

## » Provisions related with Dispute Resolution Mechanism

As discussed in the previous segment of grievances redressal procedure, disputes arises in between Insured and Insurer can be sorted out up to certain extent. Besides this option, there are number of other methods can be used as dispute resolution mechanism in the market. An insurer can resolve dispute as per the provisions laid down in The Consumer Protection Act or approaching the insurance ombudsman as per "Redressal of Public Grievances Rules 1998". Following are the provisions of dispute resolution mechanism:

## » The Consumer Protection Act

### Meaning of Consumer Protection

Consumer Protection may be defined as the steps taken for protecting consumers from unfair trade practice, exploitation and monopolistic attitudes of some business

organizations. It is basically focused on developing awareness of the consumers about their rights and responsibilities as a customer. They must know the procedure to be followed for redressal of their grievances and stand for their rights. For Example, consumers should know how to protect them from various unfair trade practices adopted by companies like black marketing, adulteration, hoarding, misleading advertisements etc.



### Importance of Consumer Protection

Business is not possible in the absence of consumers. Hence, it is highly required to protect the consumers from wrong or unfair practices followed by the companies in India.

Following are the main importance of consumer protection:

#### 1. From Consumer's Point of View

Consumer protection carries a lot of importance from the consumer's point of view:

- (a) **Consumer Ignorance** : Generally consumers are ignorant or not aware about their rights and options available for them to protect their interest. It becomes essential to make them aware and educate about their rights and various organizations authorized for grievance redressal for protecting their interest.
- (b) **Unorganized Consumers** : It is required for the consumers to form an organization of consumers for protecting their interest and creating awareness about the consumer rights and responsibilities. Consumer Organizations are provided certain powers and rights to stand for the rights of the consumers. These organizations can fill case against on behalf of aggrieved consumers. So, it becomes necessary to bring unorganized consumers in to the forum of consumer organization for availing protection.
- (c) **Widespread Exploitation of Consumers** : Consumer protection helps in protecting the consumers from the widespread exploitation of business firms in the form of black marketing, unfair trade practices, hoarding, and adulterations etc.

## 2. From Business Point of View

Importance of Consumer protection can be viewed differently discussed below:

- (a) **Long Term Interest of Business** : Consumer Satisfaction should be of prime concern for all the business. Long term interest of the companies largely depends on the level of consumer satisfaction. Consumer satisfaction helps in enhancing the sales and demand for the product in the market.
- (b) **Business Uses Society's Resources** : All business organizations are depending on various resources available in the society for operating business activities. So, it is the responsibility of the business firms to provide better quality and services to the consumers. Consumer's Protection helps in protecting and satisfying the consumer needs and wants.
- (c) **Social Responsibility** : Every business organization has to perform their responsibility towards the society involving various groups and customers. Quality products and affordable price is the basic requirement of customers which should ensure by each and every organization as a part of social responsibility. Consumer protection works as a guide businessman to provide social responsibilities.
- (d) **Moral or Ethical Justification** : Morality and Ethics must be maintained by all the business houses as an integral part. It adds values to the business and increases the image in the market. In today's competitive market environment, all business firms have to work as per ethical values otherwise it cannot sustain or survive in the market.
- (e) **Government Intervention** : Business firms engaged in unfair trade practices deliberately attempt to avoid rules, regulations and intervention of government. Brand image of the business firms are adversely affected by direct intervention by government. So, it is essential for the business enterprises to protect the interest of consumers to maintain their goodwill and brand image.

## Legal Protection to Consumers

There are different rules and regulations framed by government for the purpose of protection of consumer. Government of India has formulated a special Act for protecting the interest of the consumers termed as "The Consumer Protection Act 1986".

## The Consumer Protection Act 1986

This Act came in to existence from 1<sup>st</sup> July, 1986 for the purpose of protecting consumers from the manipulation, malpractices and unfair trade practices adopted by the business firms. The salient features of this act are:



- (a) This act provides number of rights and responsibilities to consumers.
- (b) It helps in protecting or safeguarding consumers against defective goods, unfair trade practices, manipulation and exploitation.
- (c) This Act formed three agencies for redressal of grievances of consumers.

### Meaning of Consumer

Consumer may be defined as a person who consumes or use of goods and services. As per the Consumer Protection Act, 1986, consumer is defined as follows:

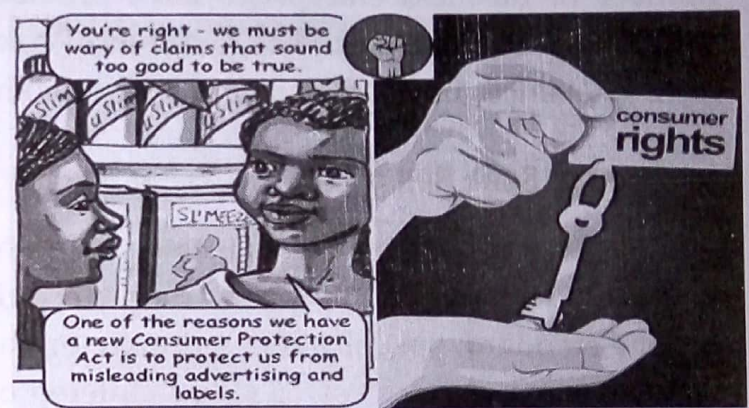
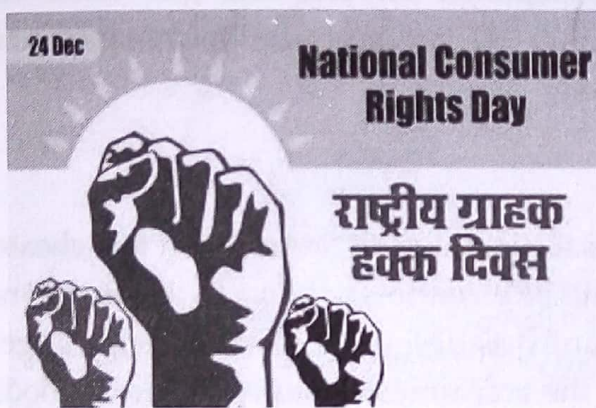


Consumer is

- (a) One who purchases goods or hire services for some value
- (b) Any uses of such goods or beneficiary of services with approval of the buyer
- (c) Anyone who uses the goods bought or services hired for earning livelihood by self-employment.

## Rights of Consumer

As per Consumer Protection Act, 1986, consumer has provided some rights for protecting and safeguarding their interests. These rights of consumers are:



### (a) Right to Safety

Consumers are paying money for procuring different products and services in the market. It is the responsibility of the business firms to provide quality goods and services to their customers. Consumer has the right to get full value of the products purchased. They can appeal against the business enterprises selling products of inferior quality and harmful effects. For Example, Mobile Phones manufactured with substantial component parts may cause serious injury or harm to the users.

### (b) Right to be Informed

Consumer has the rights to get all the information related to the products such as quality, quantity, price, component parts, date of manufacturing, date of expected expiry, instructions to use etc.. All these informations help a consumer to take decisions regarding purchase of products and services. Consumer Protection Act, 1986 has framed strict guidelines for providing of all these required information on the package and label of the product.

**(c) Right to Choose**

Consumers enjoy the rights and privileges to select their products as per their requirement from the market. It is necessary for the business firms to produce and supply variety of products at affordable prices to meet the needs and wants of consumers. It provides a cushion to the consumers in selecting their preferred products out of the variety of products available.

**(d) Right to be Heard**

As per Consumer Protection Act, consumer has to rights to appeal against exploitation and unfair trade practices adopted by number of business firms and to be heard. There are number of business enterprises have provided customer services and grievances cell to listen to the complaints and suggestions of consumers. Other organizations are instructed to have grievances unit for listening to the customers.

**(e) Right to Seek Redressal**

Consumers have the rights to seek for redressal of their grievances when feel cheated or exploited. A customer can put a complaint against the vendors when the product is not as per the standard, specification and more importantly as desired. This right helps in getting compensation for the loss or injury suffered by the consumers. In certain cases, goods are replaced completely or repaired for satisfying the need of consumers.

**(f) Right to Consumer Education**

Consumer should possess adequate knowledge about their rights and reliefs provided to them for protecting their interest. It became essential to educate the consumers about their legal rights from time to time. At present, there are number of consumer organizations, government agencies, media are taking lot of initiative to educate and aware the consumers.

**(g) Responsibilities of Consumers**

Following are the major responsibilities of consumers:



1. **Consumers must exercise their rights :** Consumer should understand their rights and responsibilities properly. They must exercise their rights and reliefs provided by Consumer Protection Act and other legal framework.
2. **Be aware about various goods and services :** Consumer should be aware of various products and services available in the market. They have to choose the products and services best suited their needs or requirements.
3. **Buy only standardized products :** Consumers should procure quality products manufactured as per the minimum standard. Government has determined certain standard parameters for different type of products manufactured. It is the responsibility of consumers to check and verify the quality of the products on the basis of these government standards. For Example, consumer should look for the BIS and HALLMARK sign at the time of purchase of Gold Jewellery.



BIS hallmark



Agmark



ISI mark



FPO mark

4. **Learn about Risks associated :** It is required for the customers to learn about the risks and uncertainties associated with the products and services available in the market before purchasing. It ensures their safety and security.
5. **Caution Consumer :** Customers should be highly cautious about buying of variety of products and services sold by different companies in the market. It protects them from cheating and exploitation from the unfair trade practitioners.

6. **Avoid blind trust on advertisements** : Consumers should check, verify and analyze the products or services before purchasing out of number of alternatives. They should not blindly believe the Ads which represent the features and utilities of products.
7. **Ask for Proper Bill and Cash Memo** : It is the responsibility of the consumers to ask for proper bill and cash memo on purchase of goods and services in the market. It helps in restricting unfair trade practices and malpractices.
8. **Ready to file complaints** : It is the most important responsibility of the consumers to take a stand for their rights and file complaints against inferior products and malpractices of the business firms.
9. **Formation of consumer societies** : Consumers should fight for their rights by establishing consumer organizations or societies. It is their responsibility to be united for educating other people and creating awareness among them about their rights and responsibilities.
10. **Protecting Environment** : Consumers should try to protect the environment by eliminating waste, littering through effective use of the products.

### Who can file a complaint?

According to Consumer Protection Act, 1986, the following persons can complain:

- (a) Any Consumer
- (b) Registered Consumers Association
- (c) The Central or The State Government
- (d) One or More consumers on behalf of a group of consumers having same interest
- (e) A legal heir or representative of a deceased consumer

### Against whom a complaint can be filed

- (i) Complaints can be filled against seller, manufacturer, or dealers deal with inferior quality and defective goods.
- (ii) Complaints can be filled against service provider's deals in defective or deficient services.

### Legal Redressal Machinery as per Consumer Protection Act, 1986

There are three tier system followed as per The Consumer Protection Act, 1986 for redressal the grievances of consumers. It is regarded as the legal redressal machinery. The



main purpose of this system is to protect the interest and rights of the consumers by operating at district, state and national level.

### **1. District Forum**

District Forum consists of a President and Two other members, one of whom is a woman. All these fellow members are appointed by state government. Consumers can put their complaints for goods and services up to a maximum value of ₹ 20 lakhs. District Forum sends the goods to the laboratories for testing against which complaints are made. Agency informs the final decisions to both the parties on the basis of laboratory report. If the aggrieved party is not satisfied by the decisions of the district forum, he can appeal before the State Commission against the judgment within 30 days.

### **2. State Commission**

State Commission consists of a President and at least two members including a female member. All of these members are appointed by state government. Complaints for goods and services for a value between ₹ 20 lakhs and ₹ 1 Crore and appeals against the decisions of District Forum are accepted in this commission for hearing. After listening to both the parties, State Commission may send the goods for further testing if feel necessary and give the decision on the basis of inspection report of the goods. If the complaining party is not satisfied with the order of the State Commission, he can appeal before the National Commission within 30 days.

### **3. National Commission**

National Commission consists of a President and four numbers of fellow members including one female member. All these members are appointed by Central Government. The complaints can be filed in National Commission if the value of the goods is more than ₹ 1 Crore. On receipt of the complaint, both the parties are informed. Goods are sent for testing in the laboratory if required. Decisions have taken by the Commission on the basis of Laboratory Testing Report and arguments of both the parties. If aggrieved party does not get satisfied with the judgment of the commission, he or she can file a complaint against the verdict in Supreme Court within 30 days.

### **Remedies or Relief available**

Following are the major reliefs available to the consumers:

- (a) Eliminating defects from the goods
- (b) Reduction of deficiencies in services

- (c) Replacement of the inferior and defective goods with better one.
- (d) Refund of the excess price paid for goods and services
- (e) Eliminating or Prohibiting unfair trade practices
- (f) Withdrawal or Ban of defective and harmful products from the market
- (g) Effective and Reliable Ads portraying a true picture about products and services
- (h) Compensation for loss or damage

### Role of Consumer Organizations and NGOs

There are number of consumer organizations operated all over the country with the basic purpose of protecting consumers from the unfair trade practices, exploitation and malpractices of the business firms. The most popular consumer organizations operated in the country are Consumer Guidance Society of India (Mumbai), Citizen Action Group (Mumbai), Consumer Education and Research Centre (CERC) Ahmadabad, Common Cause (New Delhi) etc.

The major roles played by these organizations are:

- (i) Preparation of brochures, journals, magazines etc.
- (ii) Creating awareness among consumers
- (iii) Gathering data and information about different products and services and testing their quality
- (iv) Organize seminars, conferences, workshops for solving consumer problems
- (v) Filing cases or complaints on behalf of consumers
- (vi) Opening and operating consumer grievances cells
- (vii) Helps the government agencies to solve cases related to exploitation of customers
- (viii) Providing knowledge about consumerism
- (ix) Guiding people in proper selection of products by checking safety and quality measures like ISI Mark, AGMARK, HALLMARK etc. on the package and label of the product.

### ► Insurance Ombudsman

The word "Ombudsman" first ever conceptualized in the 19<sup>th</sup> century as an authority empowered to investigate individual complaints or grievances from the insured parties against public authorities, corporations and departments etc in Sweden. After few years,

this concept was used in many countries like UK, Australia etc. In India, this concept came in to effect in the year 1998. As per the power conferred under sub section (1) Section 114 of the Insurance Act, 1938, Central Government of India has set up an ombudsman specifically for insurance sector. The primary objective of ombudsman is to redress and settle the disputes arising between insurance companies and insured parties. Ombudsman is regarded as a quasi judicial body formed for this purpose of quick settlement of disputes arises among insurers and insured. It works as a mediator between insured and insurer. It does not work as a judicial authority. It does not have the rights to issue summons to the parties and the witnesses. It has to take all its decisions on the basis of documentary evidences provided.

### **Regulations on Insurance Ombudsman**

- (1) There shall be established such number of Insurance Ombudsman for such territorial jurisdiction as the Executive Council of Insurers may specify, for discharging the duties and functions prescribed under these rules.
- (2) An Ombudsman shall be selected from amongst persons having experience of the insurance industry, civil service, administrative service or judicial service.
- (3) An Ombudsman shall be selected by a Selection Committee comprising of—
  - (a) Chairperson of the IRDAI, who shall be the Chairman of the Selection Committee;
  - (b) one representative each of the Life Insurance Council and the General Insurance Council from the Executive Council of Insurers – members;
  - (c) A representative of the Government of India not below the rank of a Joint Secretary or equivalent, in the Ministry of Finance, from the Department of Financial Services member.
- (4) The Executive Council of Insurers shall prepare a panel through an open process by inviting applications from amongst the eligible candidates and the selection process shall be in accordance with the selection criteria finalized by the Executive Council of Insurers with the approval of the Central Government in the Ministry of Finance.
- (5) An Ombudsman shall be appointed after satisfactory vigilance clearance from the immediate previous employer and medical fitness report from an authorized doctor.

### **Term of office of Insurance Ombudsman**

An Ombudsman shall be appointed for a term of three years and shall be eligible for

reappointment: Provided that no person shall hold office as an Ombudsman after he has attained the age of seventy years.

### **Remuneration of Insurance Ombudsman**

- (1) The Ombudsman shall be allowed a fixed pay of two lakh twenty-five thousand rupees per month and any pension to which he is entitled from the Central Government or a State Government shall be deducted from his salary.
- (2) The revised pay shall be such as may be determined by the Central Government: Provided that the other allowances and perquisites payable to the Ombudsman shall be such as may be determined by the Executive Council of Insurers with the prior approval of the Central Government.

### **Territorial jurisdiction of Insurance Ombudsman**

- (1) The office of the Insurance Ombudsman shall be located at such places and shall have such territorial jurisdiction as may be specified by the Executive Council of Insurers from time to time.
- (2) The Executive Council of Insurers shall specify the territorial jurisdiction of each Ombudsman.
- (3) The Ombudsman may hold sitting at various places within his area of jurisdiction in order to expedite disposal of complaints.

### **Duties and functions of Insurance Ombudsman**

- (1) The Ombudsman shall receive and consider complaints or disputes relating to
  - (a) delay in settlement of claims, beyond the time specified in the regulations, framed under the Insurance Regulatory and Development Authority of India Act, 1999;
  - (b) any partial or total repudiation of claims by the life insurer, General insurer or the health insurer;
  - (c) disputes over premium paid or payable in terms of insurance policy;
  - (d) misrepresentation of policy terms and conditions at any time in the policy document or policy contract;
  - (e) legal construction of insurance policies in so far as the dispute relates to claim;
  - (f) policy servicing related grievances against insurers and their agents and intermediaries;

- (g) issuance of life insurance policy, general insurance policy including health insurance policy which is not in conformity with the proposal form submitted by the proposer;
  - (h) non-issuance of insurance policy after receipt of premium in life insurance and general insurance including health insurance; and
  - (i) any other matter resulting from the violation of provisions of the Insurance Act, 1938 or the regulations, circulars, guidelines or instructions issued by the IRDAI from time to time or the terms and conditions of the policy contract, in so far as they relate to issues mentioned at clauses (a) to (f) .
- (2) The Ombudsman shall act as counselor and mediator relating to matters specified in sub-rule (1) provided there is written consent of the parties to the dispute.
  - (3) The Ombudsman shall be precluded from handling any matter if he is an interested party or having conflict of interest.
  - (4) The Central Government or as the case may be, the IRDAI may, at any time refer any complaint or dispute relating to insurance matters specified in sub-rule (1), to the Insurance Ombudsman and such complaint or dispute shall be entertained by the Insurance Ombudsman and be dealt with as if it is a complaint made under rule 14.

### **Manner in which complaint to be made**

- (1) Any person who has a grievance against an insurer, may himself or through his legal heirs, nominee or assignee, make a complaint in writing to the Insurance Ombudsman within whose territorial jurisdiction the branch or office of the insurer complained against or the residential address or place of residence of the complainant is located.
- (2) The complaint shall be in writing, duly signed by the complainant or through his legal heirs, nominee or assignee and shall state clearly the name and address of the complainant, the name of the branch or office of the insurer against whom the complaint is made, the facts giving rise to the complaint, supported by documents, the nature and extent of the loss caused to the complainant and the relief sought from the Insurance Ombudsman.
- (3) No complaint to the Insurance Ombudsman shall lie unless—
  - (a) the complainant makes a written representation to the insurer named in the complaint and
    - (i) either the insurer had rejected the complaint; or

- (ii) the complainant had not received any reply within a period of one month after the insurer received his representation; or
  - (iii) the complainant is not satisfied with the reply given to him by the insurer;
- (b) The complaint is made within one year
- (i) after the order of the insurer rejecting the representation is received; or
  - (ii) after receipt of decision of the insurer which is not to the satisfaction of the complainant;
  - (iii) after expiry of a period of one month from the date of sending the written representation to the insurer if the insurer named fails to furnish reply to the complainant.
- (4) The Ombudsman shall be empowered to condone the delay in such cases as he may consider necessary, after calling for objections of the insurer against the proposed condonation and after recording reasons for condoning the delay and in case the delay is condoned, the date of condonation of delay shall be deemed to be the date of filing of the complaint, for further proceedings under these rules.
- (5) No complaint before the Insurance Ombudsman shall be maintainable on the same subject matter on which proceedings are pending before or disposed of by any court or consumer forum or arbitrator.

#### **Recommendations made by the Insurance Ombudsman.**

- (4) Where a complaint is settled through mediation, the Ombudsman shall make a recommendation which it thinks fair in the circumstances of the case, within one month of the date of receipt of mutual written consent for such mediation and three copies of the recommendation shall be sent to the complainant and the insurer concerned.
- (5) If the recommendation of the Ombudsman is acceptable to the complainant, he shall send a communication in writing within fifteen days of receipt of the recommendation, stating clearly that he accepts the settlement as full and final.
- (6) The Ombudsman shall send to the insurer, a copy of its recommendation, along with the acceptance letter received from the complainant and the insurer shall, thereupon, comply with the terms of the recommendation immediately but not later than fifteen days of the receipt of such recommendation, and inform the Ombudsman of its compliance.

**Award**

- (1) Where the complaint is not settled by way of mediation under rule 16, the Ombudsman shall pass an award, based on the pleadings and evidence brought on record.
- (2) The award shall be in writing and shall state the reasons upon which the award is based.
- (3) Where the award is in favour of the complainant, it shall state the amount of compensation granted to the complainant after deducting the amount already paid, if any, from the award : Provided that the Ombudsman shall,
  - (i) not award any compensation in excess of the loss suffered by the complainant as a direct consequence of the cause of action; or
  - (ii) not award compensation exceeding rupees thirty lakhs (including relevant expenses, if any).
- (4) The Ombudsman shall finalize its findings and pass an award within a period of three months of the receipt of all requirements from the complainant.
- (5) A copy of the award shall be sent to the complainant and the insurer named in the complaint.
- (6) The insurer shall comply with the award within thirty days of the receipt of the award and intimate compliance of the same to the Ombudsman.
- (7) The complainant shall be entitled to such interest at a rate per annum as specified in the regulations, framed under the Insurance Regulatory and Development Authority of India Act, 1999, from the date the claim ought to have been settled under the regulations, till the date of payment of the amount awarded by the Ombudsman.
- (8) The award of Insurance Ombudsman shall be binding on the insurers.

**Review of activities of Insurance Ombudsman**

- (1) The Ombudsman shall prepare an annual report detailing the activities undertaken during the previous financial year under their jurisdiction, statement of accounts and any other relevant information and submit to the Executive Council of Insurers with a copy to the IRDAI by the 30th June every year.
- (2) The Executive Council of Insurers shall on receipt of annual reports of all Insurance Ombudsman, furnish a report containing a general review of the activities of Insurance Ombudsman during the preceding financial year and such other

information as it may consider necessary, to the Central Government and to the IRDAI any time after the 30th June but not later than the 30th September, every year.

- (3) The IRDAI shall consider the annual reports so furnished under sub-rule (1) and the report of the Executive Council of Insurers under sub-rule (2) and take suitable steps as it deems fit and necessary.

### **Advisory Committee**

- (1) An Advisory Committee consisting of eminent persons not exceeding five and including one Central Government nominee shall be constituted by the IRDAI to review the performance of the Insurance Ombudsman from time to time.
- (2) The IRDAI shall decide the time, venue and quorum of the meeting of the Advisory Committee.
- (3) The Advisory Committee shall submit its report to the IRDAI for review and further action as deemed necessary.

### **Recommendations to Central Government**

The IRDAI, in consultation with the Executive Council of Insurers, may recommend to the Central Government, proposals for effecting improvements in the functioning of the Insurance Ombudsman.

### **Types of Reserve maintained by Insurance Companies**

There are different types of reserves maintained by insurance companies in the system of accounting. These are discussed below for the better understanding of the learners.

#### **(a) Reserve for Unexpired Risks**

It is the amount kept as reserve for use at the end of accounting year for an unexpired insurance. It is created for meeting the possible liability caused from the unexpired insurance policies. Such reserve is termed as Reserve for Unexpired Risks. Percentage of such reserve is 100% in case of marine insurance and 50% of net premium in respect of other general insurance policies.

#### **(b) Claims Reserves**

Acceptance and settlement of claims are common in insurance sectors. On maturity or on the occurrence of hazardous situation, insured may ask for settlement of claims from the



insurers. Generally, it is a time taking and challenging process to settle all such claims for insurance companies. In order to ensure effective claim settlement, companies maintain a special reserve termed as "Claims Reserve".

On receipt of claim application from the insured, the claims adjuster will open a file to maintain a detail record of claims payable to the insured. Claims reserve is mostly maintained by the insurance companies to measure profitability and cash-flow. This reserve keeps on fluctuating from time to time due to the effect of claims settlement process. In this type of reserve, a sum equal to an amount expected to be paid to the insured. It also includes the expenses incurred by the insurer in the process of claim settlement like legal charges, fees payable to the advocates etc.

### **(c) IBNR Reserve**

IBNR represents claims incurred but not reported in the insurance sector. Generally, insurance companies prepare a detail report of the claims demanded by the insured parties. Incurred but not reported (IBNR) reserve deals in calculation of claims made by the insured, but not reported to the insurer. This reserve covers short-term issues. It is illustrated from the example of a claim made on a seasonal home that will not be noticed until the owners arrive. There are some situations in which losses can take lot of time. IBNR helps insurance companies kept the required funds apart to cover the amount of claims of the insured.

### **(d) Statutory Reserves**

As per the rules and regulations framed by government regulating agencies, insurance companies maintain specific reserve funds termed as statutory reserve. These funds help in facing unexpected increase in volume of claims. Environmental claims and Product Liability Claims are huge in size which requires heavy funds for the insurance companies to pay off.

### **(e) Account Balance Reserves**

Account balance reserves are basically used in the annuity type of insurance contracts. In such insurance contracts, insurer keeps an amount equal to the amount the policyholder has in their account minus a surrender charge.

### **(f) Benefit Reserves**

Benefit driven reserves are regarded as the a type of reserve kept by the insurance companies for long duration policies like whole life, ten year term with options, and endowments etc. This type of insurance contract includes the criteria of prepayment for future periods of coverage where the reserves are kept separately for payment of expected future benefit costs. The amount kept under this reserve is invested pension funds, AAA

rated bonds, government bonds, basically with low risk investment options with the possibility of higher return.

### Reserving Process followed by Insurance Companies

Following are the process of reserving followed by Insurance Companies:

1. Design or Develop a specific model of the process on the basis of assumptions.
2. Set up the model by utilizing past observations and experiences.
3. Make a Test Analysis of the model set in along with its assumptions to draw conclusions of acceptance or rejection of it.
4. Use the model to anticipate future possibilities.
5. Determine the amount of reserve on the basis of professional judgment and experience.

### Determination of solvency margins - life insurance business

1. Interpretation: In this Schedule, (1) "Available Solvency Margin" means the excess of value of assets (as furnished in form-AA specified under Insurance Regulatory Development Authority of India (Actuarial Report and Abstracts for Life Insurance Business) Regulations, 2016) over the value of life insurance liabilities (as furnished in form-H of Insurance Regulatory Development Authority of India (Actuarial Reports and Abstracts for Life Insurance Business) Regulations, 2016) and other liabilities of policyholders' fund and shareholders' funds;

(2) "Solvency Ratio" means the ratio of the amount of Available Solvency Margin to the amount of Required Solvency Margin as specified in form-KT-3 of Insurance Regulatory Development Authority of India (Actuarial Report and Abstracts for Life Insurance Business) Regulations, 2016.

2. Every insurer at all time shall maintain its Available Solvency Margin at a level which is not less than higher of fifty per cent of the amount of minimum capital as stated under Section 6 of the Act and one hundred percent of Required Solvency Margin failing which the Authority shall act in accordance with sub-section (2) of Section 64VA of the Act.

3. "Control level of Solvency" shall mean the level of solvency margin specified by the Authority in accordance with sub-section (3) of Section 64VA of the Act on the breach of which the Authority shall act in accordance with sub-section (4) of section 64VA of the Act without prejudice to taking any other remedial measures as deemed fit. The control level of solvency is hereby specified as a solvency ratio of 150 %.

4. Determination of Required Solvency Margin : Every insurer shall determine the Required Solvency Margin, the Available Solvency Margin and the Solvency Ratio as per Insurance Regulatory Development Authority of India (Actuarial Report and Abstracts for Life Insurance Business) Regulations, 2016.

### Regulations on Investment made by Insurance Companies in India

"Investment Assets" mean all investments made out of:

#### (1) In the case of Life Insurer

- (i) shareholders' funds representing solvency margin, non-unit reserves of unit linked insurance business, participating and non-participating funds of policyholders, funds of variable insurance products including One Year Renewable pure Group Term Assurance Business (OYRGTA) at their carrying value
- (ii) policyholders' funds of Pension, Annuity business and Group business including funds of variable insurance products at their carrying value
- (iii) policyholders' unit reserves of unit linked insurance business including funds of variable insurance products at their market value as per guidelines issued under these regulations, from time to time

(2) in the case of General Insurer including an insurer carrying on business of re-insurance or health insurance or in case of a branch of a foreign company engaged in the business of re-insurance, funds maintained in its head office account, shareholders' funds representing solvency margin and policyholders' funds at their carrying value as shown in its balance sheet prepared in accordance with any regulations issued in that behalf for the time being in force, by IRDAI (Preparation of Financial Statements and Auditors' Report of Insurance Companies) Regulations.

### Approved Investments

(a) No insurer shall invest or keep invested any part of its Controlled Fund, as defined under Sec 27A / Assets as defined under Sec 27 (2) of the Act, read together with Sec 27E of the Act, otherwise than in approved securities, as per Section 2(3) of Insurance Act, 1938, as amended from time to time and in any of the following approved investments, namely:

1. debentures secured by a first charge on any immovable property plant or equipment of any company which has paid interest in full
2. debentures secured by a first charge on any immovable property, plant or equipment of any company where either the book value or the market value,

whichever is less, of such property, plant or equipment is more than three times the value of such debentures

3. first debentures secured by a floating charge on all its assets of any company which has paid dividends on its equity shares.
4. preference shares of any company which has paid dividends on its equity shares for at least two consecutive years immediately preceding
5. equity shares of any listed company on which not less than ten percent dividends have been paid for at least two consecutive years immediately preceding
6. immovable property situated in India, provided that the property is free of all encumbrances;
7. loans on policies of life insurance within their surrender values issued by him or by an insurer whose business he has acquired and in respect of which business he has assumed liability;
8. Fixed Deposits with banks included for the time being in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934) and; such other investments as the Authority may, by notification in the Official Gazette, declare to be Approved Investments.

**(b) In addition the following investments shall be deemed as Approved Investments**

1. All rated debentures (including bonds) and other rated & secured debt instruments as per Note appended to Regulations 4 to 9. Equity shares, preference shares and debt instruments issued by All India Financial Institutions recognized as such by Reserve Bank of India – investments shall be made in terms of investment policy guidelines, benchmarks and exposure norms, limits approved by the Board of Directors of the insurer.
2. Bonds or debentures issued by companies, rated not less than AA or its equivalent and A1 or equivalent ratings for short term bonds, debentures, certificate of deposits and commercial papers by a credit rating agency, registered under SEBI (Credit Rating Agencies) Regulations 1999
3. Subject to norms and limits approved by the Board of Directors of the insurer's deposits [including fixed deposits as per Regulation 3 (a) (8)] with banks (e.g. in current account, call deposits, notice deposits, certificate of deposits etc.) included for the time being in the Second Schedule to Reserve Bank of India Act, 1934 (2 of 1934) and deposits with primary dealers duly recognized by Reserve Bank of India as such.

4. Collateralized Borrowing & Lending Obligations (CBLO) created by the Clearing Corporation of India Ltd and recognized by the Reserve Bank of India and exposure to Gilt, G Sec and liquid mutual fund forming part of Approved Investments as per Mutual Fund Guidelines issued under these regulations and money market instrument or investment.
5. Asset Backed Securities with underlying Housing loans or having infrastructure assets as underlying as defined under 'infrastructure facility' in Regulation 2 (h) as amended from time to time.
6. Commercial papers issued by All India Financial Institutions recognized as such by Reserve Bank of India having a credit rating of A1 by a credit rating agency registered under SEBI (Credit Rating Agencies) Regulations 1999
7. Money Market instruments as defined in Regulation 2(j) of this Regulation, subject to provisions of approved investments.

**Explanation:** All conditions mentioned in the 'note' appended to Regulation 4 to 9 shall be complied with.

(c) The board of the insurer, to comply with the provisions of Section 27A (2) (ii) of the Act, may delegate to Investment Committee, for investments already made and the continuance of such investments from controlled fund / assets, in otherwise than in an approved investments, and in All India Financial Institutions recognized as such by RBI for investments carrying a rating of less than AA and being part of Approved Investment. The investment committee shall be responsible for the details, analysis and review of non-performing assets of investments on a quarterly periodicity. The insurer shall report compliance of this provision to the Authority through Form 4.

(d) Unless specifically permitted by the Authority, no investment shall be made in any entity not formed under laws relating to companies in India and in any private limited company or one person company or a company formed under section 8 of the Companies Act, 2013 or erstwhile Section 25 of the Companies Act, 1956.

## ► Provisions on Investment Management

### A. Constitution of Investment Committee

1. Every insurer shall constitute an Investment Committee which shall consist of a minimum of two non-executive directors of the Insurer, the Chief Executive Officer, Chief of Finance, Chief Risk Officer, Chief of Investment division, and the Appointed Actuary. The Board of the Insurer shall ensure that Chief of Finance, Chief of Investment and the Chief

Risk Officer, shall fulfill the minimum qualification requirements specified in the regulations / guidelines issued by the Authority. The decisions taken by the Investment Committee shall be recorded and be open to inspection by the officers of the Authority.

## **B. Investment Policy**

1. Every Insurer shall draw up, an Investment Policy (IP) (fund wise IP in the case of Unit Linked Insurance Business) and place the same before its Board of Directors for its approval.
2. Every insurer shall have a model code of conduct to prevent insider / personal trading of Officers involved in various levels of Investment Operations in compliance with SEBI (Prohibition of Insider Trading) Regulation, 1992 as amended from time to time and place the same before its Board of Directors for its approval.
3. While framing the Investment Policy, the Board shall ensure compliance with the following:
  - (i) Issues relating to liquidity, prudential norms, exposure limits, stop loss limits including securities trading, management of all investment risks, management of assets liabilities mismatch, Scope of Internal or Concurrent audit of Investments, criteria form empanelment and review of investment brokers, investment statistics and all other internal controls of investment operations, the provisions of the Insurance Act, 1938 and IRDAI (Investment) Regulations, Guidelines and Circulars made there under
  - (ii) Ensuring adequate return on policyholders and shareholders' funds consistent with the protection, safety and liquidity of such fund(s).
4. The investment policy of Life, General Insurer including an insurer carrying on business of re-insurance or health insurance, as approved by the Board shall be implemented by the investment committee. The Board shall review on a quarterly basis the monitoring of fund wise and in respect of each product (both participating and nonparticipating products in the case of life insurers) the following minimum:
  - (a) **Life Insurers:**
    - (i) new business scale planned versus actual at the end of the period1 to maturity
    - (ii) expenses projected versus actual

- (iii) persistency / renewal premium streams projected versus actual
  - (iv) claims - projected versus actual
  - (v) actual yield versus projected yield or returns
  - (vi) action plan and follow up status
- (b) General Insurer including an insurer carrying on business of re-insurance or health insurance (at line of business level):
- (i) gross level of premium income projected vs actual along with reasons for negative growth if any
  - (ii) steps to correct the business achieved as planned in case of under achievement of gross written premium
  - (iii) underwriting results planned vs achieved along with reasons for negative deviations
  - (iv) claims outgo projected versus actual - major reasons for increase / decrease in loss ratio and corrective steps planned for future
  - (v) expenses including acquisition cost planned Vs actual in case of excess over permitted limits, reasons for such excess along with plan to comply limits
  - (vi) overall incremental investments projected vs actual - reason for deviation from the planned accretion and steps planned to correct the trend if the same is negative.
5. The Board shall review the investment policy and its implementation on a half-yearly basis or at such short intervals as it may decide and make such modification to the investment policy as is necessary to bring it in line with the investment provisions laid down in the Act and Regulations made there under, keeping in mind protection of policyholders' interest and pattern of investment laid down in these regulations or in terms of the agreement entered into with the policyholders in the case of unit linked insurance business.

### **International Trends in Insurance Regulations**

When we are discussing about international trends, insurance companies and their customers will likely to face number of regulatory changes in coming years worldwide. There are different areas or concerns will be addressed in the future period of time.

Following are the regulatory trends that may expect in the field of insurance at international level:

**Own Risk Solvency Assessment (ORSA):**

ORSA refers to Own Risk Solvency Assessment. Insurance companies following ORSA system are required to submit a detail report on the annual filing to their concerned regulatory insurance authorities. This report consists of their own assessment of risk profile, techniques of managing risks, the potential impact of those risks and a view on solvency. All the insurance players successfully handling and implementing ORSA system have taken time to understand the concept and components of the system. They are utilizing it as an opportunity to increase their own risk and capital frameworks and sought to drive business value from the ORSA process.

**Department of Labor (DOL) fiduciary standards:**

The DOL's "Conflict of Interest" rule on fiduciary investment advice came in to effect from June 2016 in the United States. On 2<sup>nd</sup> March 2017, DOL has published a proposed rule that would extend the applicability date of the rule for 60 days to address questions of law and policy in the country. The said rule will remain intact until issue of a final rule delaying the applicability date.

**Cyber technology:**

Technological advancement in the society raised the volume of online business transactions. As a result of which, cyber technology has become a major issue for the regulators especially for the insurance sector. The presence of multiple regulatory systems for cyber security leads to the threats of duplication and extra costs. On the other side, it becomes immensely difficult for the insurance companies to defend their cases in court room in the event of cyber breaches in the absence of safety measures.