

Securities and Insurance Laws (Amendment and Validation) Act, 2010

February 15, 2013

SECURITIES AND INSURANCE LAWS (AMENDMENT AND VALIDATION) ACT, 2010¹

[No. 26 of 2010]

[20th August, 2010}

An Act further to amend the Reserve Bank of India Act, 1934, the Insurance Act, 1938, the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992

Be it enacted by Parliament in the Sixty-first Year of the Republic of India as follows—

1. Received the assent of the President on August 20, 2010 and published in the Gazette of India, Extra., Part II, Section 1, dated 23rd August, 2010, pp. 1-4, No. 34

Prefatory Note—Statement of Objects and Reasons.

The Securities and Exchange Board of India Act, 1992 was enacted, inter alia, to provide for the establishment of a Board to protect the interests of investors in securities and to promote the development of, and to regulate, the securities market and for matters connected therewith or incidental thereto. The Insurance Act, 1938, inter alia, contains the law relating to the business of Insurance and the Insurance Regulatory and Development Authority Act, 1999 was enacted, inter alia, to provide for the establishment of an Authority to protect the interests of holders of insurance policies, to regulate, promote and ensure orderly growth of insurance industry and for matters connected therewith or incidental thereto.

2. The Securities and Exchange Board of India (SEBI) issued on the 9th April, 2010, an order against certain insurance companies directing them not to issue any offer document, advertisement, brochure soliciting money from investors or raise money from investors by way of new or additional subscription for any product including ULIPs having an investment component in the nature of mutual funds, till they obtain the requisite certificate of registration from the SEBI. The differences of opinion relating to jurisdiction of the SEBI and the Insurance Regulatory and Development Authority (IRDA) in respect of hybrid or composite instruments or units (by whatever name called) which provides a component of investment and a component of insurance issued by an insurer had arisen.

3. In order to clear uncertainties on the differences of opinion relating to jurisdiction of the securities market regulator, i.e., the SEBI and the insurance regulator, i.e., the IRDA it has become necessary to clarify that the "life insurance business" also include any unit linked insurance policy and accordingly to amend the Insurance Act, 1938, the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992 for the said purpose.

4. In order to address the differences of opinion among certain statutory regulators which may arise in future, it was felt necessary to set up a joint mechanism, consisting of the Union Finance Minister as its Chairperson, and Governor, the Reserve Bank of India (RBI), the Chairperson, Secretary, Department of Economic Affairs, Secretary (Financial Services) and Chairpersons of



the Insurance Regulatory and Development Authority, Securities and Exchange Board of India and the Pension Fund Regulatory and Development Authority (PFRDA) as its members, for resolving future differences of opinion as to whether any hybrid or composite instrument, having a component of insurance or any other investment or securities market instrument or a component of money market instrument falls within the jurisdiction of the IRDA or SEBI or RBI or PFRDA.

5. As both Houses of Parliament were not in session and immediate action was required to be taken, the President promulgated the Securities and Insurance Laws (Amendment and Validation) Ordinance, 2010 on the 18th June, 2010 to achieve the above objectives.

6. The Bill seeks to replace the aforesaid Ordinance.

CHAPTER I

PRELIMINARY

1. Short title and commencement.

(1) This Act may be called the Securities and Insurance Laws (Amendment and Validation) Act, 2010.

(2) It shall be deemed to have come into force on the 18th day of June, 2010.

CHAPTER II

AMENDMENT TO THE RESERVE BANK OF INDIA ACT, 1934

2. Insertion of new Chapter III-E in Act 2 of 1934.

After Chapter III-D of the Reserve Bank of India Act, 1934, the following chapter shall be inserted, namely—

“CHAPTER III-E

JOINT MECHANISM

45-Y. Joint Mechanism.—

(1) Notwithstanding anything contained in this Act or the Securities and Exchange Board of India Act, 1992 (15 of 1992) or any other law for the time being in force, if any difference of opinion arises as to whether—

(i) any instrument, being derivative referred to in clause (a) or money market instrument referred to in clause (b) or repo referred to in clause (c) or reverse repo referred to in clause (d) or securities referred to in clause (e) of Section 45-U of this Act; or

(ii) any instrument, being policy of life insurance under the Insurance Act, 1938 (4 of 1938) or the rules or regulations made thereunder, or scrips or any other securities referred to in sub-clauses (i), (ia), (ib), (ic), (id), (ie), (ii), (iia) and (iii) of clause (h) of Section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956),



is hybrid or composite instrument, having a component of money market investment or securities market instrument or a component of insurance or any other instrument referred to in clause (i) or clause (ii) and falls within the jurisdiction of the Reserve Bank of India or the Securities and Exchange Board of India established under Section 3 of the Securities and Exchange Board of India Act, 1992 (15 of 1992) or the Insurance Regulatory and Development Authority established under Section 3 of the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999) or the Pension Fund Regulatory and Development Authority constituted by the Resolution of the Government of India Number F.No. 1(6) 2007-PR, dated the 14th November, 2008, such difference of opinion shall be referred to a Joint Committee consisting of the following, namely—

(a) the Union Finance Minister	ex officio Chairperson
(b) the Governor, Reserve Bank of India	ex officio Vice-Chairperson
(c) the Secretary, Department of Economic Affairs in the Ministry of Finance, Government of India	ex officio Member;
(d) the Secretary, Department of Financial Services in the Ministry of Finance, Government of India	ex officio Member;
(e) the Chairperson, Insurance Regulatory and Development Authority	ex officio Member
(f) the Chairman, Securities and Exchange Board of India	ex officio Member;
(g) the Chairperson, Pension Fund Regulatory and Development Authority	ex officio Member;

(2) The Secretary, Department of Financial Services in the Ministry of Finance, Government of India shall be the convener of the meetings of the Joint Committee referred to in sub-section (1).

(3) In case of any difference of opinion referred to in sub-section (1), any Member of the Joint Committee referred to in clauses (&), (e), if) or (g) of that sub-section may make a reference to the Joint Committee.

(4) The Joint Committee shall follow such procedure as it may consider expedient and give, within a period of three months from the date of reference made under sub-section (3), its decisions thereon to the Central Government.

(5) The decision of the Joint Committee shall be binding on the Reserve Bank of India, the Securities and Exchange Board of India, the Insurance Regulatory and Development Authority and the Pension Fund Regulatory and Development Authority."

CHAPTER III

AMENDMENT TO THE INSURANCE ACT, 1938

3. Amendment of Section 2 of Act 4 of 1938.

In the Insurance Act, 1938, in Section 2, after clause (11), the following Explanation shall be inserted and shall be deemed to have been inserted with effect from the 9th day of April, 2010, namely—

'Explanation.—For the removal of doubts, it is hereby declared that "life insurance business" shall include any unit linked insurance policy or scrips or any such instrument or unit, by



whatever name called, which provides a component of investment and a component of insurance issued by an insurer referred to in clause (9) of this section.’

CHAPTER IV

AMENDMENT TO THE SECURITIES CONTRACTS (REGULATION) ACT, 1956

4. Amendment of Section 2 of Act 42 of 1956.

In the Securities Contracts (Regulation) Act, 1956, in Section 2, in clause (h), after sub-clause (id), the following Explanation shall be inserted and shall be deemed to have been inserted with effect from the 9th day of April, 2010, namely—

‘Explanation.—For the removal of doubts, it is hereby declared that “securities” shall not include any unit linked insurance policy or scrips or any such instrument or unit, by whatever name called, which provides a combined benefit risk on the life of the persons and investment by such persons and issued by an insurer referred to in clause (9) of Section 2 of the Insurance Act, 1938 (4 of 1938).’

CHAPTER V

AMENDMENT TO THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992

5. Amendment of Section 12 of Act 15 of 1992.

In the Securities and Exchange Board of India Act, 1992, in Section 12, in sub-section (1-B), the following Explanation shall be inserted and shall be deemed to have been inserted with effect from the 9th day of April, 2010, namely—

“Explanation.—For the removal of doubts, it is hereby declared that, for the purposes of this section, a collective investment scheme or mutual fund shall not include any unit linked insurance policy or scrips or any such instrument or unit, by whatever name called, which provides a component of investment besides the component of insurance issued by an insurer.”

CHAPTER VI

MISCELLANEOUS

6. Validation.

Notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority, the provisions of Section 2 of the Insurance Act, 1938 (4 of 1938) or Section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) or Section 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), as amended by this Act, shall have and shall be deemed to always have effect for all purposes as if the provisions of the said Acts, as amended by this Act, had been in force at all material times and accordingly any unit linked insurance policy or scrips or any such instrument or unit, by whatever name called, issued or purported to have been issued at any time before the 9th day of April, 2010, shall be deemed and always deemed to have been validly issued and shall not be called in question in any court of law or other authority solely on the ground that it was issued without a certificate of registration under any law for the time being in force or without following any procedure under any law for the time being in force, by an insurer or any other person.



7. Repeal and savings.

(1) The Securities and Insurance Laws (Amendment and Validation) Ordinance, 2010 (3 of 2010), is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the Reserve Bank of India Act, 1934 (2 of 1934) or the Insurance Act, 1938 (4 of 1938) or the Securities Contracts (Regulation) Act, 1956 (42 of 1956) or the Securities and Exchange Board of India Act, 1992 (15 of 1992), as amended by the said Ordinance, shall be deemed to have been done or taken under the corresponding provisions of those Acts, as amended by this Act.

