

# A Close Look at the Free-Look Option in Insurance Policies

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“Free-look period” provisions in insurance policies give to an insured the very important right to withdraw from his insurance contract that he has already concluded. These provisions enable him some time for thought so that he can take a conscious decision about ending the insurance contract. They protect him against hasty decisions.

Free-look period provisions are mandatory in life insurance policies,<sup>1</sup> and in health insurance policies that have a term of one year or more.<sup>2</sup> This option is an additional right. It is distinct from the right of an insured to cancel the policy under its terms during the period of the policy.

This article analyses free-look provisions in different statutory instruments that mandate the provision, and in sample policy wordings, brochures and free-look cancellation forms available for download from web-pages of insurers. Expectations of insured persons about free-look provisions are drawn from reported judgments, web complaint forums and articles in newspapers. The analysis shows that the free-look option of the insured gets circumscribed by additional conditions imposed by insurers through conditions that they incorporate in their policies and free-look cancellation forms. These additional conditions affect each aspect of free-look provision.

This article examines the true purpose of this provision and its use, and proceeds to posit that this provision gives to the insured an additional right to withdraw from the contract, and that it does not and cannot have the effect of terminating or extinguishing the rights of an insured under law.

In conclusion, this article suggests a new standard free-look provision.

## Mandatory free-look provisions

Mandatory free-look provisions were introduced for the first time in life insurance policies in 2002,<sup>3</sup> and in health insurance policies in 2009.<sup>4</sup> Such provisions are not

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Sukanya Natarajan of the fourth year of the five-year law-degree course at ILS Law College, collected and analysed product information, brochures, policy wordings and free-look cancellation forms.

<sup>1</sup> Regulation 6 of the IRDA (Protection of Policyholders Interest) Regulation 2002

<sup>2</sup> Regulation 5(g) of the IRDA Health Insurance Regulations 2013 as amended by the IRDA (Health Insurance) (First Amendment) Regulations 2014.

<sup>3</sup> by IRDA (Protection of Policyholders Interest) Regulation 2002

mandatory in other insurance policies. Statutory instruments that impose these provisions are discussed below.

***The IRDA (Protection of Policyholders Interest) Regulation 2002*** provide:

1. The insured has an option to return the policy;
2. He can do so within 15 days from the date he receives the policy document;
3. The time of 15 days provide him time to review the terms and conditions of the policy;
4. He can return the policy where he disagrees to any of those terms and conditions;
5. He must state the reasons for his objection;
6. If he does so, he is entitled to refund of the premium paid;
7. The insurer can deduct from the premium:
  - a. proportionate risk premium for the period on cover,
  - b. expenses incurred by the insurer on medical examination of the proposer,
  - c. stamp duty charges;
8. In case of unit linked policy, the insurer will repurchase units at the price on the date of cancellation.
9. The insurer must inform the insured about this option;
10. The insurer must inform in a letter forwarding the policy.

***IRDA Circular of 2 September 2009*** mandated<sup>5</sup> for the first time free-look provisions into health insurance policies (which include personal accident insurance and travel insurance) along the same lines as life insurance policies, with further provisions as follows:

1. The insured will have option to return the policy only at the first inception of the policy;
2. Free-look provision was mandatory only in policies of duration of three years or more; while such provision could be voluntarily included by insurers in policies of a shorter term;
3. The free-look provision shall be a part of the policy as a ‘special conditions attaching to the policy’;<sup>6</sup>
4. The insurer can deduct proportionate risk premium for the period of cover only if risk has commenced, and in proportion to the risk covered during such period.

***IRDA Health Insurance Regulations 2013*** revised some of these provisions as follows:

1. Free-look period shall apply to all health insurance policies (irrespective of their period)
2. The insured can return the policy if not acceptable;

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<sup>4</sup> by Circular No CIR / 41 / IRDA / Health / SN / 09-10 / 32 dated 02 September 2009 issued by IRDA.

<sup>5</sup> under section 14(1) and 14(2)(b) of the IRDA Act 1999.

<sup>6</sup> under section 7(m) of the IRDA (Protection of Policyholders’ Interests) Regulations, 2002

3. The insured can claim the refund if he has not made any claim during the free-look period;
4. In case of unit linked policy, the insurer can repurchase units at the price as on the date of return of the policy.

***IRDA Health Insurance (First Amendment) Regulations 2014*** made these provisions applicable to health insurance policies of a period of one year or more.

***The Guidelines issued by IRDA on Distance Marketing of Insurance Products of 2011***<sup>7</sup> require that standardized scripts prepared by insurers and brokers for presenting their products on distance marketing modes<sup>8</sup> shall provide for the right to cancel the policy within 30 days of receipt of the policy. This shall apply to the following policies offered by insurers over distance mode:

- (i) life policies and covers tied to credit or debit cards,
- (ii) all personal accident insurance policies and
- (iii) all health insurance policies with term of 3 years or more.<sup>9</sup>

***The Exposure Draft of IRDA (Protection of Policyholders' Interests) Regulations, 2014*** reiterates the free-look provisions stated earlier in the Regulations of 2002, but also proposes the following:

1. Giving information in the product prospectus about the rights of the prospect to avail of free look option.
2. Giving a statement in the Key Features Document :
  - a. the policy-holder's right of availing free-look option
  - b. the option is to cancel the policy
  - c. he can do so if his current understanding of terms and conditions of the policy make him decide so.

## **Aspects of mandatory free-look provisions**

Although the same principles underlie free-look provisions in different policies, there are significant differences in details. As provisions having the same purpose, these dissimilarities may appear insignificant. But in their operation and application, they can have different consequences. They are perceived in different ways.

These differences are stated and analysed below. For this purpose, sample policy wordings of one life and one health product of each insurer, and brochures and free-look cancellation forms are analysed to the extent these are available for download on the particular insurer's web-site. Conditions in some policies and procedures extend beyond those mandated by statutory instruments above, and are likely to impose costs and inconvenience upon the insured, or to deter him from the exercising the free-look option. Analysis of each aspect is followed by suggestions.

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<sup>7</sup> IRDA / ADMN / GDL / MISC / 059 / 04 / 2011 dated 05 April 2011

<sup>8</sup> through voice mode including telephone calling, short messaging service, emails, internet, interactive television, direct postal mail, newspaper and magazine inserts, and solicitation by any means of communication other than in person.

<sup>9</sup> later made applicable to health policies of term of one year or more.

### ***Documents that contain the provision***

The statutory instruments stated above differ in terms of the document in which the information of the free-look provision shall be given to the prospect / insured.

The Guidelines require that information and details about the free-look provisions shall be informed to the prospect / insured in the standardized scripts prepared by insurers for presenting their products on distance marketing modes. In case of life insurance, the provision shall be informed in the letter forwarding the policy.

Although the Policyholder Regulation (or the Exposure Draft) does not require that the provision be incorporated as part of the policy, many life insurance policies incorporate them. In health insurance policies (including personal accident and travel), the provision shall form part of the policy as a condition. The Exposure Draft proposes that the prospectus shall inform about the right to avail of the free-look option, and the Key Features Document shall inform him about the right to cancel the policy.

Since the prospect / proposer / insured should be fully aware of the existence and extent of his option, this author suggests that information about the provision be described in all of the documents mentioned above. Brochures and marketing literature including standardized scripts can state that such option is available. The letter forwarding the policy can draw attention to the option and the manner in which it can be exercised. The policy can state in detail the option to return the policy, and details of the time and manner of its exercise, its consequences, and the right of the insured to receive and liability of the insurer to return the premium. A free-look cancellation form can be annexed to the policy that can state the documents or other particulars required by the insurer so that it can process the refund of premium effectively and fast.

### ***Description and nature of the option***

The option is differently described: as an option to return the policy (Policyholder Regulation and Exposure Draft), allowing the insured to return the policy, which is a concession (Health Regulation), and a right to cancel the policy (Guidelines).

Although these free-look provisions are intended to give the same privilege to the insured, they appear differently in policy wordings. Thus where an insured is allowed a period of 15 days<sup>10</sup>, he will be expected to seek permission. If he has a right<sup>11</sup> or option<sup>12</sup> to cancel, he can himself exercise the right that will end the contract. If he has an option<sup>13</sup> to return the policy, it is expected to end only when it is received and cancelled by the insurer. Where the insured has to request for cancellation,<sup>14</sup> he has to

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<sup>10</sup> Cholamandalam Health, Future Generali, IFFCO Tokio

<sup>11</sup> Canara HSBC, Future Generali

<sup>12</sup> Apollo Munich, Bajaj Allianz Health, Bharati Axa, HDFC Ergo, Liberty Videocon, L&T Insurance, Max Bupa Health,

<sup>13</sup> ICICI Lombard, Aviva Life, Bharti AXA, Birla Sun Life, Exide Life, Max Life, Star Union, Aegon Religare Life, Future Generali, ICICI Prudential, Reliance Life,

<sup>14</sup> DHFL, Edelweiss Tokio Life,

await cancellation by the insurer. Another insurer will give to the insured a period of 15 days.<sup>15</sup> One policy seeks to keep the power of cancellation with the insurer.<sup>16</sup>

The author suggests that the terms across legislative instruments and all documents and literature made by the insured shall be aligned.

### ***Commencement of free-look period***

All statutory instruments mentioned above and all brochures and policies of insurers uniformly state that the free-look provision commences on the date of receiving the policy. One insurer makes it dependent on the receipt of the welcome kit in case of the new Electronic Insurance Account, or on the delivery date of the email confirming the grant of access to the EIA.<sup>17</sup> These provisions are clear and unambiguous.

Differences about the commencement date arise where the original policy is received by the insurance agent and not the insured. The free-look provision contemplates that the insured will have read the terms of the policy before he decides to end the policy. Hence the free-look period shall begin only after the insured has received the policy document, and not when the agent has received it.

In case of dispute, the date the insured received the policy must be proved. The burden of proving the date of receipt of the policy lies on the insured. This is a difficult burden to discharge, because in most cases, evidence to support receipt of the policy will merely be the insured's statement. On the other hand the fact that a letter has been delivered is capable of objective evidence, viz a signed acknowledgment, which will be in custody of the insurer. The insurer is in a better position to prove delivery than the insured. The insurer should not be absolved of the task of proving delivery of the policy to the insured if the insurer has documents that will prove delivery. In any case the initial burden that the policy was sent must lie on the insured, because the evidence that the policy was sent is a fact within the special knowledge of the insurer.

The policy is an important document. The insurer can be required to send the policy to the insured by registered post or by any other mode that records delivery. This will not only ensure delivery, but also provide evidence of delivery.

### ***Effective date of cancellation***

None of the statutory instruments have a provision stating the effective date of cancellation of policy. Nor is there a mention of such date in the policies, the brochures or free-look cancellation forms.

This date is important because (i) risk until such date is covered, (ii) proportionate premium applicable to such period shall be deducted before returning the premium to the insured and (iii) the price at which units in a unit-linked policy will be repurchased should be reckoned with reference to such date. As regards unit-linked

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<sup>15</sup> ICICI Lombard

<sup>16</sup> Future Generali

<sup>17</sup> Birla Sun Life

policies, the Policyholder Regulation and the 2014 Regulation require that the price of units repurchased by insurer shall be calculated as on the date of cancellation, while the Health Regulation refers to the date of return of policy. However, one insurer will calculate the repurchase price only after all documents and requirements are received by the insurer.<sup>18</sup>

It is submitted that the date on which the insured's written intimation of cancellation reaches the insurer should be reckoned as the effective date of cancellation for the purposes of calculating proportionate risk charges or for calculating repurchase price of units. The actual refund of premium or amount paid by the insured can be postponed until other formalities are completed: viz. return of original policy, bank details and confirming the identity of the person claiming the amount.

### ***Reasons for cancellation***

The very nature of free-look provision implies that the insured shall have the free-look option irrespective of the reason. The Policyholder Regulation, Circular, Guidelines and Exposure Draft provide that the insured can return the policy if he disagrees with any terms of the policy. They also require the insured to state reasons for his objection. It is perhaps the intention of these statutory provisions that reasons shall be stated, but will not affect the cancellation; but the provisions seem to suggest to the insured that he must specify the terms of the policy with which he disagrees, and that he must have some objection to the policy or its terms and conditions. The Health Regulations do not require him to state any reasons for return, but provide that the insured can return the policy 'if not acceptable'. This also suggests that he must show which aspect of the policy is not acceptable.

Policies of various insurance companies state circumstances that will entitle the insured to return the policy: not happy,<sup>19</sup> not acceptable,<sup>20</sup> objections to terms and conditions,<sup>21</sup> insured disagrees,<sup>22</sup> not satisfied,<sup>23</sup> not suitable to needs.<sup>24</sup> Policies of twelve life insurers require that the insured to state reasons for his objection.<sup>25</sup>

Free-look cancellation forms indicate how insurers perceive the free-look provisions. These forms give a list of reasons that must be marked off by the insured. These are: the insured does not agree<sup>26</sup> or is not satisfied<sup>27</sup> or disagrees<sup>28</sup> with the terms and

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<sup>18</sup> Max Life

<sup>19</sup> Cigna Health

<sup>20</sup> Future Generali, IFFCO Tokio, National Insurance, New India Assurance, Royal Sundaram, United India

<sup>21</sup> HDFC Ergo, Apollo, Bharti Axa, L&T, Max Bupa, Tata AIG

<sup>22</sup> AVIVA, Bajaj Allianz, Bharti Axa, DHFL, Edelweiss, Exide, Future Generali, India First, Max Life, Reliance, SBI Life, Star Union, Reliance Health, ICICI Lombard,

<sup>23</sup> Aegon Religare, Birla Sun Life, ICICI Pru, IDBI Fed, LIC, SBI Life, Star Union, Tata AIG, Sri Ram, Star Health, Cholamandalam, L&T

<sup>24</sup> Liberty Videocon

<sup>25</sup> SBI Life, Bajaj Allianz, AVIVA, Bharti AXA, DFHL, Edelweiss, Future Generali, India First, LIC, PNB Metlife, Reliance Life, Star Union

<sup>26</sup> Reliance Life

<sup>27</sup> Apollo Munich Health, Cigna Health, ICICI Lombard

conditions of the policy; the product or policy does not meet expectations<sup>29</sup> or requirements;<sup>30</sup> policy pack is not received<sup>31</sup> or is delayed;<sup>32</sup> there is currently no requirement;<sup>33</sup> premium amount is not as agreed or understood;<sup>34</sup> financial reasons<sup>35</sup> or problems;<sup>36</sup> personal reasons;<sup>37</sup> product differs from what was requested;<sup>38</sup> product / features / benefits not disclosed;<sup>39</sup> tampering, corrections, forgery of proposal or related papers;<sup>40</sup> and obligation sale.<sup>41</sup> Insurers therefore require a reason shall be stated.

Some free-look forms require the insured to state the reason for cancellation;<sup>42</sup> or to tick a reason for cancellation from a list<sup>43</sup> and describe such reason in detail;<sup>44</sup> or to state which terms and conditions does the insured disagree.<sup>45</sup> One insurer will not consider the cancellation without specific details of reasons.<sup>46</sup> Another insurer will reject the request if it has not a valid reason.<sup>47</sup> Some insurers also require the insured to assure the truth of statements in the cancellation form.<sup>48</sup>

It is important for insurers to know the reasons for cancellation. Stated reasons are a valuable feedback to insurers. The question is whether the statutory provisions relating to statement of reasons is mandatory. If the true nature of free-look provision is to enable an insured to cancel the policy simply because he does not like the policy, his disagreement, objection or non acceptance of terms should be unnecessary. Hence the existence of any reason, stating a reason, or describing it in detail cannot be a condition for exercising the right of cancelling the policy. An insured ought to be entitled to return the policy under the free-look provision without having or assigning any reason, except of course, that he does not want it any more. Such clear

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<sup>28</sup> SBI Life

<sup>29</sup> Birla Sunlife

<sup>30</sup> IDBI Fed

<sup>31</sup> Max Life

<sup>32</sup> Max Life

<sup>33</sup> IDBI Fed, Max Life

<sup>34</sup> Birla Sunlife, IDBI Fed

<sup>35</sup> Birla Sunlife

<sup>36</sup> Max Life

<sup>37</sup> Max Life

<sup>38</sup> Max Life, Apollo Munich Health, Cigna Health, ICICI Lombard

<sup>39</sup> Apollo Munich Health, Cigna Health, ICICI Lombard

<sup>40</sup> Max Life

<sup>41</sup> Max Life

<sup>42</sup> DHFL, Edelweiss Tokio Life, Exide Life, HDFC Life, ICICI Pru, Reliance Life, Star Health

<sup>43</sup> Birla Sunlife, IDBI Fed, Max Life, Apollo Munich Health, Cigna Health, ICICI Lombard

<sup>44</sup> Max Life, SBI Life

<sup>45</sup> SBI Life

<sup>46</sup> Kotak Life: "If the reason is not stated clearly with specific details, then the case will not be accepted for free-look cancellation"; and "Specific details about the reason should be mentioned and if mis-selling the details of the same should be clearly mentioned."

<sup>47</sup> PNB MetLife: "I understand that I need to mention a valid reason for Free-look as specified in the Terms and Conditions of the policy Cancellation else PNB MetLife can reject the request"

<sup>48</sup> ICICI Pru, PNB MetLife, SBI Life, ICICI Lombard

interpretation will not only reinforce the right of cancellation, but will also avert disputes about the existence and truth of the reasons of cancellation.

### ***The cancellation request***

The statutory instruments do not provide the mode of exercising the free-look option. Nor do they state the place where the cancellation must be communicated. It is assumed therefore that it may be done orally, or intimated by email or a letter indicating an intention to cancel or return the policy.

Many insurers have made available forms that an insured can use for this purpose. Some forms are very simple and hence insured-friendly,<sup>49</sup> but perhaps in this case, the other formalities will be informed to the insured after the insurer receives the form.

As regards the address to which the cancellation shall be sent, many insurers do not mention in the free-look cancellation forms the place where the form shall be submitted.<sup>50</sup> One insurer requires that the form shall be personally submitted to the branch, without specifying the branch.<sup>51</sup> Among those forms analysed, only one form gave specifically an address to which the form shall be sent.<sup>52</sup>

This author submits that it should be sufficient to cancel the policy by any mode like written notice, or by return of policy; a form should not be mandatory to give effect to the return of policy. However, the insurer might require information from the insured for completing the cancellation process, for which purpose the form is a convenient vehicle. It is also submitted that address for sending the cancellation must be mentioned in every document in which the free-look provision is stated.

### ***Procedure after intimation of cancellation***

The statutory instruments above provide that after the insurer has received a notice of cancellation from the insured, they shall return the amount calculated as indicated. But they do not state the procedure.

A study of free-look cancellation forms indicate that almost all insurers require the original policy, and require its submission with the cancellation form, and many make it mandatory in express terms. Some insurers also require the insured to return the first premium receipt,<sup>53</sup> or the Health Card.<sup>54</sup>

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<sup>49</sup> Star Health, Edelweiss Tokio Life

<sup>50</sup> Birla, DHFL Pramerica, Edelweiss, HDFC Life, ICICI Pru, IDBI Fed, Max Life, PNB Metlife, Reliance Life, SBI Life, Star Union Dai Ichi Life, Apollo Munich Health, ICICI Lombard, Star Health

<sup>51</sup> Aviva Life

<sup>52</sup> Kotak

<sup>53</sup> Birla Sunlife, Star Union Dai Ichi Life

<sup>54</sup> Cigna Health



## ***Mode of refund***

Most insurers impose payout through NEFT mode, while some will not insist on such mode if the bank does not participate in the e-clearing or NEFT system.<sup>55</sup> One insurer restricts payment into the very account from which the premium was paid.<sup>56</sup> Payment by cheque or DD will be made at the insurer's option,<sup>57</sup> and in some cases at the option of the insured,<sup>58</sup> while one insurer will pay by cheque only if the credit is not affected by the bank for any reason.<sup>59</sup> For such payment purposes, insurers seek information about bank account into which refund amount shall be credited, and verification of its details. Most insurers seek either a cancelled cheque or verified bank statement or pass book for such verification.

It is submitted that by default, refund should be made into the bank account from which the premium was received, unless the insured gives an option to receive it electronically into another bank account, or by cheque or demand draft.

## ***Effect of cancellation***

Since the free-look provision is an option to an insured, its mere exercise ends the policy if its conditions are met. The request addressed to the insurer does not need acceptance,<sup>60</sup> consent or approval of the insurer. By exercise of the option, the policy terminates. All rights and obligations under the policy will be discharged. Neither can the insured claim or enforce the policy, nor the insurer. The insurer's obligations are discharged automatically. The brochures, policies and forms use dissimilar words: that the policy will terminate<sup>61</sup> and all rights, benefits and interests under the policy shall stand extinguished,<sup>62</sup> or terminated;<sup>63</sup> that the contract and all obligation under shall end,<sup>64</sup> that the payout of refund will discharge the insurer<sup>65</sup> in full satisfaction under the policy,<sup>66</sup> the contract shall stand terminated upon payment of refund money,<sup>67</sup> the policy will stand cancelled;<sup>68</sup> that the cancellation will result in termination of the insurance contract, and all rights titles and interest under the shall

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<sup>55</sup> Aviva Life, Reliance Life

<sup>56</sup> Birla Sunlife

<sup>57</sup> ICICI Pru, PNB Metlife

<sup>58</sup> Cigna Health, Max Life, DHFL

<sup>59</sup> Reliance Life

<sup>60</sup> but see Free-look Form of Kotak Mahindra: "This application will not be effective until it is officially accepted by Kotak Mahindra Old Mutual Life Insurance Ltd."

<sup>61</sup> Policy: Aegon Religare, ICICI Pru, Max Life,

<sup>62</sup> Policy: Aegon Religare, Bharati AXA, Birla SunLife, ICICI Pru, Max Life, Apollo Munich, Cigna Health, HDFC Ergo, Liberty Videocon, L&T, Max Bupa

<sup>63</sup> Exide Life

<sup>64</sup> Free-look form: DHFL Pramerica

<sup>65</sup> Free-look form: IDBI Fed , Reliance Life

<sup>66</sup> Free-look form: IDBI Fed

<sup>67</sup> Free-look form: Reliance Life

<sup>68</sup> Policy: Cholamandalam Health

stand terminated,<sup>69</sup> that the cover under the policy and other benefits as mentioned in the policy will cease to exist.<sup>70</sup>

This option is an additional right conferred on the insured by law. It does not and cannot take away his other rights under law. A question arises whether exercise of this option will end the other rights which the insured may have under law. Insurers use the free-look provisions in defence of allegations of mis-selling, misrepresentation and non-disclosure made by insured against them.<sup>71</sup> Such defence exceeds the terms of policies stated above. This is discussed later.

### ***Other instances of overreach***

Other provisions in free-look forms indicate that insurers restrict the insured's rights, e.g. by requiring the insured to agree to deduction of any charges as necessary for processing the request,<sup>72</sup> or to penalty which will be levied on payout value for the processing of request;<sup>73</sup> or to charges and taxes applicable.<sup>74</sup>

### **Free-look provision does not affect legal rights**

It is submitted that the free-look provision is an additional right given to an insured to cancel and return the policy; this does not prejudice any right of a insured to rescind, avoid, terminate or cancel the policy, or to claim remedies, which the insured may have under general law. Nor does it free or discharge the insurer from any obligation or liability under general law. The free-look provisions do not change, amend or modify ordinary rights and duties under general laws.

It is submitted that failure to examine and return the policy within free-look period cannot be used as a defence against the claim of an insured about mis-selling the policy or misrepresentation by the insurer or the insurance agent.<sup>75</sup>

### ***Remedies for misrepresentation, fraud, forgery etc***

As a contracting party, an insurer is as much bound to tell the truth, and not to suppress facts that will affect the consent of the insured to the contract. The insured is entitled to know all facts that will enable the insured to make the contract of insurance at all, or to contract on the same terms.

The duty of utmost good faith is usually referred as one applicable to the insured. The insurer's duty to disclose remains in the background. The duty of utmost good faith is

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<sup>69</sup> Free-look form: Max life, Apollo Munich Health, Cigna Health,

<sup>70</sup> Free-look form: ICICI Lombard

<sup>71</sup> suggested in Raj Pradhan, Free-look period policy cancellation is not free, [www.moneylife.in](http://www.moneylife.in), 16 May 2013

<sup>72</sup> ICICI Pru (Form)

<sup>73</sup> AVIVA (Form)

<sup>74</sup> Reliance Life

<sup>75</sup> See for decisions by court refusing relief to insured on the ground that the insured failed to return the policy within free-look period: *T S Bash v Star Health & Allied Insurance Co Ltd* II (2014) CPJ 620 (NC); *Tappan Kanti Dhar v Tata AIG Life Insurance Corporation Limited* II (2014) CPJ 183 (HP)

mutual;<sup>76</sup> it applies to both parties in an insurance contract.<sup>77</sup> That the insurer is also bound by the duty of disclosure is also recognised in India.<sup>78</sup> The insurer's duty of disclosure is of disclosure of all facts known to the insurer that are material to the risk insured against, or to the chances of recovering a claim which a prudent insured would take into account when deciding whether to place the risk with the insurer.<sup>79</sup> The insurer will be bound to disclose all facts that will enable the insured (as proposer) to decide whether to contract with that insurer, viz. the type of coverage offered and the conditions of contract. Such facts will include details about the insurer, the product (benefit, options, charges, premiums, surrender values, bonuses, perils covered, exclusions), the contractual obligations (terms, conditions) and the law.<sup>80</sup> Many Regulations of the IRDA oblige an insurer to give information about these facts to the customer and in the sales / marketing literature.

The insurer's duty is not merely a duty of good faith, but of 'utmost' good faith requiring the insurer to disclose all facts to the insured voluntarily without the insured seeking information or asking questions. The facts to be disclosed are not limited to those that the IRDA Regulations require by way of mandatory disclosure.

Some complaints made by insured persons<sup>81</sup> against insurers allege misconduct that caused the insured to make or led to the insurance contract, viz:

1. misrepresentation or fraud, viz. extortionate charges depleting the product, product different from what was proposed, selling wrong policies, fraudulent calls, promise of good returns.<sup>82</sup>
2. misrepresentation by breach of duty of utmost good faith: failure to advise about heavy mortality charges,<sup>83</sup> especially high mortality charges applicable to persons of old age.
3. fraud by making promise without intention of performing: promise of free gifts – vehicles etc, promise of interest free loans.
4. fraud by collusion: collusion between parties, viz. agents and insurers<sup>84</sup>
5. misrepresentation of causing insured to commit a mistake: policy sold by banks as a profitable scheme of investment;<sup>85</sup> single premium policy being sold as annual premium policy, compulsion to buy insurance policies while

<sup>76</sup> MacGillivray on Insurance Law, 9<sup>th</sup> ed, Sweet and Maxwell, 1991 p 424.

<sup>77</sup> *Carter v Boehm* (1766) 3 Burr 1905, per Lord Mansfield; *Banque Financiere de la Cite SA v Westgate Insurance Co Ltd* [1991] 2 AC 249; see for example section 19 of the Marine Insurance Act 1963.

<sup>78</sup> *Modern Insulators Ltd v Oriental Insurance Co Ltd* AIR 2000 SC 1014

<sup>79</sup> *Banque Financiere de la Cite SA v Westgate Insurance Co Ltd* [1991] 2 AC 249

<sup>80</sup> See for example Article of the EU Directive 92/96/EEC

<sup>81</sup> by approaching courts and tribunals, on web-forums, and as disclosed in articles and news

<sup>82</sup> *Aviva Life Insurance Co India Pvt Ltd v Shelly Sharma* Rev Petn No 2356 / 2013 decided on 3 March 2014 (NCRDC)

<sup>83</sup> *Virendra Pal Kapoor v Union of India* 2014 (8) ADJ 602 (Allahabad HC)

<sup>84</sup> Babar Zaidi, *Free-look period: Policies should be sent directly to the policyholder*, The Economic Times, 11 April 2011

<sup>85</sup> *Surinder Pal Kaur v Aviva Life Insurance Company India Limited II* (2014) CPJ 138 (Punj.)

applying for a loan or other services, compulsion to buy a policy in order to return amount of another policy;<sup>86</sup> annual premium policy sold as single premium policy

6. forgery: fake documentation<sup>87</sup>

7. purporting to accept proposal never made: Not in name of proposer

It is submitted that in each of these situations, the insured has a remedy and can seek return of premium: viz. avoid the contract for misrepresentation or fraud or non-disclosure,<sup>88</sup> or claim on the principle of non-est-factum or lack of contract, or seek to set aside the contract on the ground of forgery. Free-look provisions cannot affect this right.

It is submitted that although insurers have attempted to use the free-look provision as a shield<sup>89</sup>, the free-look provision cannot absolve an insurer from liability.

### ***Duty of insurer to give the policy that the proposer wants***

It is the duty of the insurer to give a policy for the product that a proposer has asked, and with terms and conditions promised in prospectus, brochures, and other documents given to the insured. An insurer cannot be absolved of this duty because the insured did not or chose not to read the policy or return it within the free-look period.

### ***Insurer cannot shift burden***

The provisions relating to free-look period cannot compel an insured to read and check whether the policy follows the promises made by the insurer concerning the product. This burden lies on the company. An insured should not be required to check whether the policy document matches the insurance he had sought.

### ***Cannot estop the insured***

It is possible that an insurer has sold a product that does not match the information supplied to the insured while selling the policy. The insured may not have read the policy within the free-look period. The free-look provision cannot compel the insured to read the policy, and his omission to read the policy or return it cannot be said to estop him from seeking remedies under general law. The free-look provision cannot allow the insurer to insist that the insured has accepted the policy if not returned within the free-look period. The insurer is not entitled to claim that retaining the policy document beyond the free-look period conclusively establishes that the insured has agreed to all

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<sup>86</sup> *Max New York Life Insurance Co Ltd v Reena Singh* Rev Petn No 2394, 2395 / 2013 dec on 7 August 2014 (NCRDC)

<sup>87</sup> *Tapan Kanti Dhar v Tata AIG Life Insurance Corporation Limited II* (2014) CPJ 183 (HP)

<sup>88</sup> Sections 17, 18 and 19 of the Indian Contract Act 1872.

<sup>89</sup> *Aviva Life Insurance Co India Pvt Ltd v Shelly Sharma*, Rev Petn No 2356 / 2013 decided on 3 March 2014 (NCRDC); *Devinder Kumar v HDFC Standard Life Insurance Company Ltd I* (2014) CPJ 241 (UT Chd); *Max New York Life Insurance Co Ltd v Reena Singh* Rev Petn No 2394, 2395 / 2013 dec on 7 August 2014 (NCRDC); ` II (2014) CPJ 138 (Punj.)

terms stated in the policy. Failure to return the policy within the free-look period cannot debar the insured from questioning the policy and actions of the insured, nor can it mean that the insured has agreed to the terms and conditions of the policy.

## Conclusion and suggested provision

The free-look provision is an additional option of the insured. Although a policy might give him a power to cancel the policy according to its terms, this option allows him to become free of the insurance contract on conditions prescribed by statutory provisions. He becomes entitled to return of premium subject to minimum deductions that represent cost incurred by the insurer until cancellation.

The cancellation under this provision, when it happens, benefits both parties – the insured as well as the insurer. In a case of mis-selling, it allows the insured to return the policy without being required to prove conditions that will entitle him to avoid the contract. The insurer is also saved of the time and expense involved in defending such claim. The cancellation can and should happen seamlessly.

Mandatory free-look provisions have not avoided disputes about exercise of free-look option. Insurers have imposed additional conditions that impede or restrict exercise of the option. This is likely to deter insured persons from using the option. With adjustments that will clarify certain ambiguities, the free-look provisions reduce disputes and consequent losses in terms of costs, time and embarrassment.

## A model free-look provision

A suggested free-look provision for a policy is given below:

*You have an option to cancel this policy in the free-look period of 15 days from the day you receive the policy.<sup>90</sup> You must intimate in writing your decision of cancelling the policy within 15 days from the day you receive the policy. You can send this intimation to any of our branches. You can also intimate your decision by sending an email to the email address of our customer service centre within such 15 days from your email address registered with us.*

*Before we give effect to your cancellation and refund your amount, you must give us*

- 1. the original policy*
- 2. self-attested copy of your PAN Card*
- 3. all documents and particulars that will assure us of your identity*
- 4. details of your bank account with a copy of a cancelled cheque.*
- 5. other documents that we may ask for that will assist us in establishing your identity and your bank details.*

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<sup>90</sup> In health insurance policies: You have an option to cancel this policy in the free-look period of 15 days from the day you receive the policy. You have this option at the inception of the policy, and not at the time of renewal.

*We will refund the premium within 7 days from the day we receive all above documents after deducting*

- 1. The proportionate risk charges from the commencement of the insurance cover until the date we receive your intimation of cancelling the policy,*
- 2. the expenses that we may have paid for your medical check up before the policy was issued to you*
- 3. the stamp duty charges*

*If yours is a unit-linked policy, we will repurchase the units at the price prevailing on the date we receive your intimation cancelling the policy.*

*We will refund the amount to the bank account from which you paid the premium, or at your option, by electronic transfer to your other bank account or by cheque / demand draft drawn in your name and bank account number.*

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