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Insurance Governance for World's Largest Democracy

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Foreword

There have been attempts in the past to reimagine India through many lenses and perspectives. Commentators have used varied epithets to present the India story; from 'A break out nation' to 'Incredible India' and 'Rediscovery of India'. The Indian insurance industry is also at an inflection point in history. Industry leaders have tried to analyse Indian insurance through different paradigms – from 'A uniquely Indian growth model' to 'Making the next leap'.

India has been found to be overwhelming, complex and yet compelling. Perhaps this has propelled the two Insurance Thought Leaders from India, Shri H Ansari, former insurance regulator and Shri Arun Agarwal, an insurance industry veteran to reimagine Indian Insurance with a lens and on a canvass never attempted before, and provide us with a riveting Monograph, "Insurance Governance for World's Largest Democracy".

The result is a collaborative framework that insists on total insurance penetration in India, led by a vision that embraces inclusion and champions reforms to encourage enterprise, not just to serve the macroeconomic objectives but to feed and strengthen them.

The insurance regulator is reimagined as the ultimate Underwriter of sorts, underwriting human endeavours, who is required to challenge and change the status quo, applying behavioural economics propagated by Noble Laureate Richard Thaler of "nudging" with "libertarian paternalism".

India is not just the largest democracy, but the oldest living civilisation on earth and the inclusive insurance will help perpetuate this living reality with renewed health and agility. We need to be optimistic while being vigilant, as with increasing development, the industry would need to effectively respond to emerging risks.

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Preface

Our first Monograph, **"A Transformative Agenda for the Indian Insurance Industry and its Policy Framework"** published in May, 2017, was about transforming the Indian Insurance Industry since financial services, including insurance, exert a major impact on the long term economic growth of a country. The regulator, as the Transformational Agent, must ensure right outcomes, and ensure competition with a level playing field that drives efficiency and efficiency that in turn drives growth. By contrast, protectionism and heavily regulated market makes firms less competitive besides, impacting the penetration which is the current currency.

Our Monograph2, **"An Implementation Agenda for Insurance Regulatory and Development Authority of India (IRDAI) to Transform its Regulatory Framework to serve The INDIA of 2022"** published in November, 2017, was a result of a task given by the Ministry of Finance following in the wake of first Monograph, to come out with suggestions for specific regulatory changes. This involved challenging the status quo, and implied deployment of a principle-based regulatory framework aiming at prudential regulations dovetailed with minimum conduct standards. The developmental support to market would demand application of behavioural economics propagated by the likes of Noble Laureate Richard Thaler of "nudging" with "libertarian paternalism".

It is no coincidence, however, that recent years have not seen any transformative leap: the regulatory changes are mostly transactional and sometimes tactical. There is also no integrated framework created by the IRDAI to ensuring "Ease of Doing Insurance Business". The Government's policy stance, on the contrary, is clearly articulated at different forums by the Hon'ble PM of India:

1. "In this New India, we have started the campaign for de-regulation, de-licensing and de-bottlenecking. Due to such reforms, India has been consistently doing better in every Global Ranking. A jump of 10 points in the Logistics Performance Index, a jump of 13 points in the Global Competitiveness Index, a 24 point improvement in the Global Innovation Index and, most importantly, a 65-rank improvement in the World Bank's Ease of Doing Business Index, are phenomenal. And if there is any gap anywhere – I will personally act as a bridge".[1]

2. An enabling Alternative Dispute Resolution (ADR) ecosystem is a national priority as it adds to investors' comfort level. Businesses seek assurance of the prevalence of rule of law in the Indian market; there is a need to promote India globally as an arbitration hub, and resolve commercial disputes efficiently. A robust legal framework backed by a vibrant arbitration culture is essential. Professionally run arbitral institutions can deliver global standards of services at reasonable costs to Indian businesses. ADR processes also preserve personal and business relationships that might otherwise be damaged by the adversarial process.[2]

Our current Monograph on **"Insurance Governance for World's Largest Democracy"** is yet another attempt to put the spotlight on right insurance governance in India, providing a well delineated and a collaborative framework for a fully insurance penetrated and insurance inclusive India. This comprehensive package includes a **Vision** that partakes of inclusion, the **Right Reforms** that encourage and reward enterprise and entrepreneurs, and **The Change Makers** who work through Right Reforms to set India on a growth trajectory in the days ahead, as articulated in this Monograph.

In our recommended charter, the IRDAI is part of wider 'stakeholder' universe, aligns with the macroeconomic objectives and social priorities and uses modern regulatory tools to bring about paradigm shifts. Since servicing and supervising the market as an "adult" (insurance market has completed more than18 years since its opening up) requires 'upscaling'; IRDAI Transformation – with a complete mind set change from control and regulation to competition and transparency - with the active assistance of the Government, will have to be pursued. The fact that India is a single market for insurance significantly helps the Government and the IRDAI, in particular, to put its imprimatur in underwriting human endeavours.

The Vision of Inclusion is possible through right insurance governance which creates predictability, ensures equality before law, and gives people a choice to demand right insurance services – essential leitmotif for a democratic society. Looking eastwards from Turkey towards Japan, India is the only landmass with an unbroken democracy. It's time to weave a new idiom and a new set of engagements that represent the world's largest democracy.[3] Let Indian insurance governance set new benchmarks.

H Ansari
Arun Agarwal

1.Edited excerpt by the PM at the Bloomberg Global Business Forum in New York, September 25, 2019 – Business Standard September 29, 2019

2. Working to make India an arbitration hub: PM, Nayanima Basu New Delhi | Updated on January 16, 2018 Published on October 23, 2016, Business Line

3. "India has a bold new language for the rest of the world" by Chitra Subramaniam, Mint dated September 6, 2019

Introduction

India has repeatedly demonstrated the ability to accomplish amazing things when there is a clear mission, political will and effective partnership between policy-makers and industry. The emergence of IT and pharma firms as global competitive players, and more recent progress in areas such as space exploration, Aadhaar, digital payments and data connectivity, show that nothing is impossible.[4] 'Make in India' essentially 'for India', can also include 'for the world' when we choose to do so.

There are macroeconomic targets set - taking up share of manufacturing in GDP from 17% now to 25% by 2022; doubling exports by 2025; and of course getting India's GDP from USD 2.7 trillion last year to USD 5 trillion by 2025 (implying 8% average annual growth on the back of 4% inflation)[5]. These require active sustenance from every single sector, including insurance where the Government and the IRDAI are required for their transformational roles.

The slowing economy in the last few quarters has thrown up two clear messages: First, incremental reform is incapable of coping with the disruptions.[6] Second, the government needs to take a decisive approach on the financial architecture in India: It needs to take an axe to the system, as a scalpel will no longer suffice.[7] This is true of insurance as well, as insurance governance continues to be lackadaisical despite low and barely moving insurance penetration levels in the last two decades:

Whereas research[8] has established that a 1% rise in insurance penetration translates into a 13% reduction in uninsured losses - a 22% reduction in the taxpayers' contribution following a disaster – and increased investment equivalent to of 2% of national GDP.

At the same time, Swiss Re has urged re/insurers to help improve the resilience of the world economy by closing the "record high" protection gap of $1.2 trillion, which is a "risk iceberg" (Based on Swiss Re Institutes' separately developed insurance resilience indices, insurers have an opportunity to close a combined record protection gap of $1.2tn in 2018 premium equivalent terms across three main areas of risk: NATCAT, mortality and healthcare). This has been caused by excessive debt, a lack of growth-enhancing reforms and monetary policy that has been pushed beyond its limit. Factors such as the $70 trillion increase in global debt burden since the 2007/8 global financial crisis are an evidence that the world is less resilient. Negative (nominal) yielding debt now amounts to $17 trillion and may well increase, given that central banks continue to push interest rates lower. It is in this less resilient global economic climate that the $1.2 trillion insurance protection gap means that 46 percent of natural catastrophe, mortality and health risks are not being covered. There is evidence that the relationship between insurance markets, insurance coverage and macro stability is a strong positive one. Therefore, structural reforms are needed, including insurance solutions[9] which requires right insurance governance.

Since governance is the way rules, norms and actions are structured, sustained, regulated and held accountable; good governance is a way of measuring how public institutions conduct public affairs and manage public resources in a preferred way. This monograph on **"Insurance Governance for the World's Largest Democracy",** therefore, attempts to weave a comprehensive framework, to assist the policy makers. The Indian **insurance governance** urgently needs a two-fold transformative agenda:

1. A transformed and transformational IRDAI, providing Single Window Ownership (presenting its own collaborative verticals, and also ensuring cross-sector support from Taxation, Transportation, Company Law, Judiciary, Reserve Bank, Securities Regulator and many others) to the Indian insurance providers;

2. Government directing the IRDAI, backed up by Executive and Legislative reforms, to transform the Indian insurance market to be inhabited by proficient, robust and independent service providers.

Given insurance governance imperatives, the Chairman IRDAI, as the CEO of the Indian insurance, is required to create an inclusive Indian insurance market by challenging and changing the status quo, applying behavioural economics propagated by Noble Laureate Richard Thaler of "nudging" with "libertarian paternalism".

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4. Ravi Venkatesan column titled, "China's Sputnik moment could prove to be India's big break" in Mint on 27 July, 2019.
5. Business Standard Editorial on 27 July, 2019
6. C Raja Mohan, Indian Express, "Beyond Kashmir" dated August 27, 2019
7. Neelkanth Mishra, Indian Express, "Seize the slowdown" dated August 30, 2019
8. Lloyd's Global Underinsurance Report, October, 2012
9. "Risk iceberg call to action", Intelligent Insurer, 11 September, 2019

Executive Summary

Indian macroeconomic objectives require sector specific policy framework that enables institution building in regulatory space. Insurance being one of the key drivers of the economy, it is important to ensure that regulatory framework has the capability to take the industry in the desired direction while focussing on bridging the protection gaps identifiable at different stages of market development.

As we endeavour to build world class institutions, the first step is to identify the right governance imperatives to create an inclusive Indian insurance market. These include a **Vision** that provides for inclusion, **Right Reforms** that encourage and reward enterprise and entrepreneurs, and **The Change Makers** to set Indian Insurance on a growth trajectory forever.

1. The Vision

The Government's Vision for IRDAI must be to promote **"Inclusive, fully penetrated insurance".** The **Regulatory Accountability** following the above Vision should focus on IRDAI ensuring the following:

1.1. Provide Ease of Doing Insurance Business Framework

IRDAI will be required to have a leading industry service proposition, built on progressive and right regulations, excellence in processes, and technology such that life of users becomes better. This is possible when IRDAI assumes and discharges Single Window Ownership.

1.2.Protect Market Oversight

IRDAI market oversight has to include sustainable and profitable growth of its entities that is valued by all stakeholders.

2. The Right Reforms

The insurance regulatory space in India has evolved into a prescriptive, and micromanaged supervision. The obligatory 'Development' package has not been delivered in the last two decades. One of the reasons, in all fairness, has been the hardcoding of insurance and allied laws even before the regulator stepped on to the scene. Yet, it is equally true that the insurance regulator did not foresee blowing winds of change, in the wake of Insurance (Amendments) Act, 2015 that devolved many a 'power' to the IRDAI, however limited.

In one of the many instances, the amended Insurance Act permitted IRDAI to approach management expenses and procurement costs with a fresh perspective. As a Change Maker, the Regulator had to be bold and take contrarian call to allow/bunch total of Management Expenses and Procurement Expenses. This was necessary to cater to demand led booster to the Management of Distribution rather than supply led controls, which has only created hunted psyche. Insurers need to be trusted as prudent managers, with full regulatory accountability for their Management Expenses/Combined Ratios/Embedded Values and have them under regulatory scrutiny, and not having to camouflage procurement expenses.

Lack of a regulatory vision would appear to be one reason why micromanagement continued despite 2015 developments. However, post 2015 too, the insurance regulator did not work on 'tools' and 'technologies' to provide 'Ease of Doing Insurance Business' Framework despite Government of India's policy commitment to providing 'Ease of Doing Business' Framework for its macroeconomy. Even the current macroeconomic target of getting India's GDP raised from USD 2.7 trillion last year to USD 5 trillion by 2025 has not led to regulatory rethinking since such pole-vaulting requires active sustenance from every single sector, including insurance.

'Development Agenda' is best described in the 190th Law Commission of India Report, "The regulation of insurance requires a paradigm shift from just a supervisory and monitoring role to a development role so that the insurance business promotes economic growth".

This, in turn, is possible through empowering the Providers/Users and the Market with 'Right Reforms' complemented with IRDAI discharging 'Single Window Ownership'. This is why ease of doing business, the rule of law and clear tax laws are so important:

2.1. Ease of Doing Insurance Business Framework

It must be woven with right regulatory anchors and deploying right regulatory tools. Currently, a lot of 'regulatory policy anchors and tools' that lay the foundation of the Indian insurance regulatory architecture seem to be at variance with modern equity/rationale.

For example, all 'Conduct Regulations (Standards)' are issued to the Indian market as 'Prudential Regulations'; Regulations do not proclaim and adhere to Free Competition and a Level Playing Field; Conduct Regulations (Standards) are one size-fits-all for both high performing and poor performing entities; Regulations are not outcome based; Regulations focus on compliance rather than risks. The list goes on.

2.2. Principle-based Insurance Regulatory Framework

Prescriptive framework is generally an antidote to ingenuity and innovation, and is a debilitating, discernible and everyday reality in the context of Indian Insurance. Ironically, there are no visible signs in the public domain to work on the right solutions as the principle based approach lends itself effortlessly to the 'ease of doing insurance business';

2.3. Taxation framework

In what is arguably one of the boldest reforms in the last 20 years, the Finance Minister has cut the effective tax rate on corporate profits from approximately 35% to 25.2% for existing domestic companies and 17% for the new manufacturing companies established before October 23, 2023 provided the companies take no exemptions. The tax rates are now globally competitive, and by putting an end to exemptions, the government has greatly simplified the corporate profit tax system and thus eliminated numerous sources of bribes, harassment and tax disputes.

Similarly, the insurance regulator has to now work with the tax authorities for a consistent, stable and simple tax environment which is essential for developing an inclusive insurance set up, and for setting up an internationally competitive insurance market place in India. With the protection gap in India at USD 8.5 trillion (Report by Swiss Re - Mortality Protection Gap: Asia-Pacific 2015), all possible tax reforms need to be unleashed, along with rest of reforms, to cater to an inclusive and fully insurance penetrated India. The insurance taxation framework must, therefore, promote business activity, aid equality and must be easy to administer.

3. The Change Makers

The 'community of Change Makers' – The Central Legislature, the Central Government, and the IRDAI must together help convert the 'science of insurance' into an implementable 'tools and technology' (the 'Single Window Ownership' for such a task has to assumed by the IRDAI):

3.1. The Central Legislature

The hard coding of the primary laws makes the regulatory management inflexible, and the regulator cannot cater to the dynamically evolving market. For example, Section 32 B of the Insurance Act lays down that every insurer shall undertake such percentages of life insurance business and general insurance business in the rural and social sectors, as may be specified, in the official gazette by the Authority, and Section 32C says that every insurer shall… discharge the obligations specified under the Section 32 B to life insurance or general insurance policies to the persons residing in the rural sector, workers in the unorganised or informal sector or economically vulnerable or backward classes of the society and other categories of persons as may be specified by regulations made by the 'Authority' and such insurance policies shall include insurance for crops. Thus, the primary law assumes that such markets are and will remain supply driven.

The Government of India, on the contrary, has already demonstrated demand led transformation through its marquee programmes such as PMSBY, PMJJY, PMFBY and PMJAY etc.. Therefore, these market segments require an active understanding from a development perspective rather than enforcing supply side regulatory mechanism, through quotas and penal regimes.

Therefore, the Government's legislative agenda must allow all the primary legislations such as Insurance Act and Allied Acts undergo prudential transformation to allow IRDAI the direction, flexibility and accountability to promote development, and effective, globally benchmarked supervision of the insurance industry. Illustrative examples have been provided, in this Monograph, to enable relooking at the entire set of primary laws and legislations.

3.2. Central Government as The Executive

The general economic agenda of de-regulation and de-bottlenecking; Improvements in Global Competitiveness Index; World Bank's Ease of Doing Business Index; Promote India globally as an Arbitration Hub for Alternative Dispute Resolution processes; Letting Indian Enterprises have a major role in improving the GDP growth rate; and to increase India's Geo-strategic reach in the new world order are all eminently linked to the insurance sector in their fulness. As the Central Government is the ultimate Change Maker, the insurance agenda as owned by the IRDAI should be helped by India having a single market for insurance. The insurance agenda must be pushed with the right note – bring regulatory seat to Mumbai, where the financial ecosystem is and where bulk of the insurance market operates from, to allow cross-pollination of interactions between the 'market' and the 'regulator' that will make the regulatory governance richer, and improve Ease of Doing Insurance Business;

3.3. Central Government as The Owner of Insurance Firms

The PSU insurance firms (LIC/GIC Re and the four GI Companies) are indeed the Systemically Important

Financial Institutions (SIFIs) for the Indian market (The Financial Stability Board (FSB) refers SIFIs as institutions "whose distress or disorderly failure, because of their size, complexity and systemic interconnectedness, would cause significant disruption to the wider financial system and economic activity"). As the distress is obvious in at least few of the firms, and to cater to the new India of tomorrow, Government's Transformational Agenda as an 'Owner' has to include all PSU insurance Companies' governance and management oversight by a fully independent, professional and empowered Insurance Board Bureau (IBB) to get them transformed into world-class insurance providers. If the IBB is made successful by the Government, it might render the debate - whether to bring down Government holdings below 51% - as insignificant and inconsequential, with large attendant benefits to the Government and to the entire Indian insurance market;

3.4. The IRDAI

It must cater to the Vision of "Inclusive, fully penetrated insurance", and fulfil macroeconomic target of adding 1% insurance penetration by 2025. The Chairman, IRDAI, as the CEO of the Indian insurance market, has its tasks cut out. The agenda for 'Inclusion' has 'Development' and 'Supervision' go hand-in-hand, and the Macroeconomic agenda is best possible through empowering the Providers and the Market with 'Right Reforms'. The IRDAI, as the leading Insurance Change Maker, must work through 'Good Governance' (as road mapped in this Monograph) to give Indian insurance market affordable choices to demand and get right insurance services and solutions. Besides, it must work on significant priorities such as: Promoting India as the 'Reinsurance Hub', an Insurance ADR Hub, and help establish a Country Risk/ Management framework etc.

4.The Technology that acts as a Catalyst

Start-ups are rewriting India's economic roadmap, and will lead India's march to $5 trillion GDP. By supporting start-ups, risk-takers, and wealth-creators building for a better future, India can accelerate its transformation into an economic powerhouse. InsurTech is neither just about technology, nor finance, it is about innovation and inclusion. The Indian insurance market, therefore, deserves this game changing tool:

4.1. Insurance Sandbox

Within insurance, the "Sandbox environment" must primarily cater to business propositions such as "Insurance Solicitation or Distribution" and "Insurance Products" rather than 'Underwriting, Policy and Claims Servicing' since these are operational mechanisms that can be fast tracked through direct regulatory clearances;

4.2. Federalisation of Technologies

InsurTech can also bring about federalization of technologies provided the"New Business Models" are allowed to cut through current silos of 'life'/'non-life'/'reinsurance'/'banking'/'capital markets' etc., and usher into a SINGLE "Sandbox environment" across all the financial services at IFSC, GIFT, Gandhinagar;

4.3. India and Global Developments

India must learn from global developments where there are two broad models available: UK/Singapore and China - In UK, the FCA and PRA have brought together experts of many disciplines to monitor FinTech developments to cater to "community of interest". The Bank of England also runs a FinTech accelerator. The FCA's innovation department works with twin objectives: Policy engagement and Services for InsurTech firms. The FCA has the largest team dedicated to innovation in Europe – Project Innovate. It has both a regulatory sandbox and an innovation hub, through which firms can request direct support from a dedicated team. In Singapore, the MAS believes that a key driver to transforming Singapore into a smart financial centre is the provision of a regulatory environment that is conducive for innovative use of technology; The InsurTech market in China isn't led by the small startups: large digitally savvy incumbents or large internet companies command the emerging and still-growing market. The Chinese insurers take the lead and drive innovation internally.

The Authors of this Monograph have worked on a charter and a framework which is detailed, though not exhaustive, rather than penning critique of the Insurance setup. They also have the commitment to offer capacity building processes to cater to this Monograph's Right Insurance Governance Framework that offers clarity and balance, to usher in the rigours of implementation.

1. The Vision

The Government's Vision, for IRDAI, must be to promote **"Inclusive, fully penetrated insurance".** The idea of inclusion should mean:

- **For the policy holders**': When risks and covers are aligned, and the customer satisfaction is maximised;

- **For the Shareholders**' (including government): When they get the right Return on Equity;

- **For the larger body of stakeholders' (including public at large)**: When they participate in the growth story of Insurers via equity participation, especially retail investors, and

- **For the Indian economy:** When the Assets under Management grow faster and power the Indian economy.

The **Regulatory Accountability** following the above Vision will prescribe IRDAI ensuring the following:

a) Provide Ease of Doing Insurance Business Framework - IRDAI will be required to declare a clear industry service proposition, built on progressive and right regulations, excellence in processes, and technology such that life of users becomes better. This is possible when IRDAI assumes and discharges Single Window Ownership.

b) Protect Market Oversight - IRDAI market oversight has to include sustainable and profitable growth of its entities that is valued by all stakeholders.

The vision for inclusion beyond penetration is clear: it means not just policy holders but the potential policy holders; not just protection but promotion; it also means Insurance is required to contribute to the per capita rise of GDP and help promote its exports. The essential expectation behind these Vision Statements is that the IRDAI undertakes to create an enabling environment, with accent on customer centricity and speed of services backed by technology. This will help IRDAI nudge the market along.

2. The Right Reforms

2.1. Ease of Doing Insurance Business Framework

2.1.1.What is "Ease of Doing Insurance Business Framework"?

India ranks 163rd on the Enforcing Contracts indicator of the 'Ease of Doing Business Index' by World Bank, and as the insurance policy is a contractual obligation, it can be argued that India is ranked low in terms of 'Ease of Doing Insurance Business Index'.

The Economic Survey 2018/19 also recognises that the single biggest constraint to 'ease of doing business' in India is the ability to enforce contracts and resolve disputes[10] but currently, there is a lack of confidence to convert the political promise of 'ease of doing business' into bureaucratic/regulatory performance.[11]

'Ease of Doing Insurance Business' framework has been provided for in **The Vision** statements. 'Ease of Doing Business Framework' also requires "a mindset change among the policymakers. All rules and regulations should be formed based on the dealing that people do business in the right way. Innocent does not need to prove innocent because it impedes the ease of doing business. This becomes a huge cost to compliance."[12]

The IRDAI, despite a call for "sector-based model"[13] and despite Hon'ble PM's unambiguous policy goals, has not followed up on its obligation to create a framework of 'Ease of Doing Insurance Business'. The **'regulatory policy anchors'** that form the foundation of the current Indian insurance regulatory architecture - some of them discussed below - do not help, since these are not in sync with modern equity/rationale:

a) 'Prudential Regulations' and 'Conduct Standards' – A distinct framework to let both 'prudential regulations' and 'conduct regulations (standards)' work together has not been established. Currently:

1. All **'Conduct Regulations (Standards)'** are issued to the Indian market as **'Prudential Regulations'**;
2. Regulations do not proclaim Free Competition and a Level Playing Field to all;
3. Conduct Regulations (Standards) are one size-fits-all for both high performing and poor performing entities;
4. Regulations are not outcome based;
5. Regulations focus on compliance rather than risks.

b) Fundamental Form of Regulatory governance - The fundamental form that governs most modern global markets at the regulatory level include 'prudential regulation' aspects such as licensing, capital adequacy, risk management, governance etc. Most other functions are 'conduct standards' which can be issued as 'guidelines' or 'minimum standards. The 'conduct standards' are left to the self-regulated market mechanisms – either to the Self-regulatory Organizations (SROs) or to the insurance providers themselves. This does not happen in the Indian market.

c) Capital adequacy, Risk management and Governance - In global terms, most countries have now gone for Risk-based Capital (RBC) modelling and the advance countries are now moving to the economic capital practices:
1.Minimum Capital - Myanmar
2.Formula, No Risk Weight - Brunei, India, Macau, Vietnam
3.RBC - Indonesia, Japan, Philippines, Thailand, Hong Kong, Sri Lanka
4.Economic Capital, ORSA - Malaysia, New Zealand, Singapore, South Korea, Taiwan, US, Australia, Switzerland, China and Solvency II for EU Countries

The RBC journey in India, however, has been going on for a very long time now. On 1 December 2011 IRDAI appointed a Committee on the road map for Risk Based Solvency Approach for the insurance sector in India, which submitted its report on 22 April 2014. On 10 June 2016, the IRDAI appointed another Committee to review the Risk Based Capital approach and liability valuation methods in the light of developments in the Indian Accounting Standards in the insurance sector, which submitted its report on 17 July 2017. On 21 September 2017 the IRDAI formed a 10 Member Committee to implement RBC to be completed by March 2021. In

10. "Towards a $5 Trillion Economy" by Krishnamurthy Subramanian, Chief Economic Advisor, Government of India, The Times of India dated July 5, 2019
11. "What investors really want" by Vikram Mehta, Indian Express dated August 5, 2019
12. Richard Rekhy, CEO, KPMG India
13. "Improving Ease of doing business – Think tank moots sector-based model" by Indivial Dhasmana, Business Standard dated September, 14, 2019

contrast, China began its journey on the RBC equivalent to EU Solvency II around 2012 and implemented the process on 1 January 2016 called as China Risk Oriented Solvency System (C-ROSS). IRDAI journey is also to be contrasted with RBI's economic capital framework discussions which is finding traction with media and academic circles.

IRDAI should have quickly moved capital solvency rules from standard formula to risk based capital and not waited for over a decade now; and correlate the volatility on the balance sheets such as correlation of catastrophe and cyber models to underwriting, credit and market risks. This needed to be mandated along with risk based pricing and assets & liabilities management. The Capital markets regulator seeks higher disclosure from insurers looking to list. It insists on disclosure of embedded value, policy maturity time table, audit qualification, segment-wise lapsation of policies and profit contribution, among others. For non-life it has to be combined ratio in conjunction with the reserving, among others. The insurance regulator IRDAI should also plan to push for more transparency in the insurance industry by introducing uniform disclosure norms for both listed and unlisted companies. India should have been seriously considering implementation of a robust, risk-based capital supervisory framework that achieves Solvency II equivalence, to go alongside capital market listing and rating by international credit rating agencies, to increase commercialization of the insurance industry, necessitating better governance, prudence in reserving and shifting focus to profitability over premium income accretion.

d) Self-Regulated market mechanisms – As the term suggests, Self-Regulatory Organizations (SRO) is responsible for regulating itself. It exercises some degree of regulatory authority over an industry or profession. The concept of SRO requires a regulatory commitment to allow it to be independent, yet accountable – requiring occasional friendly nudges and philosophical guidance. These lend depth and gravitas to the whole market, thus making it easy for the harnessing of markets' technical expertise.

The IRDAI mentions the following entities as the SRO, but its regulatory framework doesn't fully extend to conform to the SRO mechanisms:

- Indian Institute of Surveyors and Loss Assessors of India (IIISLA)
- Insurance Brokers Association of India (IBAI)
- Insurance Information Bureau (IIB)
- The Life and General Insurance Councils of India

1. Indian Insurance Institute of Surveyors and Loss Assessors (IIISLA) as the SRO

Surveyors and Loss Assessors perform an extremely important service to buttress financial economy of the country; rendering technical assessment of a loss following an 'event' covered under an insurance policy. The current regulatory framework for the surveyors and the loss assessors has the IRDAI laying down:

1. Licensing criteria;
2. Training;
3. Constitution and Functions of Surveyors and Loss Assessors Committee, including appointment of Surveyors and Loss Assessors;
4. Duties and Responsibilities of a Surveyor and Loss Assessor;
5. Categorisation of Surveyors;
6. Code of Conduct;
7. Reporting Framework

If the IRDAI was indeed setting out to make IIISLA as the SRO responsible for regulating itself within the space allowed under Section 64 UM of the Insurance Act, as amended in 2015, it would have arrived at the different framework than the existing regulations. For instance, Section 64 UM is hard coded only in the following areas:

1. Academic qualifications per regulations;
2. Member of IIISLA;
3. Code of conduct per regulations;
4. Appointment of Surveyors and Loss Assessors to assess losses beyond thresholds as provided by the IRDAI

Which means that the IRDAI, with a view to lend depth and gravitas to the Indian insurance market, and making it easy to harness Surveyors and Loss Assessors' technical expertise, would have allowed IIISLA freedom/not stepped into in following areas:

1. Licensing criteria;
2. Training;
3. Constitution and Functions of Surveyors and Loss Assessors Committee;
4. Categorisation of Surveyors;
5. Reporting Framework

Therefore IIISLA, should be allowed a genuine SRO (limited by the current Insurance (Amendment) Act, 2015) and, should be encouraged to review and modify the management of insurance claims and insurance surveyors. The following needs to be thought of:

1. IIISLA needs two separate streams for Motor and Non-Motor Surveyors and Loss Assessors having different Governing Bodies, training curricula, and discipline procedures, laying down fee structure, fixing duties and responsibilities of surveyors etc.;

2. Licensing - The current system of licensing requires change. What is required is the qualification criteria, combined with training (for entrants after studies) or orientation (for persons with industry experience, after orientation), and strong and deterrent code of conduct;

3. Globally the Loss Adjusters are expected to manage claims with various experts involved on it (such as forensic accountants, civil engineers, project engineers, lawyers, management consultants, technical and research bodies etc.);
4. Categorisation - The system of categorization, restricting the type of insurance policies a surveyor is allowed to survey is not scientific. It is the buyer of the professional services who must select the licensed professional he wants to use and it is important that current categorization is done away with;
5. Personal Lines insurances ("Personal lines' means an insurance policy taken or given in an individual capacity) require insurers allowed to use their own qualified staff (not mandatory) to survey and assess such losses (per minimum qualification criteria). As Motor insurance claims run into millions, with IIISLA Motor Members only around 12000, the way out is to raise the limits for the assessment of losses from Rupees fifty thousand to Rupees one lakh for the Motor Surveyors and raise Non-Motor Surveyors limits to Rupees two lakhs. This will also be in line with the review to be carried out every three years per Section 12 (3) of the Chapter III of the IRDAI (Insurance Surveyors and Loss Assessors) Regulations, 2015;
6. Insurance Frauds – Since insurance fraud is a reality and there is a lack of trained manpower, IIISLA can bridge the gap by working upon standardizing a course on Insurance Fraud investigation on the lines of Risk Engineers / Surveyors etc. The accreditation, in due course , would be done by IIISLA;
7. IIISLA Advisory Committee – Since IILSLA is catering to the needs of Insurance Industry and customers, it is important to have an Advisory Committee (rather than an IRDAI Committee per Section 10 of Chapter III of the IRDAI (Insurance Surveyors and Loss Assessors) Regulations, 2015) having representation from Insurers and Consumers. This will enable IIISLA to frame training courses , curriculum and improving standard of quality of services by their members in consultation with their partners.

2. Insurance Brokers Association of India (IBAI) as the SRO

Broking is a critical Third-Party Channel, which has proved its utility all over the world. India deserves a credible Broking channel management to respond a dynamically changing environment, which has already seen top 10 Brokers control almost 70% of the brokered business, and the sales aggregations now yielding to service aggregations etc.

The current regulatory framework for the Brokers has IRDAI laying down maximalist framework. If the IRDAI was indeed setting out to make IBAI as the SRO responsible for regulating itself within the space allowed under Section 42 D and E of the Insurance Act, as amended in 2015, it would have arrived at the minimalistic framework. Even Section 14 (2 c) of the IRDA Act, 1999, "specifying requisite qualifications, code of conduct and practical training for intermediary or insurance intermediaries…" talk of these "without prejudice to the generality of provisions contained in sub-section 14 (1), "Subject to the provisions of this Act and any other law for the time being in force, the Authority shall have the duty to regulate, promote and ensure orderly growth of the insurance business and reinsurance business".

Which means that the IRDAI, with a view to lend depth and gravitas to the Indian insurance market, must make it easy for Brokers to penetrate the Indian market more (The Government's decision to permit 100% FDI in insurance intermediaries is expected to deepen the market in terms of new products and technology. This could help bring in global products, practise and sales strategies to India's insurance market),[14] The IRDAI must, therefore, allow IBAI to become a genuine SRO (limited by the current Insurance (Amendment) Act, 2015). The IBAI should be encouraged to review the management of broking:

1. Administration - The Broking administration to be run by IBAI, recognized by the IRDAI as the SRO (taking over 'conduct management'), must have its own charter with rules and regulations;
2. Capitalisation - The brokers might be better capitalized so that they move to more transactional risk advisers backed by minimal self-regulatory governance but with greater accountability. Similarly, Brokers could have just two categories; Direct and Composite (including reinsurance), and the Brokers be asked to carry a minimum capital of INR 50.00 and 100.00 million respectively. The Reinsurance Brokers play a dual role: they represent the Insured as Insurer, however, they provide also underwriting information to Reinsurers on behalf of Insurer regarding the client;
3. Underwriting Authorities - Brokers might be allowed binding underwriting authorities from insurers under a set of clearly spelt out principles, strictly subject to mutual written agreements detailing the type and extent of authority etc. This could become a strong tool for penetrating market segments such as SMEs;
4. Sub-Brokers - IBAI might like Brokers authorized to use the services of a sub-Broker in a given circumstance, as spelt out in its charter. Similarly, captive broking might not be a taboo under a principle-led charter;
5. Training - IBAI would work out a suitable structure for Brokers' training;

14. "Insurance intermediary biz now opened up to foreign investors" by Shreya Nandi in Mint dated August 30, 2019

***6. Risk Management* –** Since risk management is the backbone of the underwriting management, the IBAI ought to collaborate with the Insurance Councils come out with an extensive risk management framework, to be practised by Brokers and Insurers alike;

***7. IBAI Advisory Committee* –** Since IBAI is catering to the needs of Insurance Industry and its customers, it is important to have an Advisory Committee having representation from Insurers and Consumers. This will enable IBAI to frame training courses, curriculum, risk management, claims consultancy and improving standard of quality of services by their members in consultation with their partners.

3. Insurance Information Bureau of India (IIB) as the SRO

Insurance Information Bureau of India was established by the IRDAI in 2009. It was registered as an independent society under the Andhra Pradesh Societies Registration Act on 21st November 2012. It's objectives include acting as single point for entire insurance industry data; Ensure data is available to various market players, researchers, policyholders and common public for real time decision making; Provide benchmark rates for the industry; Publish reports to aid IRDAI in regulatory functions and insurers in decision making; Publish reports for the benefit of the whole industry; Provide the necessary inputs for policy research and insurance industry development activities; Take initiative for fraud detection, identification of uninsured vehicles, etc.

A truly self-funding SRO, with professional independence and benchmarked on global best practices, the IIB must be tasked to bring about hitherto unrealized gains to the Indian insurance industry. It is important therefore that IIB should be a truly single point data repository and data management Bureau for the entire insurance industry in India, equivalent to the Credit Bureau of India. It must be managed by the best IT talents/professionals.

The Bureau, can be a game-changer, if recast on a principle-based governance protocol to serve the Indian insurance industry according to its requirements, and not to serve any control mechanisms:

***a) Standardised Data Formats with specific reporting cycles* –** There is dire need for a protocol based data collection. Currently, there are data collections via IRDAI, the Insurance Council, Public Disclosures, Financials, Business Analytics Portals (BAP), and later by the Investigative teams as well.

***b) Data Protocols to define information* –** Any information that is considered strategic from business perspective should not be parted with unless there are protocols defined and securities guaranteed.

***c) No Offline data should be asked* –** unless it is part of the protocol process.

4. The Life & General Insurance Councils of India as the SROs

The two Insurance Councils – Life and General – are the representative bodies of the Life and General Insurers respectively per Section 64 C of Part II A of the Insurance (Amendments) Act, 2015. One of the functions of the Executive Committees of the two Councils – Life and General – per Section 64 J and L is "to aid and advise insurers, carrying on Life/General insurance business, in the matter of **setting up standards of conduct** and sound practice and in the matter of rendering efficient service to holder of policies of Life/General insurance".

Aided by the Insurance Act provisions, the Councils must be enabled by the IRDAI to become genuine SROs for the insurers, of the insurers, and by the insurers (this will also require amendments to the Insurance (Amendments) Act, 2015 as recommended in Chapter 3.2.1.11.) with sound and globally benchmarked insurance practices and "standards of conduct". The Life and General Insurance Councils need to be 'nudged' to take over all "standards of conduct" functions from the IRDAI in the matter of 'underwriting management', and transform themselves into a credible and profitable service providers. For instance:

***4.1. Credible Underwriting Forums* -** Councils must have active Underwriting Forums, across business lines, providing "standards of conduct" on 'products', and 'pricing' to aid, advise, and assist insurers in maintaining high standards of conduct and services to policy holders. A special "standard of conducts" will be on Proposal Forms. The current IRDAI run product pricing approval management is prescriptive that has solvency implications. Therefore, "standard of conduct" around pricing are very important where **risk based pricing** approaches take care of both experience as well as exposure rating models that are actuarially tested and approved to assist pricing.

***4.2. Underwriting Management* -** What Indian market needs is a framework of Ease of Doing Insurance Business in all spheres of "products" and "pricing". Insurance policies are legal contracts – there can be myriad ways of moulding these 'contracts' into appropriate frameworks, to suit needs of the individuals (Retail – life/non-life), called "products". Once such insurance contracts (the chassis and the add on) are in place, insurers ought to be free to 'derive products' and sell them according to risks and insureds profile, based on sound underwriting

15. ET Retail.com – October 29, 2019

standards. There is a pertinent need to redefine the regulatory framework via insurance councils, governing marketing of "products" by insurers, and meet with "minimum product standards" (or face 'Conduct' Ramifications on breach of 'Minimum Standards') ensuring usage of "products" under the 'Use and File' regime. The policyholders' protection interests are to be catered to in view of principle-based recommendations (Chapter 2.2.1.a).

The IRDAI and the GI Council don't have to reinvent the wheel on the 'commercial lines' contracts. These lines have always been led by the leading international re/insurers such as Swiss re/Munich re/London Market Association etc. The 'Use and File' system backed up by these re/insurers 'wordings' and 'clauses' (to be 'tweaked' per Indian law/market conditions and maintained as a repository by the Council) would help the Indian markets on the 'commercial lines'.

4.3. Standardised Certification process - Insurance contracts need to have an independent accredited Lawyers/Law Firms (the process will be evolved and controlled by IRDAI) signing off **insurance contracts from a 'contract certainty'** perspective (Chapter 2.2.1. a). The current regulations mandatorily require a lawyer to certify the File & Use documents for a 'product' being filed and this is also being done by Compliance Officers who also may hold a lawyers degree. The current regime needs to be changed with a new framework to be laid down by IRDAI. There should be a new **Standardised Certification process by IRDAI accredited Lawyers/Law Firms** that will lay out a new accreditation criteria, mandating professional standards involving minimum qualifications and experiences, passing Bar Council examinations, Continuous Professional Development (CPD) requirements and carrying minimum professional liability coverage.

4.4. Interact with the Government, Policy makers and other bodies on policy matters: In addition to the Government and the Policy makers, the Councils may also play an important role in representing the Insurance Industry on various judicial forums considering the rise in judicial activism today and a lack of representation from the Industry in many such critical litigations, which eventually have a major bearing in the business of insurers in India.

4.5. Insurance 'Awareness' and 'Education' - Since the insurance penetration is low it needs public 'awareness' programmes to be run by the two Insurance Councils (India's life insurers, under the aegis of the Life Insurance Council, working together in the industry's first joint mass media campaign to promote life insurance is the right beginning). It might be a good idea to cater to 'insurance research and education' via CSR funding, and instituting insurance chair at prominent academic institutions. The corporate sector has over the last 5 years contributed Rs 50,000 crore and above towards CSR. Maximum funds have been given to projects for poverty alleviation, safe drinking water, education, health[15]. Insurance Industry (Life and General) cumulative profits have been building up, 2% of which needs to go for CSR activities. If 10% of this 2% CSR fund is earmarked for "Research and Education"; the Industry will transform in a variety of ways. This CSR allocation will help to create "Chair" catering research and futuristic innovation in Insurance in prestigious institutes like IIM etc. will help catapult thought leadership of the Industry to another level in the next five years.

4.6. Insurance education and researches - The other transformative task is to spread 'education' with a secular intent and with ownership neutrality. The IRDAI ownership of the Institute of Insurance and Risk Management (IIRM) at Hyderabad presents conflict of interest of sorts, has an unintended partisan agenda and must, therefore, be discontinued.

e) The 4 Ps of insurance marketing -

The '4Ps of Marketing' – Products, Pricing, Placements (Distribution) and Promotion' - have not been woven into principle led 'Ease of Doing Insurance Business' framework, to be dealt with through principle-based 'minimum conduct standards' via IRDAI/SROs: However, steps such as standardisation of Health contracts are in the right direction provided they remain 'minimum conduct standards' but implemented and audited maximally.

f) Ease of doing business: Why India is faltering in enforcing contracts -

"Though India continues its upward march in the ease of doing business rankings – climbing up to 63rd place in the latest edition – the country continues to remain a laggard (at 163rd place among 190 countries) when it comes to enforcement of Contracts. This is a direct reflection of the state of India's judiciary. On an average, it takes four years to resolve a commercial dispute in India – as against 164 days in Singapore, the top ranked nation, in terms of dispute resolution. In fact, India figures among the bottom five countries, in terms of time taken for enforcement of contracts"[16].

As the insurance policy is a contractual obligation, it is inarguable that India is ranked low in terms of 'Ease of Doing Insurance Business Index'. Yet the two fundamental pillars for protection of policyholders' interests - 'contract certainty' and 'effective litigation' – are not part of the

16. "Ease of doing business: Why India is faltering in enforcing contracts" by Sudipto Dey, Business Standard dated November1, 2019

current regulatory design. This Monograph provides for both. It addresses policyholders' interests in terms of 'contract certainty' (Chapter 2.2.1. a). It also addresses policyholders' interests in terms of effective litigation management:

1. Insurance Ombudsman Rules, 2017- Recommending improvements in the Ombudsman Scheme - Grievance Redressal Mechanism for 'Personal Line' insurances, especially the Insurance Ombudsman Rules, 2017 (Chapter 3.1.5. and 3.2.4);

2. Alternative Dispute Resolution Mechanisms – Recommending a dedicated arbitrational forum currently for resolving disputes between Insured, Insurers and Reinsurers in India (Chapter 3.4.2. (6). The preparatory ground work includes having all insurance policy contracts with the clauses that provide for alternative dispute resolution mechanisms, jurisdictional clauses and seat of ADR settlement, which has so far not been regulatorily administered.

g) 'Committees' constituted by the IRDAI –

Currently, the broad IRDAI working involves forming 'Committees' to deal with issues. The committees normally have disparate 'experts' and it's not easy to weave an integrated theme; often times the reports are long researches and become an end by themselves; and reports often involve time overruns. At the end of it all, recommendations are either accepted (fully or partially) or not accepted, leaving 'the market' either confused with lack of firm solutions or left with its own devices/ interpretations. Often a Committee work leads to the formation of another committee. The needed outcomes become a casualty in the process.

Following are two examples, among many:

1. The Trade Credit insurance in India – The Trade Credit policies in India in 1999/2000 were started by the non ECGC insurers with the leading and specialized reinsurers. The product requires highly sophisticated data analytics and underwriting tools to analyze the commercial and risk underwriting. Arising out of a crisis in 2010, involving an Indian insurer whose deals defied global practices, led the IRDAI to first suspend the product across the market and then severely restricted its scope. Though revisited in March 2016, business debilitating provisions remain. Globally Trade Credit Insurance has established itself as the backbone for safe expansion of credit for the MSME segment, providing business insights, buyer information, monitoring services and even assistance in debt recovery at a very low premium to the financial sector. The global best practices, long dealt with successfully, have not been acceptable to IRDAI such as 'Banks as insured' and 'Factoring' etc. IRDAI has now set up a nine-member working group headed by Chairman, New India to review March 2016 guidelines. After almost two decades, India still needs a large working group to submit its report in three-months (if the time is not extended further), and another 3/6 months before IRDAI would consider and implement recommendations.

2. Micro insurance - The IRDAI (Microinsurance) Regulations, 2015 laid down elaborate regulatory mechanisms on Microinsurance products, distribution etc. The IRDAI, whilst announcing formation of a new Committee in April, 2019 on Microinsurance, states:[17]

- "India has been seen to be a very exciting market and a pioneer in the microinsurance sector in the world and has provided an example with its microinsurance regulations. Even so, market penetration in the microinsurance sector is seen to be low in India". (Should the regulations not be outcome-based?)

- "The market is largely supply driven". (Has the Government of India, on the contrary, not demonstrated demand led transformation through its marquee programmes e.g. PMSBY, PMJJY, PMFBY and PMJAY etc.?)

- With a certain self-belief, the IRDAI have formed a new 13-member Committee to change Microinsurance regulations on 25 April, 2019 within three months. The Committee has already seen two changes – on 11 June, 2019 and 7 July, 2019 and the Committee report is not yet in sight. (Can the Microinsurance be developed through rule-based and penal regimes, without an active understanding of the market?)

IRDAI administration by Committees conveys diffused ownership, and reflects hierarchies rather than a flat organization with devolved, single point ownerships with specialisms burgeoning throughout. The urgency and certainty of direction will necessarily come through specific IRDAI Ownerships, responsible for a particular work-stream, which in turn can draw upon market expertise – but not in the manner illustrated in the above examples.

h) Buyer-beware -

There is increasing evidence to show that a move away from buyer-beware market is the road ahead in financial regulation. The Sumit Bose report talks of certainty at solicitation level. The proposed Indian Financial Code (IFC) too envisages this approach. The current regulatory insistence on "insurance being a subject matter of solicitation" is still rooted in the dogma

17. The IRDAI Committee on Microinsurance – IRDA/RI/ORD/MISC/061/04/2019 dated April 24, 2019

where insurance was considered only "buying". 'Seller beware' might be an idea whose time has come – 'Insurer' for its 'Agents' / and the accredited SROs for the 'Intermediaries'/'Insurance Intermediaries'.

i) The debate on lag in insurance penetration – The earlier regulatory stance was that more capital is required for deeper penetration,[18] However, the findings from FICCI, CII and McKinsey suggest that enabling policy actions to become "inclusive, progressive and high performing" sector will mean much less additional capital requirement to effect a paradigm change in the insurance market.

j) IRDAI's Service Proposition – The emphasis that IRDAI needs to deliver a leading industry service proposition such that life of users becomes better has not received due recognition. The following few examples, among many, are recounted in support:

1. Exclusion relating to Genetic Disorders - The Delhi High Court in the matter of United India vs JP Tayal stated that discrimination in health insurance against individuals based on their genetic disposition or genetic heritage is unconstitutional. It directed IRDAI to ensure that insurers do not reject claims on the basis of exclusions relating to genetic disorders. IRDAI immediately issued a circular on 19 March, 2018 to this effect. Later, on an appeal to the Supreme Court of India, the Delhi HC judgment was stayed on 27 August, 2018 prompting IRDAI again on 5 September, 2018 to abate its earlier circular.

2. Pollution Under Control (PUC) Certificate - The Hon'ble Supreme Court of India passed an order on 10 August, 2017 that no motor insurance policy should be issued without a valid PUC. It appears that the Insurance Industry did not have a proper opportunity to fully represent its own challenges in implementing the new process; systems and implementation woes; and the necessity to have extended time lines.

3. Long Term Motor Policies - The IRDAI circular of 28 August, 2018 directed all insurers to follow and implement the SC order, starting 1 September, 2018 involved massive system changes, raising of the insurance costs, inter-channel issues besides, affecting the pricing and reserving issues.

4. Mental Healthcare[19] - Here again, a new Act was passed by the Government, and the insurance industry has been found unprepared to immediately comply with the new requirements, as the insurers feel that the data currently available in cases of mental illnesses are insufficient to arrive at the definition of a mental illness for the purpose of providing an insurance cover.

5. HIV - The IRDAI circular on the "Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act 2017" on 9 October, 2018 directed all insurers to comply with S 3(j) of the Act with immediate effect, knowing fully well that there is a lack of credible data to undertake this task and the prevailing laws enforce restriction on sharing of the details of the patients suffering from HIV.

6. CEO Remuneration – There are clear guidelines, yet the CEO remuneration has to be approved by the IRDAI, and this too, not without delays.

k) IRDAI website - The site browsing reveal the following, among many deficiencies:

- Lack of continuous updating;
- PDFs don't always open;
- Professional site management;
- The site lacking a dedicated section /FAQ on understanding the basis of licensing/registration processes for prospective foreign investors / players etc. to especially supplement the Ease of Doing Insurance Framework.

On a bipartisan note, it will be revealing to visit the UK regulators' (**www.bankofengland.co.uk/pra**)/(**www.fca.org.uk**) and the Singapore regulator's (**www.mas.gov.sg**) sites and compare them with (**www.irda.gov.in**) to get a feel of the difference. The developed markets web sites are designed to facilitate ease of doing business in terms of:

- Friendly designing;
- Ease of navigation;
- Quality and reliability of information;
- Interact ability; and
- Ease of printing and sharing the pages, where helpful to businesses.

2.1.2. Upshot

The Indian insurance market needs right regulations and their prudent management, based on principle-based framework that together constitute 'Ease of Doing Insurance Business Framework'. The essential expectation is that the IRDAI undertakes to create an enabling environment, speed of services backed up by technology, and nudges the market along. This cohort, when it works for the entire group of 'stakeholders', would then cater to the Vision of Inclusion, which means not just policy holders but the potential policy holders as well.

18. IRDAI - "According to our estimates, the capital requirement for increasing the insurance penetration in India to 6% would be around Rs 50,000-60,000 Crore. The capital can come from foreign investors or from Indian investors".
19. Asia Insurance Review eDaily, 27 May 2019

2.2. Principle-based Regulatory Framework

The 'Ease of Doing Insurance Business Framework' recognises a principle-based platform where right regulations and their prudent management would constitute the right insurance governance framework. The Indian insurance regulatory framework is, however, prescriptive. The high dosage of regulations comes with high cost of compliance (A comment from the market – "License Raj has been replaced by Compliance Raj in India"). The Regulatory adherence is to the prescribed checklists rather than outcomes.

The regulatory overload with attendant micromanagement results in "the big picture" taking a back seat. This is quite opposite to what Jose Manuel Barroso, the former President, European Commission once said in his annual 'State of the Union' speech to the European Parliament, "We need to be bigger on big things and smaller on small things".

The Governor, Reserve Bank of India (RBI) has taken a different stance though: "The broad objective has been to keep pace with the requirements of the fast-growing Indian economy, whilst being vigilant of potential risks to financial stability. This is done through freeing up market forces by moving away from prescriptive to principle-based regulation, whose core features are simplification of processes, encouraging product innovation, removing regulatory differentiation across participant categories and ensuring protection for retail market participants".[20]

The Business Leaders in India, too, have been demanding principle-based architecture:

1. Banker Uday Kotak[21] has highlighted the increasing trust deficit between regulators and regulated entities as the latter is increasingly becoming more rule-based; Noting that society, regulations and governments have moved away from the trust-based model which is principle-based into the area of rule-based model.
2. G N Bajpai, former Chairman, SEBI and LIC has suggested, "The product basket, distribution channel, selling techniques and 'go to market' and regulatory design framework must undergo a comprehensive re-engineering."

2.2.1. Principle-based architecture for Indian insurance regulations

a) The Protection of Policy Holders' Interests

The Policyholders' Interests are neither defined nor specifics designed in the regulatory framework. Yet, protecting the interests of policyholders is invoked as a matter of faith rather than a principle-based regulatory tool.

The need for consumer protection arises from an imbalance of power, information and resources. A well-designed consumer protection framework can bridge the gap between consumers and Insurers, which has following core elements:

1. Transparency - Full, plain, adequate and comparable information about price, terms and conditions (including inherent risks) and procedures of the products and services the customer is subscribing to;
2. Choice - Fair display and non-coercive presentation with necessary disclosures on products and procedures;
3. Redress - Free and unhindered access of the customer to the grievance redressal system of Insurers and availability of inexpensive and speedy mechanism with the Insurer to provide efficient resolution to the complaints and disputes.

These are principle-based standards involving: **'Contract Certainty'** (pre-sale) and, **'Effective grievance management & dispute resolution mechanisms'** (post sales servicing) to be institutionalized by the IRDAI but implemented by the two insurance councils.

Contract Certainty - Insurance contracts (contrary to the concept of 'products') need to have credible and accredited Law Firms signing them off from the perspective of **"Contract Certainty"** which includes:

1. Preserving the sanctity of basic **'Insurance Principles'** such as 'indemnity', 'insurable interest', 'proximity cause', 'contribution', 'subrogation', and 'assignment' etc.;
2. Such insurance contracts ought not to be contrary to the laws of the land such as Law of Limitation, Redressal

20. "Harmonize norms between banks and NBFCs" by Shaktikanta Das, RBI Governor, Business Standard dated August 25, 2019
21. Uday Kotak in The Times of India - April 13, 2019

of Grievances and Dispute resolution etc. The Indian insurance contracts must be adjudicated upon based on Indian laws, Indian jurisdiction and the seat of adjudication should also be in India except involving cross border jurisdictions;

3. Such insurance contracts are not contrary to the other Indian jurisprudence such criminal laws, financial laws and capital market laws;

4. The 'technical' terms used in the insurance contracts are properly defined, and have consistency with the broader market; and are neither 'ambiguous' nor unreasonable' nor 'unconscionable' nor subject to various interpretations;

5. Such contracts are not contrary to the insurance regulators' specific regulations/standards and, injunctions;

6. Such contracts are not contrary to the international laws and conventions which have either been adopted by India or where the Indian International trade is routinely subjected to and that have a bearing on the specific insurance contract; where the risks are global and the risk contours are not bound to Indian jurisdiction;

7. The 'contract certain' insurance contracts must cater to the basic function they have been intended and introduced to the market for e.g. Medical travel product must cater to the medical emergencies whilst traveling abroad.

Effective grievance management & dispute resolution mechanisms - too, need to be institutionalized:

1. Insurance Ombudsman Rules, 2017 - Recommending improvements in the Ombudsman Scheme - Grievance Redressal Mechanism for 'Personal Line' insurances, especially the Insurance Ombudsman Rules, 2017 (Chapter 3.1.5. and 3.2.2);

2. Alternative Dispute Resolution Mechanisms – Recommending a dedicated arbitrational forum currently for resolving disputes between Insured, Insurers and Reinsurers in India (Chapter 3.4.2. (6). The preparatory ground work includes having all insurance policy contracts with the clauses that provide for alternative dispute resolution mechanisms, jurisdictional clauses and seat of ADR settlement, which has so far not been regulatorily administered.

b) 'Product / Pricing approval' management

IRDAI administered 'product approval' management has prescriptive requirements and accountabilities. As demonstrated in the Sumit Bose report, the IRDAI approach to approving insurance products encroach upon many fundamentals of protection of Policyholders' interests. A regulatory regime that takes it upon itself to "approve" or "reject" products make it a regulatory failure in case of a malpractice, malfeasance or even invite anti-trust provisions besides, causing delays. Insurance contracts need to have an independent accredited Lawyers/Law Firms signing off **insurance contracts** per regime laid down in this document. The IRDAI run product pricing approval management is prescriptive, too.[22] This has many implications, including solvency. The global best practices have risk based pricing approaches linked to the modern solvency regime, to take care of both experience as well as exposure rating models, actuarially run, to assist pricing.

c) Appointed Actuaries

IRDAI's mandate to have Appointed Actuaries working with Insurers needs relooking. If the regulatory requirement is actuarial sign offs on a set of given tasks, it needs to be left with Insurers to fulfil, through internal or external resources, rather than mandating it as insurers' hierarchy. Where the Actuarial sign off is indeed required is for the **Risk Based Pricing** mechanism.

d) Reinsurance Principles

Reinsurance is principally used to spread risks around the world, instead of maximizing risk retention within a country: 67% of the losses of 9/11 in the United States, still world's largest economy, were picked up by the international reinsurance industry. However, the Indian regulations have 'premium retentions' mandated to measure them at the 'country level' despite International Association of Insurance Supervisors (IAIS) having a model risk management framework and the "ceding insurer responsibility model" in place.

There is this stated objective that 'premiums' need to be retained in India rather than 'risks' exported out. Whilst the Government and Regulatory objective is to retain 'premiums' within the Country, it is important that there is a proper risk transfer test prescribed within the Regulations, to determine whether the 50% risk retention is being achieved. There is a common understanding that the Regulatory objective is to retain 50% of the risk within the Country, otherwise, transferring 50% of the premiums does not mean that 50% of the risk has been transferred out.

Moreover despite 'reinsurance' having been defined in the Insurance Act as amended in 2015, a regulatory licensed 'Indian Insurance company' for life/general/health insurance business (as opposed to regulatory licensed 'Indian Reinsurance Company') is allowed to do "inward reinsurance business" – which means following a different principle vis-a-vis primary insurance law. Another market principle that it should have level playing field is not being followed in the Indian reinsurance space where GIC Re

22. "Insurers can change rates by up to 15% without IRDAI nod" by Rachel Chitra, Times of India, September 25, 2019

(a Government reinsurance company) is treated as the preferred entity, favouring it with 'Order of Preference' and 'Compulsory Cessions' regulations.

e) Approach to Outsourcing

The current IRDAI regulations are premised on two anchors: 1) Outsourcing regulations would prevent over-riding payments to the Intermediaries, and 2) The Insurers are prohibited from outsourcing any of the following activities mentioned under (1 to 8) in any manner:
1. Investment and related functions;
2. Fund Management Including NAV calculations
3. Compliance with AML and KYC, provided, KYC verification through third party service providers is allowed as per Clause 3.1.2 of IRDAI AML Master Circular dated 28th Sept 2015;
4. Product designing, all actuarial functions and enterprise-wide risk management;
5. Decision making in Underwriting and Claims functions excluding procedural activities related to payment of Survival Benefit claims in Life Insurance;
6. Policyholders Grievances Redressal;
7. Decision to appoint Insurance Agents, Surveyors and Loss Assessors;
8. Approving Advertisements

The above approach signifies a prescriptive treatment to a significant part of the business activities that are best left to the companies under well-defined IAIS standards, depending upon their approach to business, perception of risks and management by priorities. The following two global examples are cited, in support:

a) A leading transnational company does not outsource its internal audit function since it is considered 'material' in its management philosophy;
b) There is another leading international market which does almost one-third of business, globally, through an outsourced underwriting model.

IAIS Standards on introduction to Outsourcing model has the supervisor requiring the insurer to retain at least the same degree of oversight of, and accountability for, any outsourced material activity or function (such as a control function) as applies to non-outsourced activities or functions. The Board and Senior Management remain responsible in respect of functions or activities that are outsourced. These are principle-based standards, which are risk-based and recognize that the level of risk associated with an outsourcing arrangement is informed by the materiality of that activity to the insurer's operations.

Outsourcing by insurance providers offer a number of benefits that insurers are able to pass on to their policyholders. In addition to reduction of expenses, outsourcing can improve policy management, allow insurers to focus resources on new product development and deliver those products faster and more effectively through their customer and intermediary service. While outsourcing arrangements can bring cost and other benefits, it may increase the risk profile of an institution. The regulatory framework must strike a balance between oversight and operational flexibility for the insurer and its third-party service provider. Should an outsourced activity be critical to an insurer's operations, the expectation should be that there is a stronger due diligence, oversight, management and monitoring of the supplier – as evidenced by the insurer's processes.

f) Expenses of Management

The current regulatory regime on expenses of management in India is prescriptive, with regulatory control on all aspects of insurers' operations, and at many levels. In line with best global standards, with absolute reliance on risk based capital and solvency standards, there are far more effective proxies to monitor insurer's performances. This will also be in line with a total balance sheet approach in the assessment of solvency to recognize the interdependence between assets, liabilities, regulatory capital requirements and capital resources and to require that risks are appropriately recognized. There should be just one limit, at overall company level, in keeping with the spirit of Insurance Act Amendments of 2015 where the intention has been a cap at the company level. Therefore, the regulatory controls on the expenses of management could be geared to incentivize better performing entities, and discourage consistently poor performing laggards using intelligent proxies rather using the regulatory mechanism as a one-size-fits-all tool.

g) Management of Distribution

'Distribution' has been a stand-alone IRDAI vertical headed by IRDAI Member (Distribution) for some time now. The distribution channels include Brokers, Individual Agents, Corporate Agents, Common Service Centers, Point of Sales persons (POS), Insurance Marketing Firms, Web aggregators, E Commerce, Banc assurance, Distance marketing, and Motor Insurance Service Providers (MISPs).

However, 'distribution channels are considered misfiring'[23] as a result of micro managed multiple distribution models with multiple rules/restrictions and governance structures:

1. Constantly changing regulatory distribution governance structure is not principle-based;

23. CII-EY Insurance Report: "Insurer of the Future", August, 2016

2. Section 2 (1) (f) of the IRDA Act, 1999 defines "Intermediary" or "Insurance Intermediary" as including "insurance brokers, reinsurance brokers, insurance consultants, corporate agents, third party administrators, surveyors and loss assessors and such other entities, as may be notified by the Authority from time to time". Therefore, leaving aside the "Intermediaries" such as Third-party Administrators, Surveyors and Loss Assessors, and Insurance Repositories and the First Party Channel of "Insurance Intermediaries", all the 'Third Party Channel insurance intermediaries' should have been clubbed under one regulatory framework to ensure easy understanding and consistency across different types;

3. Despite the above 'Act' classification where "Intermediary / Insurance Intermediary" has left out "Agents" but has included "Corporate Agents", the IRDAI web site includes "Agents" and "Corporate Agents" under the caption of "Agency Distribution", leaving a gap of understanding between the IRDA Act, 1999 classification and IRDAI web site display;

4. There is an increasing evidence to show that a move away from buyer-beware market is the road ahead in financial regulation. The current regulatory insistence on "insurance being a subject matter of solicitation" is still rooted in the dogma where insurance was considered only "buying";

5. The supply led approach to distribution has the IRDAI coming out with regulations with frequent changes and updates e.g. Micro insurance, POS, Insurance Marketing Firms etc. without necessarily catering to distribution led penetration. **The following Case Study on Motor Insurance Service Providers (MISP) throws light on the 'misfiring' assessment by the CII/EY:**

IRDAI came out with its guidelines on MISP on 31 August, 2017 with the objective "..to recognise the role of the automotive dealer in distributing and servicing motor insurance policies so as to have regulatory oversight". MISP means an automobile dealer appointed by the insurer or the insurance intermediary to distribute and/or service motor insurance policies of automotive vehicles sold through it".

While the regulatory oversight process was underway, the 'market defiance', and the consequent IRDAI outreach began to build up:

a) IRDAI, on 17 October 2017 warned insurers and intermediaries not to make payments to dealers in violation of the regulations;
b) IRDAI, on 1 November, 2017, released a list of FAQs/clarifications which clarified that OEM/Financier are not covered under the ambit of the guidelines;
c) The GI Council, around this time formed a 'Watchdog Committee' consisting of few CEOs to report back to the IRDAI on the transgressions of MISP guidelines;
d) IRDAI, also carried out MISP audits, and the first order has recently been passed on 13 September, 2019. Further orders are also expected;
e) IRDAI, on 11 January, 2017 came out with further guidelines, stating: creation of insurer panel by MISP/Broker is restrictive, and acknowledged that the OEMs were exercising undue influence without corresponding accountability;
f) Under the weight of the market defiance and the prescriptive and contradicting IRDAI guidelines, the MISP experimentation appears to be practically over; larger pay-outs in motor business continuing, as before.

It might serve useful purpose to recall 'IRDAI approved MISP framework, which has not been principle-based:

1. The Motor Dealers/OEMs present monopolies and conflicts of interest, and control the motor market. Yet, IRDAI decided to rope them in; leaving out OEMs, and recognising dealers as Agents/Sub-Brokers (the Motor insurers experienced OEMs clout during the recent floods in the country);
2. OEMs (indirectly) and the Dealers (directly) have become the end clientele for the insurer; the Policyholders are a distant entity. Moreover, the insurance policy, more often than not, comes as part of Dealers' sale of the vehicle to the buyer: The sanctity of the insurance contract, and the policyholders' insurance purchases often become secondary choices as the policyholders is not left with an independent option to purchase an insurance cover of his choice though regulations contemplate otherwise;
3. IRDAI, by coming out with these guidelines, have ensured dilution of insurer status and making them become vendors to dealers and OEMs – despite being the actual risk takers and capital providers;
4. The current mismatch between 'tariffed distribution expenses' and 'non-tariffed product pricing' is a systemic asymmetry, and leads to enhanced 'risks' to the policy holder ;

Principle-based approach to Distribution has an uncomplicated architecture with strong market standards: First Party Channel (primarily Agency), and The Third Party (primarily Broking) – the Banc assurance could be both First or Third Party. This allows flexibility to insurers to manage their distribution costs and derive optimal value from the distribution infrastructure depending on whether it is Insurer built/operated or a Third-Party channel. The distribution expenses ought not to be sub-limited to the

24. CII Insurance and Pensions Summit on 23 August, 2019 at Mumbai: Panel Discussion on "'Redefining the risk in the Business of Insurance"

Expenses of Management. There ought to be only a maximum expense of management limit prescribed for the insurer, which is in sync with the operational principles of business management – complete accountability with maximum freedom. The channel principles are further explained:

1. First Party Channel: Insurer built and operated - The insurer is made responsible for creating and maintaining the First Party distribution infrastructure, directly or outsourced and with or without any open architecture – there is a principal and agent relationship between the insurer and his intermediary, with the principal assuming complete accountability of such contracts. As the nature of contract goes, it is the principal who arranges the appropriate level of training and certifications and be empowered for the marketing frameworks and the consequential compensation regimes, both the extent and the manner. The law of land has sufficient safeguards to deal with the agent's transgressions. In case of an agency-principal relationship, since the principal is vicariously liable for the acts of its agents; the entire process of shortlisting a channel until settlement of disputes shall be internal to the insurer.

2. Third-party Channel - Third-party professionals undertake a host of distribution activities independently. Such entities would include Brokers, and Alternate Channels. For channels which represent the customers e.g. brokers, aggregators or Banks, there is a single framework required to govern them. The adherence to the norms prescribed shall be overseen by their Self-Regulatory organizations (SRO). As the term suggests, SRO is responsible for regulating itself. It exercises some degree of regulatory authority over an industry or profession. The concept of SRO requires a regulatory commitment to allow it to be independent, yet accountable – requiring occasional friendly nudges and philosophical guidance. These lend depth and gravitas to the whole market, thus making it easy for the harnessing of 'markets' technical expertise'.

Distribution is a demand led mechanism where strengthening distribution network is an issue of utmost importance. Insurance is still a relationship based business, and human touch between the provider and potential customer is a significant factor: Technology supplements, but doesn't replace this fundamental reality. Creating sales force driven growth environment is the most desirable phenomenon for the insurance industry. This approach leads to both - improved productivity and goodwill that are the mantras for higher penetration. Distribution does not require regulatory micro management (which any way has not succeeded), but a regulatory commitment to ensuring a simple, principle-based playfield.

h) Investments

The current regulatory regime on Investments is prescriptive with stringent control on the investment types and the extent of investments etc. These stifle innovation and restrain the insurer from holding the assets that it believes are most appropriate for meeting its financial objectives. Since the nature of business and structure of liabilities differ among insurance companies, a uniform rule-based regulatory requirement on investment applicable to all insurers discourages insurers from developing their own risk management. The IRDAI should usher in a new regime of 'approved' and the 'non-approved' investments, at the discretion of the Board of the Company, using transparent methods such as insurers having positive CORs for the non-life insurers. The IRDAI has also issued a modification to Preparation of Financial Statements and Auditors Report of Insurance Companies, and has required insurers to segregate policyholders and Shareholders funds at security level. In case of any deficit/shortfall in policyholders' investments arising out of the loss in the Revenue Account or otherwise shall be recouped by transfer of securities from the shareholders' investments to the policyholders' investments. Such bifurcation of monies in the non-life insurance sector does not happen globally, though it is common in a Takaful operation as it has to comply with the Islamic principles of mutualism. This is because the income that insurers get from underwriters' income is uncorrelated to the markets – and for many of these insurers the bulk of their income ought to come from underwriting rather than from investment income as in the life insurance industry. Moreover, a Life Policyholder has a stake in the treasury of the Insurer to the extent of the Sum Assured.

i) Corporate Governance

What conscience is to a natural person, corporate governance is to a corporate. Corporate Governance seeks to create protocols, lays down standards and procedures which help in achieving two fundamental objectives – first, the Directors and Managers act in the interest of the company and all its stakeholders; second, in doing so the Directors and the Board are accountable to the capital providers in the use of assets and resources to their disposal.

The organizational framework for corporate governance initiatives in India consists of the Ministry of Corporate Affairs (MCA) and the Securities and Exchange Board of India (SEBI) oversight (for the listed companies). Besides the Companies Act, 2013, IRDAI has felt equally necessary to issue corporate governance guidelines to demand good governance practices. Interestingly, IRDAI does not necessarily see itself as one of 'Stakeholders' as it seeks to be mentioned separately.

It's important to create an effective principle-based corporate governance, rather than continue with a prescriptive corporate governance guidelines. The Regulator must track the performance of the Boards of the insurance companies, and subject the Boards to a close regulatory oversight instead of mere submission of certain reports or minutes of the Board meetings etc. The Board should be made answerable to the Regulator for poor decision making or controls leading to undue suffering to the policyholders. The Regulator must ensure that the Board comprises of people with relevant knowledge and experience. (In our country, the Directors are questioned only when serious fraud or financial loss is reported/detected or alleged by a whistle blower). As an illustration, IRDAI governance model should proactively think of the following:

1. IRDAI's approved accreditation criteria for Independent Directors, which must be mandatorily followed by all Company Boards;
2. Independent Directors' mandatorily filing of individual reports to the IRDAI following every Board meeting, on key items set by IRDAI.
3. One key accountability should be the role of gender in the insurance industry beyond any prescriptive rules. The facts have been evident for some years now. Companies across the world with more than one woman on their boards have generated shareholder returns 3.3% higher each year than companies with no women on the board. A Harvard Business Review study shows that companies with women occupying 30% of leadership positions are 15% more profitable than companies with no women in leadership positions. Closer home, if Indian women participated in the workforce to the same extent as women across the world, India's GDP would be higher by 27% and grow an additional 1.5% each year.
4. Good governance should result in value creation manifesting on a host of parameters. Hence, IRDAI oversight must include sustainable and profitable growth of its entities that is valued by all stakeholders.[25]

Finally, with its acceptance of Single Window Ownership, the IRDAI must take all stakeholders along – the Government, the Legislature, the Market and, all other interested bodies **in its transparently committed Vision and Principles of Right Governance** where its decisions shall be examined in the light of basic covenants of fairness, disclosure, transparency, discipline, accountability and independence such that it believes that it is part of the wider stakeholders' group. The IRDAI and all its regulated entities, as joint stakeholders, must all remain responsible corporate citizens.

j) InsurTech

IRDAI has recently released the Sandbox Model and have called for Insurers to file new/innovate products with InsurTech within a prescribed date. The Sandbox model would allow the Insurers to test innovative products and processes with InsurTech solutions in many areas and lenient regulatory relaxations as may be decided by the IRDAI on the merits of every applications filed under the model. On the one hand, regulatory sandbox has been launched; on the other, insurers have been asked to refile all their products. Besides "Insurance Solicitation or Distribution" and "Insurance Products", the "Sandbox environment" also includes 'Underwriting, Policy and Claims Servicing'. Principally, operational mechanisms ought to be fast tracked through direct regulatory clearances, and not through Sandbox. "Sandbox environment" and clearances should only include business propositions such as "Insurance Solicitation or Distribution" and "Insurance Products".

2.2.2. Upshot

The prescriptive regulatory framework is generally an antidote to ingenuity and innovation, as seen above, and when it is not outcome based but it leads to an attritional and non-linked compliances. The principle-based approach, on the other hand, lends itself to the 'ease of doing insurance business' with right outcomes. It also means that the regulations must move from a one-size-fits-all regulatory framework to a regime calibrated to insurers' assets, solvency ratios and risk tolerance, evident and demonstrated competencies.

25. "The business case for gender equality in our society" by Kapil Viswanathan in Mint dated November8, 2019

2.3. Taxation Framework for fostering the Indian Insurance Industry

"In what is arguably one of the boldest reforms in the last 20 years, the Finance Minister has cut the effective tax rate on corporate profits from approximately 35% to 25.2% for existing domestic companies and 17% for the new manufacturing companies established before October 23, 2023 provided the companies take no exemptions. The tax rates are now globally competitive, and by putting an end to exemptions, the government has greatly simplified the corporate profit tax system and thus eliminated numerous sources of bribes, harassment and tax disputes".[26]

The Finance Minister has further promised GST simplification to help India improve business ranking. India has jumped 14 places to rank 63rd out of 190 countries in the World Bank's ease of doing business 2020 report. "GST is an ongoing process in improving".[27]

Following far-reaching tax reforms being carried out for the wider economy, a consistent, stable and simple tax environment is extremely essential for developing a modern insurance set up, and for setting up an internationally competitive insurance market place in India. Hence, the following framework.

2.3.1. Taxation on Life Policies

2.3.1.1. Indirect Tax: Goods and Service tax Acts ('GST')

1. Term insurance (protection) policy

A term insurance (protection) policy has a very unique feature of providing protection to the family of the policyholder against the death of the breadwinner, which is a key societal need. As per a report by Swiss Re (Mortality Protection Gap: Asia-Pacific 2015), the protection gap in India is USD 8.5 trillion. This reflects the lack of awareness and education on the need for protection. The PMJJBY scheme launched in FY 2016 gave a strong impetus in raising awareness on protection.

With this context it is to be noted that GST is levied at the rate of 18% on term insurance products. The levy of GST on the entire premium component ignores the fact that the Life Insurance companies have to provide for claim payable to the policyholders and a substantial portion of this premium is invested so as to build up the corpus for meeting such claims. While this principle has been recognised while levying tax on ULIP and Endowment products (where the investible portion is not taxed), in term products the GST is levied at full rate on the entire premium. The premium income doesn't belong to the company in its entirety. This has made term insurance expensive.

In order to increase the penetration of insurance, it is important that GST on Term insurance be reduced to 5 percent from the existing 18%, so that it becomes more affordable to the customers. Premiums applicable for term insurance have significantly reduced over a period of time to make it more and more affordable for the customers. The burden of indirect taxes has gradually increased over the years and culminating in the levy of GST at the rate of 18%. The cost of taking term insurance has consequently gone up steeply. Thus on one hand, the insurance companies have reduced the base cost of term cover for the customer so as to make it more affordable the GST levy has made the premium costlier for the customer. The levy of tax at full rate on the entire premium also ignores the fact that only a part of the premium is actually a consideration for service and a major portion is invested to meet the claims liabilities.

2. Payment of GST, both at 'Accumulation' and 'Annuity purchases'

Policyholder has to be pay GST twice for the same investment kitty once at the time of accumulation / savings and then again when a lump sum amount is invested towards purchase of annuity. This results in double payment of GST by the policyholder.

In order to mitigate the financial hardships of the pensioners no GST should be levied on purchase of annuity policy. Post retirement, annuity is the sole source of income for many policyholders and hence it is important that double incidence of GST is avoided.

26. "How to do $5 Trillion by 2024" by Arvind Panagariya, Times of India – October 15, 2019
27. PTI | October 25, 2019

2.3.1.2. Direct Tax: Income Tax Act, 1961 ('Act')

1. Parity between 'NPS' and 'Life'

National Pension Scheme ('NPS') enjoys certain additional tax benefits as per Section 80CCD under the Act as compared to life insurance products, thereby making the life insurance products less attractive from a tax perspective: An additional deduction of Rs.50,000 is available for investments in NPS under Section 80CCD. This is over and above the general deduction limit of Rs.1,50,000 as prescribed under section 80C. Life insurance is however covered and clubbed with many other investment options like PPF, NPS, EPF, PF, tuition fees and principle component of housing loan repayment, under the overall limit of deduction of Rs.1,50,000.

Additional tax benefits should also be available for life insurance products. A separate deduction in form of a separate section under the Act for term life insurance will encourage people to purchase life insurance policies and provide protection to their families. If due to any reasons, separate deduction cannot be provided, then the current combined limit of Rs.1,50,000/- under section 80C could be suitably increased. This is to incentivise more people to opt for life insurance and also with a view to bring in parity between NPS and life insurance products.

2. Annuity Taxation

Annuity from policies of life insurance companies is fully taxable in the hands of the policyholders. This also results in double taxation for the policyholder to the extent of premiums paid.

In order to mitigate the financial hardships of the pensioners when, due to old age factor, the medical and other expenses are at its peak and also due to the fact that in most cases annuity is the only source of income post retirement: The annuity income should be exempted from tax; In an event such exemption cannot be granted, it will help that while computing taxable component of maturity proceeds in a pension policy, premium amount paid for keeping the policy in force is reduced so as to only tax the accretion on the investment. This measure will help in avoiding double taxation on the policyholders on the premiums paid. Such portion which represents the principle invested by the policyholder should be excluded. Post retirement, annuity is the sole source of income for many policyholders and hence it is recommended that such receipts should be exempted from tax. Further, in many cases the total income of pensioners could be below the maximum amount liable for tax.

3. Act Exemptions

Under the Act, receipts from life insurance policies are exempted in the hands of policyholders only if premium to sum assured ratio is equal to or more than 1:10. If these conditions for exemption are not satisfied, the entire proceeds become taxable in the hands of the policyholder.

In order to address the issue, IRDAI approves all the products and while granting such approval, considers all factors including the premium to sum assured ratio for every product which could vary based on the age and health profile of the customer. It is important that the Premium to Sum assured ratio prescribed by IRDAI is considered and the ratio prescribed in the Act should be removed. It is also important that this limit of 10 percent of the premium should be suitably revised to factor that a policyholder is able to avail insurance cover depending upon his needs and not mandatorily having to take 10 times cover. These limits, which are hard coded and prescribed under the Act could be breached in many cases due to situations beyond the control of the policyholder. For example, life insurance companies are able to provide insurance cover to persons with disability, illnesses, life style diseases or people over a particular age (typically 45 years) only by charging a higher premium. It is a double loss for a policyholder as he has to first pay higher premiums to avail insurance and then he does not even get tax exemption on the proceeds. Insurance contracts deserve a more liberal tax treatment with the IRDAI approved premium to sum assured ratio being considered as appropriate for granting tax exemption.

2.3.2. Non-Life Insurance

2.3.2.1. Direct Tax Recommendations

1. Minimum Alternate Tax ('MAT') was basically introduced to tax the zero tax - highly profitable companies which were declaring dividends. Therefore, MAT should not be made applicable to the insurance industry as this industry is well regulated and does not enjoy any tax incentives. An exclusion has been provided in the IT Act itself as a result of which MAT provisions are not applicable to the Life insurance sector. Therefore, a specific clarification should be provided so that the Non-life sector should be treated at par with the Life insurance sector, wherein MAT is not applicable;

2.Computation of income of an insurance company is governed by the provisions of Section 44 (read with Schedule I) which overrides all the other provisions of the IT Act. Hence, once the income is determined as per Section 44 read with Schedule I, no further adjustment to the total taxable income should be made. e.g. disallowance of notional expenditure in respect of exempt income under Section 14A of the IT Act, disallowances under section 40(a)(i) and 40(a)(ia) of the IT Act, transfer pricing adjustments, etc.;

3. Any statutory provisions or reserves made in accordance with IRDAI regulations are mandatory in nature and based on actuarial valuation. Such statutory provisions should not be added back to the income while computing the taxable income;

4. Non-life insurance industry has started investing in real estate. Investment properties are bought with a long-term perspective and the investment is in accordance with the investment regulations of the IRDAI in this regard. To boost the investments in this sector by the growing insurance industry, long term capital gains on sale of investment property should be exempt from tax by providing avenues such as investment in capital gains bonds etc. or investment in another property as may be prescribed. This will further the diversification of policy holder funds and also provide the required boost to the real estate sector;

2.3.3. Reinsurance

A separate taxation regime should be introduced, keeping in mind the peculiarities of the reinsurance business.

2.3.3.1. TDS on reinsurance premium under the provisions of Income Tax Act, 1961

Under the current TDS provisions of Income-tax Act, 1961 (Act), insurance and reinsurance premiums paid to domestic insurance companies are not subject to TDS. Furthermore, as per provisions of the Act read along with the relevant Double Taxation Avoidance Agreement (DTAA), TDS is not applicable in respect of Foreign insurance and reinsurance companies not having Permanent Establishment in India.

The fact that insurance/reinsurance premiums paid to domestic insurers/ reinsurers are not subject to TDS is irrespective of the fact whether the premiums are paid by individuals or corporates.

The Cross Border Reinsurers (CBR) subject to relevant DTAA have always been subject to TDS under section 195 of the Act. Some of the CBRs had liaison offices in India and the premium was collected by the Parent entity outside India. Also, the risk pertaining to the aforesaid premiums were written outside and no activity whatsoever was undertaken by the Indian branch and or Liaison Office as the case may be. Since the premium and risk pertaining to premium collected was underwritten outside India, and the CBRs, being residents of other countries, the CBRs were eligible to claim benefit under the tax treaty between India and the respective country. Further, since the CBRs did not have a permanent establishment (PE) in India and the premium earned was in the form of business income, the aforesaid income was not considered as taxable in India under the provisions of relevant tax treaties.

As business operations in India increased, branches of foreign reinsurers/Lloyd's India were set up in India for carrying out business from India. These branch offices setup by CBRs for reinsurance business constituted a permanent establishment in India. The Branch office maintains its separate books of accounts and thereby for the activities carried by the branch the amount of premium was accounted for in its books and also the risk thereon were underwritten accordingly.

As per the Indian tax laws, these branch offices set-up by companies outside India, are considered as non-residents for the purpose of taxation and hence provisions of section 195 of the Act are being applied to them. Since the risks are underwritten in the branch books, the premium paid by other insurer/reinsurer to branch office is being subject to TDS at the maximum marginal rate applicable to non-residents.

Given, that insurance business has a long gestation period, TDS has a significant impact on cash flows and blocks working capital. Foreign Reinsurance Branches (FRB)'s have been applying for nil TDS certificates with the tax authorities in India. However, in the recent past it has been observed that the tax authorities in India are reluctant in issuing Nil TDS certificates to FRB's. Currently, the tax authorities are issuing lower withholding certificates in the range of 2-5% in some cases. The process is subjective with inherent delays due to which receipt of premiums also gets delayed till the time the appropriate TDS certificates are received. Further, these certificates are applicable for particular limits of premium income based on estimated amounts of business declared at the time of the application and if the premiums during the year exceed that mentioned in the certificate, those additional amounts are again exposed to TDS at the maximum marginal rate for which the entire process needs to be re-initiated. It is therefore pertinent to revisit the object of section 195 which is clearly brought out in the CBDT Circular: No. 152 [F. No. 484/31/74-FTD-II], dated 27-11-1974. **Point no 3 in the said circular reads as follows:**

"The object of section 195 is to ensure that the tax due from non-resident persons is secured at the earliest point of time so that there is no difficulty in collection of tax subsequently at the time of regular assessment. Failure to deduct tax at source from payment to a non-resident may result in loss of revenue as the non-resident may sometimes have no assets in India from which tax could be collected at a later stage. Tax should, therefore, be deducted in all cases where it is required to be deducted under section 195 before the payment is made to the non-resident and the tax so deducted should be paid to the credit of the Central Government as required by section 200 read with rule 30. Failure to do so would render a person liable to penalty under section 201 read with section 221, and would also constitute an offence under section 276B".

It is clearly evident that the objective and the spirit of this section was to cover those non-residents who may have no assets in India and hence non- deduction of tax at early stages may have resulted in permanent LOSS OF REVENUE to the Tax Authorities.

The Branches of foreign reinsurers/ Lloyd's India have set up offices in India are regulated entities under licence from the IRDAI for carrying out reinsurance business in India. All Insurance / reinsurance companies operate within the rules and regulations framed by IRDAI. These regulated entities have brought in the required regulatory/assigned capital and are required to maintain the minimum solvency at all times which is the same as that required by the domestic insurers/ reinsurers. Further, they are also subject to all tax compliances like (i) obtaining a tax registration, (ii) payment of advance tax as per due dates, (iii) filing of corporate tax returns, (iv) tax deduction at source compliance, etc. which are applicable to domestic insurers/ reinsurers. Thus, in well-regulated environments there is no question of any loss of revenue to the tax authorities. Additionally, as a condition governing the registration of FRB's /Lloyd's India with the IRDAI, they are also required to provide a letter of comfort from their parent entities that the parent would meet all the liabilities of the branch at all times. The IRDAI (Registration and Operations of Branch Offices of Foreign Reinsurers other than Lloyd's) Regulations, 2015 and IRDAI (Lloyd's India) Regulations, 2016 have put these conditions amply clearly.

It is doubly clearly that these non-residents insurance / reinsurance branches which are regulated by IRDAI do not pose the threat of loss of revenue to the Authority as envisioned by the object of the Circular. Hence, the provisions of section 195 should not be applicable to reinsurance premiums paid to Foreign Reinsurance Branch (FRB's)/Lloyd's India as in the case of domestic insurance/ reinsurance companies. Reinsurance companies were allowed to set up their branch w.e.f.2017 and it is important to provide a level playing field to the FRB's / Lloyd's India in the absence of which cash flows are severely impacted which makes viability of the business in India for a foreign branch questionable.

The fact that branches of foreign banks can receive their income earned in India without being subject to TDS is also noteworthy.

2.3.3.2. Rate of Income Tax applicable to FRB's and Lloyd's

FRB's and Lloyd's, being branches of foreign reinsures, are registered as non-residents under the Act. Hence, they are liable to tax at 40% plus surcharge and education cess whereas the domestic insurance/reinsurance companies are liable to tax at 22% plus surcharge and education cess. Ultimately, the impact of all taxes manifests itself in the pricing and hence, it makes it difficult for the FRB's and Lloyd's to compete with the domestic players as a result of something over which they have no control irrespective of the efficiencies that they may try to bring in other areas

In order to make it fair and favourable for the existing and future foreign branches to be set up in India and in furtherance of the overall objective of making India a promising reinsurance hub, it is imperative that FRB's and Lloyd's be provided a level playing field with the domestic insurance / reinsurance companies. Hence FRB's and Lloyd's should be taxed at 22% in line with the domestic tax rate instead of 40%.

Taxation rates and concessions for Reinsurance sector in Asia region is provided in the table below. Once the entities are granted with the tax incentive status (normally for a period of 10 years), they will be concessionary taxed.

Location	Corporate Tax Rate	Tax Incentive Rate for Reinsurance
Australia	30.0%	NIL
China	25.0%	NIL
Hong Kong	16.5%	8.25%
Japan	23.2%	NIL
Korea	11.0%/ 22%/ 24.2%	NIL
Malaysia	24.0%	8.00%
Singapore	17.0%	10.00%
India	22%	40% for Foreign Reinsurance Branches (having underwriting branch office in India)

2.3.3.3. Reinsurance Export Services – Preferential Taxation at par with other countries

To make India as a Reinsurance hub and to give incentive to Foreign Reinsurance branches (FRBs) for the Reinsurance Underwriting Activities from offshore business (Non-Indian/Global) from FRBs India office, it is recommended that a new lower taxation rate "Reinsurance Export Services (RES)" tax rate of 10% should be introduced which will be lower than the current taxation rate of 40% for FRBs and Lloyd's. This rate will be competitive with Taxation rates present for Reinsurance activities in Asian countries like Singapore, Hong Kong, Malaysia etc. If this new RES linked taxation rate is introduced, then: India will take a step towards becoming a Reinsurance hub;

- Offshore reinsurance businesses that is sparingly underwritten from FRB's India office due to current high taxation rate of 40% will be underwritten from India which will also help in building reinsurance talent pool in India and expand the team size to cater to a larger geography;
- If such offshore reinsurance business is underwritten from India then RES linked Tax on the profits from such business will be paid in India;
- Net premium retained after retrocession will be invested in Indian Government Bonds / Corporate bonds in India as per IRDA investment guidelines.

2.3.3.4. MAT should not be made applicable to such a highly regulated industry, in line with Life insurance business

2.3.4. Goods and Services Tax ('GST') – Non-Life

Suitable amendments need to be carried out in the tax law to ensure the following:

1. It is recommended that a two-tier tax rate should be introduced for the insurance sector - one rate for B2B transactions and another for B2C transactions. B2B transactions could afford a tax rate of 18% due to availability of Input Tax Credit. However, the said rate would trigger inflation for B2C transaction;
2. Even for B2B transactions, GST paid on premium for life Insurance and personal health insurance (Nonlife) is not eligible for input tax credit;
3. In other words, there should be two rates of GST - one for transactions where Input tax credit is available and the other for those where no Input tax credit is available;
4. Given that most contracts are exempted from GST as a part of social initiatives e.g. crop insurance by the government to reduce the cost to the final consumer, proportionate input credit related to exempt services should not be disallowed to insurers. This increases their cost of providing services and ultimately would need to be built into the pricing;
5. Under the GST regime, transactions in securities are treated as an exempt service and therefore proportionate reversal of input tax credit is required, It is recommended that the requirement of reversal of input tax credit for transactions in securities should be done away.

2.3.5. Goods and Services Tax ('GST') – Reinsurance contracts

1. End to end exemption - Contracts which are considered exempt by insurance for the purpose of GST should also be exempt for reinsurance purpose. Given that it is the same contract which is being reinsured and hence no GST must be applicable (insurance includes reinsurance);
2. Reversal of input credit - Given that most contracts are exempted from GST as a part of social initiatives by the government to reduce the cost to the final consumer e.g. crop insurance, proportionate input credit related to exempt services should not be disallowed to reinsurers. This increases their cost of providing services and ultimately would need to be built into the pricing. These expenses are required for providing the exempt services irrespective of them not being capable of being directly attributable to the service;
3. Presence in multiple states triggers challenges to Insurance sector from the perspective of compliance and investment on Information Technology - Comprehensive guidelines are required to be issued to determine the place of supply for both B2B and B2C transactions.

2.3.6. Upshot

Indian insurance industry provides an essential backstop for protection against risks; supports India's economic growth by generating funds for developing the country's infrastructure; and driving social security. A conducive and robust taxation framework for the insurance sector will help foster India's socio-economic objectives. Therefore, a good tax system has to promote rather than hinder economic activity, aid economic equality rather than inequality, and be easy rather than complicated to administer.[28]

28. "It's time for a direct tax regime that's growth focused and fair" by Niranjan Rajyadhyaksha, Mint dated August 28, 2019

3. The Change Makers

3.1. The Central Legislature

The Central Legislature has an oversight of the insurance sector, through primary and secondary legislations. As part of the Government's oversight of the Indian Insurance sector and to improve its competitiveness, some of the recent moves include 100% FDI permitted for insurance intermediaries; Government examining further opening up of FDI in insurance beyond 49%; and deep cuts in the corporate taxes that will help the insurance industry. The Government's legislative agenda, however, needs to go beyond.

The Government's Legislative Agenda to cater to "Inclusive, fully penetrated insurance" needs to adhere to the following principles:

1. Principles based primary legislations that align the objectives across related streams, and prudently avoid being overly specific in the primary legislations;
2. Strategic approach to set new directions, and empowering regulator with adequate powers to conduct insurance supervision through secondary legislations/ regulations, and allowing the flexibility to respond to the dynamic supervisory environment encountered;
3. Regulatory Accountability to promote effective and globally consistent supervision of the insurance industry in order to develop and maintain fair, safe and stable insurance markets for the benefit and protection of policyholders.

3.1.1. The Insurance Act

The Insurance (Amendment) Act, 2015 introduced significant changes in the management of insurance and reinsurance in India. However, keeping in view with the above principles, the following illustrative examples (not exhaustive) should be used to relook at the entire Insurance Act.

3.1.1.1. The Foreign investment ceiling – time to allow 100% FDI

The foreign investment ceiling in Indian insurance companies was increased from 26% to 49% through Insurance (Amendment) Act, 2015; the Government is examining further opening up of FDI in insurance beyond 49%.

The issue should be looked at strategically from a reform perspective; incremental reform is increasingly incapable of coping with the requirement of providing an inclusive and fully insurance penetrated India. A decisive and a new approach on the financial architecture in India should allow 100% FDI for insurance and reinsurance companies. The issues that need to be tackled frontally, would include:

a) Systemic worries are best met through robust regulations. The Geneva Association's Insurance and Resolution in Light of the Systemic Risk Debate, February 2012 paper points out that while insurance failures and subsequent wind-downs of course happen, they generally have no potential to disrupt the financial system. As experience in all relevant jurisdictions shows, specific insurance resolution processes are well established and tested, and applied consistently to all insurers. It is only when insurance and reinsurance companies engage in activities outside of the core insurance business, specifically in banking-like potentially risky activities that risk to the financial system may arise if left unmanaged and conducted massively and under inadequate supervision;

b) The Government must be cognizant of the Joint Venture arrangements which, more often than not, are a source of friction amongst partners and do not help transnational insurer bring all their experiences and expertise into the market when the dominant priority might be to increase market share, and raising valuations;

c) The 'Indian owned and controlled' shouldn't be the dominant priority especially, when it is pitted against the more pressing need to improve insurance penetration/ density, and bring the global best practices into the Indian market. Once Indian regulated, it shall still be an 'Indian entity' notwithstanding 100% FDI, and will still benefit India and Indians.

3.1.1.2. Protection of Policyholders' Interests

The current IRDAI Mission to "protect the interests of the Policy holders, to regulate, promote and ensure orderly growth of the insurance industry and for matters connected therewith or incidental thereto" needs to be aligned with International Association of Insurance Supervisors (IAIS) mission whose approach is similar to the one recommended by the Law Commission:

"Promote effective and globally consistent supervision of the insurance industry in order to develop and maintain fair, safe and stable insurance markets for the benefit and protection of policyholders".

3.1.1.3. Contemporary definitions – under Section 2

The Act needs more up to date definitions in relation to sector specific approaches such as Life, General, Health and Reinsurance. Thereafter the Regulator is best positioned to deal with these terms in finer intricacies, rather than seeing some of them e.g. Fire; Marine and Miscellaneous etc. get defined in the primary legislation with out-dated descriptions, especially in a world with fast changing risk and exposure profiles. This cascades down to the regulatory and market practices that don't necessarily help the modern management of business lines. For example:

"In this Act, unless there is anything repugnant in the subject or context-

(11) ***"life insurance business"*** means the business of effecting contracts of insurance upon human life, including any contract whereby the payment of money is assured on death (except death by accident only) or the happening of any

(6B) ***"general insurance business"*** means fire, marine or miscellaneous insurance business, whether carried on singly or in combination with one or more of them;

(6A) ***"fire insurance business"*** means the business of effecting, otherwise than incidentally to some other class of insurance business, contracts of insurance against loss by or incidental to fire or other occurrence customarily included among the risks insured against in fire insurance Policies;

(13A) ***"marine insurance business"*** means the business of effecting contracts of insurance upon vessels of any description, including cargoes, freights and other interests which may be legally insured, in or in relation to such vessels, cargoes and freights, goods, wares, merchandise and property of whatever description insured for any transit, by land or water, or both, and whether or not including warehouse risks or similar risks in addition or as incidental to such transit, and includes any other risks customarily included among the risks insured against in marine insurance policies;

(13B) ***"miscellaneous insurance business"*** means the business of effecting contracts of insurance which is not principally or wholly of any kind or kinds included in clause (6A), (11) and (13A);

Under the Insurance (Amendment) Act, 2015, the following has been added:

(6C) ***"health insurance business"*** means the effecting of contracts which provide for sickness benefits or medical, surgical or hospital expense benefits, whether in-patient or out-patient travel cover and personal accident cover;

The above approach gives rise to the following issues:

a) The above definitions defy modern and global business practices and there are many business classes, both traditional and modern, which don't get reflected
b) These lead to cascading regulatory regime which are not in sync with global practices and

Therefore, the Act should generically cater to only three classes of insurances which are Life, General and Health and the "General Insurance business" should be redefined as under:

a) "General insurance business means the effecting of contracts which provide for insurance covers other than defined for Life insurances business and Health insurance business"
b) Consequently, the definitions for fire insurance business, marine insurance business and miscellaneous insurance business will be dropped from the Insurance Act.

These recommended changes would allow the Regulator to lay down a regulatory framework to cater better to Indian market needs, especially in the agriculture, liability and disaster insurance products. Much of the modern non-life insurance in India would revolve around: Property, Casualty, Marine, Health, Agriculture, Disaster insurances, Liability, Trade credit, Energy and Aviation etc. and the Regulator is better positioned to deal with these rather than seeing some of these defined with outdated outlines, especially in a world with fast changing risk and exposure profiles in the primary legislation.

3.1.1.4. Licensing, capital adequacy, risk management and governance of insurance firms

All of these require close observation and changes keeping in view the market dynamics and control requirements. It is appropriate to vest the responsibility with the regulator to administer through subordinate legislation rather than have these in the primary legislation.

3.1.1.5. Insurance Business in rural and social sectors/Obligations of insurer in respect of rural or unorganised sector and backward classes: Sections 32B and 32C

Section 32 B lays down that every insurer shall undertake such percentages of life insurance business and general insurance business in the rural and social sectors, as may be specified, in the official gazette by the Authority: Whereas Section 32C says that every insurer shall… discharge the obligations specified under the Section 32 B to life insurance or general insurance policies to the persons residing in the rural sector, workers in the unorganised or informal sector or economically vulnerable or backward classes of the society and other categories of persons as may be specified by regulations made by the Authority and such insurance policies shall include insurance for crops.

The Government of India, on the contrary, has already demonstrated demand led transformation through its marquee programmes such as PMSBY, PMJJY, PMFBY and PMJAY etc. that has reminded the policy makers that the market is not supply driven. Therefore, such market segments require an active understanding of from a development perspective rather than enforcing supply side mechanism, through quotas and penal regimes.

3.1.1.6. Obligatory insurance: Sections 32D and 105B

Motor third party insurance is now obligatory for general insurers to the extent prescribed in the regulations. For the purposes of third-party insurance related to either death of a person or grievous hurt to a person, the Central Government shall prescribe a base premium and the liability of an insurer in relation to such premium for an insurance policy in consultation with the IRDAI. And there is a penalty of 250 million in case of breach of obligatory insurance.

The social objectives, with its set of mandates and penalties, under a commercial dispensation, are an anachronism and have the potential to impede efficiency which in turn impacts growth.

3.1.1.7. Principles based prudent man approach to investments

Regulator should be empowered for principles based prudent man approach to investments rather than mandating them in primary legislation u/s 27, 27A, 27B and 27D of Insurance Act - Section 27 of the Insurance Act says, "No insurer shall directly or indirectly invest outside India the funds of the policy holders".

The Insurance Regulator should be empowered to allow overseas investments adequately diversified, to avoid excessive reliance on any specific asset, issuer, counterparty, group, or market and also to mitigate the risks associated with investments in domestic market. It is also important to have prudent man approach norms and correlate the underwriting disciplines and the performance of the insurers with the freedom they are accorded to deal with the investments of their funds. The investment regulations are equally applicable to both insurers and reinsurers, which impacts on diversification of risks since both are investing in the same market. Therefore, overseas markets investments must be allowed for the reinsurers, earmarked for the Indian policyholders.

3.1.1.8. Principle Based Approach to Management of Distribution: Section 40 and 42

Section 40 of the Act should leave the Regulator with all the authority to regulate and manage the intermediation including the penal provisions on the basis of solvency and prudent business norms. Within the ambit of the regulations, the insurers would be responsible for the recruitment, training, compensation and the conduct of the agents etc. under the principal-agent relationship principle.

3.1.1.9. Penalties: Section 102 (91), 104 (92), 105 (93), 105 B&C (94)

The Upper limits of the maximum penalties have been raised to new levels. To cite an example: up to 250 million in case of violation of the provisions relating to Investments (Section 27). This amounts to 25% of the capital prescribed for general insurance companies. These issues must again be left to the discretion of the Regulator and be part of the secondary legislation, as there are more than one way to discipline an errant player.

3.1.1.10. Section 105C - Adjudication and Appeals: IRDAI vested with power to adjudicate

The IRDAI has been empowered to hold enquiry after giving a reasonable opportunity of being heard. The Appellate authority for appeal against orders of the IRDAI is 'Securities & Appellate Tribunal' (SAT), set up under the SEBI Act, 1992. Since the SAT currently deals with issues related to the capital markets, its expertise in dealing with matters of insurance law may be limited. The Law Commission had suggested a separate appellate authority for the insurance industry, which would hear appeals against decisions by the IRDA. Appeals against decision by the proposed insurance appellate authority (IAT) would lie directly with the Supreme Court.

In the interim, SAT could have a separate Insurance Bench with a new Non-Judicial Member (preferably a technical person from insurance domain), along with the existing Judicial Member. This will help appellate regime get better traction.

3.1.1.11. Clause 76(2) - 64F, Para 2

The Insurance (Amendment) Act, 2015 recommends as under:

"The Executive Committee of the General Insurance Council shall consist of the following persons, namely:

a) Four representatives of members of the General Insurance Council elected in their individual capacity by the members in such manner as may be laid down in the bye-laws of the Council;
b) An eminent person not connected with insurance business, nominated by the Authority; and
c) Four persons to represent insurance agents, third party administrators, surveyors and loss assessors and policy-holders respectively as may be nominated by the Authority:

Provided that one of the representatives as mentioned in clause (a) shall be elected as the Chairperson of the Executive Committee of the General Insurance Council. 4 members of the Council elected in their individual capacity and 1 person not connected with general insurance business nominated by the Authority and 4 persons to represent Agents, TPAs, Surveyors and Policyholders - TOTAL 9"

It is important that General Insurance Council be left to be a Self-Regulatory Organization for the insurers, of the insurers and, by the insurers.

3.1.1.12. Access to Mutual/ Cooperative Insurance

According to research from the International Cooperative and Mutual Insurance Federation (ICMIF) the countries where there is no mutual/cooperative insurance law represent 9% of the world's Gross Domestic Product (GDP). More than 950 million people worldwide are served by mutual or cooperative insurers. It is the fastest growing part of the insurance sector but domestic legislation and regulation must be brought up to the highest standards to ensure that the existing and potential mutual and cooperative insurance customers are not disadvantaged. The research also suggests that it is people in low-income countries around the world that have the least access to mutual/cooperative insurance, as 63% of low-income countries have no mutual/cooperative law to write insurance.

It is felt that the cooperative and mutual insurance business model is not sufficiently understood by policymakers, regulators or commentators in India:

1. The concept of Mutuality was devised where all the persons desirous of covering the risks come together and initially contribute pre-agreed figure out of which the claims are met and administrative expenses incurred. In the event, this is found insufficient, supplementary contributions are collected from the various participants. In this concept, the profit element is singularly absent and the participating groups are able to seek reinsurance at a cheaper rate and that too after going through their own retention and such like-minded societies group together retaining a substantial portion. This concept has been successfully implemented for Marine Liability Cover where sum insured is not mentioned in the Certificate and the participant's liability, be it contractual or legal, is a limit of Insurance. More than 90% of the world tonnage is covered under such Associations collectively known as International Group of P&I Associations. In India, if one has to think in terms of at least coastal shipping to be served locally, the concept of Mutuality needs to be recognized under the Mutuality Act. If this is done, the Indian Ship-owners can then form an association to run the Mutual Insurance Organization to protect the contractual and legal liability of the participating Members;

2. The Insurance Act in India does not recognize mutual concept of Insurance which is in vogue globally. The mutual and cooperative sector is one sector that can change the face of deprived and destitute in India by putting people before profit, and that seamlessly to protect the lives and the livelihood of millions who are otherwise not reached by commercial insurers. In the paradigm of developmental work, the 'pooling' and 'community' deliver best results.

3.1.2. The IRDA Act, 1999

3.1.2.1. Insurance Advisory Committee (Section 25 of the IRDA Act, 1999)

Section 25 (1) – The Authority may, by Notification, establish with effect from such date as it may specify in such notification, a Committee to be known as the Insurance Advisory Committee.

Section 25 (2) – The Insurance Advisory Committee shall consist of not more than twenty-five members excluding ex officio members to represent the interests of commerce, industry, transport, agriculture, consumer fora, surveyors, agents, intermediaries, organisations engaged in safety and loss prevention, research bodies and employees' association in the insurance sector.

Section 25 (3) – The Chairperson and the members of the Authority shall be the ex officio Chairperson and ex officio members of the Insurance Advisory Committee.

Section 25 (4) – The objects of the Insurance Advisory Committee shall be to advise the authority on matters relating to the making of the regulations of under Section 26.

Section 25 (5) – Without prejudice to the provisions of Sub Section (4), the Insurance Advisory Committee may advise the Authority on such other matters as may be prescribed."

For a high performing culture, best practices and inspirational leadership, the direction should come from a revamped Insurance Advisory Committee having the best of Indian and Global financial/insurance/reinsurance leadership, along with sectoral experts such as Healthcare, Agriculture, Technology, Marketing, and Corporate Governance etc. The Section 25 (2) should be amended as under:

"Section 25 (2) – The Insurance Advisory Committee shall consist of not more than twenty-five members excluding ex officio members to represent the interests of commerce, industry, transport, agriculture, Healthcare, Technology, Marketing, insurance, and Corporate Governance etc. The sector experts would also include professionals from the international financial and insurance community."

3.1.2.2. Composition of the Authority/ Tenure of office (Section 4/5 of the IRDA Act, 1999)

1. Chairperson

The Chairperson, to be appointed by the Central Government, should essentially come from amongst the best of Indian/Global professionals with appropriate background. Given the transformation agenda, the Chairperson cannot afford any apprenticeship in the basics and fundamentals of insurance, notwithstanding industry familiarity, as the job delivery starts from Day 1. The term of the office could vary from 5 to 8 years, and the maximum age could go up to 75 years – for necessary experience and sustained delivery.

2. Whole-time/Part-time Members

The choice of the whole-time / part time members be left to the Chairman/IRDA Board to be among the best of Indian/Global insurance professionals and not just from among the public sector organizations. The term of the office could vary from 5 to 8 years, and the maximum age could go up to 75 years.

3.1.3. A New "The Indian Insurance Act – India Code for Laws relating to insurance contracts"

The Insurance Act 2015 of UK has been hailed as the biggest shake-up of insurance law in the UK since 1766 that came into force on August 12, 2016. It is also described as a once-in-a-generation reform of insurance law in the UK and is heralded as being crucial to keeping the London insurance market at the very centre of the global stage. The Insurance Act 2015 is the most significant reform of UK insurance contract law for a century. It's the insurance equivalent of pulling down the Berlin wall.

What is required is a new India code for laws relating to insurance contracts. The Marine Insurance Act, 1963 in India could be converted to a new "The Indian Insurance Act – India Code for Laws relating to insurance contracts" on the lines of The Insurance Act 2015 of UK.

The laws relating to insurance contracts in India require a transformative vision. For instance, the principles of 'contract certainty' could be codified to adequately protect Policy Holders' interests, catering to its prudential mechanism that are fundamentally based upon 'Contract Certainty' (pre-sale) and 'Effective dispute resolution mechanisms' (post sales servicing), with Fraud Management standing guard at both ends. The primary legislations of the insurance, however, do not deal with the conduct of insured: Insurance being a technical subject initiating prosecution against misconduct of Insured under the general laws becomes difficult and most of the time remains inconclusive.

Insurance is a business of trust. Insurers are considered to be the trustees of the premium paid to it by policy holders and capital funded to it by its shareholders. Unlawful appropriation of such money held with the trustee is a crime against the other policy holders and shareholders. This fact itself calls for a stringent penal provision to be embodied in the primary legislations to act as deterrent against people opting to indulge in such activities. Other than having stringent penal provisions in the primary legislations, it is also required to establish special investigation agencies with appropriate skill set to monitor, investigate and determine insurance misconducts including fraud.

In this reference, precedents can be drawn from mature markets such as UK and US. Other than having statutory provisions to combat insurance misconduct including fraud, the legislature of such countries have facilitated constitution of special bodies for investigation and prosecution of insurance frauds besides monitoring fraud trends and advising Insurers and Regulators accordingly.

3.1.4. Public Liability Act, 1991

The Act after its enactment in the year 1991following Bhopal disaster hasn't been updated / changed. For instance, arising out of an incident as defined in the Act, the compensation payable for fatal injuries is just Rs 25,000. The Act needs to be recast and realigned to reflect societal obligations to better protect the Indian consumers should a similar incident happen now.

3.1.5. Ombudsman Scheme - Grievance Redressal Mechanism for 'Personal Line' insurances Redressal of Public Grievances Rules, 1998 (RPG Rules)

The Insurance Ombudsman Rules, 2017 - The objects of these Rules is to resolve all complaints of all personal lines of insurance, group insurance policies, policies issued to sole proprietorship and micro enterprises on the part of insurance companies and their agents and intermediaries in a cost effective and impartial manner.

The present form of RPG Rules have certain anomalies, and it is necessary to convert the RPG Rules into a dispute adjudication procedure that can be relied upon by the retail customers and the insurers. **An improved and fully empowered Ombudsman office should handle entire traffic of grievances as an adjudicative process, including the incorporation of an adequate appeals process.** The Ombudsman shall act as counsellor and mediator provided there is written consent of the parties to the dispute. However, the following must be amended:

1. The framework of Rules does not make Ombudsman awards enforceable upon the complainant;
2. The Rules do not provide for appeal against the award of Ombudsman, which makes the adjudication procedure incomplete. The award of Insurance Ombudsman shall be binding on the insurers;
3. The Ombudsman shall not award any compensation in excess of the loss suffered by the complainant as a direct consequence of the cause of action; or not award compensation exceeding rupees thirty lakhs (including relevant expenses, if any).

On the administrative side of reforms:

1. There should be at least one Ombudsman in every state and Union Territory of India;
2. Ombudsman so appointed should be either having insurance backgrounds or judicial backgrounds;
3. The administrative mechanism must ensure that there is a proper succession planning, and that there are no posts that remain vacant.

The dispute resolution before consumer forums presents its own challenges, and these issues have undermined the effectiveness of the forums as a dispute resolution mechanism. The foremost is the delay caused due to capacity constraints. The other is the inconsistencies between decisions rendered by different benches of the Commission. The Union Minister for Consumer Affairs has expressed concern on the lack of infra-structure, poor salaries, besides, non-transparent system of appointing members in the district forums involving consumer forums in India.

Moreover, there are obvious conflicts in the Consumer Protection Act, 2019:

The introduction of the term "unfair contract" and the powers given to the Consumer Commissions to strike down any terms of a contract considered to be unfair to the Consumer can have serious consequences to the Insurance Industry:

1.Section 2(46) "Unfair Contract" is defined to include a contract if it causes significant change in the rights of the consumer, which include the following: (i) requiring excessive security deposits; (ii) imposing a disproportionate penalty for a breach in contract; (iii) refusing to accept early repayment of debts; (iv) terminating the contract without reasonable cause; (v) transferring a contract to a third party to the detriment of the consumer without his consent or (vi) imposing unreasonable charge or obligations which put the consumer at a disadvantage;

2.Section 49 and 59 of the Consumer Protection Act, 2019 empowers the State Commission and National Commission to declare any term of contract, which is unfair to any consumer, to be null and void;

3. Possible provisions of the insurance policy which may be affected - Average Clause/Principle of Loading of premium/Clauses with regard to the right of the insurer to cancel the policy at any point of time can be affected/ Repudiation clauses and exclusion clauses;
4.Trend in some other Countries

In Australia, the provisions of Competition and Consumer Act 2010 relating to Unfair Contract Terms were not extended to the Insurance Contracts.

In New Zealand, the provisions of Fair Trading Amendment Act, 2013 does not apply to the Insurance Contracts entered into on or before 18.03.2015.

3.1.6. Changes made to Chapter XI of the Motor Vehicles Act, 2019 dealing with Third Party Claims and its impact

Section 147: Premium Fixation - For the purposes of third-party insurance related to either death of a person or grievous hurt to a person, the Central Government shall prescribe a base premium and the liability of an insurer in relation to such premium for an insurance policy in consultation with the Insurance Regulatory and Development Authority.

Since Central Government will prescribe the base TP premium and the liability of an insurer in relation to such premium, in consultation with IRDAI, any coverage for liability over and above the fixed limit will attract further premium as decided by the insurer. The overall liability in case of a third party still remains unlimited and thus scope of increase in premiums would be open every year based on the payments made in compliance of the Court judgements. This will lead to insurance coverage getting costlier each year and may lead to further vehicles remaining uninsured. Capping of final liability would help in moderating the premiums and making insurance affordable for all.

Since Central Government will prescribe the base TP premium and the liability of an insurer in relation to such premium, in consultation with IRDAI, it de facto becomes the insurance regulator, in addition to discharging the executive functions. This document maintains a principle-based approach to insurance governance, including precise role and authorities for each wing of the 'power structure' i.e. legislative, executive and the regulatory wings. Whilst the executive wing has the concern to decide the scale of tortious liabilities, the premium setting should be left to the IRDAI under the risk based pricing concept.

Section 149: Settlement by Insurance Company - The insurance company shall, upon receiving information of the accident, either from claimant or through accident information report or otherwise, designate an officer to settle the claims relating to such accident. An officer designated by the insurance company for processing the settlement of claim of compensation may make an offer to the claimant for settlement before the Claims Tribunal giving such details, within thirty days and after following such procedure as may be prescribed by the Central Government. If, the claimant to whom the offer is made:

A) accepts such offer, the Claims Tribunal shall make a record of such settlement, and such claim shall be deemed to be settled by consent; and the payment shall be made by the insurance company within a maximum period of thirty days from the date of receipt of such record of settlement;

B) rejects such offer, a date of hearing shall be fixed by the Claims Tribunal to adjudicate such claim on merits.

This will help in early settlement of the claim. However, since the offer is to be made before the claims tribunal, the purpose of early settlement would get defeated as the lawyer of the claimant would be in. Only if this was made mandatory for the claimant to first approach the insurance company as in case of other claims, there would have been speedy settlement of the claims. The settlement could have been recorded in the court accordingly. Therefore, it is recommended that Motor Third Party liabilities must be allowed to be managed as First Party Claims administration. In view of the Motor Vehicles (Amendment) Act, 2019 provisions, it is essential that the Indian Parliament / Central Government allow direct control and support to the insurance companies in the management of Motor Third Party Liability claims to make it much more inclusive, and provide efficacious, timely, just and fair compensation to the victims of Road Traffic Accidents.

3.1.7. Direct Tax Act, 1961 (Act) Exemptions

Under the Act, receipts from life insurance policies are exempted in the hands of policyholders only if premium to sum assured ratio is equal to or more than 1:10. If these conditions for exemption are not satisfied, the entire proceeds become taxable in the hands of the policyholder.

IRDAI approves all the products and while granting such approval, considers all factors including the premium to sum assured ratio for every product which could vary based on the age and health profile of the customer. It is recommended that the Premium to Sum assured ratio prescribed by IRDAI should be considered and the ratio prescribed in the Act should be removed. It is recommended that this limit of 10 percent of the premium should be suitably revised to factor that a policyholder is able to avail insurance cover depending upon his needs and not mandatorily have to take 10 times cover.

These limits, which are hard coded and prescribed under the Act could be breached in many cases due to situations beyond the control of the policyholder. For example, life insurance companies are able to provide insurance cover to persons with disability, illnesses, life style diseases or people over a particular age (typically 45 years) only by charging a higher premium. It is a double loss for a policyholder as he has to first pay higher premiums to avail insurance and then he does not even get tax exemption on the proceeds. Insurance contracts deserve a more liberal tax treatment with the IRDAI approved premium to sum assured ratio being considered as appropriate for granting tax exemption.

3.1.8. Upshot

The Government's Legislative Agenda must ensure all primary legislations such as Insurance Act and Allied Acts undergo prudential transformation to set new directions, and prevent them becoming overly specific. This is to allow IRDAI the necessary empowerment, flexibility with an accountability to respond to the dynamic supervisory environment, and allow it to provide 'tools and technology of insurance' to the Indian insurance market led by 'Ease of Doing Insurance Business Framework'.

3.2. Government of India – The Executive

A democratically elected government is responsible to its citizens/consumers, but also has a stakeholders' relationship with the corporate India whilst ensuring its viability. The corporate India must feel confident that they have a reasonable deal with the Government.[29] In the context of insurance, whilst the policy holders' need protection and promotion both, the insurers, too, need to have their policy framework of viability worked out from the Government and the IRDAI.

The general economic agenda of de-regulation and de-bottlenecking; Improvements in Global Competitiveness Index; World Bank's Ease of Doing Business Index; Promote India globally as an arbitration hub for Alternative Dispute Resolution processes; Letting Indian Enterprises have a major role in improving the GDP growth rate; and to increase India's Geo-strategic reach in the new world order are eminently linked to the insurance sector in their fulness.

3.2.1. The IRDAI

3.2.1.1. Staffing the Regulatory Body

Currently, Chairperson / Members are appointed only with government / public sector background. The global best practices include robust education, experiences and background – whether public or private or trans-border; and meritocracy rules without any other consideration such as age, gender or the nationality etc.

3.2.1.2. Regulatory Independence

The UK government has no direct involvement in regulation of the insurance industry and the Financial Policy Committee (FPC) of the Bank of England is responsible only for macro-prudential supervision in order to maintain financial stability, with no direct powers over individual institutions. The regulation of insurers and reinsurers (including other financial services providers) is divided between two authorities: the Prudential Regulation Authority (PRA); and the Financial Conduct Authority (FCA). The PRA (a subsidiary of the Bank of England) is responsible for supervising prudential matters while the FCA is responsible for the conduct of business regulation.

Therefore, regulatory independence in India is crucial and the executive overrides should not jump the institutional relationships or that cannot be justified as a fair governance imperative, in line with the global best practices:

1. Arm's length transaction - According to the Companies Act, 2013, an arm's length transaction is defined as one conducted as though the transaction took place between two unrelated persons even though they are related so that no conflict of interest arises. Similarly, the Indian Executive should not display weaknesses for its own PSU insurance entities, such as: a) obligatory cessions and b) Order of preference/right of first refusal regimes etc. These also go against the principles of fair and level playing field competition that drives efficiency and growth;

2. MoU between IRDAI and other Countries' Insurance Authority - The Union Cabinet, in one of the cases, provided its ex-post facto approval for the memorandum of understanding between Insurance Regulatory and Development Authority of India (IRDAI) and the Insurance Authority of United Arab Emirates. Such authorities need to be devolved to the insurance regulator;

3. Constitution of Funds - It is important that the powers vested with the Regulatory Authority relating to "Constitution of Funds" per Section 16 of the IRDAI, 1999 are not diluted with.

3.2.1.3. Regulatory Seat

Models of best practice for encouraging the development of a financial services hub can be drawn from the examples of London, Singapore, Dubai and New York, amongst other global centres of commerce. In these markets, a cluster effect has developed as expertise in underwriting, professional intermediation and related support services have been attracted by commercially-viable trading and regulatory regimes and high-quality and politically stable institutional environments.

Mumbai is India's leading insurance centre and has the largest concentration of financial services firms and insurance suppliers in India. Yet, the Indian insurance regulatory office sits in Hyderabad and the 'industry' goes to Hyderabad rather than the regulator being part of the 'market', entailing 'millions' every single year.

29. Hardeep Singh Puri, Minister of State for Civil Aviation, Housing and Urban Affairs and Commerce, Government of India at the 6th National Forum, "Developing Partnerships, Engaging Stakeholders", September 19-20, 2019

Therefore, the Government must carry forward its insurance agenda with all right moves, including bringing regulatory seat to Mumbai, where the financial ecosystem is and where bulk of the insurance market operates from, to allow cross-pollination of interactions between the 'market' and the 'regulator' that will make the regulatory governance richer, and improve Ease of Doing Insurance Business.

Mumbai is also well placed to develop itself as the Indian 'Reinsurance Hub' to compete with Dubai and Singapore but the IRDAI, having been seated away from the 'Centre of Indian Insurance' has not had the benefit of cluster effect. Since this involves political change management, the regulatory 'nudge' to itself, and to the Government for better economic gains will be definitive.

3.2.2. The Insurance Ombudsman Rules, 2017

An improved and fully empowered Ombudsman office should be handling entire traffic of grievances as an adjudicative process that can be relied upon by the retail customers and the insurers, including the incorporation of an adequate appeals process. This is especially important as the consumer forums have their own set of challenges. The foremost is the delay caused due to capacity constraints. The other is the inconsistencies between decisions rendered by different benches of the Commission. The Union Minister for Consumer Affairs has expressed concern on the lack of infra-structure, poor salaries, besides, non-transparent system of appointing members in the district forums involving consumer forums in India. Moreover, there are obvious conflicts in the Consumer Protection Bill, 2019, and as is the practice in Australia and New Zealand, the provisions of Consumer Protection Act relating to Unfair Contract Terms should not have been extended to the Insurance Contracts.

3.2.3. Indian Shipping: The Merchant Shipping Act, 1958

In terms of volume, about 95% of India's trade is transported by sea (90% of the world's trade is carried by sea); in terms of value, sea trading accounts for about 70% of India's trade. The Indian Shipping Industry is, therefore, a livewire of Indian trade. Indian Merchant Navy ranks amongst the top 20 in the world.

Unfortunately, there has been a sharp decline in the share of Indian ships in the carriage of India's overseas trade from about 40% in the late 80s to 7% in 2015-16. Additionally, the Indian fleet is also ageing with average age increasing from 15 years in 1999 to 19.3 years as on January 1, 2017; 45% of the fleet is over 20 years old.

India is one of the earliest members of the International Maritime Organisation, IMO, (which currently includes 174 member states), a specialised agency of the United Nations, that is responsible for measures to improve the safety, security and efficiency of international shipping and to prevent marine pollution from ships. In fact, India is considered one of the very important members of the IMO and has been elected to the Council of the IMO ever since it started functioning, except for a two year hiatus, 1983-84.

The Indian Merchant Shipping Act (MSA), 1958, that fosters the development and ensures efficient maintenance of Indian mercantile marine to serve national interest incorporates into Law the IMO Conventions that are approved by the Union Cabinet / Parliament. In fact, with the support of the Hon'ble PM the Union Cabinet has on 10/06/2015 approved the Ministry of Shipping's proposal for India's accession to the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001, (Bunker Convention) of the IMO as well as to amend the MSA, 1958 to give effect to the Bunker Convention, 2001 (came into force internationally on 21/11/2008), the Nairobi Convention, 2007 (came into force internationally on 14/04/2015) and Salvage Convention, 1989 (came into force internationally on 14/07/1996).

It may be observed that whilst IMO generally takes about 7/8 years to have its Conventions internationally effective/operational after receiving ratification of the minimum number of its member states that may be required as per its rules, India, in many cases, may take many more years to ratify them. The Big Question that, therefore, arises, could such delay/s in ratifying affect foreign going Indian Ships flying Indian Flags? If it really does in some cases, could it be avoided keeping in mind that Indian Shipping's share in the carriage of India's overseas trade has been falling steadily over the last three decades and more?

Indian Insurance – Since marine insurance (cargo, hull and liability) in India has a symbiotic relationship with international conventions and national maritime laws, early approvals of IMO conventions will help Indian insurance industry in ways beyond ordinary. In Dubai and Singapore, the development of each as a global financial centre has benefitted from a dedicated division within the regulator, or a separate body, for promotional activities. The DIFC in Dubai, the Monetary Authority of Singapore (MAS) and the Maritime and Port Authority (MPA) in

Singapore have each played an important role. Similarly, synergy between the Director General (Shipping)/Ministry of Shipping and the IRDAI will unlock many growth opportunities for the Indian insurance and, in turn, for the macroeconomy of India.

3.2.4. Upshot

The Government's Executive Agenda has an oversight of the insurance sector, through Insurance Regulatory and Development Authority, 1999 Act and the Insurance Act, 1938 as amended in 2015 and through other allied legislations. In a society which needs rapid penetration and inclusive insurance, the Executive agenda has to be transformative – intervene where necessary but stay away where it is prudent.

The Government is the ultimate Change maker.

3.3. Government of India – The Owner of Insurance Firms

In addition to its Legislative and Executive roles, the Government has two more insurance touchpoints:

1. A very significant provider of insurance services, as an owner - The Government Insurance Firms control significant chunks of the market in 'Life', Non-Life and 'Reinsurance' segments. Some of the recent forward movements by the Government of India include examining listing of LIC at the Indian bourses, and consolidating India's PSU General Insurance sector. These should help raise financial accountability and competitive sharpness;

2. A large buyer of insurance protections, especially across Crop, Accident & Health and Life and Pension segments.

This Chapter covers the first touchpoint that needs resetting from sustainability and profitable growth perspectives. The Hon'ble PM has provided the right context - Idealism and ideology are not enough in economic decision making. Pragmatism and practicability should also be taken into account. In the 21st century economy Innovation and Enterprise should be the mantras that will guide and be the driving forces for any sector. There are no separate mantras for the success of private sector or public sector. India will be a 5 trillion dollar economy in a few years. India's Public Sector Enterprises have a major role in achieving this goal by improving the GDP growth rate, and bringing a new system in place. Their contribution is essential to increase India's Geo-strategic reach in the new world order.[30]

3.3.1. Are the PSU insurance firms (LIC/GIC Re and the four GI Companies) Systemically Important Financial Institutions (SIFIs) for the Indian insurance market? Why do they need to transform?

The PSU insurance firms are indeed the Systemically Important Financial Institutions (SIFIs) for the Indian market as the Financial Stability Board (FSB) refers Systemically Important Financial Institutions (SIFIs) as institutions "whose distress or disorderly failure, because of their size, complexity and systemic interconnectedness, would cause significant disruption to the wider financial system and economic activity". Therefore, the PSU insurance firms need transformation.

3.3.1.1. Insurance SIFI Backgrounds

1. Life Insurance Corporation (LIC) – LIC is a crown jewel for the Indian economy. This is because of the insurer's financials. On a capital base of Rs 5 crore, LIC last reported a valuation surplus of profit of Rs 48,436 crore for FY 2018 and assets under management of Rs 31.11 lakh crore.[31] If the LIC shares are listed on stock exchanges, it could easily emerge as country's top listed company in terms of market valuation. Public listing of LIC will lead to more disclosures of investment and loan portfolios and better governance e.g. the recent decisions of the LIC to use its policy holder's funds to acquire the controlling stakes in the IDBI Bank, its decision to bail out the GIC Re and the New India IPOs, and LIC's agreement to offer a line of credit amounting to INR1,250bn ($18bn) by 2024 to fund highway projects[32] will have a closer market scrutiny.

LIC is under the supervisory oversight of the IRDAI but is governed by the LIC Act of 1956 which enables the state-owned insurer to obtain a special dispensation in several areas including higher stakes in companies beyond the limit set by the IRDAI. Despite an earlier report that its performance has been an area of concern for the new top management,[33] LIC, has strongly reiterated that it is in "sound financial health": It has, in fact, declared the highest ever bonus amounting to more than INR500bn ($7bn) to its policyholders for the financial year ended 31 March 2019. Its market share as of August 31, based on the number of policies issued, is 72.84% and for the first-year premiums is 73.06%.[34]

2. GIC Re – GIC Re is a state-owned enterprise, and is notified as the 'Indian Reinsurer'. It has a global footprint that provides reinsurance in over 90 countries globally

30. The Hon'ble PMs addresses to the Central Public Sector Enterprises, published-October 23, 2016
31. George Mathew and Shaji Vikraman in the Indian Express – July 28, 2019, "LIC listing back on agenda, as government looks to give disinvestment a boost"
32. Asia Insurance Review eDaily, 22 July, 2019
33. George Mathew and Shaji Vikraman in the Indian Express – July 28, 2019, "LIC listing back on agenda, as government looks to give disinvestment a boost".
34. Asia Insurance Review eDaily, 11 October, 2019

besides, Indian insurers in India. In a major achievement, GIC Re has emerged as the 10th largest global reinsurer in the global ranking of 2017 in an exercise by the international rating agency Standard & Poor's. Its Lloyd's Syndicate is part of its plan, to grow globally. GIC Re has large attributes to become a leading Indian multinational provided it works on globally benchmarked specialisms. It must also set standards for the Indian market across underwriting, claims and risk management. GIC Re must also use its dominant position in India to lend its weight to the IRDAI to enable India become a Reinsurance Hub. In the fulfilment of this task, it should not seek any 'preferences'. GIC Re could be the next financial sector crown jewel provided the Government understands that though GIC Re significantly reinsures Indian insurance market, its sustenance and strength comes from its global play. It must be granted professional independence and support as befits an Indian multinational.

The GIC Re, despite ranked 10th globally in the rankings based on reinsurance gross premiums written in the previous year, saw its 2017 IPO receiving a tepid response from the market, with little over half subscription coming from LIC. Also, despite **AM Best** affirming the Financial Strength Rating of A- (Excellent) and the Long-Term Issuer Credit Rating of "a-" to GIC Re with stable outlook, its market capitalisation has been losing steam: it stood more than Rs 75,900 Crores at the time of its IPO in October, 2017 but has come down quite significantly as of now.

3. PSU Non-Life (General insurance) – These companies play a significant role in the Indian economy. However, monopoly hangover, underwriting indiscipline, undeserving attachment to the top-line numbers, managerial hierarchies, long reporting lines, inability to pay right compensations have been among many reasons for all the four Non-life PSU insurers (New India, National, Oriental and United India) having adverse combined ratios for decades (the combined ratio, a key measure of financial health for insurers, calculated by dividing the claim-related losses and general business costs by the earned premiums over a period). In addition, all except New India, have been straining at the leashes in terms of solvency margins. According to an estimate, the capital infusion required for the three insurers could be over INR100bn ($1.4bn).[35] India's non-life insurance market is marked by continued reliance on realised and unrealised investment gains to offset technical losses, potential short-term disruption from regulatory enhancements and persistently competitive and underperforming core business lines of motor and agriculture, notes the international rating agency AM Best[36]

New India, despite being the largest general insurance company in India on the basis of gross premium collection, too saw its 2017 IPO receiving a nonchalant market response, with LIC subscription providing the life line. Also, despite AM Best affirming the Financial Strength Rating of A- (Excellent) and the Long-Term Issuer Credit Rating of "a-" to New India with stable outlook, its market capitalisation has been losing steam disconcertingly: it stood around Rs 65,900 Crores at the time of its IPO in November, 2017 but has seen quite an erosion of its valuation as of now.

3.3.1.2. 3 PSUs drag non-life insurers into red [37]

Three public sector insurance companies have dragged down the non-life industry into a Rs 44.00 crore loss in FY 19. National, Oriental Insurance and United India have together reported losses of Rs 4200 crores, which is more than the collective profits of remaining 23 companies. The reason for the poor performance of the state owned general insurance companies is their huge underwriting loss.

AM Best Downgrades Oriental Insurance - AM Best has recently downgraded the Financial Strength Rating (FSR) to B+(Good) from B++ Good) and the Long-Term Issuer Credit Rating (Long-Term ICR) to "bbb-" from "bbb+" of Oriental Insurance. The rating downgrades follow a deterioration in AM Best's view of Oriental's operating performance and ERM fundamentals. In particular, the company recorded a sizable underwriting loss of INR 38 billion (USD 549 million) in fiscal year 2019 (FY2019). The company reported a combined ratio of 136% for FY2019 and a five-year Average combined ratio of 132% (FY2015-FY2019). The company's capital and surplus reduced by 11% in FY2019 to INR 104 billion (USD1.5 billion) from INR 118 billion (USD1.8billion), increasing the company's sensitivity to underwriting and investment shocks. The negative outlooks reflect AM Best's expectation that Oriental's rating fundamentals may weaken further if the Company is unable to stabilize its risk-adjusted capitalization and operating performance over the near term.

AM Best Downgrades[38]***United India -*** The FSR of United India has been downgraded to C++ (Marginal) from B (Fair) and the Long-Term Issuer Credit Rating (Long Term ICR) to b+ from bb+. The rating downgrades reflect a deterioration in AM Best's view of United's balance sheet strength and operating performance fundamentals.

35. Asia Insurance Review eDaily, September 3, 2019
36. Asia Insurance Review eDaily, 30 May, 2019
37. "3 PSUs drag non-life insurers into red" – Mayur Shetty, Times of India – 12 August, 2019
38. Press Release of August 28, 2019

AM Best Downgrades National Insurance - A.M. Best has downgraded the FSR to C++ (Marginal) from B++ (Good) and the Long-Term Issuer Credit Rating (Long-Term ICR) to "b" from "bbb" of National Insurance. The company experienced a significant deterioration in its risk-adjusted capitalization as of the year-end March 2018 filing. As a result of its reduced capital position, its equity investment leverage has increased significantly, further straining risk-adjusted capital, as measured by Best's Capital Adequacy Ratio (BCAR). National's ERM is not appropriate for its size and complexity and is assessed as weak. Its financial filings have significantly lagged that of its peers due to system constraints. Furthermore, the company has experienced extended periods without permanent top leadership in the five years prior to March 2018.

3.3.1.3. Merger of three insurance companies

The Central Government in its Budget for the 2018-19 fiscal year (FY2019) had proposed the merger of National, United India and Oriental Insurance into a single insurance entity prior to being listed on Indian bourses. A Group of Ministers led by the Finance Minister, may look into whether the firms need to be merged or acquired by the one which is financially strong; it will also see if some of the units of the firms can be put up for strategic sale, instead of merger or acquisition.[39]

The continuing uncertainty around the future of these companies is taking a toll on their businesses – their collective market shares stood at 30.05% on the day of the then FM's announcement on 1 Feb. 2017, and this has now come down to 23.54%. This is bound to impact their finances even further with little scope to bring down their management expenses.

3.3.2. The Banking Sector Parallels

The banking sector has had more open and robust discussions around the sector reformative tasks. Nayak Committee review of banks board governance in May 2014 revealed that "The financial position of public sector banks is fragile, and the board governance is weak. It is a fundamental irony that the Government disadvantages the very banks it has invested in. Governance difficulties in public sector banks arise from several externally imposed constraints, which among other things, include dual regulation (by the Finance Ministry, and by the RBI); compensation constraints leading to the erosion of specialist skills; external vigilance enforcement; and applicability of the Right to Information Act". The report recommends, among other things: Need for wide-ranging human resource policy changes/Need for better incentivizing, and compensations through stock options/ Need for fully empowered boards, solely entrusted with the governance and oversight of the management of the banks/As dual regulation is discriminatory, RBI be the sole regulator for banks.

The banking debates have continued: "The decision making in the Indian Government is actually almost paralyzed by the fear of the four Cs – Courts, CBI, CVC and CAG, all overhanging."[40]; "If the Government's control over the banks was no longer justifiable, there is no logic for the banking department to continue. The RBI should be the sole and the only authority to supervise and regulate the banks. The duality of control must go…The Government has to give up the control function. However, within very short time, the Government must move to get out of the banking system."[41]; "RBI should have the power to regulate the Public-Sector Banks. Once this is done, there will be no need for the banking division to do a second layer of regulation[42]; If the PSBs are not privatized there will be creeping privatization where the government asset over time erodes in value and technology makes it even more difficult for a PSU Bank to respond because technological change is going to be very fast.[43] All the 'experts' are also unanimous that governance problems of PSBs emanate from the constitution of their boards, which are "compromised" – therefore, governance must improve. Above all, fifty years after bank nationalisation, banking is still seen as an enterprise driven by social purpose and political considerations – not depositor's interests. This needs to change.[44]

3.3.3. Required Policy changes in the Indian PSU Insurance space

The Indian government, in January 2017 had approved the listing of country's four PSU Non-Life insurance companies and the lone state-run reinsurer GIC Re to ensure higher levels of transparency and accountability and to gradually bring down the government holding in these companies to 75% from the present 100%, after 2015 insurance amendments allowed government

39. "GoM soon to speed up merger of three insurance companies" by Somesh Jha, Business Standard, September 25, 2019
40. Former Chief Economic Advisor, Arvind Subramanian in Indian Express: 18 February, 2018
41. N Vaghul, Former Chairman, ICICI Bank in Mint: 16 March, 2018
42. Montek Singh Ahluwalia, Former Planning Commission Deputy Chairman in Business Standard: 21 March, 2018
43. Nandan Nilekani, Co-Founder and Non-Executive Chairman of INFOSYS in Mint: 22 March, 2018
44. "The original sin" by Shaji Vikraman in the Indian Express – July 19, 2019

stakes to be brought down to 51%.

The divestment process started with GIC Re and New India in the late 2017 with not so encouraging results. Whilst divestment could be a one-time decision making, listing requires strong management turnaround processes, on a continuing basis.

With banking sectors' afflictions also visiting the Indian PSU insurance space, following have become commonplace, in addition to its own:

1. Despite being a sector regulator, the IRDAI does not fully extend itself in regulating state entities;
2. There are managerial and structural issues facing the PSU insurance companies;
3. A consistent succession planning is not in place, especially at the top echelons despite some of the entities being listed companies;
4. There is a fear of 4 Cs (Courts, CBI, CVC and CAG) overhanging.

The PSU insurance firms must be granted professional independence and support as befit Indian companies servicing vital cogs of the Indian economy such as Health, Agriculture, Automobile and practically the entire Indian economy. Since the idea behind the merger of three non-Life PSU insurance companies into one is to create a single strong and better governed entity, reduce inter-company competition (it has been so cut throat that even in those business lines where the PSU insurance companies are largely dominant e.g. Energy, Aviation and Marine Hull etc. the results have been negative) so as to fetch better valuations at listings (also prop up the sagging employee morale, improve systems and unlock financial strengths), it is much more prudent to merge the three companies with Mumbai based New India, which is already a listed entity.

What is perhaps true of the banking sector is largely true of the PSU Insurance companies as well, in problem diagnostics. After almost fifty years of insurance nationalisation, government companies cannot still be seen as an enterprise driven by social purpose and political considerations – not policyholders' interests. Therefore, all the PSU Companies including LIC, GIC Re, New India (after the merger of other three companies with it) must be enabled real professional set-up working under the umbrella of a fully independent, autonomous and empowered **Insurance Board Bureau (IBB)**, solely entrusted with the governance and oversight of the management of the PSU Insurers with diversified skill sets. As the dual regulation has been found to be ineffective and costly, let IRDAI be the sole regulator for the PSU Insurers.

The IBB will work on the next level of governance standards for the PSU entities under its charge:

1. The IBB will independently set all policy standards for the PSU Insurers under the "delegated authority" from the Government of India;
2. The Board will negotiate fresh paradigms and independence for its entities' accountability to CBI, CAG and CVC, as proposed by YV Reddy, Former Governor RBI in a speech in 2002 (Indian Banking: Paradigm Shift in Public Policy) ;[45]
3. The Board will consist of best of professionals from Government, PSU, Indian Private and Global Private Sectors;
4. Setting up of independent boards with diversified skill sets for the PSU companies: Checks and balances to ensure independence of independent directors;
5. All the PSU Companies will be run professionally by the best of professionals with full autonomy and an eye on the best of class servicing ensuring profitability against the current ethos of Top Line chase;
6. Audit quality indicators to be made public, to increase transparency: Indian Accounting Standards implementation for all entities;
7. The PSU entities would be encouraged to use business surpluses to augment capacities rather than be pressured to share them as dividends;
8. The PSU entities would be encouraged to charge risk based pricing to service government sponsored schemes in life, crop, accident and health segments. If the private insurers are finding the PM Crop insurance costly and pulling out, the PSU insurers should be doubly careful because of their higher management expenses; extremely low reinsurance commissions; delays in getting the premiums from the state governments that could put their cash-flow management under severe stress; political intervention in claims settlements; and continuing manually operated crop cutting experiments in a lot of cases. Moreover, the contagion through co-insurance mechanism would spare none of the government owned non-life insurer.[46]
9. There has to be a need for wide-ranging human resource policy changes, in line with the competitive environment and compensations that will include short term variable components, need for better incentivizing and allowing compensations through long term stock options, and an eye for long term succession planning;
10. The IBB will be accountable to the Government for all the financial parameters, as agreed. Among other things, the IBB will be responsible for a sustained and solvent insurance companies.

45. "Look beyond the conventional methods to get credit flowing" by V Ananath Nageswaran, Mint dated September 10, 2019
46. "Private insurers find PM crop insurance scheme costly" by Namrata Acharya, Business Standard, Nov3, 2019

Structural measures take time to work their way through the system. But even the announcement effect of structural reforms can be stunning. If for example, the government were to put out a roadmap for giving up its majority stake in PSBs (read PSUs), it will go a long way in shoring up sentiments.[47] Before this, however, if the IBB is made successful by the Government, it might render the debate - whether to bring down government holdings below 51% - as insignificant and inconsequential.

This will be similar to Government doing the mega merger of the banks but unless the government follows a hands-off policy, it will not yield the desired results. They (the Banks) must be driven by their respective boards and not the department of financial services of the finance ministry. Not the chief risk officers alone, all senior executives must get market-related salaries. And they must be freed from the glare of investigative agencies – CVC, CBI and ED.[48]

3.3.4. Upshot

The Government's reformative agenda as an Owner must include all PSU insurance Companies having governance oversight by a fully independent, professional and empowered Insurance Board Bureau (IBB), and make them world-class insurance providers. The 21st century economy mantras of Innovation and Enterprise will immensely help at least two of India's PSUs - LIC and GIC Re, in the near term, to increase India's Geo-strategic reach in the new world order. The Non-Life PSUs will take time but their slide down would be arrested forthwith.

Once the PSU companies' governance is taken care of, government's large insurance protection schemes across Crop, Accident & Health and Life and pension segments will have a better traction, and government moves such as considering creating a reinsurance pool for the Pradhan Mantri Fasal Bima Yojna (PMFBY) to retain premiums from the flagship crop insurance scheme at home, will have a far meaningful understanding and response.[49]

It is important to recall China efforts: The Chinese government has ensured that the government-owned Chinese insurance companies, as professionally managed entities, become vital cogs running the wheels of Chinese economy and further its strategic interests – all in a decade's time.

47. "Bank for the buck" by D Subbarao, Indian Express dated September 5, 2019
48. "Bravo FM, but it's only half the job done" by Tamal Bandyopadhyay, Business Standard September 9, 2019
49. Asia Insurance Review eDaily, August 28, 2019

3.4. The IRDAI

The Government of India's Regulatory Agenda for the IRDAI has 'Development' and 'Supervision' go hand-in-hand, "The Authority" is, therefore, a Change Maker first, to work on The Reforms as per Chapter2 (2.1 to 2.3.). These require a Credible, Responsible and Proportionate Regulatory architecture in line with global best practices, duly localized and supported by:

1. A robust, proficient and transparent legal, regulatory and tax environment as well as modern Dispute Resolution Mechanisms;
2. The ability to attract and develop talent, and build a strong infrastructure of supporting services;
3. A commercial and entrepreneurial business environment.

It is important to recall China efforts: The Chinese government has ensured that China Insurance Regulatory Commission (CIRC), as a professionally managed entity, become vital cog running the wheels of Chinese economy and further its strategic interests – all in a decade's time.

3.4.1. A Proactive IRDAI, in its undiluted Vision and tasks, should summon the following 'tools':

1. Revamping IRDAI -

Along with 'Development' and 'Supervision' joining hands, 'prudential' and 'conduct' aspects also need to complement; but these need clear delineation. Per IRDAI Act, 1999, 'The Authority' can have 9 Members (five whole-time and four part-time), besides a Chairperson. The current vertical ownership for the five Whole Time Members is along business/functional lines ('Life'/'Non-Life'/'Distribution'/'Actuarial'/'Finance'), and it suffers from following infirmities:

a) The current arrangement neither caters to the 'development' priorities not does it distance 'Conduct Standards' from 'Prudential Regulations'. This is the reason perhaps everything is 'prudential' currently;
b) 'Distribution' does not require supply led regulatory thrusts. This document has narrated evidences in support (Chapter 2.2.1.g);
c) 'Actuarial' is a support function, it does not sit on top of the pile;
d) In the current dispensation, 'Legal' processes and clearance functions as well as Audit and Compliance don't sit on top of the pile; whereas modern regulatory arrangements are driven by rule of law, with minimal control and optimal deterrence.

Therefore, revamp is necessary, with the Whole-Time Members allowed to lead 'new' verticals such as:

1. Member, Development (to cater to the 'Development' of the entire 'insurance sector')
2. Member, 'Prudential' and Risk Management (including Enterprise Risk Management embedding capital adequacy, risk management and governance);
3. Member, 'Conduct' Management (including Audit & Compliance, and protection of policy holders interests);
4. Member, Finance & Investments;
5. Member, Legal (including policy and regulatory enforcements)

The part time members can be more specialised functions depending on the requirements. The choice of the whole-time / part time members should be left to the Chairman/ IRDA Board, to be chosen from among the best of Indian/ Global insurance professionals and not just from among the public sector organizations;

2. Flatter IRDAI -

Currently, the IRDAI is hierarchy oriented. The Regulator is required to create specialized knowledge, flatter organisational structures, and accountable ownerships within IRDAI;

3. Capacity Enhancements -

Currently, the Private Sector has no seat on the regulatory table. The regulator must ensure good mix of talent from both the private and public sectors, even on secondments;

4. Insurance Advisory Committee -

For a high performing culture, best practices and inspirational leadership, the direction should come from a revamped Insurance Advisory Committee having the best of Indian and Global financial/insurance/ reinsurance leadership, along with sectoral experts such as Healthcare, Agriculture, Technology, Marketing, and Corporate Governance etc.

3.4.2. "Nudge" in policy design

Once the 'Ease of Doing Insurance Business Framework' is ready, built around leading service propositions, right regulations, tight processes, the IRDAI as the Change Maker, would be required to launch forth to 'influence the choice architecture of people'[50]; switch from economies fundamentally being in equilibrium to a mode where there is a constant disequilibrium with economies spiralling around in vicious or virtuous cycles[51]; and use behavioural economics, particularly the idea of a "nudge" in policy design. Behavioural economics provides the necessary tools and principles to not only understand how norms (policies) affect behaviour but also to utilise these norms (policies) to effect behavioural change.[52]

The "nudge" in policy design, to tilt the policy sails and effect behavioural change, will have many dimensions and possibilities, a few of which are discussed here:

1) Policy alignment with the Government -

The Government of India oversees the IRDAI, as an overall governmental responsibility. Therefore, sovereign and economic priorities must have proactive responses and right regulatory processes in place.

2) IRDAI to help stablish country Risk Management agenda for India -

It is important a strong agenda dedicated to understanding of risk and mitigation as well as improving resilience is created, that:

- Addresses social issues e.g. pollution, safety at work, construction defects;
- Addresses ever growing risk profiles such as through climate changes (climate has changed[53])and cybercrimes etc.;
- Enforces implementation of construction codes and improve data collection (both in terms of quality and format);
- Develops insurance schemes that transfer risks from Government to the insurance industry;
- Facilitates the development of local talent pools and consultancy services such as Risk Management to cater to Indian and Asian markets.

3) Capital Market Linkages -

The insurance regulator must also hasten linkages with the Indian capital markets as the Insurance Linked Securities, as part of an alternative capital, is now nearly USD 100 billion (part of the USD 585 billion global reinsurance capital), that especially addresses natural catastrophes. This will be helpful since the Alternative Risks Transfer mechanisms are now allowed in India, which is proving to be quite a success in the global insurance markets.

4) The Priority 'Risks' Framework -

Given the under penetration in India, the regulatory agenda has to be transformational. By freeing itself from the current micro-management trappings, the regulator can start measuring the world of 'risks' in a holistic way. Few examples :[54]

- Capital Risks – Is the lack of regulatory urgency of not implementing economic risk based capital regime not resulting in loosening of required governance standards?
- Low Profitability – is the current lack of adequate regulatory controls not responsible for the vicious cycle of competitive premiums, low profitability, lower resilience and lower public trusts?
- Nat Cat modelling – Is the gap between the premium vs risks ceded, coupled with the absence of NAT CAT modelling, not generating skewed risks to the reinsurers which, if recognised, could lead to turmoil in the Indian market?
- Taxation risks – Globally the reinsurance regimes are based on low taxes but in India the reinsurance branches are subject to heavy taxation. Will it not lead to implosions later/somewhere else?
- Tariffed expenses vs non tariffed product pricing – Does this mismatch between tariffed expenses (management and distribution) and non-tariffed product pricing not lead to enhanced 'risks' to the policy holder?
- Cross-subsidisation risks – Will the cross-subsidisation between retail and corporate products not lead to failure of the business models, at some point of time?
- Coinsurance - is the current practice of co-insurance not a systemic risk, and the one which distorts underwriting application?

Once a holistic regulatory risk management is in place, the regulatory insurance governance will acquire a new pitch, and a different level.

5) Performance Management -

IRDAI market oversight must include sustainable and profitable growth of its firms, through globally recognised regulatory tools.

6) Alternative Dispute Resolution Mechanisms -

Singapore, London and Hong Kong have been the preferred destinations for commercial arbitration for Indian parties. It is estimated that

50. "Why behavioural change in this country is such a complex task" by Biju Dominic, Mint
51. "A much-needed blueprint" by Abheek Barua, Business Standard dated July 5, 2019
52. "Towards a $5 Trillion Economy" by Krishnamurthy Subramanaian, The Times of India dated July 5, 2019
53. "That sinking feeling" by Bibek Bhattacharya, Mint – October 5, 2019
54. CII Insurance and Pensions Summit on 23 August, 2019 at Mumbai: Panel Discussion on "'Redefining the risk in the Business of Insurance"

approximately 30% of cases taken up by the Singapore International Arbitration Centre involve at least one Indian party. Hong Kong International Arbitration Centre (HKIAC) maintains one of the largest caseloads in the Asia-Pacific region, with majority of the administered arbitrations having been international cases.

"Though India continues its upward march in the ease of doing business rankings – climbing up to 63rd place in the latest edition – the country continues to remain a laggard (at 163rd place among 190 countries) when it comes to enforcement of Contracts. This is a direct reflection of the state of India's judiciary. On an average, it takes four years to resolve a commercial dispute in India – as against 164 days in Singapore, the top ranked nation, in terms of dispute resolution. In fact, India figures among the bottom five countries, in terms of time taken for enforcement of contracts".[55]

As the insurance policy is a contractual obligation, it is beyond doubt that India is ranked low in terms of 'Ease of Doing Insurance Business Index' And if, if 'contract certainty' and 'effective litigation' are fundamental to true protection of policyholders' interests, and for developing a modern insurance set-up in India, the IRDAI needs to define the Policyholders' Interests and design its specifics in the regulatory framework, as proposed in this Monograph. The Hon'ble Prime Minister has rightly emphasized for making India a global hub for arbitration, highlighting the need to develop cost-effective and time-bound processes. "There is need to develop specialized arbitration, bar associations also need to be professionally involved". Hon'ble Indian PM has made enabling Alternative Dispute Resolution (ADR) ecosystem a national priority as it adds to investors' comfort level.

India has never been a preferred jurisdiction either for conducting international commercial arbitration or for enforcing foreign arbitral awards. Therefore, the Arbitration and Conciliation (Amendment) Act, 2015 is aimed at giving the necessary impetus for ease of conducting arbitration in India. It is also expected that the Amendment Act will address the concerns of all and also bolsters attempts at increasing the "ease of doing business in India." Arbitration/mediation are inexpensive and time efficient in comparison to litigation. Even with complex international cases, it is more cost-effective to mediate/arbitrate rather than litigate.

As long as the basic principles set out by the International Bar Association are met – these being fairness, uniform and non-discriminatory treatment, clarity and transparency, professional responsibility, reality and flexibility – allowing foreign law firms to provide non-litigious and advisory services on issues of foreign and international law, arbitration and mediation services will be an important catalyst for international investment and growth in the insurance and reinsurance market. The Government of India has allowed this window for the International Financial Services Centre under the SEZ rules.

As India is in the process of globalizing its economy and especially in the context of (re) insurance contracts that demand clarity on applicable law, jurisdiction and seat of legal dispute resolution there is both a need and an opportunity for specialised legal services to support the insurance and reinsurance market. However, there is no dedicated arbitrational forum currently for resolving disputes between Insured, Insurers and Reinsurers in India.

The preparatory ground work that requires to be undertaken by IRDAI will, among things, include:

a) Ensuring all insurance policy contracts having the clauses inserted that provide for alternative dispute resolution mechanisms, with jurisdictional clauses and seat of ADR settlement duly laid down;
b) IRDAI building and maintaining accredited panel of Conciliators, Mediators and Arbitrators, to help Indian market become insurance ADR Centre, at the earliest.

7) Reinsurance Hub in India

1. International Backdrop and Underpinnings of Global Reinsurance Hubs

Reinsurance is primarily used to spread risks around the world. Diversification of risk is the fundamental function through which reinsurers create value, ultimately providing efficient and effective protection to the ceding insurers. A wise reinsurance program can increase an insurer's financial standing; whereas counterproductive regulatory restrictions on the reinsurance program can produce financial instability. In the United States, up to 60% of the costs of catastrophic losses are transferred/exported to the international reinsurance industry, significantly alleviating local costs and allowing for a swift influx of capital following large events: 67% of the losses of 9/11 in the United States, still world's largest economy, were picked up by the international reinsurance industry.

Established centers of reinsurance around the globe have in common a flexible, robust and responsive regulatory approach. Their regulators adopt international standards such as those established by the IAIS, implementing transparent policies for the authorization and regulation of international insurers, reinsurers and brokers:

55. "Ease of doing business: Why India is faltering in enforcing contracts" by Sudipto Dey, Business Standard dated November1, 2019

1.1. International (re)insurers (and policy holders) work most effectively in a commercial environment underpinned by robust and transparently-applied international law and practice, supported by specialist legal practitioners with appropriate qualifications, complemented by speed of access to courts and transparent dispute resolution procedures.

1.2. Models of best practice for encouraging the development of a financial services hub can be drawn from the examples of London, Singapore, Dubai and New York, amongst other global centers of commerce. In these markets, a cluster effect has developed as expertise in underwriting, professional intermediation and related support services have been attracted by commercially-viable trading and regulatory regimes and high-quality and politically stable institutional environments.

1.3. In Dubai and Singapore, the development of each as a global financial center has benefitted from a dedicated division within the regulator, or a separate body, for promotional activities. The DIFC in Dubai, the Monetary Authority of Singapore (MAS) and the Maritime and Port Authority (MPA) in Singapore have each played an important role. Both regulators have been extremely proactive in engaging with international insurers, offering financial incentives including free or discounted office space, and communicating the benefits of doing business in the market, as the regulator is uniquely positioned to do.

1.4. Hubs around the world are sometimes associated with a liberal tax regime. In the DIFC there is 0% tax on corporate income and profits (this is guaranteed until 2054, and may be renewed beyond this), as well as other financial incentives, including no municipal or local authority taxes, levies or charges payable by institutions operating in DIFC (guaranteed for a similar period), and the freedom to repatriate all capital and profits. Simple and relatively liberal tax regimes have also attracted foreign investment in London where the corporate tax rate will be 17% by April 2020). In London, international businesses also benefit from no withholding tax on dividends, normally no capital gains tax for non-residents, and interest deductions on loans financing foreign equity investments (subject to certain limits). In Singapore, the taxation rates are 10% and 17% respectively for non-Singaporean and Singaporean policies respectively.

2. Indian Market

The 41st report from the Parliamentary Standing Committee on Finance (December, 2011) recommended for the Foreign Branches since the Branches would leverage the financial strength of its parent. It also recommended India becoming the 'Reinsurance Hub' for the Asian Reinsurance region. Though the 'Hub' was mentioned, it was not defined. The assumption perhaps was that the introduction of the Foreign Reinsurance Branches will itself create a 'Hub'.

What 'Hub' means is creating 'conditions' for writing 'Global (Non-Indian polices/risks'), apart from Indian policies; allowing for competing with the existing/ emerging 'Global Hubs' on equal or better footing, from a policy perspective. The Government's vision to see India becoming a Reinsurance Hub is, however, facing headwinds[56]:

2.1. Branch Offices of Foreign Reinsurers

A significant change brought about by the Insurance Amendment Act 2015 was the opening up of the Indian reinsurance market to branch offices of foreign reinsurers. Not content with seeking comfort around the entire balance sheet of the parent, its rating, solvency and its global market conduct, the foreign reinsurance branches have been burdened with compliance to all the local Acts and regulations besides, specific regulations evolved for the foreign reinsurance branches. (e.g. Local solvency rules have to be complied with despite Foreign reinsurers already complying with economic risk based capital and solvency norms under EU wide Solvency II regime or equivalent of that). This means additional attendant costs such as all key management personnel on the ground, unconnected reporting requirements, higher taxes and higher regulatory and compliance burdens. Additionally, there are Investment Regulations and the need for a joint audit which is unique to Indian market. When there is already a limit in terms of the number of firms that an auditor can act for, then prescribing a joint audit needs to be specially understood from a corporate governance perspective. Similarly, investment audit and a concurrent audit can be easily performed by the firm's internal auditor, based on the scope prescribed by the IRDAI. There are investment regulations mandating investments in the specified securities which are equally applicable to both insurers and reinsurers, which impacts on diversification of risks since both are investing in the same market. Therefore, after the appropriate Act and the Regulatory changes, overseas markets investments must be allowed for the reinsurers, earmarked for the Indian policyholders. There are also dichotomy of rules by IRDAI and the RBI's FEMA regulations that cause confusion, especially procurement of funds from the home office.

The Branch offices of foreign reinsurers should have a simple regulatory regime drawn up, which does not

56. An article in Business Standard dated 31 Jan 2017 from Ashvin Parekh titled "One step forward, many backward" - The area of reinsurance is perhaps an excellent example of retro stepping"

burden them with (illustrative but not exhaustive):

a) Retrocession limits;
b) Local solvency rules if they have already complied with economic risk based capital and solvency norms under EU wide Solvency II regime or equivalent of that;
c) Quarterly actuarial filings;
d) Public Disclosures;
e) Mandatory investments in the local markets;
f) General caveat that such Branches would be subjected to the entire Insurance Act provisions.

2.2. Taxation (already mentioned earlier per Chapter 2.3.3. to 2.3.4.) - involving following heads:

2.2.1. TDS on reinsurance premium under the provisions of Income Tax Act, 1961
2.2.2. Rate of Income Tax applicable to FRB's and Lloyd's
2.2.3. Reinsurance Export Services – Preferential Taxation at par with other countries
2.2.4. MAT should not be made applicable to such a highly regulated industry, in line with Life insurance business
2.2.5. Goods and Services Tax ('GST')
2.2.5.1. End to end exemption
2.2.5.2. Reversal of input credit
2.2.5.3. Presence in multiple states triggers challenges to Insurance sector from the perspective of compliance and investment on Information Technology

2.3. Regulations

2.3.1. Reinsurance Principles

Reinsurance is principally used to spread risks around the world, instead of maximizing risk retention within a country. The Indian regulations have 'premium retentions' mandated to measure them at the 'country level' despite IAIS having a model risk management framework and the "ceding insurer responsibility model" in place.

Very importantly, despite 'reinsurance' having been defined in the Insurance Act as amended in 2015, a regulatory licensed 'Indian Insurance company' for life/general/health insurance business (as opposed to regulatory licensed 'Indian Reinsurance Company') is allowed to do "inward reinsurance business" – which means following a different principle vis-a-vis primary insurance law.

Another market principle that it should have level playing field is not being followed in the Indian reinsurance space where GIC Re (a Government reinsurance company) is treated as the preferred entity, favouring it with 'Obligatory Cession' and 'Order of Preference' regulations:

2.3.1.1. Obligatory Cession

The government, in consultation with IRDAI, continues to allow mandatory cessions to the GIC Re @ 5% of all cessions from the direct non-life insurers; this continuation, particularly after Insurance Act (Amendments) 2015, is an anachronism from a principle led framework perspective. This executive decision does not gel with sound underwiring principles as well e.g. GIC Re may find certain treaties unacceptable from an underwriting perspective, yet it has no choice for the 5% of its share.

2.3.1.2. Order of Preference / Right of First Refusal regime

The regime involves protection of GIC Re besides, inhibiting the introduction of cutting edge reinsurance products and healthy practices. The foreign reinsurers will not share their 'IPR' with GIC Re, thus compromising on development of a dynamic reinsurance market in India. It does not help create level playing field. The Order of preference regime must be premised on equal footing for GIC Re and the foreign reinsurance branches in India, either:

Remodelled

- Terms may be sought from any number of onshore and offshore reinsurers simultaneously;
- The ceding insurer will choose best terms and allocate share to the successful quoting market;
- The remaining share must then be offered to all onshore reinsurers, who have a right of first refusal;
- For any undersubscribed surplus, capacity may be accepted from offshore reinsurers;
- There should be Contract certainty for the conclusion of RI agreement

Or Removed

The offshore reinsurers could be transacted with simultaneously with collaterals, to restore parity with foreign reinsurance branches in India.

2.3.1.3. Retentions

There is this stated objective that 'premiums' need to be retained in India rather than 'risks' exported out. Whilst the Government and Regulatory objective is to retain 'premiums' within the Country, it is important that there is a proper risk transfer test prescribed within the Regulations, to determine whether the 50% risk retention is being achieved. There is a common understanding that the Regulatory objective is to retain 50% of the risk within the Country, otherwise, transferring 50% of the premiums does not mean that 50% of the risk has been transferred out.

2.3.1.4. Retrocession

Global Reinsurers pool the risks underwritten by all global entities including subsidiaries and branches and purchase a common retrocession thereby benefitting from scale and diversification. The Branch operations of the foreign reinsurers are permitted to continue to access such central retrocession program. The retrocession arrangement with the Group and/ or affiliate within the Group is through a standard reinsurance contract and is structured on an arm's length principle which is to ensure that both parties are acting in their own self-interest and are not subject to any pressure or duress from the other party. The cession limits currently prescribed in the Indian Regulations are also made applicable to the branch operations when placed with entities within the Group. Moreover, Regulators across the world permit 100% retrocession to group companies and affiliate companies of the parent company and do not insist on retro-cession to third party entities. Moreover from FRBs point of view, there is a global book that partakes of all programmes including India, but the regulatory insistence for a specific Indian specific retrocession programme may not have a sound 'risk' basis.

2.3.2. The reinsurance costs

The reinsurance costs are naturally higher in India, as a result of highlights presented from 2.1. to 2.3., that tend to follow the trail of higher capital charge, higher regulatory and compliance burdens, and higher taxes.

2.4. Mumbai Vs IFSC, GIFT at Gandhinagar

The global experiences have demonstrated that in these global hubs, a cluster effect has developed as expertise in underwriting, professional intermediation and related support services have been attracted by commercially-viable trading and regulatory regimes and high-quality and stable institutional environments. This is only possible at Mumbai since it is India's leading insurance centre and has the largest concentration of financial services firms and insurance suppliers in India. The following arguments should be beyond any debate:

a) Mumbai, as India's leading insurance centre and having the largest concentration of financial services firms and insurance suppliers in India, most deserves to have the regulatory seat for the growth of Indian insurance as well as for the sake of Indian macroeconomy (since it is only through cross-pollination of interactions between the 'market' and the 'regulator' which will make the regulatory governance richer);

b) Mumbai is also well placed to develop itself as the Indian 'Reinsurance Hub' to compete with Dubai and Singapore but the IRDAI, by placing itself away from the 'Centre of Indian Insurance' has not understood the significance of cluster effect; nor has it ensured best in class insurance regulatory and taxation policies. Since this involves political change management, the regulatory 'nudge' to itself, and to the Government for a better economic gains will be decisive.

Recent developments seem to suggest that India is looking to develop the international Financial Services Centre (IFSC) at SEZ, GIFT, Gandhinagar as a reinsurance hub, seeking to attract reinsurers to underwrite offshore business. However, it does not have the market ecosystem. Additionally, neither the regulatory framework has given it competitive edge over other hubs (it does have competitive taxation policies, though) nor has the IRDAI created symbiotic synergies between Mumbai and IFSC Gandhinagar.

2.5. IRDAI – the 'Owner' of Indian Reinsurance Hub

If the 'Owner' IRDAI is indeed serious to see India becoming a Reinsurance Hub it must, with the active support of the Government and GIC Re, lead Indian market establish a Reinsurance Hub at Mumbai, since 'developing its export potential' using Indian talent is part of IRDAI's charter for the Indian economy. **The IRDAI, as a Single Window Owner** (presenting its own collaborative verticals, and also ensuring cross-sector support from Taxation, Transportation, Company Law, Judiciary, Reserve Bank, Securities Regulator and many others)**, would ensure:**

2.5.1. Removing policy impediments - listed at 3.4.2.8. (2.1 to 2.3), within a time frame of not more than 12 months;

2.5.2. Establishing Relationships with the 'home regulators' of the FRBs – This would remove most of the current concerns and fears about the FRBs that are currently forcing IRDAI to build regulatory walls, to the detriment of its 'own entities' (everyone is paying equal rate of taxes, after putting up the regulatory capital demanded of them);

2.5.3. Predicate the Indian Reinsurance Hub on 'global' risks written from India without any risk capital charge on par with Singapore and Dubai;

2.5.4. GIC Re - Ensure that GIC Re, with its dominant position in India and a growing international profile, lends its weight to enable India become a Reinsurance Hub; and not continue to seek preferential treatments around 'Obligatory Cessions' and 'Order of Preference' which do not necessarily help GIC Re commercially and the Indian reinsurance market administratively;

On the contrary, withdrawal of 'Obligatory Cessions' and 'Order of Preference' will actually help GIC Re as it has large attributes to become a leading Indian multinational provided it works on globally benchmarked specialisms, and not remain sheltered under protectionist policies at home. It must also set standards for the Indian market across underwriting, claims and risk management. GIC Re could be the next financial sector crown jewel provided the Government understands that though GIC Re significantly reinsurers Indian insurance market, its sustenance and strength comes from its global play. It must be granted professional independence and support as befits an Indian multinational;

2.5.5. Make India (Mumbai) an attractive market place - The key to creating a hub is to make enabling provisions: Regulations, Tax, Ease of Doing Insurance Business, Availability of talent etc. When these areas are addressed, then Indian the jurisdiction will automatically become attractive for investors.

8) Making an Inclusive Motor Third Party Liability Regime

a) Introduction - The Global Status Report on Road safety by WHO says that more people die in road accidents in India than anywhere in the world including China. Whilst it costs something like 1 to 2% of the GDP in the high income countries, it cost 3% of the GDP in India. According to a UN Economic and Social Commission for Asia and the Pacific (UNESCAP) study, India's GDP takes a 3% hit every year due to road accidents, which is equivalent to over US$60 billion. There are about 1.5 million Third Party Liability cases pending in different Tribunals / High Court and the Supreme Court. The volume of third party claims is increasing every single day and the MACTs do not have adequate wherewithal to dispose of claims expeditiously;

b) Drivers' negligence – In India approximately every fourth accident occurs because of the negligence of the Driver. However, for all events the compensation is paid by the owner of the vehicle or its insurer of (Motor Third Party Liability). This results into 'minimal' or 'no accountability' of the driver to perform his duties with 'Discipline" and 'Responsibility'. While the license formalities enforce discipline on the Drivers, the 'Responsibility' can only be ensured by enforcing civil liability upon them; About 100 two-wheeler users per day die in a road accident in India because they did not wear a helmet;

c) Speed of disposal by the MACT - The speed of disposal in the MACT cases is abysmally slow. In one case, with watershed implications called "Sarla Verma case", the accident took place in 1988, the claim was adjudicated in the trail court in 1993 further adjudicated by the High Court in 2007 and still further by the Supreme Court in 2009. Normally the adjudication of the cases is taking anywhere from 3 to 5 years, and beyond;

d) The Differences in the handling of MACT cases by various States – There are marked differences in the handling of MACT cases by different states. Lack of insurance product knowledge/concept of insurance itself is resulting in divergent orders being passed across various MACT courts around India. MACT courts have also sometimes passed orders involving frauds directing the Insurers to pay the Claimant and in turn recover the money from the fraudulent party. Though as per Insurance Contract, the Insurer need not do this;

e) Changes made to Chapter XI of the Motor Vehicles Act, 2019 dealing with Third Party Claims and its impact - Section 147: Premium Fixation –

For the purposes of third-party insurance related to either death of a person or grievous hurt to a person, the Central Government shall prescribe a base premium and the liability of an insurer in relation to such premium for an insurance policy in consultation with the Insurance Regulatory and Development Authority.

Since Central Government will prescribe the base TP premium and the liability of an insurer in relation to such premium, in consultation with IRDAI, any coverage for liability over and above the fixed limit will attract further premium as decided by the insurer. The overall liability in case of a third party still remains unlimited and thus scope of increase in premiums would be open every year based on the payments made in compliance of the Court judgements. This will lead to insurance coverage getting costlier each year and may lead to further vehicles remaining uninsured. Capping of final liability would help in moderating the premiums and making insurance affordable for all. Since Central Government will prescribe the base TP premium and the liability of an insurer in relation to such premium, in consultation with IRDAI, it de facto becomes the insurance regulator, in addition to discharging the executive functions. This document maintains a principle-based approach to insurance governance, including precise role and authorities for each wing of the 'power structure' i.e. legislative, executive and the regulatory wings. Whilst the executive wing has the concern to decide the scale of tortious liabilities, the premium setting should be left to the IRDAI under the risk based pricing concept.

f) Changes made to Chapter XI of the Motor Vehicles Act, 2019 dealing with Third Party Claims and its impact - Section 149: Settlement by Insurance Company –

57. Asia Insurance Review eDaily, 9, October, 2019

The insurance company shall, upon receiving information of the accident, either from claimant or through accident information report or otherwise, designate an officer to settle the claims relating to such accident. An officer designated by the insurance company for processing the settlement of claim of compensation may make an offer to the claimant for settlement before the Claims Tribunal giving such details, within thirty days and after following such procedure as may be prescribed by the Central Government. If, the claimant to whom the offer is made:

i) accepts such offer, the Claims Tribunal shall make a record of such settlement, and such claim shall be deemed to be settled by consent; and the payment shall be made by the insurance company within a maximum period of thirty days from the date of receipt of such record of settlement;
ii) rejects such offer, a date of hearing shall be fixed by the Claims Tribunal to adjudicate such claim on merits.

This will help in early settlement of the claim. However, since the offer is to be made before the claims tribunal, the purpose of early settlement would get defeated as the lawyer of the claimant would come in. Only if this was made mandatory for the claimant to first approach the insurance company as in case of other claims, there would be speedy settlement of the claims. The settlement could be recorded in the court accordingly. The Police, like in Delhi, may do full investigation and submit the detailed accident report (DAR) to insurer & MACT. Insurer would settle the case out of court and get the compromise recorded before Lok Adalat/legal Aid board/Tribunal. If negotiations fail then only application should be filed before concerned Tribunal for contesting the case. There should be time limit for each action.

In view of the Motor Vehicles (Amendment) Act, 2019 provisions, it is essential that the Indian Parliament / Central Government and the IRDAI allow direct control and support to the insurance companies in the management of Motor Third Party Liability claims to make it much more inclusive, and provide efficacious, timely, just and fair compensation to the victims of Road Traffic Accidents. **Therefore, it is recommended that Motor Third Party liabilities must be allowed to be managed as First Party Claims administration.**

In light of the litigation pendency with the judiciary, the new provision can be introduced wherein victim/Claimant can directly approach to the Insurance Company for seeking compensation. Requisite information and list of documents can be prescribe in Central Motor Vehicle rules through amendment. Post submission of requisite documents Insurer shall evaluate the case and in case of admissible liability, insurer will pay the compensation to the Victim/Claimant without intervention of MACT Court. This process shall give speedy relief to the victim and curtail the intervene of Advocates and other mediator mechanism. In case of dispute on the quantification of compensation, both the parties (Insurer and Claimant) can approach to the legal conciliation cell and just and reasonable compensation can be fixed through conciliation. This will avoid the court litigation procedure and matter can be settled amicably.

It would further help if the Central Government, IRDAI and the General Insurance Council could work on the following and have a suitably amended Central Motor Vehicles (Amendment) Rules, 2019:

1) The compensation is not structured (Like WC Act 1923) hence claimants are not aware about the liability/just compensation and take help of Advocates, and invariably the compensation amounts are inflated to discourage settlement. Hence, structured formulae are very important;

2) Insurers struggle to settle cases where two vehicles or more vehicles are involved. There should be formulae to fix contributory/composite negligence on each driver so that compensation may be shared amongst the insurer and such cases, too, may be settled smoothly and promptly;

3) In death cases, sometimes issue of legal heirs crop up and seal of the court is needed to save interest of the company;

4) Disability certificate, not issued by treating doctor/ medical board, is a major issue in grievous injury cases.

3.4.3. Upshot

The IRDAI, as the leading Insurance Change Maker, needs to cater to its Vision to cater to "Inclusive, fully penetrated insurance" by adapting to the global best practices and getting them localised. Amongst many possibilities, the UK market's Prudential Regulatory Authority (PRA), Financial Conduct Authority (FCA), Lloyd's of London market practices and Monetary Authority of Singapore (MAS) should merit close examination.

There is also an evidence that the relationship between insurance markets, insurance coverage and macro stability is a strong positive one, and since research has also established that a 1% rise in insurance penetration results in an increased investment equivalent to of 2% of national GDP; let there be a macroeconomic target set for the insurance regulator as well – to add 1% insurance penetration by 2025. The Chairman, IRDAI, as the CEO of the Indian insurance market, must lead with a strategic plan to fulfil both – the Vision for inclusion, and the macroeconomic target.

4. The Technology Catalyst

4.1. InsurTech: Catalyst for transforming the Indian insurance industry

Insurance is a large global industry, which is being challenged by megatrends such as Big data and digital that are driving transformations and finding their way to the core of any insurer's strategy. Digitization of insurance is the next big opportunity after FinTech. InsurTech innovation is now a global phenomenon. Digital innovation is relentlessly redefining the next-generation insurance ecosystem.[58] The main factors driving the growth of InsurTech include an archaic distribution system, dwindling consumer trust in the incumbents, millennial appeal and most importantly, a huge commercial potential for start-ups offering new and relevant products.

According to McKinsey research, more than $10 billion has been invested into InsurTech since 2012. InsurTechs are often start-ups with simple business models and narrow areas of focus, whether it be artificial intelligence or machine learning. In addition, many InsurTechs have data-analytics capabilities. They are digital organizations with the ability to respond to market opportunities much more quickly than global insurance companies. As such, they are more likely to boast an agile culture that pursues and rewards innovation, as well as a mind-set that puts them at the forefront of changes in the industry. The future industry model will be shaped extensively by partnerships where incumbents retain ownership of the end customer while InsurTechs act as digital enablers that drive the adoption of digital technologies along the value chain to help advance the digital transformation journey.[59]

4.1.1. Global Trends in FinTech / InsurTech Innovations

4.1.1.1. US -

InsurTech developments might even put pressure for more federalization of insurance regulation as new technologies will have a greater nationwide reach, such that state-level regulation of insurance may become increasingly difficult to administer;

4.1.1.2. UK -

The Financial Conduct Authority (FCA) and Prudential Regulatory Authority (PRA) have brought together experts of many disciplines to monitor FinTech developments to cater to "community of interest". The Bank of England also runs a FinTech accelerator. The FCA's innovation department works with twin objectives: Policy engagement and Services for InsurTech firms. The FCA has the largest team dedicated to innovation in Europe – Project Innovate. It has both a regulatory sandbox and an innovation hub, through which firms can request direct support from a dedicated team. FCA's regulatory sandbox allows businesses to test innovative propositions in the market with real consumers, and is open to authorised firms and unauthorised firms that require authorisation and technology businesses. Market associations such as Association of British Insurers (ABI) support regulator's work on innovation, regulatory sandbox and its promotion of Global Financial Innovation Network (GFIN). Consequently, London is ranked No.1 globally, out of 1500 InsurTech start-ups round the world in 2018;

4.1.1.3. Singapore has been aiming to grow a smart financial centre where innovation is pervasive and technology is used widely to enhance value, increase efficiency, manage risks better, create new opportunities for all. The Monetary Authority of Singapore ("MAS") believes that a key driver to transforming Singapore into a smart financial centre is the provision of a regulatory environment that is conducive for innovative use of technology;

4.1.1.4. China has enhanced its insurance industry to be a strategic industry, for the development of the Chinese economy and society. The InsurTech market in China isn't led by the small startups: large digitally savvy incumbents or large internet companies command the emerging and still-growing market. The Chinese insurers take the lead and drive innovation internally;

4.1.1.5. Germany - 14 insurance giants, 2 accelerators, 25 start-ups constitute InsurTech Hub Munich (ITHM) which is transforming insurance. ITHM is a cross-sector entrepreneurial platform to collaborate on creating innovative insurance products and services. It connects start-ups, corporates, universities, research centres, investors, and the government to transform the

58. City of London Corporation PwC Fintech series: India-UK InsurTech landscape
59. "A New Industry Model for InsurTech" by Simon Kaesler, McKinsey

the future of insurance. The ITHM is one of 16 innovation hubs that are part of the Digital Hub Initiative, supported by the German Federal Ministry of Economic Affairs and Energy. Together, they are bridging the gap between start-ups and the complex German market by regularly exchanging insights on successful innovation methods and promoting start-ups that could benefit from a different industry ecosystem.

4.1.2. Indian Challenges

The Indian market still largely caters to the bricks and mortar business models and insurance products even after 18 years of market opening up and despite, 'Products' needing evolution into risk-partnerships, and requirement of new and innovative business models.

4.1.3. Required principles-based regulatory support to InsurTech

The regulatory framework has to recognise that 'economies of speed' is as important in today's digitally-powered environment as the traditional notion of 'economies of scale'.

4.1.3.1. Insurers' stake in InsurTech start-ups

Existing rules prevent insurers from acquiring a stake of more than 10% stake in such start-ups due to which they are unable to access the propriety software developed by these companies. Many insurers are still using legacy software at the back end and are unable to compete with tech-savvy firms as they leverage technology in various areas of their operations from fraud detection to cross-selling of insurance plans. On the other hand, insurance companies are finding it difficult to cater to Internet -savvy millennials who form one-third of India's population. It has to be recognised that rigid / inflexible regulations make it difficult to try out any new technology based initiatives in the Indian insurance market.

Insurance companies are setting up accelerators and innovation hubs as well as digital garages or inhouse innovation hubs to offer new products and services and optimize their existing offerings with the help of digital disruptions in InsurTech. Moreover, insurance companies and internet companies are making partnership arrangements to offer new products. Start-ups are playing a major role in digital disruptions, hence insurers are forming partnerships with start-ups from various industries. In 2019, tech giants will continue to leverage what they know about their customers to provide the innovative and unique insurance offerings. Large companies like Amazon and Google have one major competitive advantage when it comes to providing insurance options: a deep trove of customer data. There is no question they see opportunities in the financial services and insurance spaces. Amazon, in particular, is acquiring and funding InsurTech start-ups and initiatives, both in the U.S. and abroad, while partnering with carriers.[60]

4.1.3.2. The Indian Regulatory Sandbox regulations

The Indian Regulatory Sandbox must partake of the following, to complement/supplement the current efforts:

a) Getting the balance right – Right balance between maintaining policyholder protection without stifling innovation is very important since, essentially Policy Holders' protection means just two things a) contract certainty and b) effective grievance/dispute resolution mechanisms;

b) Data Governance – Smart Data Governance, which is Data Protection and Cybersecurity: Data is an asset and a currency even if it is intangible at this point of time and provenance of data must be part of the grand strategy;

c) Regulatory Sandbox – It is reassuring to see it meaning an environment used in the financial service sector, which provides testing ground for new business models and applications that may not necessarily be covered fully by or fully compliant with existing regulations;

d) New Business Models and Applications – Apart from defining "Sandbox environment", it is equally important to define "New Business Models and Applications" and these should not include 'Underwriting, Policy and Claims Servicing' since these are operational (though technological) mechanisms that should be fast tracked through direct regulatory clearances rather than through "Sandbox environment". In other words, "New Business Models and applications" should only include "Insurance Solicitation or Distribution" and "Insurance Products": (E.g. Synechron's Blockchain Accelerator for Insurance Claims Processing presents a scenario in which customers no longer submit a claim and insurers do not administer claims. The distributed database and smart contracts enable auto-execution of claims handling processes based on independent and trusted authoritative source data. Blockchain's automation and objectivity will create an environment of trust for customers, insurers, asset providers and regulators. Operational costs including assessment, dispute resolution and payments will decline significantly, as will fraud losses. We believe

60. (https://www.dig-in.com/list/10-insurtech-predictions-for-2019-xl-innovate)

blockchain, integrated with other emerging technology innovations, will reshape the insurance operating model in the next five year) ;[61]

e) InsurTech Accelerators and the Innovation Hub - Regulatory Sandbox is not another regulatory layer, but a mechanism for the regulators round the globe to help institutionalise technology based transformative innovations at a rapid speed. It is therefore, also important for the IRDAI to rope in Self-Regulatory Bodies (SROs) such as Insurance Councils and get them to constitute a Committee, along with insurance and technology experts, to become the Innovation Hub and provide acceleration to the sandbox experimentation. This Committee will provide cross-sector entrepreneurial platform to collaborate on creating innovative insurance products and services, connecting with start-ups, incumbents, investors, and the IRDAI/Government to transform the future of insurance. **The founding vision of the accelerator** is to provide access to innovation to a larger corporate audience through a community approach, to try and build a safer future together, where traditional competitors sit at the same table to exchange ideas and developments about innovation, agility and digitisation.

f) The Committee – The Committee should have a fast track mechanism that will also help overcome the existing InsurTech limitations of:

- Limited insurance knowledge;
- Validating if the pain-point is a key customer pain-point or more of a nice-to-have or too niche;
- Identifying and effectively engaging "right" insurance partner;
- Overcoming the biggest challenge of moving from pilot stages to meaningful production rollouts;
- Simplify the sheer complexity of the industry and regulations, which may be a barrier to entry;
- Acting human - ensuring that the customer engagement is not neglected and to check what ROI is available for continuous building contextual ecosystems.

g) The 'Other Conditionalities' – The IRDAI should be conscious of current practice of deviation approvals, and therefore, should relook at the following:

- A principled approach to the Application process – rather than application in a "specified form";
- "Conditions for grant of permission" – The Innovation Hub should take this call, and not IRDAI;
- Extension of first permission – 6 months could be a deterrent, especially if the process is opaque. In addition, Exit Strategy (In the Exit Criteria: Is the IRDAI testing for Cyber Resilience?) is very important, and a failure of one experiment should not lead to the start-up becoming persona non grata;
- Conclusion of the proposal must be time bound.[62]

4.1.4. Upshot

InsurTech is a game changing opportunity not just for the financial services but for the Indian macroeconomy. It is neither just about technology, nor finance, it is about innovation and inclusion. There is a potential revolution of sorts for every segment, including hitherto uncaptured segments such as 'Millennials', and 'Geriatrics'[63].

Globally, InsureTech Connect (ITC), the annual gathering of thousands of leaders from insurance carriers, InsurTechs, and venture capital firms, provides a great opportunity to explore the industry's most pivotal topics, such as how new technologies and capabilities are transforming all aspects of the industry[64].

Many experts have been pushing the idea of SEZs where the ease of doing business is made dramatically friction free. Such zones may be used as "sandboxes" to experiment with reforms[65] especially, where apart from only insurance sandbox environment, FinTech/InsurTech can also bring about federalization of technologies provided alternate Business Models are also allowed to cut through current silos of 'life'/'non-life'/'reinsurance'/ 'banking'/'capital markets' etc., and usher into a SINGLE FINANCIAL SECTOR "Sandbox environment" across all the financial services.

In order that FinTech and InsurTech movement is successful in India, different regulators such as IRDAI, SEBI, RBI, PFRDA, should pool their resources to build a common sandbox environment. It may therefore, make perfect business sense to take such sandboxes across to the GIFT Centre at Gandhinagar, which is the only operational International Financial Services Sector (IFSC) in the country, with dedicated infrastructure and relaxed taxation regulations. With the IFSC at GIFT Centre likely to receive a common single Financial Services Regulator, one could imagine the breadth of FinTech/InsurTech innovations for the entire financial services.

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61. https://www.forbes.com/sites/andreatinianow/2019/01/09/insurance-interrupted-how-blockchain-innovation-is-transforming-the-insurance-industry/#6ef19f1e3ec6.
62. https://medium.com/@vishnu_3187/uk-fca-regulatory-sandbox-lessons-learnt-and-application-tips-26dbbe5f1135
https://www.fca.org.uk/publications/research/regulatory-sandbox-lessons-learned-report
https://www.leadersedge.com/industry/thinking-outside-the-sandbox
63. Interesting Report : InsurTech Rising: A Profile of the InsurTech Landscape December 2018 https://www.milkeninstitute.org/sites/default/files/reports-pdf/InsurTech-Rising-12.4.18.pdf
64. Scott Ham, McKenzie & Co. September, 2019
65. Ravi Venkatesan column titled, "China's Sputnik moment could prove to be India's big break" in Mint on 27 July, 2019.

Epilogue

All our Monographs from 2017 onward through to 2019 have urged **Right Insurance Governance** for, insurance has therapeutic values and transformative character. Insurance also contributes to stabilise macroeconomics; reduce risks; build resilience; prepare for climate change that has already happened; address risk fundamentals and their correlations (e.g. cyber is not IT risk but a governance issue; and growing health and lifestyle hazards need to be managed etc.); help usher in structural reforms leading to bridging of protection gaps.

There is a constant refrain from the regulators for more than two decades that 'the Indian market is not mature for far-reaching reforms', without ever putting forward a comprehensive, clear and balanced agenda: Not realizing that it is impossible to sustain the oldest civilization and the largest democracy in the world without its associated wisdom and intelligence.

Since good governance is a way of measuring how public institutions conduct public affairs and manage public resources in a preferred way**, The Change Makers,** especially IRDAI must agree on fundamental preferences as well as regulatory responsibilities, in the context of laying down **Right Insurance Governance in India:** That IRDAI is an administrative set up (a friend, philosopher and guide!) required to nurture talent, technology and capital to unleash market's 'technical' and 'distributive' potential, deploying right 'tools'; That 'protection' and 'promotion' go hand-in-hand – one doesn't go without the other; That the 'letter' and 'spirit' of regulations means outcome-based regulations following its 'letter' with minimalistic stance, and 'spirits' with maximalist stance rather than other way around; That in the growth of some of the leading global financial centers the respective regulators have each played a pivotal role, and have been extremely proactive in engaging with all stakeholders – much, therefore, needs to be done in India; That the PSU insurance firms, which are the Systemically Important Financial Institutions (SIFIs) for the Indian financial markets and which support the wider financial system and economic activity deserve IRDAI's attention to ensure that institutions such as LIC and GIC Re have significant footprints in the global sweepstakes as well, and the non-life firms are harmonized to service the Indian markets effectively.

Keeping steps with the Governor, RBI musings, "Adoption of global best practices to improve market integrity is another important aspect of regulation"[66], could the IRDAI not learn from **Lloyd's of London** practices which is a partially mutualised market, is 331 years old catering to nearly 100 businesses from 200 jurisdictions from around the globe with more than 75 global licenses? Lloyd's manages the collective Lloyd's licenses, reputation and brand of its market. Alongside robust regulations by PRA and the FCA, Lloyd's exercises stringent supervision and control over the businesses operating in the market. Lloyd's businesses are measured against a set of **minimum standards** across governance / underwriting / claims / risk management / operational processes / conduct risks / investment management and modelling design and implementation etc. Lloyd's market oversight is supportive of a sustainable profitable growth valued by all stakeholders.

Having understood Government's resolve to reform and transform the macroeconomy, the framework attempted in this Monograph is designed to assist **The Change Makers** to bring in **Right Insurance Governance.**

66. "Harmonize norms between banks and NBFCs" by Shaktikanta Das, RBI Governor, Business Standard dated August 25, 2019

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The meetings with MOF (DFS) continued – with Shri Ravi Mital on 19 March, 2018, and with Shri Debasish Panda, Additional Secretary on 6 April, 2018 as well as 30 April, 2019 to discuss our work, and exchange ideas. Our current Insurance Monograph on **"Insurance Governance for World's Largest Democracy"** is a culmination of all such exchanges and attempts to put the spotlight on right insurance governance in India.

We would also like to thank all our colleagues and friends from within the insurance industry and outside who provided useful insights and perspectives. We are hugely indebted for their professional help, ideas and advice in almost all the areas covered in this Monograph.

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This is a Monograph of the industry, by the industry, and for the industry.

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H Ansari has also contributed to industry papers; among them a monograph titled, "A Transformative Agenda for the Indian Insurance Industry and its Policy Framework", and another monograph "An Implementation Agenda for The IRDAI to Transform its Regulatory Framework to serve The INDIA of 2022". jointly put together with Arun Agarwal.

Arun Agarwal, a 1977 Batch Direct Recruit officer from GIC, spent initial two decades with the public sector companies - GIC/Oriental Insurance/National Insurance Academy. Arun then worked for AIG in India and was amongst the founder members of Tata AIG General Insurance. Later, he was involved with the founding of Chola MS General Insurance and was its first Chief Executive and Managing Director. Arun has also represented Lloyd's, London as their General Representative in India.

As Honorary Visiting Fellow with the BSE Institute, Mumbai, he is pursuing academic, research and engagement activities with the policy makers. Earlier, there was a monograph published in May, 2017, "A Transformative Agenda for the Indian Insurance Industry and its Policy Framework", jointly put together with H Ansari, a former Indian insurance regulator. Based on discussions with the Ministry of Finance (Department of Financial Services), the duo was requested to come out with suggestions for specific regulatory changes. Accordingly, Monograph2 was worked upon in November 2017 titled as, "An Implementation Agenda for The IRDAI to Transform its Regulatory Framework to serve The INDIA of 2022". Currently, Arun is also working on a Book, tentatively titled as "An Agenda for Transformative Governance in India".

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