

LEGALFOXES LAW TIMES

COMPARATIVE STUDY OF BANKING AND INSURANCE LAWS IN INDIA & UAE

By: Shreya Srivastava

ABSTRACT

As rules define a game, good laws similar to rules promote good behaviour, such as cooperation, creativity, and hard work. Among the various laws that we read about and that helps administering a Country, Banking and Insurance Laws are a major part. The concept of Banking can be in general referred to as economic activities that facilitate accepting and protecting the money that are the savings of individuals or any other entities, and then utilising that money for profit. Insurance on the other hand holds in its ambit the concepts of life insurance and other insurance. It refers to those activities wherein bodies or insurance corporations work with individuals and legal entities towards risk management in order to protect an individual assured against catastrophic losses and potential risks. This paper broadly focuses on a Comparative study of the Laws relating to Banking and Insurance in India as also in the United Arab Emirates.

KEYWORDS: Banking, Country, Catastrophic Losses, Economic Activities, Insurance, Law, Money, Potential Risk, Rules

Banking and Insurance Law in India

The structure of banking and insurance that is adopted in India is said to be the most stable network and also allows having easy access to other such global financial structures. The structure so followed in India is not stagnant and has continuously undergone and still going through a number of reforms with the changed circumstances where the situations demand more flexible rates of lending; or privatisation of banks which are majorly held by governments; or be it removal of restrictions on operations of Foreign Banks and many other Privately held banks. A financial scheme of a country like India which comprises of both the Banking and the Insurance Sector,

helps in a faster growth of the economy. One of the important features of Indian banks and insurance companies is that, one can take advantage of the growing domestic market while aspiring for global competitiveness.¹

In the Indian system of Banking, there is the Apex Bank, also referred to as the Reserve Bank of India which adopts and follows a very conservative approach which has for long helped India to stand out various financial crises that the world has been facing. The banking structure is still said to have a great and long term potential of growth with the rapid urbanization and the subsequent earnings of the Middle Income Groups.

If seen the data recorded for the year 2005-2010, as companies and other corporate entities focus on expansion and in turn availing frequent long term loans, it can be seen that there's immense surge in the credit demands of the banking structures.² There is also a second reason to the same, which is seen to be the increase in the expenditure of the middle class people towards various luxuries. This has increased the growth of the concept of retail banking in the country.

There is said to be certain indicators that showcases the strengths of the Banking Structure in India. These include a wide range of data for growth in the rates of Bank Deposits, Bank Credits, an increase in Per-Capita Credit, Credit-Deposit Ratio, the large-scale opening of new branches in the home country and many more, like the increase in the measure of Net Profits earned by the Banks all over, interest margin and increase in rate of return on Assets and many more for the Financial Years 2009-10 and 2012-13 when the world was facing recession.

Also, the **Pradhan Mantri Jan Dhan Yojana** launched by Prime Minister Narendra Modi in August 2014 helped to add 115 million accounts with 8,698 crore rupees in bank deposits.³

In the past few years, India has also experienced a hike in the limits of Portfolio investments in the banks handled privately as also in the rates of Foreign Direct Investments. This is seen as one major step towards reviving and developing financial stability and capitalization; also the capacity to manage risk.⁴

Coming to the **Insurance sector** in India, the history of insurance law can be seen to be dating back to the times of the Manusmriti, Yagnavalka Dharmashastra and Kautilya's Arthashastra all of which contains excerpts as to pooling of valuable resources over a period of time which could

¹ *Emily Frost*, INDIA'S BANKING AND INSURANCE SECTORS; Available at: <https://internationalbanker.com/banking/indias-banking-and-insurance-sectors/> [Accessed on 15 June, 2020]

² *Emily Frost*, INDIA'S BANKING AND INSURANCE SECTORS; Available at: <https://internationalbanker.com/banking/indias-banking-and-insurance-sectors/> [Accessed on 15 June, 2020]

³ The Economic Times, PM 'Jan Dhan' Yojana launched; 1.5 crore bank accounts opened in a day; Available at: <https://economictimes.indiatimes.com/news/economy/policy/pm-jan-dhan-yojana-launched-1-5-crore-bank-accounts-opened-in-a-day/articleshow/41093413.cms?from=mdr> [Accessed on 15 June, 2020]

⁴ *Emily Frost*, INDIA'S BANKING AND INSURANCE SECTORS; Available at: <https://internationalbanker.com/banking/indias-banking-and-insurance-sectors/> [Accessed on 16 June, 2020]

be utilised later in the times when unforeseen events occur that leads to loss and destruction such as natural calamities, fire, theft or robbery, etc. such a concept relates to what is today known as 'Insurance'. The first instance of the setting up of Life Insurance business was seen in 1818 when the Oriental Life Insurance Company was established in Calcutta. Subsequently in the year 1829, in the Madras Presidency the dealings of Life Insurance were initiated through the Madras equitable. The British Insurance Act was enacted in the year 1870, post which in the last three decades of the nineteenth century, the Bombay Mutual (1871), Oriental (1874) and Empire of India (1897) were set up in the Residency of Bombay.⁵

With time a number of foreign insurance companies came up to deal with insurance matters in India, such as Royal Insurance, London Globe Insurance, Albert Life Assurance, Liverpool, etc. The first statutory measure regulating life insurance was the Indian Life Assurance Companies Act, 1912. In 1938, with a view to protecting the interest of the Insurance public, the earlier legislation was consolidated and amended by the Insurance Act, 1938 with comprehensive provisions for effective control over the activities of insurers.⁶

Some Asia-Pacific Countries including India are currently termed as the key global players in the field of insurance business. Huge amount of population is one factor which leads to attracting the insurance business. The current worth of insurance in India is expected to achieve a haul of about 400% in the coming 10-12 years. Immense growth is seen in India's Life Insurance sector among other forms of Insurances.⁷

Banking and Insurance Law in UAE

Like the banking system of India, the one in United Arab Emirates is also one of the most reliable systems. UAE has the most developed infrastructure of Banking and Insurance with a very strict check of the government. Similar to the Reserve Bank of India, the Central Bank of United Arab Emirates is said to perform the functions of the "Banker's Bank".⁸ The finance system is not very easy to do away with, since it is not easy to acquire or obtain licence or grant for setting up or running a banking business. The Laws and regulations governing the banking system in UAE are smooth in their functioning. The banking structure consists of

⁵ CA RAJKUMAR S. ADUKIA, INSURANCE LAWS OF INDIA; Available at: <https://taxguru.in/wp-content/uploads/2012/11/insurance-hb-1101.pdf> [Accessed on 17 June, 2020]

⁶ CA RAJKUMAR S. ADUKIA, INSURANCE LAWS OF INDIA; Available at: <https://taxguru.in/wp-content/uploads/2012/11/insurance-hb-1101.pdf> [Accessed on 17 June, 2020]

⁷ *Emily Frost*, INDIA'S BANKING AND INSURANCE SECTORS; Available at: <https://internationalbanker.com/banking/indias-banking-and-insurance-sectors/> [Accessed on 17 June, 2020]

⁸ Banking Laws and Regulations in UAE; Available at: <http://www.companies-dubai.com/en/bank-accounts-in-dubai/255-banking-laws-and-regulations-in-uae> [Accessed on 18 June, 2020]

the Apex Bank i.e. the Central Bank and various local and foreign banks that operate in its periphery. At present, the count is of about 50 foreign banks and 20 national banks that are running successfully in the region. All of these banks are required to comply with the best drafted international standards thus in turn delivering best quality services.⁹

The various legislations that govern the banking systems of the United Arab Emirates include the Central Bank Law, 1980, Circulars relating to Anti-Money Laundering (AMLSCU), Law of Islamic banks, etc. The function of the Apex Bank is to regulate the entire financial system whereas the other bodies perform the functions of formulating monetary policy line, checking onto the banking regulations, managing currency, etc.

In the current era, UAE is considered to be among those handful of countries which recognizes the rights to confidentiality and privacy as the basic rights of individuals dealing with the banking institutions. The said is secured through legislations. UAE has also been ranked in the top 10 countries for observing such rights, as per the index of Tax Justice Network and Financial Secrecy for the year, 2015.¹⁰

Coming to the Insurance Law that prevails in the United Arab Emirates, it is said that such laws are governed by the Insurance law which is a Federal Law of UAE. Such law has been enacted in order to administer, control and manage Takaful insurance, general Insurance, Cooperative insurance, etc. The Insurance Authority looking after the insurance laws govern both the conventional insurance as also the shariah-complaint insurance.¹¹ Also, the Insurance disputes in UAE are capable of being settled through arbitration. Under Article 1028(1)(d) of the UAE Civil Transaction Code, an arbitration clause may not be included in an insurance policy, unless the



⁹ The new UAE Central Bank law; Available at: <https://www.lexology.com/library/detail.aspx?g=5f9dc8ed-4876-4e86-b9df-6212e6522962> [Accessed on: 21 June, 2020]

¹⁰ The new UAE Central Bank law; Available at: <https://www.lexology.com/library/detail.aspx?g=5f9dc8ed-4876-4e86-b9df-6212e6522962> [Accessed on: 21 June, 2020]

¹¹ UAE Insurance Law- Detailed overview; Available at: [https://www.stalawfirm.com/en/blogs/view/uae-insurance-law-detailed-overview.html#:~:text=Within%20the%20United%20Arab%20Emirates,2007%20\(the%20Insurance%20Law\).&text=The%20IA%20regulates%20both%20conventional,shariah%2Dcompliant%20insurance%2D%20Takaful.](https://www.stalawfirm.com/en/blogs/view/uae-insurance-law-detailed-overview.html#:~:text=Within%20the%20United%20Arab%20Emirates,2007%20(the%20Insurance%20Law).&text=The%20IA%20regulates%20both%20conventional,shariah%2Dcompliant%20insurance%2D%20Takaful.) [Accessed on: 21 June, 2020]

arbitration clause is contained in a special agreement separate from the general printed conditions of the insurance policy.¹²

CONCLUSION

To conclude with the paper, it can be said that UAE followed a Banking and Insurance system which is considered to be one among the finest in the world. The transactions are initiated or undertaken with utmost care and safety. The same is regulated and controlled in a planned way by the Central Bank of the United Arab Emirates. On the other hand, the banking and insurance system in India has with time underwent massive changes and it is observed that the coming years would pose serious challenges to its working. Alike UAE, India too has a stable financial system with proper check on to the banking and insurance sector, the same being governed by several Central laws and the RBI taking charge of all the banks within its territory and also handling relations with the Foreign Banks. In the near future, India is expected to face an upsurge in the Direct Financing prospect along with the major focus shifting on financing of infrastructure, marketing, technology up-gradation and service sector. As far as low cost funds for the bank are concerned, considerable interest savings are expected on account of repayment of high cost borrowings.



¹² Al Tamimi & Company, The legal framework for insurance disputes in United Arab Emirates; Available at: <https://www.lexology.com/library/detail.aspx?g=892c1c81-d408-46ce-92d5-3aef3ab6043b> [Accessed on: 21 June, 2020]