Insurance Legal and Regulatory Framework

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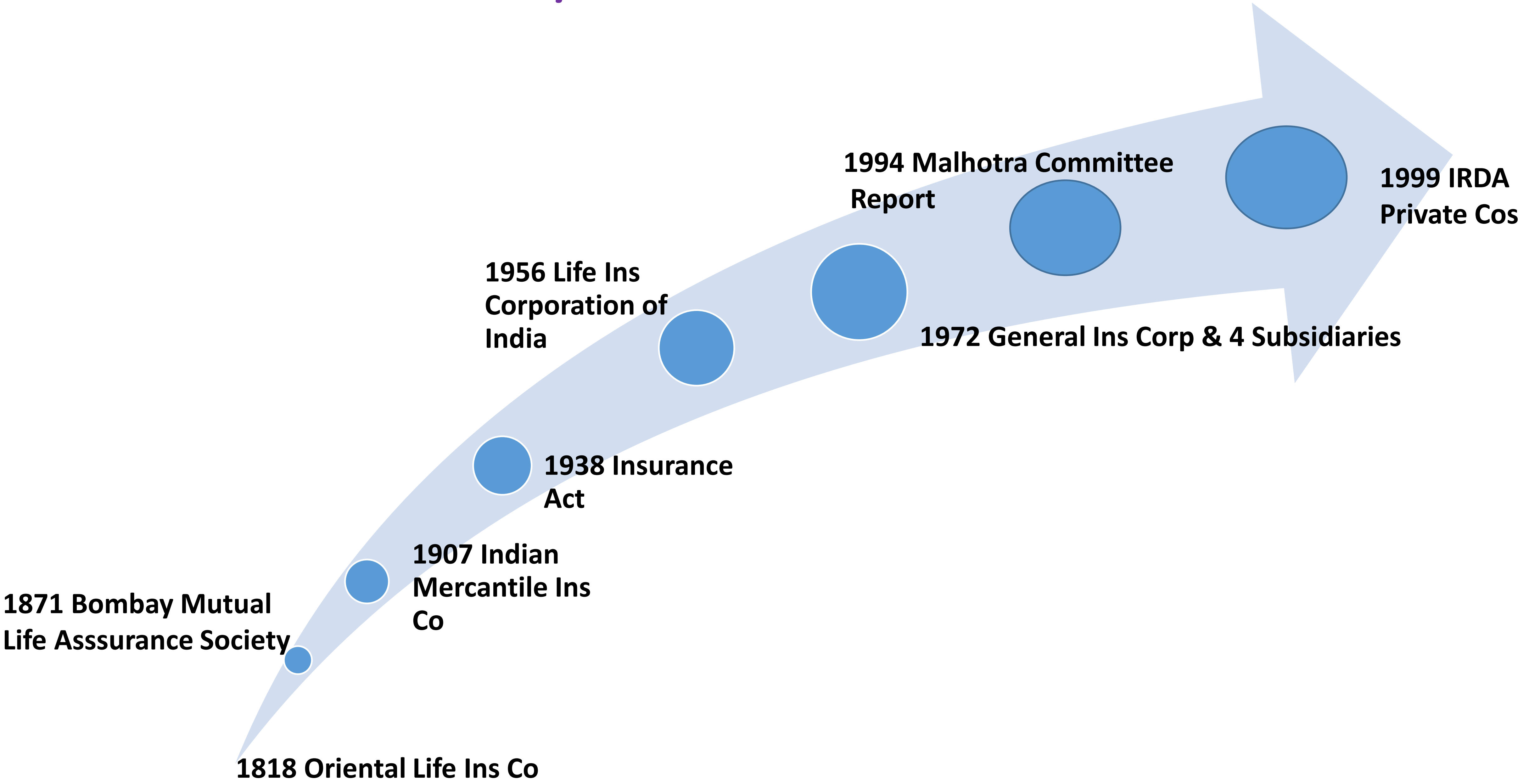
Indian Ins Industry- Path to Liberalization



Insurance Industry Snapshot 31/03/2020

Particulars	Life Insurance	General Insurance	Total
No. of Insurers	24	34	58
No. of Offices	11311	11394	22705
No. of Individual Policies(Cr)	33.28	24.14	57.42
No. of Individual Agents (Lakh)	22.78	11.92	34.70
Total Premium (in Rs Cr)2019-20	5,72,910	1,88,916	7,61,826
AUM (31/03/2020)Rs Cr	38,90,274	3,62,656	42,52,930
Penetration(2019)% (Premium/GDP)	2.82	0.94	3.76
Density(2019) US$ (Premium/Population)	58	20	78

Legislative and Regulatory Framework

Primary Legislations

Insurance Act,1938 and IRDA Act,1999

Subordinate Legislations

IRDAI Regulations

Insurance Rules,1939, Other Relevant Laws

IRDA Act,1999 (IRDAI Organisational Setup)

- Authority Composition (Section 4)

a) Chairperson

b) Not more than five whole time members

c) Not more than four part-time members

Appointed by the Central Government who have knowledge or experience in Life Insurance , General Insurance , Actuarial Science , Finance , Economics , Law , Accountancy and administration

- Duties, Powers and Functions of the Authority (Section 14)

  Regulate, Promote and Ensure orderly growth of the sector

- Powers of Central Government (Section 18,19,24)
- Furnishing of Returns- Annual Report (Section 20)
- There are separate internal departments of Life Insurance, General Insurance , Health Insurance and Reinsurance as per lines of business and support departments such as Finance & Investments, Consumer Affairs , Actuarial , Inspection and Enforcement.

Robust Regulation Making Process

- Subordinate Legislation
- Section 26 of IRDA Act,1999 and Section 114A of Insurance Act,1938 vest IRDAI with power to make Regulations.
- All the Regulations are notified in Govt Gazette and are laid on the table of Parliament and subject to Parliamentary review.(Section 27)
- An elaborate consultative process precedes the issue of Regulations by releasing Exposure draft/Discussion paper , Draft Regulations placed on website for stakeholder/public comments , consultation with Insurance Advisory Committee and final approval by Authority i.e Board.

Insurance business as defined in Ins Act,1938

- **Section 2(11) : Life Insurance business**
- Business of effecting contracts of insurance upon human life where money is assured on
- a) death
- b) the happening of any contingency dependent on human life
- Granting disability , accident covers
- Granting Annuities , superannuation benefits
- Explanation: Includes Unit linked insurance policies providing investment and insurance

- **Section 2(6B): General Insurance business (Fire, marine or miscellaneous)**

- **Section 2(6C): Health Insurance business (Sickness, medical, surgical or hospital expenses, travel and personal accident cover)**
- **Section 2(16B): Reinsurance business (Insurance of part of one insurer's risk by another insurer)**

Imp Insurance Act Provisions

Section	Brief Description
Section 2(7A)	Indian Insurance Company (Registration under Companies Act 2013, Upto 49% FDI, Indian Mgmt and Control, Solely carrying on one Ins – Composite Insurers not allowed)
Section 6	Requirements of Capital (100 Cr Ins Co,200 for Reins Co)
Section 11	Accounts, Balance Sheet of the Ins Co- Separate accounts for Policyholder and shareholder funds
Section 14	Record of Policies and claims (2015 Regulations)
Section 27,27A,27B 27C,D,E	Investments of Insurance Cos – Investment Regulations 27E forbids investment of policyholder funds outside India
Section 31B	No insurer can pay commission in excess of regulatory limits

Imp Insurance Act Provisions

Section	Brief Description
Section 32B,32C	Obligations of Life Insurers towards Rural and Social sectors- Regulations,2015
Section 32D	Obligations of general insurers for Motor third party risks
Section 33	Power of Investigation and Inspection by IRDAI
Section 34	Power to issue directions
Section 34A	Prior Approval of the Authority for Appointment and Remuneration to MD/CEO/WTD
Section 34B	Removal of Managerial persons from office
Section 34H	Power of Search and Seizure
Section 35,36,37,37A	Amalgamation or transfer

Section 38 – Assignment of Insurance policies

- Transfer of rights under the policy to Assignee
- Wholly or in part , With or without consideration
- By endorsement on policy or by separate instrument
- To state the reasons and the antecedents of assignee
- Notice in writing to the Insurer
- Written acknowledgement if asked on payment of fee (2015 Regulations)
- Insurer may accept or decline (reasons trading etc)
- Policyholder may approach IRDAI if declined

Section 39 – Nomination by policyholder

- Nomination of a person to receive policy money on death of policyholder in life insurance policies
- Minor nominee – Appointee
- Proposal stage- Or by endorsement on policy – Cancellation or change
- Notice to Insurer – Written acknowledgement –Fee (2015 Regulations)
- Assignment cancels Nomination
- Beneficial title if nominee is parent, spouse or children
- Rights of creditor preserved
- Maturity claim is paid to nominee in the event of death of LI
- Not applicable to policies under MWP Act

Section 41 – Prohibition of Rebating

- Section 40: Payment of commission only to Agents, Intermediaries Regulations
- Section 40B: Limitation of Expenses of Management(EOM) Regulations

- Section 41: No person shall allow as an inducement to take insurance nor any person accept such inducement except official rebate allowed by Insurance Co in published prospectus
- Person making default is liable for penalty of 10 lakh
- Section 41 is reproduced in proposal form for drawing the attention of Proposers for insurance

- Section 42: Appointment of Agents, 42D: Intermediaries

Section 45- Incontestability clause

- No policy of life insurance shall be called into question **on any ground whatsoever** after the expiry of three years from commencement or revival whichever is later.
- Within 3 years from commencement – it may be called into question

1. Fraud

(Explained in Sec 45)

- Reasons, Material to be informed by Insurer
- Onus on the Claimant to disprove fraud

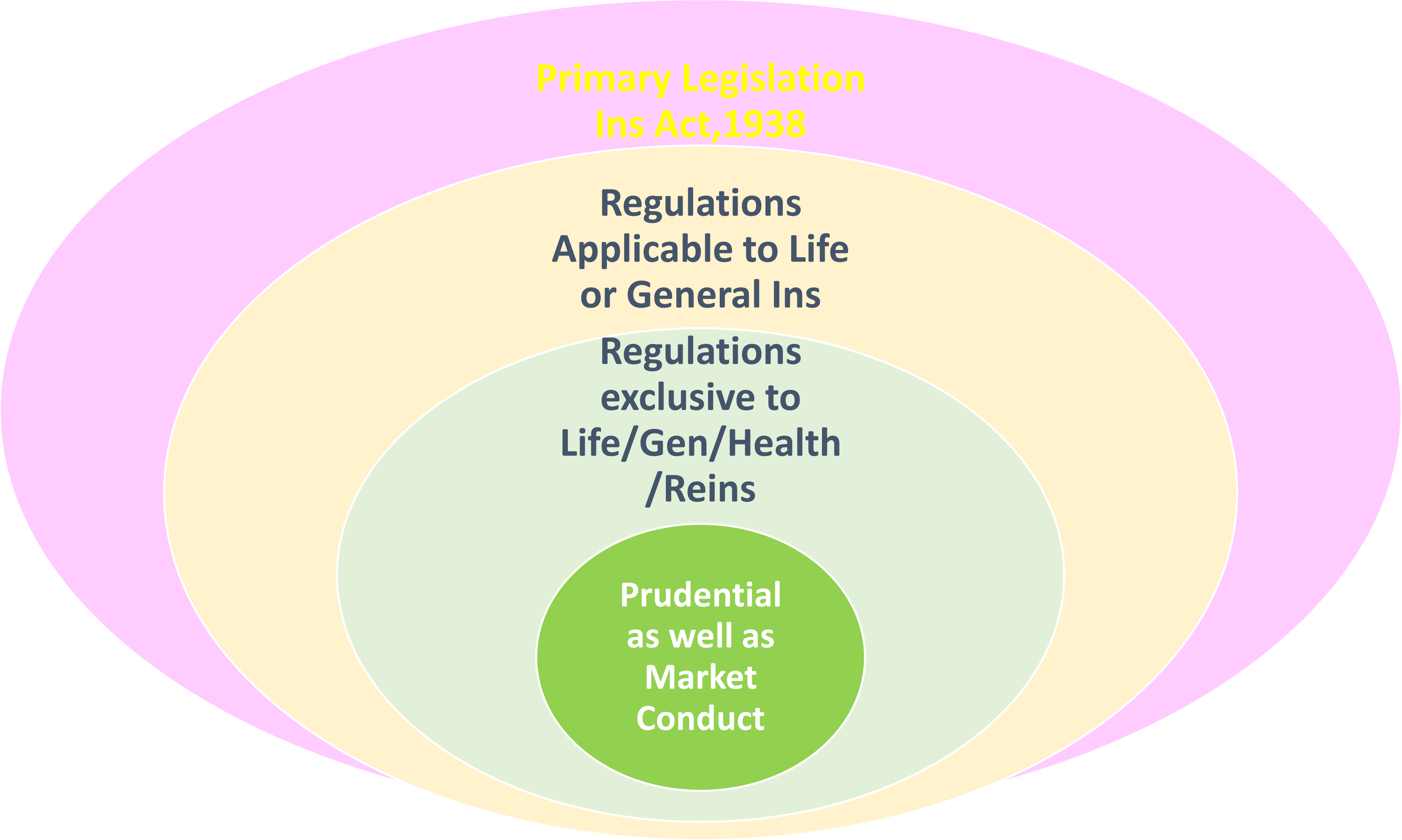
2. Misstatement or Suppression

- Grounds and materials to be informed to the claimant in writing
- Refund of premiums within 90 days from repudiation

Other Imp Sections of the Act

Section	Brief Description
47	Payment of policy money in court (if title could not be established)
50	Options on lapse of policy to be informed to policyholder
52A	Appointment and Powers/Duties of the Administrator
56	Policyholder liabilities to have first charge on assets in case of Liquidation & Insolvency
64F,G,H,I,J,K, L,M,N,R	Life and General Insurance Councils , Constitution of Executive committee (2015 amendment) and its Functions (EOM)
64UM	Appointment of Surveyors or Loss Assessors
64V,VA	Valuation of assets, liabilities, sufficiency of assets and Solvency Margin
64VC	Opening and closure of offices as per IRDAI Regulations(2015)
102	Penalty for violation of Act (1 lakh per day or 1Cr whichever is less)
110	Appeal to Securities Appellate Tribunal(SAT) against IRDAI orders

Regulations Applicable to Life Insurance



Registration of Insurance Companies,2000

- Section 3 of the Ins Act,1938
- 3 stage scrutiny – R1, R2, R3 , Classes of Insurance (2(7A) of Ins Act)
- Statutory, Prudential & Market Conduct aspects
- Indian Insurance Co, Disqualifications , Track record of promoters , Financial condition and Ability of promoters to pump capital as per proposed business plan, Ability to comply with rural and social sector obligations, FDI calculation as per Regulation 11 , Indian owned and controlled , Shareholders Agreement on voting rights
- The nature of Ins products , level of actuarial, accounting and other professional expertise, Ability to carry out all critical functions internally and meet the obligations under the Act, Key management Personnel
- Annual fee (One twentieth of one percent of total gross premium written direct by Insurer in India in preceding fin year or Rs 10 Cr whichever is less)
- Suspension of Certificate of Registration-Regulation 23

Protection of Policyholders' Interests Regulations,2017

- Mandates board approved policy on policyholders protection

Service parameters , Complaint Resolution, Ethical point of sales practices to avoid mis-sale and Information to prospects

- Point of Sale Requirements
- Information on Products (terms and conditions) on offer for sale and withdrawn on web sites
- Proposal copy to be forwarded to policyholder, Time frame for underwriting
- Matters to be stated in Life Insurance Policy
- Free Look cancellation of policies
- Claims Procedure including timelines and penal interest
- Grievance Redress Procedure
- General principles including maintaining confidentiality of policyholder information

Appointed Actuary Regulations,2017

- Mandatory position for an Insurer (3A), Absolute privilege (10)
- Qualifications (Fellow of IAI) and Certificate of Practice, Relevant experience in Life/general/Reinsurance/ Health , Disqualifications
- Powers of AA-Access to information, Access to attend and speak in Meetings including board, Obligation to report to IRDAI
- Duties & Obligations-Product design and pricing, contract wording, Investments and Reinsurance, Expenses, Valuation of Assets, Liabilities and Maintenance of Solvency Margin as per Section 64(VA) of Ins Act, Advice to board on adequacy of reserves, Privilege to make a statement
- Actuarial Report and Abstract as per Section 13 of Ins Act

Investment Regulations,2016

- Life Insurance business – Regulation 4,5
- Pension and Annuity – Regulation 6
- Unit Linked Funds – Regulation 7 (As per pattern offered)
- General/Health/Re Insurance – Regulation 8

Type of Investments	Percentage of funds
Central Government Securities	Not less than 25% (20% in case of Pension)
Central Government, State Government or other Approved Securities	Not less than 50% (40% in case of Pension)
Approved Investment & Other Investments	Not exceeding 50% (60% in case of Pension)
Investments and Housing and Infrastructure	Not less than 15%

- Investment Policy, Investment Committee
- SOP, Risk Management, Audit, Returns etc
- Exposure and Prudential norms (Regulation 9)

Other Important Regulations applicable to all Cos

Regulation	Brief Description
Advertisements & Disclosures (Use & File within 7 days)	• Definition of advertisement- Unfair/Misleading advertisement • Compliance Officer, Advertisement Register, Filing with IRDAI • Company advertisements, Agents advts, Web site & internet • Adherence to ASCI code, Procedure for action, Section 41 in Proposal
Outsourcing of Activities	• Core Activities which are prohibited for outsourcing specified • Board Approved Policy , Constitution of Outsourcing Committee • Material outsourcing, Risk factors, Qualifying Cos, Due diligence • Outsourcing Agreements, Policyholder data protection, Business continuity • Related parties, Intermediaries, Regulatory compliance, Returns
Places of Business	• Tier II and above prior approval necessary , Annual business plan, Branch expansion plan, Proper geographic distribution, Minimum policyholder services • Closure with Co board approval, 2 months advance intimation to policyholders, IRDAI • Norms for POB outside India – Liaison office, Branch offices ,capital requirements from shareholder's funds , Ring fencing foreign business to protect policyholders in India
Obligations to Rural & Social sectors	• Rural centers as per Census , Social sector is Unorganised sector, Informal sector, People BPL and persons with disability • Rural % 7,9,12,14,16,18,19,20 for 1st,2nd,3rd,4th,5th,6th-7th,8th-9th,10th year and thereafter • Social % 0.5%,1%,1.5%,2%,2.5%,3%,3.5%,4%,4.5%,5% for 1st,2nd,3rd etc .. 10th year and thereafter

Other Important Regulations applicable to all Cos

Regulation	Brief Description
Appointment of Insurance Agents, 2016	• Designated official of Insurer, Application, Disqualifications, Passing of Ins Examination, Requisite Knowledge • Composite Agent, Code of Conduct, Board approved Policy of Insurer on Agency matters
Issuance of capital by Life and general Ins Cos	• Prior written approval of Authority, Application-Requirements, Conditions for Approval • Validity period of approval • Mandatory Listing Direction
Payment of Commission Regulations	Board Approved policy, Product Category-wise Limits, Payment of Rewards
Linked & Non-linked Life product Regulations	• **Non-Linked**: Minimum life Cover and other standardizations, Guaranteed Surrender values • **Linked**: Benefits payable on death, Unit allocation and NAV, Reduction in Yield, Discontinuation of Policies • **Pension products**

***Other intermediaries Regulations: Corporate agents, Brokers, Surveyors and Loss Assessors, IMF, Referral partners, Third Party Administrators , Web aggregators**

Expenses of Management Regulations,2016

- **Expenses of Management**
- **Section 40B of Ins Act**
- **Life Insurers: Allowed expenses as percentage of premium received specified for product categories (pure term, other than term in life insurance, Pension and annuity, Health etc) and premium modes as single and regular**
- **Other Insurers: Limits for Fire, Marine, Motor, Health(Retail/Group/Govt Miscellaneous etc)**
- **Mandates a well documented policy for allocation/apportionment of expenses**
- **AA,CFO responsible**
- **Annual returns duly adopted by board to be filed with Authority**
- **Forbearance for first (10 years for Life (5 years for others) of a company**
- **Thereafter may direct excess expenses to be charged to shareholders fund and other steps**

Micro Insurance Regulations

- **What is Life MI Product?** (Non Linked, SA Not more than 2 lacs, a plan specifically approved as MI by IRDAI)
- **General Ins: Dwelling etc 1lac per asset per cover, Individual Health 1lac, PA 1lac**
- **Who can be an MI Agent?** (NGO,SHG,MFI,RBI regulated NBFC MFI , Dist Coop banks, RRBs, UCBs,PACs,BCs)
- Higher Remuneration for higher responsibilities such as Collection of proposal forms, Keying in data and transfer to Ins Co by CD, Collection and remittance of premium on authorization by Insurer, Insurer made accountable, Distribution of policies , assistance in claims
- Tie-up between Life and General Insurer
- Distribution: Other than MI Agents all others can distribute MI product
- Appointment of MI Agents by Insurer, Due diligence, 25 hrs training in local language
- Code of Conduct
- Issue of policy contracts in local languages
- Grievances and Quarterly report

Health insurance- Customer Centric Regulatory Measures by IRDAI

- Life Long Renewability
- Minimum entry age into Health Insurance at least up to age 65 Years
- Portability in Health Insurance
- People with HIV +, Mental illnesses (Laws)
- First regulations on Health Insurance as IRDA (Health Insurance) Regulations 2013 were notified on 18th February 2013, Revised in 2016

Health Insurance Regulations,2016

- Pilot Products (Innovative Products) allowed
- Wellness and Preventive Features allowed
- Health Plus Life Combi Products
- AYUSH coverage
- Customer Information Sheet with key benefits/exclusions
- Disclosures on Company's website on procedure to avail cashless facility, Geography-wise list of TPAs
- Cumulative Bonus for Benefit based policies also.
- Underwriting Policy to consider needs of sub-standard lives also.
- Standardization of definitions of Critical Illnesses and common terminology used in the Insurance contracts
- Network Providers to be registered in ROHINI (Registry of Hospitals in Network of Insurance)
- Network Providers shall meet with pre-accreditation entry level NABH standards

Functions of IRDAI-General Insurers

The functions of the IRDAI include:

- Control and regulation of the rates, advantages, terms and conditions
- Stipulating Motor TP Obligations

Regulatory Processes in IRDAI

- Regulation
- Regulation Making
- Regulatory Approvals

- Supervision
- Regulatory Returns & Analysis
- Offsite Monitoring
- Onsite Inspections
- Regulatory Actions and Enforcement
- 360 degree Review and Communications to Insurers
- Meetings – With Life Company CEOs, Board Chairpersons, Compliance Officers
- Risk Based Supervision

All Life Insurance Regulations can be accessed at www.irda.gov.in/Insurers/Life/Regulations
Any queries v.jayanthkumar@irdai.gov.in