shall be omitted ;

(iii) after clause (l) the following clause shall be inserted, namely :—

"(m) any other matter which is to be or may be prescribed."

(iv) the proviso shall be omitted ;

(b) sub-section

(b) sub-section (3) shall be re-numbered as sub-section (4) and the following shall be inserted as sub-section (3), namely :—

“(3) Every rule made under this section shall be laid as soon as may be after it is made before each of the Chambers of the Central Legislature, while it is in session, for a total period of one month which may be comprised in one session or in two or more sessions, and if before the expiry of that period, or where the period for which the rule is so laid before one Chamber does not coincide with that for which it is so laid before the other, before the expiry of the later of these periods, both Chambers agree in making any modification in the rule or both Chambers agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be.”

Amendment of  
section 116,  
Act IV of  
1938.

17. In section 116 of the said Act,—

(a) for the words, figures and brackets “from the provisions of section 7 or section 98 relating to deposits or from the provisions of sub-section (2) of section 27 relating to the keeping of assets in India” the words “from any of the provisions of this Act which may be specified in the notification” shall be substituted ;

(b) to the section the following proviso shall be added, namely :—

“Provided that no such notification shall be issued unless the Central Government is satisfied that insurers constituted, incorporated or domiciled in British India are under the law or practice in such State entitled therein to benefits corresponding to those conferred by the notification or to benefits which in the opinion of the Central Government are at least equivalent thereto.”

18. In

18. In Form A contained in Part II of the First Schedule to the said Act, in the first column, in the entry "Accident and Miscellaneous Insurance Business Account" the words "Accident and" shall be omitted.

Amendment of  
First Schedule,  
Act IV of  
1938.

19. In the Third Schedule to the said Act—

Amendment of  
Third Schedule  
Act IV of  
1938.

(a) in Part I, in regulation 2 the words "accident and" and the words "including workmen's compensation and motor car insurance" shall be omitted;

(b) in Part II,—

(i) in note (a) appended to Form D, for the words "payable outside India" the words "ordinarily paid outside India" shall be substituted, and the following sentence shall be added, namely :—

"If any question arises whether any premiums are ordinarily paid outside India, the Superintendent of Insurance shall decide the question and his decision shall be final." ;

(ii) in the heading to Form F, the words "Accident and" and the words "including Workmen's Compensation and Motor Car Insurance Business" shall be omitted.