

## Lesson 9: Public Sector Entities

### 1. Government Companies

<b>Meaning of Government Companies</b>	<p>As per Section 2(45) of the Companies Act, 2013: “Government company” means any company in which not less than fifty-one per cent of the paid-up share capital is held by the Central Government or by any State Government or Governments or partly by the Central Government and partly by one or more State Governments and includes a company which is a subsidiary company of such a Government company.</p> <p><i>Note: The “paid up share capital” shall be construed as “total voting power” where shares with differential voting rights have been issued.</i></p>
<b>Exemptions</b>	<ul style="list-style-type: none"> <li>▪ The name of all Government Companies shall end with the word “Limited”, be it Public or a Private Company. The word “STATE” is allowed in name.</li> <li>▪ As per provisions of Section 56(1) of Companies Act, 2013 which is not applicable on Government Company in respect of securities held by nominees of the Government. The requirement of execution of an instrument of transfer (SH-4) and delivering the same to the company has also been done away with in case of transfer of securities held between nominees of the Government.</li> <li>▪ As per Second proviso of Section 56(1) of Companies Act, 2013, in case of transfer of Bonds issued by a Government Company, instrument of transfer is not required to be executed and delivered to the Company provided an intimation regarding the transfer supported by the details of the transferee and the relevant bond certificate and in case where it is not in existence then the letter of allotment is delivered to the Company.</li> <li>▪ Both <b>Sections 89 and 90</b> are not applicable to Government Companies.</li> </ul>

## 2. Insurance Regulatory and Development Authority

<b>Functions and Duties of IRDAI</b>  <b>(Section 14 of the IRDA Act, 1999)</b>	<ul style="list-style-type: none"><li>• Registering and regulating insurance companies</li><li>• Protecting policyholders' interests</li><li>• Licensing and establishing norms for insurance intermediaries</li><li>• Promoting professional organisations in insurance</li><li>• Regulating and overseeing premium rates and terms of non-life insurance covers</li><li>• Specifying financial reporting norms of insurance companies</li><li>• Regulating investment of policyholders' funds by insurance companies</li><li>• Ensuring the maintenance of solvency margin by insurance companies</li><li>• Ensuring insurance coverage in rural areas and of vulnerable sections of society.</li></ul>
<b>Procedure of Grant of Licenses and Registrations in following Functionalities of IRDA</b>	<p>To facilitate the regulatory regime of insurance business in India, IRDA is authorized to grant some licenses and issue registration for setting up insurance business in India. This procedure of grant of licenses and registrations is listed in following functionalities of IRDA:</p> <ul style="list-style-type: none"><li>• Granting of license to companies to start insurance business.</li><li>• Approval of insurance product.</li><li>• Appointment of different insurance intermediary.</li><li>• Investing the insurance premium.</li><li>• Accounting &amp; Audit.</li><li>• Miscellaneous important provisions of Insurance Act.</li></ul>
<b>Refusal of registration by IRDA</b>	<ul style="list-style-type: none"><li>• If the Authority refuses the registration the reason of such decision will be intimated to the applicant.</li><li>• Applicant whose application has been rejected can file an appeal before the Central Government within 30 days from the date on which a copy of the decision is received.</li></ul> <p><b><i>Note: The decision of the Government shall be final and shall not be questioned before any court.</i></b></p>

<b>Cancellation of Certificate of Registration By IRDA</b>	<table> <tr> <th data-bbox="432 230 932 271">Compulsory Cancellation</th><th data-bbox="932 230 1385 271">Voluntary Cancellation</th></tr> <tr> <td data-bbox="432 271 932 1496"> <p>The Authority is compulsorily required to cancel the registration of an insurer either wholly or in so far as it relates to a particular class of insurance business as the case may be:</p> <ul style="list-style-type: none"> <li>▪ If the insurer fails to comply with the provisions relating to deposits; or</li> <li>▪ If the insurer fails, at any time, to comply with the provisions relating to the excess of the value of his assets over the amount of his liabilities; or</li> <li>▪ If the insurer is in liquidation or is adjudged an insolvent; or</li> <li>▪ If the business or a class of the business of the insurer has been transferred to any person or has been transferred to or amalgamated with the business of any other insurer; or</li> <li>▪ If the whole of the deposit made in respect of the insurance business has been returned to the insurer;</li> <li>▪ If in the case of an insurer, the standing contract is cancelled or is suspended and continues to be suspended for a period of six months, or</li> <li>▪ If the Central Government of India so directs.</li> </ul> </td><td data-bbox="932 271 1385 1496"> <p>The Authority has the discretion to cancel the registration of an insurer:</p> <ul style="list-style-type: none"> <li>▪ If the insurer makes default in complying with, or acts in contravention of , any requirement of the Insurance Act or of any rule or any regulation or order made or, any direction issued there under, or</li> <li>▪ If the Authority has reason to believe that any claim upon the insurer arising in India under any policy of insurance remains unpaid for three months after final judgment in regular course of law, or</li> <li>▪ If the insurer carries on any business other than insurance business or any prescribed business, or</li> <li>▪ If the insurer makes a default in complying with any direction issued or order made, as the case may be, by the Authority under the IRDA Act, 1999.</li> </ul> </td></tr> </table>	Compulsory Cancellation	Voluntary Cancellation	<p>The Authority is compulsorily required to cancel the registration of an insurer either wholly or in so far as it relates to a particular class of insurance business as the case may be:</p> <ul style="list-style-type: none"> <li>▪ If the insurer fails to comply with the provisions relating to deposits; or</li> <li>▪ If the insurer fails, at any time, to comply with the provisions relating to the excess of the value of his assets over the amount of his liabilities; or</li> <li>▪ If the insurer is in liquidation or is adjudged an insolvent; or</li> <li>▪ If the business or a class of the business of the insurer has been transferred to any person or has been transferred to or amalgamated with the business of any other insurer; or</li> <li>▪ If the whole of the deposit made in respect of the insurance business has been returned to the insurer;</li> <li>▪ If in the case of an insurer, the standing contract is cancelled or is suspended and continues to be suspended for a period of six months, or</li> <li>▪ If the Central Government of India so directs.</li> </ul>	<p>The Authority has the discretion to cancel the registration of an insurer:</p> <ul style="list-style-type: none"> <li>▪ If the insurer makes default in complying with, or acts in contravention of , any requirement of the Insurance Act or of any rule or any regulation or order made or, any direction issued there under, or</li> <li>▪ If the Authority has reason to believe that any claim upon the insurer arising in India under any policy of insurance remains unpaid for three months after final judgment in regular course of law, or</li> <li>▪ If the insurer carries on any business other than insurance business or any prescribed business, or</li> <li>▪ If the insurer makes a default in complying with any direction issued or order made, as the case may be, by the Authority under the IRDA Act, 1999.</li> </ul>
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<b>Suspension of Registration by IRDA</b>	<p>The registration of an Indian insurance company or insurer may be suspended for a class or classes of insurance business in the following cases:</p> <ul style="list-style-type: none"> <li>▪ Conducting business in a manner prejudicial to the interests of the policy-holders;</li> <li>▪ Fails to furnish any information as required by the Authority relating to its insurance business;</li> <li>▪ Non submission of periodical returns as required under the Act or by the Authority;</li> <li>▪ Non co-operation in any inquiry conducted by the Authority;</li> <li>▪ Indulges in manipulating the insurance business;</li> <li>▪ Fails to make investment in the infrastructure or social sector as specified under the Insurance Act.</li> </ul>				

### 3. Banking

<b>Governing Act</b>	Licensing of Banking Companies is governed by Banking Regulation Act, 1949.
<b>Licensing of Banking Companies (Section 22)</b>	<p>(1) Save as hereinafter provided, no company shall carry on banking business in India unless it holds a license issued in that behalf by the Reserve Bank and any such license may be issued subject to such conditions as the Reserve Bank may think fit to impose.</p> <p>(2) Every banking company in existence on the commencement of this Act, before the expiry of six months from such commencement and every other company before commencing banking business in India shall apply in writing to the Reserve Bank for a license under this section.</p> <p>However, in the case of a banking company in existence on the commencement of this Act, nothing in sub-section (1) shall be deemed to prohibit the company from carrying on banking business until it is granted a license in pursuance of this section or is by notice in writing informed by the Reserve Bank that a license cannot be granted to it.</p> <p>However, the Reserve Bank shall not give a notice as aforesaid to be a banking company in existence on the commencement of this Act before the expiry of the three years referred to in sub-section (1) of Section 11 or of such further period as the Reserve Bank may under that sub-section think fit to allow.</p> <p>(3) Before granting any license under this section, the Reserve Bank may require to be satisfied by an inspection of the books of the company or otherwise that the following conditions are fulfilled, namely:</p> <ul style="list-style-type: none"><li>▪ That the company is or will be in a position to pay its present or future depositors in full as their claims accrue;</li><li>▪ That the affairs of the company are not being, or are not likely to be conducted in a manner detrimental to the interests of its present or future depositors;</li><li>▪ That the general character of the proposed management of the company will not be prejudicial to the public interest of its present or future depositors;</li><li>▪ That the company has adequate capital structure and earning prospects;</li><li>▪ That the public interest will be served by the grant of a license to the company to carry on banking business in India;</li><li>▪ That having regard to the banking facilities available in the proposed principal area of operations of the company, the potential scope for expansion of banks already in existence in the area and other relevant factors the grant of the license would not be prejudicial to the operation and consolidation of the banking system consistent with monetary stability and economic growth;</li></ul>

	<ul style="list-style-type: none"> <li>Any other condition, the fulfilment of which would in the opinion of the Reserve Bank be necessary to ensure that the carrying on of banking business in India by the company will not be prejudicial to the public interest or the interests of the depositors.</li> </ul>
<b>License to a Company Incorporated Outside India (Section 3A)</b>	Before granting any license under this section to a company incorporated outside India, the Reserve Bank may require to be satisfied by an inspection of the books of the company or otherwise that the conditions specified in sub-section (3) are fulfilled and that the carrying on of banking business by such company in India will be in the public interest and that the government or law of the country in which it is incorporated does not discriminate in any way against banking companies registered in India and that the company complies with all the provisions of this Act applicable to banking companies incorporated outside India.
<b>Cancellation of License</b>	<p>The Reserve Bank may cancel a license granted to a banking company:</p> <ol style="list-style-type: none"> <li>if the company ceases to carry on banking business in India; or</li> <li>if the company at any time fails to comply with any of the conditions imposed upon it under sub-section (1); or</li> <li>if at any time, any of the conditions referred to in sub-section (3) and sub-section (3A) is not fulfilled:</li> </ol> <p>However before cancelling a license under clause (ii) or clause (iii) of this sub-section on the ground that the banking company has failed to comply with or has failed to fulfil any of the conditions referred to therein, the Reserve Bank unless it is of opinion that the delay will be prejudicial to the interests of the company's depositors or the public shall grant to the company on such terms as it may specify and opportunity of taking the necessary steps for complying with or fulfilling such condition.</p>

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