



INDIAN INSTITUTE OF INSURANCE SURVEYORS AND LOSS ASSESSORS

(Promoted by IRDA, Govt. of India)

Ref: IIISLA/MOF/64UM/19-20

Date: 20-02-2020

IMPORTANT MESSAGE TO MEMBERS:

We have received a communication from MOF, calling for our comments on the proposal of IRDA to amend 64UM of the ACT, for the reasons mentioned in their (IRDA) letter dt.16-01-2020. We have discussed this issue at length in the last Board Meeting held on 05-02-2020. We have requested MOF to provide the copy of the letter of IRDA dt.16-01-2020, containing the proposals. However, the same is not yet received by us.

Meanwhile, we have prepared our draft response to the contents of the letter dt.03-02-2020 of the MOF. The letter dt.03-02-2020 of the MOF, our draft response (in different colour fonts) para wise of the letter are attached and uploaded on the website of IIISLA for perusal of the Members of IIISLA.

Kindly examine the contents and response, and provide us your suggestions for improvement of our draft response, if any. Please provide your response to email id: info@iisla.co.in (INFO AT IIISLA DOT CO DOT IN), latest by 25-02-2020.

Two other docs are also attached which contain a cover letter to 'Select Committee' and 'Issues', related to the topic, which contain some related information that would be helpful to develop our logic in response.

Please treat this as MOST IMPORTANT AND URGENT

Thanks & Regards,

(D. Chandrasekhara Raju)
President, IIISLA

F. No. H-14017/108/2013 - Ins.II (Part-I)
Government of India
Ministry of Finance
Department of Financial Services
(Insurance Division)

Jeevan Deep Building,
Sansad Marg, New Delhi.
Dated: 3rd Feb, 2020

To

CE, GIPSA, Delhi

Secretary General,
GI Council, Mumbai

President, Indian Institute of Insurance Surveyors & Loss Assessors,
6-1-73, Off No.104 & 106 First Floor, Saeed Plaza, Lakdikapool,
Hyderabad - 500 004 (Telangana)

Subject: Suggestions on amendment to Section 64 UM of Insurance Act 1938 – reg.

Sir,

This is with reference to letter dated 16-01-2020 from Executive Director, IRDAI on the above cited subject.

2. Through the letter it has been informed that intermediary Surveyors are to be licensed under the Insurance Act, 1938. However by making IIISLA membership mandatory under section 64 UM, there is an overlap between the jurisdiction of IRDAI and IIISLA which is creating a problem. Therefore IRDAI has suggested that in order to ease the norms of entry to become Surveyor and Loss Assessor, section 64UM of Insurance Act 1938 may be amended as under:

“Save as otherwise provided in this section and the regulations made thereunder, no person shall act as a surveyor or loss assessor in respect of general Insurance business. The Authority shall issue one-time registration to act as a surveyor or loss assessor upon satisfactory fulfilment of the qualification and other criteria specified in the regulations issued by the Authority.”

3. IRDAI is of the view that the suggested amendment would ensure the following :

- a) Doing away with licensing under Section 64 UM of Insurance Act, 1938, as various Committees of Government of India had already recommended for the same. IRDAI will only specify qualifications and code of conduct and grant one-time registration with annual fee;
- b) Doing away with IIISLA membership as mandatory provision under Section 64 UM of Insurance Act, 1938 for ease of registration. The membership related issues can be made part of the IRDAI (Surveyors and Loss Assessors) Regulations as was specified prior to Insurance Laws (Amendment) Act, 2015.

4. It is requested that your comments on the proposal of IRDAI may please be furnished to this Department immediately.

Yours faithfully



(K. B. Nayyar)

Under Secretary to the Govt. of India
Tel.No.23748789

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Before attempting to make any comment on the above proposal of the Regulator, it needs to be examined as to what exactly the amended Act (as of 2015) is saying;

Amended Act 2015	Prior to Amendment
64UM. (1) Save as otherwise provided in this section, no person shall act as a surveyor or loss assessor in respect of general insurance business after the expiry of a period of one year from the commencement of the Insurance Laws (Amendment) Act, 2015, unless he— (a) possesses such academic qualifications as may be specified by the regulations made under this Act; and (b) is a member of a professional body of surveyors and loss assessors, namely, the Indian Institute of Insurance Surveyors and Loss Assessors: Provided that in the case of a firm or company, all the partners or directors or other persons, who may be called upon to make a survey or assess a loss reported, as the case may be, shall fulfil the requirements of clauses (a)	64UM (1) (A) Save as otherwise provided in this section, no person shall act as a surveyor or loss assessor in respect of general insurance business after the expiry of a period of one year from the commencement of the Insurance (Amendment) Act, 1968, unless he holds a valid licence issued to him by the Authority. (B) Every person who intends to act as a surveyor or loss assessor after the expiry of a period of one year from the commencement of the Insurance (Amendment) Act, 1968, but before the commencement of the Insurance Regulatory and Development Authority of India Act, 1999, shall make an application to the Authority within such time, in such form, in such manner and on payment of such fee, not exceeding rupees two hundred and fifty, as may be prescribed. (BA) Every person who intends to act as a surveyor or loss assessor after the expiry of a period of one year from the commencement of the Insurance Regulatory and Development Authority of India Act, 1999 shall make an application to the Authority within such time, in such manner and on payment of such fee as may be determined by the regulations made by the Authority; Provided that any licence issued immediately before the commencement of the Insurance Regulatory and Development Authority of India Act, 1999 shall be deemed to have been issued in accordance with the regulations providing for such licence.

and (b).	
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Thus it is the requirement of **"he holds a valid licence issued to him by the Authority."** got replaced by **"(a) possesses such academic qualifications as may be specified by the regulations made under this Act; and (b) is a member of a professional body of surveyors and loss assessors, namely, the Indian Institute of Insurance Surveyors and Loss Assessors:"**

Here, we can see that there is no overlap of any authority. Role of the Authority is to prescribe "Qualifications", which can be done by simple "notification" or as "One time Registration", as a validation criterion. Such qualified applicants only are admitted as "Members of IISLA", subject to its "Admission Criterion" devised by IISLA.

However, the clauses of 64UM(4) and 64UM(10) are not amended to reflect the replacement of licensing criterion, as above; which is being quoted as if the licensing is not replaced.

It should also be considered that; while our delegation represented before select committee of Parliament in 2015, they represented that our body having only independent surveyors. Our AOA is only for independent surveyors who are essential requirement for justice to policy holders. Complete select committee members were agreed with this point. They advised to MOF officials present to take note of the same, and it was the main reason to include IISLA in insurance act 2015.

41st Standing committee also was of the view that in the interest of policy holders, each and every claim under a policy should be assessed by independent surveyor only.

3. IRDAI is of the view that the suggested amendment would ensure the following :
a) Doing away with licensing under Section 64 UM of Insurance Act, 1938, as various Committees of Government of India had already recommended for the same. IRDAI will only specify qualifications and code of conduct and grant one-time registration with annual fee;

The Act has already done away with licensing by amending 64UM(1), through amended Act 2015, as quoted above. However, the sub clauses of 64UM (4) and (10) are to be properly worded to fall in line with the amended clause of 64UM(1).

Authority is already empowered through the above amendment to prescribe the qualifications in the Regulations made under the Act. One time registration as a validation criterion can as well be made in the Regulations, and for that purpose there is no need to amend the Act. When one time registration is proposed by the Authority, as a validation criterion, there is no need for annual fee.

b) Doing away with IISLA membership as mandatory provision under Section 64 UM of Insurance Act, 1938 for ease of registration. The membership related issues can be made

part of the IRDAI (Surveyors and Loss Assessors) Regulations as was specified prior to Insurance Laws (Amendment) Act, 2015.

This is the crux of the problem. Why the Authority is making such proposal? How mandatory membership of IISLA, is an obstacle to bring in 'one time registration' as a validation criterion? Qualification aspect has a place in Regulations made under the Act, and the Regulations are well within the scope and authority of IRDAI, and hence this proposal is obnoxious or superfluous.

Mandatory provision of IISLA membership under 64UM of the Act is in right place, and we do not see any reason why it should be moved to Regulations made under the Act. Regulations are under the scope of the Regulator and this will be a retrograde step for IISLA to develop itself into a Self Regulatory Organisation like ICAI, ICSI etc., the original scope envisaged for IISLA by various Committees.

Membership issues of IISLA, cannot be moved into Regulations made by the Authority, as such move in fact creates hurdles due to dual control of issues by IRDAI and IISLA. IISLA should be allowed to develop itself into SRO, by devising various 'fit & proper' criterion of its membership related issues and governance; as laid in its M & AOA, Code of Ethics etc.

Proposal of IRDAI itself indicates a retrograde step, since they want to go back to prior to amended Act of 2015. Several committees have recommended IISLA be developed on the lines of ICAI, as a SRO. Select Committee has studied the issue in depth and have recommended the mandatory membership of IISLA, which is now in place through amended Act 2015. Hence, the proposal of the IRDAI to move the membership issues to Regulations be dropped as such proposal is not placed on logic and have no legs to stand. We are of the opinion that the Parliament decision reflected by the amended Act 2015 has to be respected, and there is no reason as to why the membership issues of IISLA be diluted and complicated by moving it to Regulations.

4. It is requested that your comments on the proposal of IRDAI may please be furnished to this Department immediately.

The following enclosures are submitted, which may be perused to have holistic view of our stand, which has been consistent and objective.

Encl: (i) Cover Ir to select Committee

(ii) Issues:

Place:

Date:

To
The Honourable Members.,
Select Committee on Finance Bill – 2014,
Rajya Sabha Secretariat, New Delhi.

Respected Sirs,

Sub: Amendments proposed in Insurance Bill 2014 – Clause 86 (New)- 64UM –
Representation submitted.

I, (Name) R/O. (Place), am an Insurance Surveyor and Loss Assessor (SLA), licensed and practicing since last .. years. I am part of the General Insurance Industry, where the insured clientele get my service, through appointment (by insurer or insured) to assess a claim against a policy held by him, in an unfortunate situation of an accidental loss to his property or belongings, so insured. I have noted that the Parliament is seized of the matter to consider the amendment to the Insurance Act 1938 through the Bill 2014, and am submitting my view point on issues related to the profession of SLAs. Memorandum is submitted as enclosure to this cover letter and I would summarise my submissions in the following few lines.

Insurance Surveyor and Loss Assessor (SLA) is a statutory entity in General Insurance industry, who is the only authorized person to quantify the loss incurred by a policy holder. Interpretation of policy terms, coverage aspects and quantification of loss incurred by the policy holder are well justified by an independent statutory entity – SLA – who is not a part of either party to the insurance contract (insured or insurer).

The need to have an independent SLA, to be in the interest of policy holders has been submitted earlier to the 41st Standing Committee on Finance, headed by Honourable Sri Yashwanth Sinha ji, whose report and conclusion accepted our view point and recommended to the Govt. The conclusion and Recommendation of the Committee may please be studied, and an appropriate substantiation may be provided to the law makers to ensure that;

- The SLA be independent entity not aligning with either party of insurance contract.
- The institute of insurance surveyors (IIISLA) be moulded as a self regulating body for the profession, on the lines of ICAI.
- The empowerment of SLAs may be continued in the Act only, since there is no point in moving to the Regulations under IRDA, when IIISLA is to be made a self regulating body.

Committees viz; Malhotra Committee (1994), Bhandari Committee (2002) have recommended that there should be a professional body for the profession of SLAs, which would function as a self regulating body, and in due course of time charter to such Institute should be conferred like in the case other institutions – ICAI.

41st Standing Committee on Finance headed by Honorable Sri Yashwanth Sinha recommended that;

1. SLA needs to be independent to be in the interest of insuring public and
2. IIISLA should be strengthened to be a self regulating body to the profession.

FSLRC which has reviewed various regulations proposed / made in financial sector has recommended that the institution IIISLA should be given statutory recognition as a professional body responsible for the licensing and supervision of Surveyors and Loss Assessors.

The expert opinion and the intension of the Act itself envisaged that the entity of SLA be an independent functionary, not aligning with either of the parties to the insurance contract.

While so, it is a matter to be seriously considered that whether there is a need to move the empowering of SLAs from the Act to the Regulations, by amending the Act as proposed. By doing so, what is sought to be achieved?

In our opinion, such a move only dilutes the status of the SLA as an important intermediary in the General Insurance industry, and undermine the importance of IIISLA to develop into a self regulating body. The dual control of SLAs by IRDA and IIISLA as regulators of SLAs often leads to conflict of interest and growth and development of the profession would be hampered.

The experience of industry and stake holders in the industry needs to be taken into consideration in contemplating any changes in the statute, which of course is being ensured by the Govt., in the present case, by giving us an opportunity to submit our views for the proposed amendment in the Act.

The insured has no role to play (except to decide whether to insure or not) in framing the policy wordings, clauses of what is covered and what is not, premium payable and so on. In all these, the insurer takes the call as per file & use norms approved by the Regulator. The various clauses, warranties, exclusions are not easily understood by even the well educated in the society, unless one has the exposure to the industry norms and practices.

It is only at the time of a claim all these come into focus and it is left to the SLA to take the call of handling the situation to match the expectations of both the insured, and insurer while keeping in view the regulatory norms prescribed by IRDA, and within the legal frame work of the Govt. Such a task cannot be handled by any entity unless one has the requisite in-depth knowledge, judicious approach backed by appropriate authority.

Here we may have to bring to the notice of the 'Select Committee Members', the role of IRDA as a regulator, as far as the profession of SLA is concerned.

1. IRDA has deviated in devising the licensing procedure in the Regulations 2000, from the Act. While the Act specified only "Approved Surveyor" be it a firm or individual, the Regulator brought in new terminology "Corporate Surveyor" charging higher license fee,

thus creating a different class of SLAs., and industry started special / preferred consideration for survey job assignments.

2. IRDA Act 1999 laid down the “Duties, Powers and Functions of Authority” as at Chapter IV – item 14.

In practice however, IRDA has either over reached or did not act upon the duties assigned; as far as the issues of “SLAs” are concerned. Categorization of SLAs into A, B and C grades and fixing up “Financial Limits” for the jobs that can be handled by the respective grades; and restriction of departments to only 3, though they were already practicing in more than 3 departments; are the examples of what the Authority carried out though there is no such power or duty assigned to Authority for such an exercise, under the IRDA Act.

FDIs mentioned in surveyor regulations 2013 is one such topic that require to be analyzed. It is not understood as to why FDIs are needed in SLA profession. SLA is a profession which is knowledge and individual based, and not much capital is involved in setting up and practicing the profession.

The happenings in the industry; like licensing of employees of insurers to act as SLAs, Insurers entering into MOUs with the repairers which do not form part and parcel of insurance policy, Repairers, Brokers appointing the SLAs for survey jobs – against the directions of IRDA; are examples of lack of control in the industry which may lead to large scale “siphoning out of fund” from the insurance pool.

It is therefore appealed in the right earnest to the honorable members of “Select Committee on Insurance Bill 2014”, who are the members of highest policy making body of Parliament in the country, that our submissions as above may please be taken into consideration and also learned opinion of various committees on the subject matter; and recommend to the effect that;

1. **The statutory status of SLA is retained in the Act itself.**
2. **The status is further strengthened to remove the ambiguity or misinterpretation by certain interests; to the effect that SLA means – licensed independent practicing SLA.**
3. **Remove the no survey limit of claims below Rs.20,000 and incorporate in its place to mean “All Claims”.**
4. **Regulations making power be vested with the professional body of SLAs., viz; INDIAN INSTITUTE OF INSURANCE SURVEYORS AND LOSS ASSESSORS. IIISLA in short.**
5. **Recommend to Confer Chartered status to IIISLA, by devising an appropriate ‘road map’ for the purpose.**

Should the honourable members feel it necessary that a personal presentation is calledfor, I would be able to present myself for the purpose, and clarify or supplement the submission placed in this Memorandum.

With kind regards,
Yours sincerely,

Encl:

1. Memorandum:
2. Annexure – A: Section 64UM as in the existing Act.
3. Annexure – B: Gazette Notification page – 1968.
4. Annexure –C: Report of 41st Standing Committee on Finance.
5. Annexure – D: Extract of 41st Committee Report - Page 173 to 178.
6. Annexure – E: IRDA Act – Ch IV.
7. Annexure – F: Excel Sheet showing the existing & proposed provisions of 64UM.

Issue	Present Status	Pit falls / short comings in the present status	Proposed Improvements
<p>Process and associated timelines in grant/renewal of Membership. How does IISLA seek to improvise/upgrade the current system of grant/renewal of membership. further , How does IISLA capture details of erring surveyors while grant/renewal of membership.</p>	<p>Application for new membership or upgradation are routed through Units, Chapters, Zones & to CC</p>	<p>(i) No guidelines, no time frame, no tracking facility, no feed back. (ii) Rampant with personal choice rather than system driven</p>	<p>1. HO, Zones, Chapters will have adequate full time executive in place. 2.Applications submitted at unit / chapter level, (preferably at Ch level for having more holistic approach) shall send an advance copy to HO. Ch shall clear in 7 working days, with their remarks / recommendation. Zones in another 7 working days. HO shall keep track and keep the applicant updated for any short falls and / or status. Finally within 30 days, the membership shall be decided either way, with reasons if not approved. 2. Upgradation will have similar time frame of approvals. 3.In due course of time this will be automated through Mobile app. 4. GRA, Vigilence will be set up to resolve issues amongst insurer-SLA-Insured; and to monitor compliance and ethical behaviour of SLAs.</p>

<p>How has the participation of IRDAI been in the Board Meetings of IISLA and the reasons for the same.</p>	<p>To be precise: Like Dreams never come True:</p>	<p>Position of Director in IISLA does not appear to be an appealing proposition for the nominee directors. There is clear lack of will or sense of belonging, to pursue IISLA objectives. Whenever attended, though scarce, they preferred to play the role of parent department rather than as IISLA Directors.</p>	<p>Presence of such vital officials from IRDA, MOF and GI Council Chairman(ex-officio): in the BOD of IISLA should pave way for clearing obstacles, if any for pursuing the objectives of IISLA. For ex. IRDA has accepted way back in the year 2008, that the restriction of departments to 3 for those eligible to practice in more as at the time of categorisation, will be removed. However, this has not taken shape even after almost a decade by now. Categorisation was introduced in the year 2000 with grades A,B,C imposed on the SLAs. This was supposed to be reviewed periodically, which never happened thereafter. Later when IISLA was formed and its membership was supposed to be the parameter of standing of SLA; logically the Categorisation of A,B,C should have been notified as withdrawn, duly restoring the eligible departments to the qualified SLAs as at the time of categorisation 2000. Instead, the IRDA regulation tried to replace the A,B,C with F(fellow), A(Associate), L(Licentiate); thus creating more problems to IISLA as its AOA does not provide for Licentiate membership.</p>

Possible reasons for non holding of elections	Membership disputes, Court cases	membership validation criterion changed abruptly with introduction of Compulsory Benevolent Fund, besides the annual subscription that the members have to pay. Such change has been objected to by considerable number of members, and when eligible voters list was published, there was court case challenging the notification. There was also delay in appointment of Election Officer by IRDA, and furnishing	We will resolve the membership validation criterion by strictly following the provisions of AOA, and will also coordinate with IRDA for timely appointment of EO.

<p>Details of education and training programs/examinations/conferences/workshops conducted by IISLA to promote the profession amongst its members and for upgrading their skills and knowledge during the last 2 years.</p>	<p>Several seminars / training programs are organised across the Country for the benefit of its members for upgradation of skills.</p>	<p>Lack of infrastructure in training facilities like class rooms, teaching aids, uniform syllabus, dedicated faculty are the constraints; which left the program more to the enterprise of organisers rather an institutional effort.</p>	<p>Educational Board will be constituted to evolve uniform syllabus / training material modules for various topics / subjects. Zonal Councils will be assigned the role with Educational activities / training programs / seminars as focus area. Chapters will execute such programs under the supervisions of Zones, while the CC will evolve a Calender and uniform syllabus with the consultation of Educational Board.</p>

<p>A note on the proposed training institute for surveyors to be set up by IISLA on lines of Insurance Institute of India and other such institutes and suggestions w.r.t how to raise the reputation of Surveyors as a profession and make it more attractive.</p>			<p>IISLA would eventually evolve itself as an institution catering to the training, apprenticeship, articleship, CPD for the members to become competent SLAs. Here the holding of hand by the Industry stakeholders, as opined by various committees, while recommending formation of IISLA, is an essential ingredient that should help. Any profession would evolve, stabilize and standardise, if it can attract fresh talent at a reasonable continuum of inflow. For this to happen the profession should create opportunities to its practitioners, an assured remuneration commensurate with the talent, skills, workload etc. However, an assured income, much less an assured work opportunity appear to be not in practice in the profession. Regrettably the Regulator has not paid any attention to this aspect, though approached by IISLA several times. Violations in the Industry by deploying employees of Insurers for loss assessment-unmindful of conflict of interest, MOUs in Motor tie-up business predetermining the labour charges which is nothing but - treading on the toes of SLA profession;</p>
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