

3rd FEBRUARY 2022

ANALYSING THE GENERAL INSURANCE BUSINESS (NATIONALISATION) AMENDMENT ACT, 2021

INTRODUCTION

1. In August, 2021, The General Insurance Business (Nationalisation) Amendment Bill was passed by both the Houses of Parliament.

2. Soon thereafter, The General Insurance Business (Nationalisation) Amendment Act, 2021 (No. 37 of 2021) (the Amendment Act) was notified in the Official Gazette on 19th August, 2021.

The Act of 1972

1. The General Insurance Business (Nationalization) Act, 1972 (the said Act) was enacted for nationalization of the general insurance businesses in India. It provided for the pattern and procedure for transfer and acquisition of shares in the Indian insurance companies.

2. The aim of the Act was to regulate, control and secure the development of general insurance business in the country.

3. By virtue of the enactment, all the private companies involved in general insurance business were undertaken by the government and converted into public companies.

4. The said Act also provided for the formation of the General Insurance Corporation of India (GIC) for superintending and controlling the business of general insurance (Section 9). GIC became the Indian nationalised re-insurance company.

5. Under the nationalization scheme, private companies were converted into four public companies: National Insurance Company Ltd., New India Insurance Company Ltd., Oriental Insurance Company Ltd., and United India Insurance Company Ltd. These four companies formed became the subsidiary companies of GIC.

The amendment of 2002

1. The said Act was amended in 2002 to transfer the control of these subsidiary companies from GIC to the Central Government.

2. Section 10A was inserted to give effect to the same. It provided that all shares of the GIC in the capital of its subsidiary companies shall stand transferred to the Central Government. Effectively, all the functions of GIC also stood transferred to the Central Government.

3. Thus, the four companies resultantly became four independent general insurance companies. Since 2002, the re-insurance business falls under the exclusive domain of GIC.

4. The amendment also specified the role of IRDAI (Insurance Regulatory and Development Authority of India) which supervises and regulates insurance sector in India since its establishment in 1999.

The amendment of 2021

1. The Amendment Act primarily provides for privatisation of a specified insurer from amongst the list of general insurance providers listed under Section 10A of the said Act.

2. Privatisation refers to the transfer of a majority shareholding of public (government-held) companies or institutions to private entities.

3. Transfer of majority shareholders also leads to transfer of business ownership and control of the said company.

The statement of objects and reasons

The Amendment Bill provides the following reasons and purpose for effecting the amendment:

1. Greater private participation- This is in line with the Budget Speech of 2021-2022 where Finance Minister Nirmala Sitharaman had announced that two public sector banks and one general insurance company would be privatised.

2. Enhance insurance penetration and social protection- This is in view of providing benefits of insurance to a greater number of people and a higher degree of understanding of the social benefits of insurance.

3. To better secure the interests of policyholders.

4. Faster growth of economy- It is analysed from studies across the globe that privatisation helps in increasing country's productivity, growth in real GDP and enhancement in investment-cycle.

The major changes brought about through the Amendment Act

The Amendment Act deals with the following provisions:

1. Section 3 has been amended to insert clause (ba) which defines "board of directors" or "board". The term has been assigned the same meaning as that in Section 2(10) of the Companies Act, 2013- collective body of the directors of the company.

2. The definition of "general insurance business" has



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been amended. It earlier read as fire, marine or miscellaneous insurance business, whether carried on singly or in combination with one or more of them, but does not include capital redemption business or annuity certain business. Post-amendment, details of capital redemption business or annuity certain business have been excluded from the definition.

3. The term “general insurance business” has been assigned the meaning as that in the Insurance Act, 1938 which defines general insurance business under Section 2(6B) as fire, marine or miscellaneous insurance business, whether carried on singly or in combination with one or more of them.

4. The proviso to section 10B required a minimum of 51% shareholding of the Central Government in the general insurance companies specified above. Such proviso has been omitted vide the amendment. Thus, the mandatory requirement has been done away with.

5. The shareholding of the central government in such insurance companies may be reduced and be held by private entities. Vide this amendment, the Government will now be able to decrease its stake in the general insurance companies from 51% and the private companies can now hold the larger stake. This will, in effect, affect the ownership and control of the Central Government over the specified insurer.

6. Section 24B has been inserted. Section 24B lays down the procedure for companies where and when the central government ceases to have control, i.e., the law and procedure related to functioning of the specified insurer that will be privatised by virtue of the Central Government giving up its shareholding to the extent which shall be decided by the Government. It states that in respect of such specified insurer, the said Act shall cease to be applicable.

7. Under section 24B(2), the schemes formulated by the Central Government under the said Act shall be adopted by the board of directors but the same shall be subject to modifications or additions that may be made by the board.

8. Further, the powers of the central government in respect of the specified

insurer shall stand transferred to the board of directors. Thus, by virtue of such step, once the shareholding of the central government is transferred, the control, i.e., the right to appoint a majority of directors and the power over the management and policy decisions shall also stand transferred to the board.

9. Section 31A has been inserted which states the liability of director of specified insurer. It assumes liability on a director, not being a whole-time director in relation to acts or omissions committed with his knowledge, consent or connivance.

Conclusion

The amendment is a continuous step in the direction of promotion of the overall scheme of privatisation adopted by the current government in numerous sectors.

The current amendment is an oxymoronic change to the object of enactment of the said Act of 1972 since the powers are aimed at being concentrated back into the hands the private players in insurance business which the principal act actually sought to control or curtail.

The amendment has been criticised by the Opposition as well as the public on following key grounds:

1. Privatisation being detrimental to the large interest of the public in the insurance companies.
2. The safety of the crores of policy holders.
3. Loss of government’s dividend in the companies as the shareholding will decrease thus creating an overall economic impact.
4. The future of the employees and workers engaged with the insurers.
5. It is pertinent to mention that the privatization and sell off of the stakes of Life Insurance Corporation of India, the largest insurance company in India is/has been facilitated after the amendment.


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MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 19th August, 2021/ Sravana 28, 1943 (Saka)

The following Act of Parliament received the assent of the President on the 25th March, 2021, and is hereby published for general information:—

THE GENERAL INSURANCE BUSINESS (NATIONALISATION)

AMENDMENT ACT, 2021

NO. 37 OF 2021

[18th August, 2021.]

An Act further to amend the General Insurance Business (Nationalisation) Act, 1972.

BE it enacted by Parliament in the Seventy-second Year of the Republic of India as follows:—

Short title and
commencement

1. (1) This Act may be called the General Insurance Business (Nationalisation) Amendment Act, 2021.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In section 3 of the General Insurance Business (Nationalisation) Act, 1972 (hereinafter referred to as the principal Act),— 57 of 1972

Amendment
of section 3.

(i) after clause (b), the following clause shall be inserted, namely:— '(ba) "board of directors" or "board",

in relation to a specified insurer, shall have the same meaning as assigned to it in clause (10) of section 2 of the Companies Act, 2013;'

(ii) in clause (c), for the words and figures "the Companies Act, 1956", the words and figures "the Companies Act, 2013" shall be substituted;

(iii) for clause (g), the following clause shall be substituted, namely:— '(g) "general insurance business" shall have the same meaning as assigned

to it in the Insurance Act, 1938;'

18 of 2013.

(iv) in clause (h), for the word and figures "section 617", the words, brackets and figures "clause (45) of section 2" shall be substituted;

(v) after clause (o), the following clause shall be inserted, namely:— '(oa) "specified insurer" means the Corporation as defined in clause

(d) or any of the insurance companies specified in section 10A;'

Amendment
of section 9.

3. In section 9 of the principal Act, for the words and figures "the Companies Act, 1956", the words and figures

"the Companies Act, 2013" shall be substituted.

Amendment of
section 10B.

4. In section 10B of the principal Act, the proviso shall be omitted.

1 of 1956.

Insertion of
new section

5. After section 24A of the principal Act, the following section shall be inserted, namely:—

18 of 2013

24B.

'24B.(1) On and from the date on which the Central Government ceases to control any specified insurer, after the commencement

Cessation of
application of
Act.

of the General Insurance Business (Nationalisation) Amendment Act, 2021, the provisions of this Act shall cease

to apply in respect of that specified insurer.

(2) Notwithstanding anything contained in sub-section (1), on the date of cessation of applicability referred to in sub-section (1),—

(a) any scheme framed by the Central Government under sub-section (1) of section 17A in respect of the specified insurer referred to in sub-section (1) shall be deemed to have been adopted by the board of directors of such specified insurer:

Provided that the board of directors may make such additions, amendments or variations thereto, or frame

new policy in place of such scheme, as it may deem appropriate;

- (b) without prejudice to the generality of the power of the board of directors of the specified insurer under clause (a), all powers exercisable by the Central Government under a scheme framed by it in sub-section (1) of section 17A shall be exercisable by that board of directors.

Explanation 1.—For the purposes of this section, the expression "control" means the right of the Central Government, in relation to a specified insurer,— (i) to appoint a majority of its directors; or (ii) to have power over its management or policy decisions, by virtue of its shareholding rights or management rights under its articles of association or shareholders agreements or voting agreements or any other agreements executed with the specified insurer or any other person in relation to the specified insurer

Explanation 2.—For the removal of doubts, it is hereby clarified that—

- (i) the provisions of this section shall also apply to any rule, scheme, direction or notification made under this Act before the cessation of applicability;
- (ii) the cessation of applicability shall not revive anything that was not already in force or in existence under this Act or affect anything previously done or suffered under this Act;
- (iii) the board of directors of the specified insurer shall exercise the powers referred to in sub-section (2), subject to any requirement under any law for the time being in force.'

6. After section 31 of the principal Act, the following section shall be inserted, namely:—

- '31A. A director of a specified insurer who is not its whole-time director shall be held liable only in respect of such acts of omission or commission of the specified insurer which had been committed with his knowledge, attributable through board processes, and with his consent or connivance or where he had not acted diligently.

Explanation.—For the purposes of this section, the reference to "board" shall include committees of the board.'

Insertion of
new section
31A.
Liability of
director of
specified
insurer